
Judiciary Committee

HB 2754

Title: An act relating to mandatory arbitration.

Brief Description: Modifying mandatory arbitration provisions.

Sponsors: Representatives Lantz, Esser, Dickerson, Jarrett, Lysen and Kagi.

Brief Summary of Bill

- Requires implementation of mandatory arbitration in all counties of over 150,000.
- Raises the maximum limit on the fee that counties may assess for filing a request for mandatory arbitration from \$120 to \$220.
- Allows the prevailing party in a frivolous lawsuit to recover mandatory arbitration filing fees, if any, in addition to other expenses.

Hearing Date: 2/7/02

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 a 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. 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.

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 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, and makes 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.

In 2000, the Legislature authorized counties to assess a fee of up to \$120 for requesting mandatory arbitration. Revenue from such a fee is to be used solely for a county's mandatory arbitration program. A county's imposition of a fee was made subject to the possibility that voter approval of the fee would be required under Initiative 695. The initiative was subsequently declared unconstitutional by the state supreme court.

Summary of Bill:

Counties with a population of more than 150,000 are required to adopt mandatory arbitration. In counties with a population of less than 150,000, either the superior court judges or the county legislative authority may adopt mandatory arbitration. The phrase "less than 150,000" could be changed to "150,000 or less" to avoid leaving no coverage for a county that might have exactly 150,000 population.

The maximum fee that a county may assess for mandatory arbitration requests is increased to \$220. The reference to possible voter approval under Initiative 695 is removed.

Mandatory arbitration request fees are made part of the expenses that a prevailing party may recover against a party who has brought a frivolous claim or made a frivolous defense.

Appropriation: None.

Fiscal Note: Not Requested.

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