

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 495

Short Title: Family Law Arbitration Act.

(Public)

Sponsors: Representatives Hackney; and Gardner.

Referred to: Judiciary I.

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ARBITRATION OF ALL ISSUES ARISING FROM A MARITAL SEPARATION OR DIVORCE, EXCEPT FOR THE DIVORCE ITSELF, UPON THE AGREEMENT OF ALL PARTIES; AND TO AMEND G.S. 1-567.57.

The General Assembly of North Carolina enacts:

Section 1. Chapter 50 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3.

"FAMILY LAW ARBITRATION ACT.

"§ 50-41. Purpose; short title.

(a) It is the policy of this State to allow, by agreement of all parties, the arbitration of all issues arising from a marital separation or divorce, except for the divorce itself, while preserving a right of modification based on substantial change of circumstances related to alimony, child custody, and child support. Pursuant to this policy, the purpose of this Article is to provide for arbitration as an efficient and speedy means of resolving these disputes, consistent with Chapters 50, 50A, 50B, 51, 52, 52B, and 52C of the General Statutes and similar legislation, to provide default rules for the conduct of arbitration proceedings, and to assure access to the courts of this State for proceedings ancillary to this arbitration.

1 (b) This Article may be cited as the North Carolina Family Law Arbitration Act.

2 **"§ 50-42. Arbitration agreements made valid, irrevocable, and enforceable.**

3 (a) Before, during, or after marriage, parties may agree in writing to submit to
4 arbitration any controversy, except for the divorce itself, arising out of the marital
5 relationship. This agreement is valid, enforceable, and irrevocable except with both
6 parties' consent, without regard to the justiciable character of the controversy and without
7 regard to whether litigation is pending as to the controversy.

8 (b) This Article does not apply to an agreement to arbitrate in which a provision
9 stipulates that this Article does not apply or to any arbitration or award under an
10 agreement in which a provision stipulates that this Article does not apply.

11 **"§ 50-43. Proceedings to compel or stay arbitration.**

12 (a) On a party's application showing an agreement under G.S. 50-42 and an
13 opposing party's refusal to arbitrate, the court shall order the parties to proceed with the
14 arbitration. If an opposing party denies existence of an agreement to arbitrate, the court
15 shall proceed summarily to determine whether a valid agreement exists and shall order
16 arbitration if it finds for the moving party; otherwise, the application shall be denied.

17 (b) Upon the application of a party, the court may stay an arbitration proceeding
18 commenced or threatened on a showing that there is no agreement to arbitrate. This
19 issue, when in substantial and bona fide dispute, shall be immediately and summarily
20 tried and the court shall order a stay if it finds for the moving party. If the court finds for
21 the opposing party, the court shall order the parties to go to arbitration.

22 (c) If an issue referable to arbitration under an alleged agreement is involved in an
23 action or proceeding pending in a court of competent jurisdiction, the application shall be
24 made in that court. Otherwise, the application may be made in any court of competent
25 jurisdiction.

26 (d) The court shall order a stay in any action or proceeding involving an issue
27 subject to arbitration if an order or an application for arbitration has been made under this
28 section. If the issue is severable, the stay may be with respect to that specific issue only.
29 When the application is made in an action or proceeding, the order compelling arbitration
30 shall include a stay of the court action or proceeding.

31 (e) An order for arbitration shall not be refused and a stay of arbitration shall not
32 be granted on the ground that the claim in issue lacks merit or because grounds for the
33 claim have not been shown.

34 **"§ 50-44. Interim relief and interim measures.**

35 (a) In the case of an arbitration where arbitrators have not yet been appointed, or
36 where the arbitrators are unavailable, a party may seek interim relief directly from a court
37 as provided in subsection (c) of this section. Enforcement shall be granted as provided by
38 the law applicable to the type of interim relief sought.

39 (b) In all other cases a party shall seek interim measures as described in subsection
40 (d) of this section from the arbitrators and has no right to seek interim relief from a court,
41 except that a party to an arbitration governed by this Article may request from the court
42 enforcement of the arbitrators' order granting interim measures.

1 (c) In connection with an agreement to arbitrate or a pending arbitration, the court
2 may grant under subsection (a) of this section any of the following:

- 3 (1) An order of attachment or garnishment;
4 (2) A temporary restraining order or preliminary injunction;
5 (3) An order for claim and delivery;
6 (4) Appointment of a receiver;
7 (5) Delivery of money or other property into court;
8 (6) Notice of lis pendens;
9 (7) Any relief permitted by G.S. 7B-502, 7B-1902, 50-13.5(d), 50-16.2A,
10 50-20(h), 50-20(i), or 50-20(il); or Chapter 50A, Chapter 50B, or
11 Chapter 52C of the General Statutes;
12 (8) Any relief permitted by federal law or treaties to which the United
13 States is a party; or
14 (9) Any other order necessary to ensure preservation or availability of
15 assets or documents, the destruction or absence of which would likely
16 prejudice the conduct or effectiveness of the arbitration.

17 (d) The arbitrators may, at a party's request, order any party to take any interim
18 measures of protection that the arbitrators consider necessary in respect to the subject
19 matter of the dispute, including interim measures analogous to interim relief specified in
20 subsection (c) of this section. The arbitrators may require any party to provide
21 appropriate security, including security for costs as provided in G.S. 50-51, in connection
22 with interim measures.

23 (e) In considering a request for interim relief or enforcement of interim relief, the
24 court shall give preclusive effect to any finding of fact of the arbitrators in the
25 proceeding, including the probable validity of the claim that is the subject of the interim
26 relief sought or granted.

27 (f) Where the arbitrators have not ruled on an objection to their jurisdiction, the
28 court shall not grant preclusive effect to the arbitrators' findings until the court has made
29 an independent finding as to the arbitrators' jurisdiction. If the court rules that the
30 arbitrators do not have jurisdiction, the application for interim relief shall be denied.

31 (g) Availability of interim relief or interim measures under this section may be
32 limited by the parties' prior written agreement, except for relief pursuant to G.S. 7B-502,
33 7B-1902, 50-13.5(d), 50-20(h), 50A-25, 50B-3, Chapter 52C of the General Statutes;
34 federal law; or treaties to which the United States is a party, whose purpose is to provide
35 immediate, emergency relief or protection.

36 (h) Arbitrators who have cause to suspect that any child is abused or neglected
37 shall report the case of that child to the director of the department of social services of the
38 county where the child resides or, if the child resides out-of-state, of the county where the
39 arbitration is conducted.

40 (i) A party seeking interim measures, or any other proceeding before the
41 arbitrators, shall proceed in accordance with the agreement to arbitrate. If the agreement
42 to arbitrate does not provide for a method of seeking interim measures, or for other
43 proceedings before the arbitrators, the party shall request interim measures or a hearing

1 by notifying the arbitrators and all other parties of the request. The arbitrators shall
2 notify the parties of the date, time, and place of the hearing.

3 **"§ 50-45. Appointment of arbitrators; rules for conducting the arbitration.**

4 (a) Unless the parties agree otherwise, a single arbitrator shall be chosen by the
5 parties to arbitrate all matters in dispute.

6 (b) If the arbitration agreement provides a method of appointment of arbitrators,
7 this method shall be followed. The agreement may provide for appointing one or more
8 arbitrators. Upon the application of a party the court shall appoint arbitrators in any of
9 the following situations:

10 (1) The method agreed upon by the parties in the arbitration agreement fails
11 or for any reason cannot be followed.

12 (2) An arbitrator who has already been appointed fails or is unable to act
13 and a successor has not been chosen by the parties.

14 (3) The parties cannot agree on an arbitrator.

15 (c) Arbitrators appointed by the court have all the powers of those arbitrators
16 specifically named in the agreement. In appointing arbitrators a court shall consult with
17 prospective arbitrators as to their availability and shall refer to each of the following:

18 (1) The positions and desires of the parties.

19 (2) The issues in dispute.

20 (3) The skill, substantive training, and experience of prospective arbitrators
21 in those issues, including their skill, substantive training, and experience
22 in family law issues.

23 (4) The availability of prospective arbitrators.

24 (d) The parties may agree to employ an established arbitration institution to
25 conduct the arbitration. If the agreement does not provide a method for appointment of
26 arbitrators and the parties cannot agree on an arbitrator, the court may appoint an
27 established arbitration institution the court considers qualified in family law arbitration to
28 conduct the arbitration.

29 (e) The parties may agree on rules for conducting the arbitration. If the parties
30 cannot agree on rules for conducting the arbitration, the arbitrators shall select the rules
31 for conducting the arbitration after hearing all parties and taking particular reference to
32 model rules developed by arbitration institutions or similar sources. If the arbitrators
33 cannot decide on rules for conducting the arbitration, upon application by a party, the
34 court may order use of rules for conducting the arbitration, taking particular reference to
35 model rules developed by arbitration institutions or similar sources.

36 (f) Arbitrators and established arbitration institutions, whether chosen by the
37 parties or appointed by the court, have the same immunity as judges from civil liability
38 for their conduct in the arbitration.

39 (g) 'Arbitration institution' means any neutral, independent organization,
40 association, agency, board, or commission that initiates, sponsors, or administers
41 arbitration proceedings, including involvement in appointment of arbitrators.

42 (h) The court may award costs, as provided in G.S. 50-51(f), in connection with
43 applications and other proceedings under this section.

1 **"§ 50-46. Majority action by arbitrators.**

2 The arbitrators' powers shall be exercised by a majority unless otherwise provided by
3 the arbitration agreement or this Article.

4 **"§ 50-47. Hearing.**

5 Unless otherwise provided by the agreement:

6 (a) The arbitrators shall appoint a time and place for the hearing and notify the
7 parties or their counsel by personal service or by registered or certified mail, return
8 receipt requested, not less than five days before the hearing. Appearance at the hearing
9 waives any claim of deficiency of notice. The arbitrators may adjourn the hearing from
10 time to time as necessary and, on request of a party and for good cause shown, or upon
11 their own motion, may postpone the hearing to a time not later than the date fixed by the
12 agreement for making the award unless the parties consent to a later date. The arbitrators
13 may hear and determine the controversy upon the evidence produced notwithstanding the
14 failure of a party duly notified to appear. Upon application of a party, the court may
15 direct the arbitrators to proceed promptly with the hearing and determination of the
16 controversy.

17 (b) The parties are entitled to be heard, to present evidence material to the
18 controversy, and to cross-examine witnesses appearing at the hearing.

19 (c) All the arbitrators shall conduct the hearing, but a majority may determine any
20 question and may render a final award. If, during the course of the hearing, an arbitrator
21 for any reason ceases to act, the remaining arbitrators appointed to act as neutrals may
22 continue with the hearing and determination of the controversy.

23 (d) Upon request of any party or at the election of any arbitrator, the arbitrators
24 shall cause to be made a record of testimony and evidence introduced at the hearing. The
25 arbitrators shall decide how the cost of the record will be apportioned.

26 **"§ 50-48. Representation by attorney.**

27 A party has the right to be represented by counsel at any proceeding or hearing under
28 this Article. A waiver of representation prior to a proceeding or hearing is ineffective.

29 **"§ 50-49. Witnesses; subpoenas; depositions; court assistance.**

30 (a) The arbitrators have the power to administer oaths and may issue subpoenas
31 for attendance of witnesses and for production of books, records, documents, and other
32 evidence. Subpoenas issued by the arbitrators shall be served and, upon application to
33 the court by a party or the arbitrators, enforced in the manner provided by law for service
34 and enforcement of subpoenas in a civil action.

35 (b) On the application of a party and for use as evidence, the arbitrators may
36 permit depositions to be taken in the manner and upon the terms the arbitrators designate.

37 (c) All provisions of law compelling a person under subpoena to testify apply.

38 (d) The arbitrators or a party with the approval of the arbitrators may request
39 assistance from the court in obtaining discovery and taking evidence, in which event the
40 Rules of Civil Procedure under Chapter 1A of the General Statutes and Chapters 50, 50A,
41 52B, and 52C of the General Statutes apply. The court may execute the request within its
42 competence and according to its rules on discovery and evidence, and may impose
43 sanctions for failure to comply with its orders.

1 (e) A subpoena may be issued as provided by G.S. 8-59, in which case the witness
2 compensation provisions of G.S. 6-51, 6-53, and 7A-314 shall apply.

3 **"§ 50-50. Consolidation.**

4 (a) If parties to two or more arbitration agreements agree, in their respective
5 arbitration agreements or otherwise, to consolidate arbitrations arising out of those
6 agreements, they may agree upon common arbitrators to hear all arbitrations, and these
7 arbitrations shall proceed as consolidated.

8 (b) If parties to two or more arbitration agreements agree, in their respective
9 arbitration agreements or otherwise, to consolidate arbitrations arising out of those
10 agreements, the court, upon application by a party, may do any of the following:

11 (1) Order the arbitrations consolidated on terms the court considers just and
12 necessary;

13 (2) If all parties cannot agree on arbitrators for the consolidated arbitration,
14 appoint arbitrators as provided by G.S. 50-45; and

15 (3) If all parties cannot agree on any other matter necessary to conduct the
16 consolidated arbitration, make other orders it considers necessary.

17 **"§ 50-51. Award; costs.**

18 (a) The award shall be in writing, dated and signed by the arbitrators joining in the
19 award, with a statement of the place where the award was made. Where there is more
20 than one arbitrator, the signatures of a majority of the arbitrators suffice, but the reason
21 for any omitted signature shall be stated. The arbitrators shall deliver a copy of the award
22 to each party personally or by registered or certified mail, return receipt requested, or as
23 provided in the agreement. Time of delivery shall be computed from the date of personal
24 delivery or date of mailing.

25 (b) Unless the parties agree otherwise, the award shall state the reasons upon
26 which it is based.

27 (c) Unless the parties agree otherwise, the arbitrators may award interest as
28 provided by law.

29 (d) The arbitrators in their discretion may award specific performance to a party
30 requesting an award of specific performance when that would be an appropriate remedy.

31 (e) Unless the parties agree otherwise, the arbitrators may not award punitive
32 damages. If arbitrators award punitive damages, they shall state the award in a record
33 and shall specify facts justifying the award and the amount of the award attributable to
34 punitive damages.

35 (f) Costs.

36 (1) Unless the parties otherwise agree, awarding of costs of an arbitration
37 shall be in the arbitrators' discretion.

38 (2) In making an award of costs, the arbitrators may include any or all of
39 the following as costs:

40 a. Fees and expenses of the arbitrators, expert witnesses, and
41 translators;

42 b. Fees and expenses of counsel and of an institution supervising
43 the arbitration, if any;

- 1 c. Any other expenses incurred in connection with the arbitration
2 proceedings;
3 d. Sanctions awarded by the arbitrators or the court, including those
4 provided by N.C.R. Civ. P. 11 and 37; and
5 e. Costs allowed by Chapters 6 and 7A of the General Statutes.
6 (3) In making an award of costs, the arbitrators shall specify each of the
7 following:
8 a. The party entitled to costs;
9 b. The party who shall pay costs;
10 c. The amount of costs or method of determining that amount; and
11 d. The manner in which costs shall be paid.

12 (g) An award shall be made within the time fixed by the agreement. If no time is
13 fixed by the agreement, the award shall be made within the time the court orders on a
14 party's application. The parties may extend the time in writing either before or after the
15 expiration of this time. A party waives objection that an award was not made within the
16 time required unless that party notifies the arbitrators of his or her objection prior to
17 delivery of the award to that party.

18 **"§ 50-52. Change of award by arbitrators.**

19 On a party's application to the arbitrators or, if an application to the court is pending
20 under G.S. 50-53 through G.S. 50-56, on submission to the arbitrators by the court under
21 the conditions ordered by the court, the arbitrators may modify or correct the award upon
22 grounds stated in subdivisions (1) and (3) of subsection (a) of G.S. 50-55, or clarify the
23 award. The application shall be made within 20 days after delivery of the award to the
24 opposing party, stating that the opposing party must serve objections to the application, if
25 any, within 10 days from notice. An award modified or corrected under this section is
26 subject to the provisions of G.S. 50-53 through G.S. 50-56.

27 **"§ 50-53. Confirmation of award.**

28 Upon a party's application, the court shall confirm an award, unless within time limits
29 imposed under G.S. 50-54 through G.S. 50-56 grounds are urged for vacating or
30 modifying or correcting the award, in which case the court shall proceed as provided in
31 G.S. 50-54 through G.S. 50-56. The court may award costs, as provided in G.S. 50-51(f),
32 of the application and subsequent proceedings.

33 **"§ 50-54. Vacating an award.**

34 (a) Upon a party's application, the court shall vacate an award for any of the
35 following reasons:

- 36 (1) The award was procured by corruption, fraud, or other undue means;
37 (2) There was evident partiality by an arbitrator appointed as a neutral,
38 corruption of an arbitrator, or misconduct prejudicing the rights of a
39 party;
40 (3) The arbitrators exceeded their powers;
41 (4) The arbitrators refused to postpone the hearing upon a showing of
42 sufficient cause for the postponement, refused to hear evidence material

1 to the controversy, or otherwise conducted the hearing contrary to the
2 provisions of G.S. 50-47;

3 (5) There was no arbitration agreement, the issue was not adversely
4 determined in proceedings under G.S. 50-43, and the party did not
5 participate in the arbitration hearing without raising the objection. The
6 fact that the relief awarded either could not or would not be granted by a
7 court is not a ground for vacating or refusing to confirm the award;

8 (6) The award for child support or child custody constituted a gross abuse
9 of discretion by the arbitrators in rendering the award;

10 (7) The award included punitive damages, and the court determines that the
11 award for punitive damages is clearly erroneous; or

12 (8) If the parties contract in an arbitration agreement for judicial review of
13 errors of law in the award, the court shall vacate the award if the
14 arbitrators have committed an error of law prejudicing a party's rights.

15 (b) An application under this section shall be made within 90 days after delivery of
16 a copy of the award to the applicant. If the application is predicated on corruption, fraud,
17 or other undue means, it shall be made within 90 days after these grounds are known or
18 should have been known.

19 (c) In vacating an award on grounds other than stated in subdivision (5) of
20 subsection (a) of this section, the court may order a rehearing before arbitrators chosen as
21 provided in the agreement, or in the absence of a provision regarding the appointment of
22 arbitrators, by the court in accordance with G.S. 50-45. The time within which the
23 agreement requires an award to be made applies to the rehearing and commences from
24 the date of the order.

25 (d) If an application to vacate is denied and no motion to modify or correct the
26 award is pending, the court shall confirm the award and may award costs, as provided in
27 G.S. 50-51(f), of the application and subsequent proceedings.

28 **"§ 50-55. Modification or correction of award.**

29 (a) Upon application made within 90 days after delivery of a copy of an award to
30 an applicant, the court shall modify or correct the award where at least one of the
31 following occurs:

32 (1) There is an evident miscalculation of figures or an evident mistake in
33 the description of a person, thing, or property referred to in the award;

34 (2) The arbitrators have awarded upon a matter not submitted to them, and
35 the award may be corrected without affecting the merits of the decision
36 upon the issues submitted; or

37 (3) The award is imperfect in a matter of form, not affecting the merits of
38 the controversy.

39 (b) If the application is granted, the court shall modify or correct the award to
40 effect its intent and shall confirm the award as modified or corrected. Otherwise, the
41 court shall confirm the award as made.

42 (c) An application to modify or correct an award may be joined in the alternative
43 with an application to vacate the award.

1 (d) The court may award costs, as provided in G.S. 50-51(f), of the application and
2 subsequent proceedings.

3 **"§ 50-56. Modification of award for alimony, postseparation support, child support,**
4 **or child custody based on substantial change of circumstances.**

5 (a) A court or the arbitrators may modify an award for postseparation support,
6 alimony, child support, or child custody under conditions stated in G.S. 50-13.7 and G.S.
7 50-16.9 in accordance with procedures stated in subsections (b) through (f) of this
8 section.

9 (b) Unless the parties have agreed that an award for postseparation support or
10 alimony shall be nonmodifiable, an award by arbitrators for postseparation support or
11 alimony under G.S. 50-16.2A, 50-16.3A, 50-16.4, or 50-16.7 may be modified if a court
12 order for alimony or postseparation support could be modified pursuant to G.S. 50-16.9.

13 (c) An award by arbitrators for child support or child custody may be modified if a
14 court order for child support or child custody could be modified pursuant to G.S. 50-13.7.

15 (d) If an award for modifiable postseparation support or alimony, or an award for
16 child support or child custody, has not been confirmed pursuant to G.S. 50-53, upon the
17 parties' agreement these matters may be submitted to arbitrators chosen by the parties as
18 provided in G.S. 50-45, in which case G.S. 50-52 through G.S. 50-56 apply to this
19 modified award.

20 (e) If an award for modifiable postseparation support or alimony, or an award for
21 child support or child custody has been confirmed pursuant to G.S. 50-53, upon the
22 parties' agreement and joint motion the court may remit these matters to arbitrators
23 chosen by the parties as provided in G.S. 50-45, in which case G.S. 50-52 through G.S.
24 50-56 apply to this modified award.

25 (f) Except as otherwise provided in this section, the provisions of G.S. 50-55
26 apply to modifications or corrections of awards for postseparation support, alimony, child
27 support, or child custody.

28 **"§ 50-57. Orders or judgments on award.**

29 Upon granting an order confirming, modifying, or correcting an award, an order or
30 judgment shall be entered in conformity with the order and docketed and enforced as any
31 other order or judgment. The court may award costs, as provided in G.S. 50-51(f), of the
32 application and of proceedings subsequent to the application and disbursements.

33 **"§ 50-58. Applications to the court.**

34 Except as otherwise provided, an application to a court under this Article shall be by
35 motion and shall be heard in the manner and upon notice provided by law or rule of court
36 for making and hearing motions in civil actions. Unless the parties agree otherwise,
37 notice of an initial application for an order shall be served in the manner provided by law
38 for service of summons in civil actions.

39 **"§ 50-59. Court; jurisdiction.**

40 The term 'court' means a court of competent jurisdiction of this State. Making an
41 agreement in this State described in G.S. 50-42 or any agreement providing for
42 arbitration in this State or under its laws confers jurisdiction on the court to enforce the
43 agreement under this Article and to enter judgment on an award under the agreement.

1 **"§ 50-60. Appeals.**

2 (a) An appeal may be based on failure to comply with the procedural aspects of
3 this Article. An appeal may be taken from any of the following:

4 (1) An order denying an application to compel arbitration made under G.S.
5 50-43;

6 (2) An order granting an application to stay arbitration made under G.S. 50-
7 43(b);

8 (3) An order confirming or denying confirmation of an award;

9 (4) An order modifying or correcting an award;

10 (5) An order vacating an award without directing a rehearing; or

11 (6) A judgment entered pursuant to provisions of this Article.

12 (b) Unless the parties contract in an arbitration agreement for judicial review of
13 errors of law as provided in G.S. 50-54(a), a party may not appeal on the basis that the
14 arbitrator failed to apply correctly the law under Chapters 50, 50A, 52B, or 52C of the
15 General Statutes.

16 (c) The appeal shall be taken in the manner and to the same extent as from orders
17 or judgments in a civil action.

18 **"§ 50-61. Article not retroactive.**

19 This Article applies to agreements made on or after October 1, 1999, unless parties by
20 separate agreement after that date state that this Article shall apply to agreements dated
21 before October 1, 1999.

22 **"§ 50-62. Construction; uniformity of interpretation.**

23 Certain provisions of this Article have been adapted from the Uniform Arbitration Act
24 in force in this State, the North Carolina International Commercial Arbitration and
25 Conciliation Act, and Chapters 50, 50A, 50B, 51, 52, and 52C of the General Statutes.
26 This Article shall be construed to effect its general purpose to make uniform provisions
27 of these Acts and Chapters 50, 50A, 50B, 51, 52, 52B, and 52C of the General Statutes."

28 Section 2. G.S. 1-567.57(b) reads as rewritten:

29 "(b) If the parties to two or more arbitration agreements agree, in their respective
30 arbitration agreements or otherwise, to consolidate the arbitrations arising out of those
31 agreements, the superior court, ~~on~~ upon application by ~~one party with the consent of all the~~
32 ~~other parties to those arbitration agreements, may:~~ a party, may do any of the following:

33 (1) Order the arbitrations to be consolidated on terms the court considers
34 just and necessary;

35 (2) If all the parties cannot agree on an arbitral tribunal for the consolidated
36 arbitration, appoint an arbitral tribunal as provided by G.S. 1-567.41;
37 and

38 (3) If all the parties cannot agree on any other matter necessary to conduct
39 the consolidated arbitration, make any other order it considers
40 necessary."

41 Section 3. This act becomes effective October 1, 1999.