HOUSE BILL REPORT
HB 1814

As Reported by House Committee On:
Judiciary

Title: An act relating to mandatory arbitration.

Brief Description: Concerning mandatory arbitration.

Sponsors: Representatives Williams, Campbell, Kirby, Wood, Jarrett, Lantz, Flannigan, Rodne, Hunt, Simpson, Morrell, Lovick, Dunshee and Linville.

Brief History:
Committee Activity:
Judiciary: 2/15/05, 2/18/05 [DP].

Brief Summary of Bill

- Lowers the county minimum population threshold from 150,000 to 100,000 for purposes of determining in which counties mandatory arbitration must be used.
- Raises the maximum dollar amount of a legal controversy that is subject to mandatory arbitration from $35,000 to $50,000.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 10 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

Staff: Bill Perry (786-7123).

Background:

Arbitration is a nonjudicial method for resolving disputes in which a third 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. If parties agree to arbitration, the decision of the arbitrator is binding and is appealable to a court only on very limited grounds. In some cases, however, arbitration is mandatory. That is, arbitration is required by a statute, and the parties have no choice in the matter.

This mandatory arbitration is required in the superior courts of counties of more than 150,000 population. It applies to cases in which the sole relief sought is a money judgment of $15,000

or less. In smaller counties, either the superior court judges or the county legislative authority may adopt mandatory arbitration.

By a two-thirds vote, the judges of the superior court in any county with either the statutorily required or the self-imposed mandatory arbitration have the option to raise the ceiling for mandatory arbitration cases from $15,000 to $35,000. Superior court judges may also vote to use mandatory arbitration in child support cases, without limit as to the dollar amount of the support payments.

Counties may impose a filing fee of up to $220 for mandatory arbitration filings.

Anyone agreed to by the parties may be an arbitrator. If agreement is not reached, the court will appoint an arbitrator, who must be a retired judge or a lawyer with at least five years membership in the bar. Arbitrators are paid at the same rate as judges pro tem of the superior court.

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 on appeal will conduct a trial on all issues of fact and law essentially as though the arbitration had not occurred. Amounts awarded on appeal are not subject to any dollar limits. The mandatory arbitration statute provides that Washington Supreme Court rules will establish the procedures to be used in mandatory arbitration and that such rules may provide for the recovery of costs and "reasonable" attorney fees from a party who appeals and fails to improve his or her position. The rules make the award of costs and fees mandatory when an appealing party fails to improve his or her position, but make such awards discretionary when an appealing party withdraws the 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.

Summary of Bill:

The population threshold for counties that are required to have mandatory arbitration is lowered from 150,000 to 100,000.

The optional monetary ceiling for cases that are subject to mandatory arbitration is raised from $35,000 to $50,000.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: For 25 years Washington has had mandatory arbitration. Our law was the first in the country and has served as a model for many other states. About two-thirds of the

cases that go to mandatory arbitration are consumer-related, and the rest are mostly small business cases. The system has largely paid for itself. Mandatory arbitration is an efficient system for resolving disputes. It reduces costs for both sides in a dispute, and because it reduces the number of cases that go to trial, it saves the public's money and time as well. The upper dollar limit of $35,000 for cases subject to mandatory arbitration has not been adjusted since 1987. Raising that amount to $50,000 would barely keep pace with inflation. Without the bill, the number of cases that can take advantage of mandatory arbitration will be reduced.

Testimony Against: Putting more cases, and especially more complicated and expensive cases, into mandatory arbitration will simply result in more trials de novo. The bill will increase overall costs, not reduce them. The bill will inflate the costs of settlement. Defendants feel generally that they do better before a jury than before an arbitrator. Arbitrators tend to have a "split the difference" mentality, whereas defendants often feel there is an objectively obtainable value that could be assigned to a case. Defendants have an incentive to seek a trial de novo because their experience is that they will do better before a jury.

Persons Testifying: (In support) Representative Williams, prime sponsor; Larry Shannon and Rod Ray, Washington State Trial Lawyers' Association.

(Opposed) Mel Sorensen, Washington Defense Trial Lawyers' Association; Jean Leonard, Washington Insurers and State Farm Insurance; and Kenton Brine, Progressive Insurance.

Persons Signed In To Testify But Not Testifying: None.