HOUSE BILL REPORT
SB 5373

As Passed House:
March 7, 2002

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

Brief Description: Changing mandatory arbitration of civil actions.

Sponsors: By Senators Sheahan, Kline, McCaslin, Thibaudeau, Kastama, Long, Roach, Johnson and Constantine.

Brief History:
Committee Activity:
Judiciary: 2/22/02, 2/25/02 [DP].
Floor Activity:
Passed House: 3/7/02, 65-28.

Brief Summary of Bill

- Provides an offer of compromise procedure that effects the award of reasonable attorney fees and costs when an arbitration award is appealed to superior court.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 5 members: Representatives Lantz, Chair; Hurst, Vice Chair; Dickerson, Lovick and Lysen.

Minority Report: Without recommendation. Signed by 4 members: Representatives Carrell, Ranking Minority Member; Boldt, Esser and Jarrett.

Staff: Bill Perry (786-7123).

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.

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 provide 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 supreme court has adopted rules that require recovery of those costs and fees in such cases. 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. Only costs and fees incurred after the demand for a trial are recoverable under these provisions.

"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 in any case, not just a case involving mandatory arbitration. "Costs" also include items such as the filing fee and fees for service of process, notarization, and witness fees.

Summary of Bill:

An offer of compromise procedure is provided for mandatory arbitration cases that are appealed to the superior court. 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. The procedure regarding an offer of settlement includes the following:

- 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 appealing party 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.

- 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.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: Mandatory arbitration can be a valuable tool in resolving cases, but under the current law, cases take too long to get to trial on appeal. Today, an injured claimant with a pending arbitration award may have outstanding bills that are just accumulating interest and may need medical treatment that they cannot pay for, all because there is insufficient incentive for the party appealing the award to come to a compromise on the award before going to trial. Too many arbitration awards are being appealed now. The bill will allow an offer of compromise procedure to spur agreement between the parties and thereby reduce the number of cases that otherwise would add to court congestion and delay. The bill provides a fair method of resolving relatively small disputes in a timely and efficient manner.

Testimony Against: The only problem with the current system is simply that the awards of arbitrators are too high. That is why many of them are appealed. Defendants in arbitration know that juries will be more reasonable on an appeal. The bill is unbalanced and would have a chilling effect on a defendant's right to a jury determination of the case. Parties can already offer settlements at any time under the current law. The bill allows claimants to recover statutory costs even when the defendant improves its position on appeal. The real need is for better training of arbitrators who all too often simply want to split the difference between the parties without considering the real merit or lack of merit in a claim. Defendants want to settle claims quickly as much as claimants do. The bill will result in higher insurance costs.

Testified: (In support) John Durkin, attorney; Denise Isbell; Shawn Briggs, Tacoma-Pierce County Bar Association; Larry Shannon, Washington State Trial Lawyers Association; and Dale Carlisle, Washington State Bar Association.

(Opposed) George McLean, State Farm Insurance; Matt Williams, Washington Defense Trial Lawyers Attorneys and Safeco Corporation; Mel Sorensen, National Association of Independent Insurers and Allstate Insurance; and Mike Kapphahn, Farmers Insurance.