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Short Title: Mediated Settlement Conferences.

(Public)

Sponsors:

Referred to:

March 30, 1995

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE MEDIATED SETTLEMENT CONFERENCES IN CIVIL ACTIONS IN SUPERIOR COURT AND IN PRELITIGATION FARM NUISANCE DISPUTES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 7A of the General Statutes is amended by adding the following new sections to read:

"§ 7A-38.1. Mediated settlement conferences in superior court civil actions.

(a) Purpose. The General Assembly finds that a system of court-ordered mediated settlement conferences should be established to facilitate the settlement of superior court civil actions and to make civil litigation more economical, efficient, and satisfactory to litigants and the State. Therefore, this section is enacted to require parties to superior court civil actions and their representatives to attend a pretrial, mediated settlement conference conducted pursuant to this section and pursuant to rules of the Supreme Court adopted to implement this section.

1 (b) Definitions. As used in this section:

2 (1) 'Mediated settlement conference' means a pretrial, court-ordered
3 conference of the parties to a civil action and their representatives
4 conducted by a mediator.

5 (2) 'Mediation' means an informal process conducted by a mediator with the
6 objective of helping parties voluntarily settle their dispute.

7 (3) 'Mediator' means a neutral person who acts to encourage and facilitate a
8 resolution of a pending civil action. A mediator does not make an
9 award or render a judgment as to the merits of the action.

10 (c) Rules of procedure. The Supreme Court may adopt rules to implement this
11 section.

12 (d) Statewide implementation. Mediated settlement conferences authorized by this
13 section shall be implemented in all judicial districts as soon as practicable, as determined
14 by the Director of the Administrative Office of the Courts.

15 (e) Cases selected for mediated settlement conferences. The senior resident
16 superior court judge of any participating district may order a mediated settlement
17 conference for any superior court civil action pending in the district. The senior resident
18 superior court judge may by local rule order all cases, not otherwise exempted by the
19 Supreme Court rule, to mediated settlement conference.

20 (f) Attendance of parties. The parties to a superior court civil action in which a
21 mediated settlement conference is ordered, their attorneys and other persons or entities
22 with authority, by law or by contract, to settle the parties' claims shall attend the mediated
23 settlement conference unless excused by rules of the Supreme Court or by order of the
24 senior resident superior court judge. Nothing in this section shall require any party or
25 other participant in the conference to make a settlement offer or demand which it deems
26 is contrary to its best interests.

27 (g) Sanctions. Any person required to attend a mediated settlement conference
28 who, without good cause, fails to attend in compliance with this section and the rules
29 adopted under this section, shall be subject to any appropriate monetary sanction imposed
30 by a resident or presiding superior court judge, including the payment of attorneys' fees,
31 mediator fees, and expenses incurred in attending the conference. If the court imposes
32 sanctions, it shall do so, after notice and a hearing, in a written order, making findings of
33 fact and conclusions of law. An order imposing sanctions shall be reviewable upon
34 appeal where the entire record as submitted shall be reviewed to determine whether the
35 order is supported by substantial evidence.

36 (h) Selection of mediator. The parties to a superior court civil action in which a
37 mediated settlement conference is to be held pursuant to this section shall have the right
38 to designate a mediator. Upon failure of the parties to designate a mediator within the
39 time established by the rules of the Supreme Court, a mediator shall be appointed by the
40 senior resident superior court judge.

41 (i) Promotion of other settlement procedures. Nothing in this section is intended
42 to preclude the use of other dispute resolution methods within the superior court. Parties
43 to a superior court civil action are encouraged to select other available dispute resolution

1 methods. The senior resident superior court judge, at the request of and with the consent
2 of the parties, may order the parties to attend and participate in any other settlement
3 procedure authorized by rules of the Supreme Court or by the local superior court rules,
4 in lieu of attending a mediated settlement conference. Neutral third parties acting
5 pursuant to this section shall be selected and compensated in accordance with such rules
6 or pursuant to agreement of the parties. Nothing in this section shall prohibit the parties
7 from participating in, or the court from ordering, other dispute resolution procedures,
8 including arbitration to the extent authorized under State or federal law.

9 (j) Immunity. Mediator and other neutrals acting pursuant to this section shall
10 have judicial immunity in the same manner and to the same extent as a judge of the
11 General Court of Justice, except that mediators and other neutrals may be disciplined in
12 accordance with enforcement procedures adopted by the Supreme Court pursuant to G.S.
13 7A-38.2.

14 (k) Costs of mediated settlement conference. Costs of mediated settlement
15 conferences shall be borne by the parties. Unless otherwise ordered by the court or
16 agreed to by the parties, the mediator's fees shall be paid in equal shares by the parties.
17 For purposes of this section, multiple parties shall be considered one party when they are
18 represented by the same counsel. The rules adopted by the Supreme Court implementing
19 this section shall set out a method whereby parties found by the court to be unable to pay
20 the costs of the mediated settlement conference are afforded an opportunity to participate
21 without cost. The rules adopted by the Supreme Court shall set the fees to be paid a
22 mediator appointed by a judge upon the failure of the parties to designate a mediator.

23 (l) Inadmissibility of negotiations. Evidence of statements made and conduct
24 occurring in a mediated settlement conference shall not be subject to discovery and shall
25 be inadmissible in any proceeding in the action or other actions on the same claim.
26 However, no evidence otherwise discoverable shall be inadmissible merely because it is
27 presented or discussed in a mediated settlement conference.

28 No mediator shall be compelled to testify or produce evidence concerning statements
29 made and conduct occurring in a mediated settlement conference in any civil proceeding
30 for any purpose, except proceedings for sanctions under this section, disciplinary
31 hearings before the State Bar or any agency established to enforce standards of conduct
32 for mediators, and proceedings to enforce laws concerning juvenile or elder abuse.

33 (m) Right to jury trial. Nothing in this section or the rules adopted by the Supreme
34 Court implementing this section shall restrict the right to jury trial.

35 **§ 7A-38.2. Regulation of mediators.**

36 (a) The Supreme Court is authorized to adopt standards for the certification and
37 conduct of mediators who participate in the mediated settlement conference program
38 established pursuant to G.S. 7A-38.1. The standards may also regulate mediator training
39 programs. The Supreme Court may adopt procedures for the enforcement of those
40 standards.

41 (b) The administration of mediator certification, regulation of mediator conduct,
42 and decertification shall be conducted through the Dispute Resolution Commission,
43 established under the Judicial Department. The rules and regulations governing the

1 operation of the Commission shall be adopted by the Supreme Court. The Commission
2 shall be administered under the direction and supervision of the Director of the
3 Administrative Office of the Courts. The Commission shall exercise all of its duties
4 independently of the Director, except all management functions shall be performed under
5 the direction and supervision of the Director.

6 (c) The Dispute Resolution Commission shall consist of nine members: two
7 judges appointed by the Chief Justice of the Supreme Court; two mediators certified to
8 conduct mediated settlement conferences appointed by the Chief Justice of the Supreme
9 Court; two practicing attorneys who are not certified as mediators appointed by the
10 President of the North Carolina State Bar; and three citizens knowledgeable about
11 mediation, one of whom shall be appointed by the Governor, one by the Speaker of the
12 House of Representatives, and one by the President Pro Tempore of the Senate.
13 Members shall serve four-year terms, except that one judge, one mediator, one attorney,
14 and the citizen member appointed by the Governor, shall be appointed for an initial term
15 of two years. Members may serve no more than two consecutive terms. The Chief
16 Justice shall designate one of the judge members to serve as chair for a two-year term.
17 Members of the Commission shall be compensated pursuant to G.S. 138-5.

18 (d) An administrative fee, not to exceed two hundred dollars (\$200.00), may be
19 charged by the Administrative Office of the Courts to applicants for certification and
20 annual renewal of certification for mediators and mediation training programs operation
21 under this Article. The fees collected may be used by the Director of the Administrative
22 Office of the Courts to establish and maintain the operations of the Commission and its
23 staff.

24 **"§ 7A-38.3. Prelitigation mediation of farm nuisance disputes.**

25 (a) Definitions. – As used in this section:

- 26 (1) 'Farm nuisance dispute' means a claim that the farming activity of a
27 farm resident constitutes a nuisance.
28 (2) 'Farm resident' means a person holding an interest in fee, under a real
29 estate contract, or under a lease, in land used for farming activity when
30 that person manages the operations on the land.
31 (3) 'Farming activity' means the cultivation of farmland for the production
32 of crops, fruits, vegetables, ornamental and flowering plants, and the
33 utilization of farmland for the production of dairy, livestock, poultry,
34 and all other forms of agricultural products having a domestic or foreign
35 market.
36 (4) 'Mediator' means a neutral person who acts to encourage and facilitate a
37 resolution of a farm nuisance dispute.
38 (5) 'Nuisance' means an action that is injurious to health, indecent, offensive
39 to the senses, or an obstruction to the free use of property.
40 (6) 'Person' means a natural person, or any corporation, trust, or limited
41 partnership as defined in G.S. 59-102.

42 (b) Voluntary Mediation. – The parties to a farm nuisance dispute may agree at
43 any time to mediation of the dispute under the provisions of this section.

1 (c) Mandatory Mediation. – Prior to bringing a civil action involving a farm
2 nuisance dispute, a farm resident or any other party shall initiate mediation pursuant to
3 this section. If a farm resident or any other party brings an action involving a farm
4 nuisance dispute, this action shall, upon the motion of any party prior to trial, be
5 dismissed without prejudice by the court unless any one or more of the following apply:

6 (1) The dispute involves a claim that has been brought as a class action.

7 (2) The nonmoving party has satisfied the requirements of this section and
8 such is indicated in a mediator's certification issued under subsection (g)
9 of this section.

10 (3) The court finds that a mediator improperly failed to issue a certification
11 indicating that the nonmoving party satisfied the requirements of this
12 section.

13 (4) The court finds good cause for a failure to attempt mediation. Good
14 cause includes, but is not limited to, a determination that the time delay
15 required for mediation would likely result in irreparable harm.

16 (d) Initiation of Mediation. – Prelitigation mediation of a farm nuisance dispute
17 shall be initiated by filing a request for mediation with the clerk of superior court in a
18 county in which the action may be brought. The Administrative Office of the Courts
19 shall prescribe a request for mediation form. The party filing the request for mediation
20 also shall mail a copy of the request by certified mail, return receipt requested, to each
21 party to the dispute. The clerk shall provide each party with a list of mediators certified
22 by the Dispute Resolution Commission. If the parties agree in writing to the selection of
23 a mediator from that list, the clerk shall appoint that mediator selected by the parties. If
24 the parties do not agree on the selection of a mediator, the party filing the request for
25 mediation shall bring the matter to the attention of the clerk, and a mediator shall be
26 appointed by the senior resident superior court judge. The clerk shall notify the mediator
27 and the parties of the appointment of the mediator.

28 (e) Mediation Procedure. – Except as otherwise expressly provided in this section,
29 mediation under this section shall be conducted in accordance with the provisions for
30 mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and
31 standards adopted pursuant to those sections. The Supreme Court may adopt additional
32 rules and standards to implement this section, including an exemption from the
33 provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this
34 section.

35 (f) Waiver of Mediation. – The parties to the dispute may waive the mediation
36 required by this section by informing the mediator of their waiver in writing. No costs
37 shall be assessed to any party if all parties waive mediation prior to the occurrence of an
38 initial mediation meeting.

39 (g) Certification That Mediation Concluded. – Immediately upon a waiver of
40 mediation under subsection (f) of this section or upon the conclusion of mediation, the
41 mediator shall prepare a certification stating the date on which the mediation was
42 concluded and the general results of the mediation, including, as applicable, that the
43 parties waived the mediation, that an agreement was reached, that mediation was

1 attempted but an agreement was not reached, or that one or more parties, to be specified
2 in the certification, failed or refused without good cause to attend one or more mediation
3 meetings or otherwise participate in the mediation. The mediator shall file the original of
4 the certification with the clerk and provide a copy to each party. Each party to the
5 mediation has satisfied the requirements of this section upon the filing of the certification,
6 except any party specified in the certification as having failed or refused to attend one or
7 more mediation meetings or otherwise participate. The sanctions in G.S. 7A-38.1(g) do
8 not apply to prelitigation mediation conducted under this section.

9 (h) Time Periods Tolloed. – Time periods relating to the filing of a claim or the
10 taking of other action with respect to a farm nuisance dispute, including any applicable
11 statutes of limitations, shall be tolloed upon the filing of a request for mediation under this
12 section, until 30 days after the date on which the mediation is concluded as set forth in
13 the mediator's certification, or if the mediator fails to set forth such date, until 30 days
14 after the filing of the certification under subsection (g) of this section."

15 Sec. 2. G.S. 7A-38(o) reads as rewritten:

16 "(o) Report on pilot program. The Administrative Office of the Courts shall file a
17 written report with the General Assembly on the evaluation of the pilot program on or
18 before May 1, 1995. The pilot program shall terminate on June 30, 1995. Continuation
19 and funding of the pilot program. Notwithstanding the above, the termination date of the
20 pilot program is extended to October 1, 1995. The Administrative Office of the Courts is
21 authorized to use funds available to the Judicial Department from July 1, 1995, to
22 October 1, 1995, for the purpose of operating the program."

23 Sec. 3. Effective October 1, 1995, G.S. 7A-38 is repealed.

24 Sec. 4. House Bill 913 of the 1995 Session of the General Assembly, if
25 enacted, is repealed.

26 Sec. 5. The provisions of this act are severable. If any provision of this act is
27 held invalid by a court of competent jurisdiction, the invalidity does not affect other
28 provisions of this act that can be given effect without the invalid provision.

29 Sec. 6. Section 2 and Section 4 of this act are effective upon ratification. The
30 remainder of this act becomes effective October 1, 1995, and shall apply, after the
31 Supreme Court has adopted rules implementing this act, to all superior court civil actions
32 filed in any county after the date this program is implemented in that county. This act
33 also applies to all previously filed actions which are or have been specifically ordered to
34 a mediated settlement conference by a senior resident superior court judge under G.S.
35 7A-38 prior to its repeal.