

1 **SB 5373 - H AMD Failed March 7, 2002 0458**

2 By Representative Carrell

3 On page 2, line 20, after "novo" insert "and against a party who
4 does not appeal the award if the party who appeals does improve his or
5 her position upon the trial de novo"

6 On page 2, line 29, after "filed." insert "After determining the
7 amount of such costs and reasonable attorneys' fees that are to be
8 assessed against either party, the court shall adjust the amount as
9 follows: any portion of the amount represented by reasonable attorneys'
10 fees or expenses related to expert witness testimony shall be
11 multiplied by a fraction, the denominator of which is the difference
12 between the amount of the offer of compromise and the arbitration
13 award, or the amount of the arbitration award if no offer was made, and
14 the numerator of which is the difference between the award at the trial
15 and the offer of compromise, or the award at trial if no offer was
16 made, except that the fraction may not represent a number greater than
17 one."

EFFECT: Makes costs and reasonable attorneys' fees assessable against either party, if the party's position is made worse by the trial de novo. (In the case of no difference between the trial amount and the offer or arbitration award, the appealing party is assessed the costs and fees.) Requires that an assessment of reasonable attorneys' fees or expert witness fees against either party must be adjusted in proportion to the extent by which the award at trial differs from the offer of compromise or the award in arbitration.