

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 1295

Short Title: Medical Malpractice Claims Arb. Study Comm. (Public)

Sponsors: Senators Johnson of Wake; Allran, Basnight, Block, Conder, Daniel, Harris, Kaplan, Rauch, Staton, Taft, Walker, and Ward.

Referred to: Rules and Operation of the Senate.

May 11, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE MEDICAL MALPRACTICE CLAIMS ARBITRATION
3 STUDY COMMISSION.

4 Whereas, the North Carolina Bar Association's special committee on the Tort
5 Liability System has supported "...the continued development of alternative dispute
6 resolution procedures, including mediation, court-annexed arbitration, independent
7 arbitration and summary jury trials when such are desired by the litigants"; and

8 Whereas, a successful program of court-annexed arbitration has been
9 conducted in cases involving sums up to one hundred fifty thousand dollars (\$150,000)
10 in the United States District Court for the Middle District of North Carolina, and a
11 successful program of arbitration of small claims has been conducted in three Judicial
12 Districts in North Carolina; and

13 Whereas, it would be in the best interest of the public and health-care delivery
14 to provide a more efficient and less costly method of resolving claims between patient
15 and physician; Now, therefore,

16 The General Assembly of North Carolina enacts:

17 Section 1. The Medical Malpractice Arbitration Study Commission is hereby
18 created. The Commission shall consist of 13 members who shall be appointed as
19 follows:

20 (1) Five members appointed by the General Assembly upon the
21 recommendation of the Speaker of the House of Representatives as
22 follows:

- 1 a. Three persons who are members of the House of
2 Representatives at the time of their appointment, one of whom
3 shall be a licensed attorney regularly representing plaintiffs or a
4 member of a firm that regularly represents plaintiffs, and one of
5 whom shall be a licensed attorney regularly representing
6 defendants or a member of a firm that regularly represents
7 defendants;
- 8 b. One physician licensed to practice medicine in North Carolina;
9 and
- 10 c. One at-large member representing the general public;
- 11 (2) Five members appointed by the General Assembly upon the
12 recommendation of the President Pro Tempore of the Senate as
13 follows:
- 14 a. Three persons who are members of the Senate at the time of
15 their appointment, one of whom shall be a licensed attorney
16 regularly representing plaintiffs or a member of a firm which
17 regularly represents plaintiffs, and one of whom shall be a
18 licensed attorney regularly representing defendants or a member
19 of a firm which regularly represents defendants;
- 20 b. One physician licensed to practice medicine in North Carolina;
21 and
- 22 c. One at-large member representing the general public;
- 23 (3) The Chief Justice of North Carolina or his designee;
- 24 (4) The Chief Judge of the North Carolina Court of Appeals or his
25 designee;
- 26 (5) The President of the North Carolina Bar Association or his designee.

27 If a vacancy occurs in the membership, the appointing authority shall appoint
28 another person to serve the balance of the unexpired term in the same manner in which
29 the original appointment was made.

30 The Commission shall terminate upon the filing of a report with the General
31 Assembly.

32 Sec. 2. The President Pro Tempore of the Senate shall designate one Senator
33 as cochairman, and the Speaker of the House of Representatives shall designate one
34 member of the House of Representatives as cochairman.

35 Sec. 3. The Commission shall study the use of court-annexed arbitration in
36 medical malpractice actions, as described in G.S. 90-21.12, and as a part of its study, the
37 Commission may also consider studies by the American Medical Association, the North
38 Carolina Bar Association Dispute Resolution Committee, and the Duke University
39 Private Adjudication Center, regarding alternate forms of dispute resolution in
40 mediation, conciliation, and other forms of alternate dispute resolution, which might
41 lead to a more expeditious and more economical determination of issues arising in a
42 medical malpractice action than the present system of discovery and jury trial, which
43 has been found to be very time consuming and expensive. The Commission is
44 specifically empowered to study arbitration and other alternate dispute resolution forms

1 which have been implemented or are being considered for implementation in other
2 states of the United States.

3 Sec. 4. The Commission shall submit a final report of its findings and
4 recommendations to the General Assembly on or before the first day of the 1991
5 Session of the General Assembly by filing the report with the President Pro Tempore of
6 the Senate and the Speaker of the House of Representatives. The Commission may, but
7 is not required to, file its report on or before the first day of the 1990 Budget Session of
8 the 1989 General Assembly, if it can complete its work and adopt a report requiring
9 filing on or before such date. Upon filing its final report, the Commission shall
10 terminate.

11 Sec. 5. The Commission, while in the discharge of official duties, may
12 exercise all the powers provided for under the provisions of G.S. 120-19 and G.S. 120-
13 19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call
14 of the cochairmen. The Commission may meet in the Legislative Building or the
15 Legislative Office Building.

16 Sec. 6. The Commission may contract for professional, clerical, or consultant
17 services as provided by G.S. 120-32.02. The Legislative Services Commission, through
18 the Legislative Administrative Officer, shall assign professional staff to assist in the
19 work of the Commission. The House of Representatives' and the Senate's Supervisor of
20 Clerks shall assign clerical staff to the Commission, upon the direction of the
21 Legislative Services Commission. The expenses relating to clerical employees shall be
22 borne by the Commission.

23 Sec. 7. All State departments and agencies shall furnish the Commission with
24 any information in their possession or available to them.

25 Sec. 8. The Commission shall have all powers necessary or convenient to
26 carry out the purposes and provisions of this act, including, but not limited to, the power
27 to receive and accept grants or funds from any public or private agency for, or in the aid
28 of, the purposes of this section, and to receive or accept contributions, from any source,
29 of money, or labor, to be held, used, and applied for the purposes of this act. Any grants
30 or contributions received shall be held by the Legislative Services Commission and
31 these monies received shall be used prior to the use of any available State funds. If
32 grants or contributions are received thereafter, they shall be retained by the Legislative
33 Services Commission in amount equal to State funds already expended.

34 Sec. 9. There is appropriated from the General Fund to the General
35 Assembly the sum of \$25,000 for the fiscal year 1989-90 and the sum of \$25,000 for the
36 fiscal year 1990-91 for the expenses of the Commission. Any unused sums shall revert
37 to the Legislative Research Commission of the General Assembly.

38 Sec. 10. This act shall become effective July 1, 1989.