SENATE BILL REPORT

ESSB 5659

As Reported By Senate Committee On:
Judiciary, January 24, 2000

Title: An act relating to mandatory arbitration of civil actions.

Brief Description: Changing mandatory arbitration of civil actions.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Heavey, Roach, Kline, Johnson, Costa and Thibaudeau).

Brief History:
Committee Activity: Judiciary: 2/10/99, 2/24/99 [DPS]; 1/12/00, 1/24/00 [DPS].
Passed Senate, 3/9/99, 32-14.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Second Substitute Senate Bill No. 5659 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Heavey, Chair; Kline, Vice Chair; Costa, Goings, Hargrove, Haugen, Johnson, Long and McCaslin.

Staff: Dick Armstrong (786-7460)

Background: Arbitration is a nonjudicial method for resolving disputes in which a neutral party is given authority to decide the case. Arbitration is intended to be a less expensive and time-consuming way of settling problems than taking a dispute to court. Parties are generally free to agree between themselves to submit an issue to arbitration. In some cases, however, arbitration is mandatory.

A statute allows any superior court, by majority vote of its judges, to adopt mandatory arbitration in prescribed cases. In counties of 70,000 or more population, the county legislative authority may also impose this mandatory arbitration. This mandatory arbitration applies to cases in which the sole relief sought is a money judgment of $15,000 or less. By a two-thirds vote, the judges of the superior court may raise this limit to $35,000. These limits were set at their current levels in 1988, when they were raised from $10,000 and $25,000, respectively.

An award by an arbitrator may be appealed to the superior court. The superior court will hear the appeal de novo;– that is, the court will conduct a trial on all issues of fact and law essentially as though the arbitration had not occurred.

The mandatory arbitration statute provides that Supreme Court rule will establish the procedures to be used in mandatory arbitration. The statute also provides that the Supreme Court rules may allow for the recovery of costs and reasonable– attorney fees from a party who demands a trial de novo and fails to improve his or her position on appeal. The

determination of whether or not the appealing party's position has been improved is based on the amount awarded in arbitration compared to the amount awarded at the trial de novo.

Reasonable– attorney fees are set by the court based on factors designed to reflect the actual cost of legal representations. Statutory– attorney fees are set by statute at $125 and are part of the costs– which a prevailing party may be awarded. Costs– also include items such as the filing fee and fees for service of process, notarization, and witness fees.

Summary of Second Substitute Bill: The basic limit on the amount of money damages sought in a case subject to mandatory arbitration is raised from $15,000 to $25,000. The limit that can be adopted by a two-thirds vote of the superior court judges is raised from $35,000 to $50,000.

An offer of compromise procedure is provided for mandatory arbitration cases that are appealed to the superior court.

- A non-appealing party may serve an appealing party with a written offer to settle the case.

- If the appealing party does not accept the offer, the amount of the offer becomes the basis for determining whether the party that demanded the trial de novo fails to improve his or her position on appeal for purposes of awarding reasonable attorney fees and costs under the court rules.

- At a trial de novo, the offer of compromise will not be made known to the trier of fact until after a judgment is reached in the trial.

- The award of reasonable attorney fees and costs against an appealing party who fails to improve his or her position is made mandatory in statute. The superior court is also authorized to assess these same fees and costs against a party who voluntarily withdraws a request for a trial de novo, but only if the voluntary withdrawal is not made in connection with the acceptance of an offer of compromise.

- A party who prevails in arbitration and at a trial de novo may still recover statutory attorney fees and costs even if the party who appealed the arbitration award improved his or her position on appeal.

The act applies to all requests for a trial de novo filed on or after the effective date of the act.

Second Substitute Bill Compared to Substitute Bill: The second substitute bill makes technical changes to clarify the intent.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The King County and Pierce County bar associations support the mandatory arbitration program. The trial lawyers believe in alternative dispute resolution. The program provides access to justice to persons with small claims.

The offer of compromise procedure will improve the operation of the mandatory arbitration program. Small businesses use the program to handle numerous small cases outside of the normal court system.

It has been 13 years since the limits on mandatory arbitration have been increased, so it is time to expand the jurisdictional dollar limits.

Testimony Against: Insurance companies prefer to go before juries because they are more open minded and not as likely to split the difference,– which is the mind set of most arbitrators. Insurance companies get better cooperation on discovery in a court case, and find that judges have more experience.

There is no reason to raise the jurisdiction limits to $50,000. Almost all automobile cases would be covered by this limit.

The offer of compromise– in the bill is not a good idea because it makes it more difficult for defendants to appeal the case. There are better ways to provide access to justice. The offer of compromise is a let's make a deal– situation, and will drive up the costs of settling cases. This bill will aggravate an already bad situation and court rules need to be changed.

Testified: PRO: Shawn Briggs, Pierce County Bar Association; Larry Shannon, Susan Sampson, Michelle Rodosevich, WSTLA; Lucy Isaki, King County Bar Association; CON: Mel Sorenson, National Association of Independent Insurers; Mike Kapphahn, Farmers Insurance; Dave Larson, attorney.