

April 18, 2007

**H 1671. ARBITRATION/NEGLIGENT HEALTH CARE ACTIONS.** Filed 4/18/07. *TO PROVIDE FOR THE ARBITRATION FOR CAUSES OF ACTION FOR PERSONAL INJURY OR WRONGFUL DEATH BASED ON ALLEGED PROFESSIONAL NEGLIGENCE IN THE PROVISION OF HEALTH CARE, UPON THE AGREEMENT OF ALL PARTIES TO AN ACTION.*

To be summarized in tomorrow's *Daily Bulletin*.

**Intro. by England, Glazier, Rapp.**

GS 1, 90

April 19, 2007

**H 1671. ARBITRATION/NEGLIGENT HEALTH CARE ACTIONS.** Filed 4/18/07. *TO PROVIDE FOR THE ARBITRATION FOR CAUSES OF ACTION FOR PERSONAL INJURY OR WRONGFUL DEATH BASED ON ALLEGED PROFESSIONAL NEGLIGENCE IN THE PROVISION OF HEALTH CARE, UPON THE AGREEMENT OF ALL PARTIES TO AN ACTION.*

Enacts Article 1H in GS Chapter 90 to establish a procedure for arbitrating certain health care negligence disputes, as indicated in the title. Provides that such disputes will be submitted to arbitration only if all parties so elect. The plaintiff may elect arbitration in the complaint and the defendant in the answer, or the parties may subsequently file a stipulation electing arbitration. A party who does not initially elect arbitration must, when the action is commenced (for the plaintiff), or when the answer is filed (for the defendant), file a declaration stating that the attorney for that party presented the party with a copy of the statute and the party elected not to submit the dispute to arbitration. Declares unenforceable contracts that require a party to elect arbitration and that are entered into before the commencement of an action covered by the statute. Establishes procedures for mutual selection of arbitrators or, when the parties are unable to agree on an arbitrator, for selection by the court. Also establishes procedures governing the conduct of the arbitration, including provisions governing expert witnesses, written and documentary discovery, depositions, and subpoenas. Provides deadlines for various stages of the arbitration, with the arbitration hearing to begin within 270 days after the arbitration election. Requires the arbitrator to make specified findings in the award and also provides that (1) the award must be signed, in writing, and issued within 14 days after completion of the hearing; (2) the award may not exceed \$1 million for both economic and noneconomic damages; and (3) the arbitrator may not award damages under a theory of ostensible agency liability. Requires the nonprevailing party to pay the arbitrator's fees and expenses. Also requires the court to issue judgment in accordance with the arbitration award unless the award is vacated, modified, or corrected as permitted by Article 45 of GS Chapter 1, the Revised Uniform Arbitration Act (RUAA). Provides that the RUAA does not apply to arbitration under Article 1H except where the article specifically so provides (as in the provisions for judicial review) and makes conforming changes to the RUAA. Effective January 1, 2008, and applies to actions filed on or after that date.

**Intro. by England, Glazier, Rapp.**

GS 1, 90

May 15, 2007

**H 1671. ARBITRATION/NEGLIGENT HEALTH CARE ACTIONS.** Filed 4/18/07. House committee substitute makes the following changes to 1st edition. Modifies proposed GS 90-21.60 (regarding voluntary arbitration for actions for negligent health care claims) by specifying that the proposed GS Chapter 90, Article 1H, does not impair the enforceability of any arbitration provision that does not specifically require arbitration under the article. Modifies GS 90-21.61 providing that parties may agree to submit the dispute to arbitration at any time during the pendency of the action by filing a stipulation with the court to do so (was, linked the initial election to submit the dispute to arbitration to the filing of claimant's complaint and the defendant's answer). Provides that if the parties do not unanimously agree to arbitration under the article, the parties must file a declaration of their decision not to submit the dispute to arbitration with the court before the discovery scheduling conference required by GS 1A-1, Rule 26(f1) (was, linked the filing of the declaration with filing of the complaint and answer). Provides that the declaration is without prejudice to a subsequent agreement by the parties to submit the dispute to arbitration. Modifies GS 90-21.62 and 90-21.64 by linking the time frame for selecting an arbitrator and the time limitations for arbitration to the date of the filing of the stipulation by the parties agreeing to

submit the dispute to arbitration and deletes any deadlines predicated on the filing of the complaint and answer. Directs that if the parties are unable to agree to an arbitrator by 45 days after the filing of the stipulation to arbitrate, the arbitrator is to be selected from a list maintained by the Administrative Office of the Courts by the parties via an alternating elimination process (was, selection by court if unresolved by parties). Provides that the parties may make a written agreement as to the selection of an arbitrator as a precondition for a stipulation to arbitrate. Adds that continuances may be granted where all parties consent to the continuance.

Modifies GS 90-21.65 by directing that the arbitrator not make an award of damages in excess of \$1 million regardless of the number of claimants or defendants (was, limited to \$1 million for both economic and noneconomic damages). Requires the arbitrator to make findings as to whether death or injury to the plaintiff was caused by the negligence of the defendant if the arbitrator makes an award of damages to the claimant (was, make findings as to whether the claimant suffered serious mental or physical injury as a result of the professional negligence of any defendant). Enacts new GS 90-21.67 providing that the court is to retain jurisdiction while the arbitration proceeding is pending and allowing the court upon the request of the arbitrator to enter orders necessary to enforce the provisions of the act. Makes additional conforming and technical changes.

May 17, 2007

**H 1671. ARBITRATION/NEGLIGENT HEALTH CARE ACTIONS.** Filed 4/18/07. House committee substitute makes the following changes to 2nd edition. Makes technical and grammatical changes in proposed GS 90-21-62 and GS 90-21.69.

July 17, 2007

**H 1671. ARBITRATION/NEGLIGENT HEALTH CARE CLAIMS.** Filed 4/18/07. Senate committee substitute makes the following changes to 3rd edition. Modifies proposed new GS 90-21.60 to provide that the Article applies to all claims for damages (was, any cause of action for damages) for personal injury or wrongful death that is based on alleged negligence by a health care provider as defined in GS 90-21.11 where all parties have agreed to arbitration. Also provides that any contract provision (was, contract) entered into before the commencement of an action that requires a party to elect arbitration is void and unenforceable. Modifies proposed new GS 90-21.61 to authorize joint submission of a dispute to arbitration before an action is filed. Also requires a declaration not to arbitrate to state that the attorneys representing the parties have discussed the provisions of the Article with each other. Modifies proposed new GS 90-21.62 to provide that if the parties do not agree to an arbitrator by the specified time, the arbitrator must be selected from a list of emergency superior court judges (was, from a panel of special or retired superior court judges). Also provides that an emergency superior court judge serving as an arbitrator is paid at the same rate as an emergency judge serving in superior court. Modifies proposed new GS 90-21.64 to require the scheduling order to specify a deadline for serving dispositive motions and briefs. Modifies proposed new GS 90-21.65 to require the arbitrator's fees and expenses to be paid equally by the parties (was, by the nonprevailing party) and requires each party to pay its own attorney's fees and costs. Makes conforming and technical changes. Makes a conforming title change.

September 4, 2007

**SL 2007-541 (H 1671). ARBITRATION/NEGLIGENT HEALTH CARE CLAIMS. AN ACT TO PROVIDE FOR THE ARBITRATION OF CLAIMS FOR PERSONAL INJURY OR WRONGFUL DEATH BASED ON ALLEGED NEGLIGENCE IN THE PROVISION OF HEALTH CARE, UPON THE AGREEMENT OF ALL PARTIES.** Summarized in *Daily Bulletin* 4/19/07, 5/15/07, 5/17/07, and 7/17/07. Enacted August 31, 2007. Effective January 1, 2008.