SENATE BILL REPORT
SB 5373

As Passed Senate, February 11, 2002

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

Brief Description: Changing mandatory arbitration of civil actions.

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

Brief History:
Committee Activity: Judiciary: 2/1/01, 2/6/01 [DP].
Passed Senate: 3/13/01, 33-15; 2/11/02, 37-11.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.
Signed by Senators Kline, Chair; Constantine, Vice Chair; Costa, Johnson, Kastama, Long, McCaslin, Roach, Thibaudeau and Zarelli.

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.

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 Bill: 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 part 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: The bill is fair and reasonable. Most appeals (86 percent) are filed by defendants and this means that injured parties are not being paid in a timely manner. The current system needs to be changed because litigants are opting out of the system. Mandatory arbitration is a good program because it is fast and it is an inexpensive way to handle cases. The current system rewards tactical delays. The process of an offer of compromise will help to improve the system. Some cases from 1996 are still pending in the court system. It should be remembered that jury trials in King County costs taxpayers $1,200 a day. There is a large number of cases waiting for trial, but the cases cannot be heard because of the huge backlog of civil cases. The usual attorney fee granted on appeal is around $11,000 and $12,000.

Testimony Against: The bill results in a detriment to some companies because it will make it harder for appealing parties to improve their position on appeal. An offer of compromise

changes the benchmark for determining the obligation to pay the other party's attorney fees. Some arbitrators tend to split the difference between claims of the plaintiff and the defendant.

There are more plaintiffs' attorneys who sign up for the mandatory arbitration program. Insurance companies want to settle cases, and attorneys who represent such companies do a good job both at arbitration and in court.

This bill is implicit evidence that arbitration awards are generally too high. Juries typically award less than arbitrators.

Testified: PRO: Larry Shannon, WSTLA; Shawn Briggs, Tacoma Pierce County Bar Association; CON: Mel Sorensen, National Association of Independent Insurers; Jean Leonard, State Farm; George McLean, State Farm.