

1 **SB 5373 - H AMD 0405 WITHDRAWN 3-7-02**

2 By Representative Carrell

3 On page 1, strike everything after the enacting clause and insert
4 the following:

5 "Sec. 1. RCW 7.06.050 and 1982 c 188 s 2 are each amended to read
6 as follows:

7 (1) Following a hearing as prescribed by court rule, the
8 arbitrator shall file his decision and award with the clerk of the
9 superior court, together with proof of service thereof on the parties.
10 Within twenty days after such filing, any aggrieved party may file with
11 the clerk a written notice of appeal and request for a trial de novo in
12 the superior court on all issues of law and fact. Such trial de novo
13 shall thereupon be held, including a right to jury, if demanded.

14 (a) Up to thirty days prior to the actual date of a trial de novo,
15 a nonappealing party may serve upon the appealing party a written offer
16 of compromise.

17 (b) Up to twenty days prior to the actual date of a trial de novo,
18 an appealing party who has been served a written offer of compromise by
19 a nonappealing party may serve the nonappealing party a written counter
20 offer of compromise.

21 (c) In any case in which an offer of compromise or a counter offer
22 of compromise is not accepted by the appealing party or the
23 nonappealing party respectively within ten days prior to the actual
24 date of a trial de novo, the amount of the offer of compromise and the
25 amount of the counter offer of compromise shall replace the amount of
26 the arbitrator's award for determining whether the appealing party or
27 the nonappealing party has failed to improve that party's respective
28 position on the trial de novo.

29 (d) A postarbitration offer of compromise or a postarbitration
30 counter offer of compromise shall not be filed or communicated to the
31 court or the trier of fact until after judgment on the trial de novo,
32 at which time a copy of the offer of compromise and the counter offer
33 of compromise shall be filed for purposes of determining whether the
34 appealing party or the nonappealing party has failed to improve that
35 party's respective position on the trial de novo, pursuant to MAR 7.3.

36 (2) If no appeal has been filed at the expiration of twenty days
37 following filing of the arbitrator's decision and award, a judgment

1 shall be entered and may be presented to the court by any party, on
2 notice, which judgment when entered shall have the same force and
3 effect as judgments in civil actions.

4 **Sec. 2.** RCW 7.06.060 and 1979 c 103 s 6 are each amended to read
5 as follows:

6 (1) The ((supreme)) superior court ((may by rule provide for))
7 shall assess costs and reasonable attorney's fees ((that may be
8 assessed)) against a party ((appealing from the award)) , whether
9 appealing or nonappealing, who fails to improve his or her position on
10 the trial de novo. The court may assess costs and reasonable
11 attorneys' fees against a party who voluntarily withdraws a request for
12 a trial de novo if the withdrawal is not requested in conjunction with
13 the acceptance of an offer of compromise or counter offer of compromise
14 or other settlement of the case.

15 (2) For the purposes of this section, "costs and reasonable
16 attorneys' fees" means those provided for by statute or court rule, or
17 both, as well as all expenses related to expert witness testimony, that
18 the court finds were reasonably necessary after the request for trial
19 de novo has been filed.

20 (3) If the prevailing party in the arbitration also prevails at
21 the trial de novo, even though at the trial de novo the other party,
22 whether the appealing party or the nonappealing party, may have
23 improved his or her position from the arbitration, this section does
24 not preclude the prevailing party from recovering those costs and
25 disbursements otherwise allowed under chapter 4.84 RCW, for both
26 actions.

27 NEW SECTION. Sec. 3. A new section is added to chapter 7.06 RCW
28 to read as follows:

29 This act applies to all requests for a trial de novo filed
30 pursuant to and in appeal of an arbitrator's decision and filed on or
31 after the effective date of this act."

EFFECT: Allows for a counter offer of compromise by the appealing party, and makes the offer and counter offer, respectively, the benchmarks against which either party's failure to improve at the trial de novo is measured. Requires either party to be assessed

costs and reasonable attorneys' fees if he or she fails to improve his or her position.