

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2A:23A-20 to 2A:23A-30

(Tort actions-- certain-- require arbitration)

LAWS OF: 1987

CHAPTER: 329

Bill No: S2709

Sponsor(s): Orechio

Date Introduced: October 27, 1986

Committee: Assembly: Insurance

Senate: Judiciary

Amended during passage: Yes

Amendments during passage denoted by asterisks.

Date of Passage: Assembly:

November 30, 1987

Senate:

December 4, 1986

Date of Approval: December 22, 1987

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: Yes

974.90 New Jersey. Legislative. Assembly. Insurance Committee.  
159 Public hearing on insurance problems . . . held 2-18-86, 2-25-86, 2-28-86,  
1986 Freehold, Vineland, Parsippany- Troy-Hills, 1986.  
(vol. 3-- p. 50 )

(OVER)

974.90 New Jersey. Legislature. Assembly. Insurance Committee.  
159 Public hearing on professional, business and nonprofit  
1986b organizations' liability insurance, held 4-14-86. Clifton, N.J. 1986.  
(see vol. 2)

See newspaper clipping-- attached:

"Governor signs bill on lawsuit arbitration", 12-23-87 Trenton Times.

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**SENATE, No. 2709****STATE OF NEW JERSEY**

INTRODUCED OCTOBER 27, 1986

By Senator ORECHIO

Referred to Committee on Judiciary

AN ACT providing for the arbitration of certain tort claims.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
 2 *of New Jersey:*

1 1. a. Any civil action brought for personal injury, except for  
 2 actions brought \***[for personal injury which result from the use of**  
 3 **an automobile which is required to be insured]**\* pursuant to the  
 4 provisions of P. L. 1972, c. 70 (C. 39:6A-1 et seq.), shall be sub-  
 5 mitted, except as hereinafter provided, to arbitration by the assign-  
 6 ment judge of the court in which the action is filed, if the court  
 7 determines that the amount in controversy is \$20,000.00 or less,  
 8 exclusive of costs.

9 b. Notwithstanding that the amount in controversy is in excess  
 10 of \$20,000.00, the court may refer the matter to arbitration, if all  
 11 of the parties to the action consent in writing to arbitration and  
 12 the court determines that the controversy does not involve novel  
 13 legal or unduly complex factual issues.

14 c. The provisions of this section shall not apply to any con-  
 15 troversy on which an arbitration decision was rendered prior to  
 16 the filing of the action. The provisions of this section shall apply  
 17 to any cause of action, subject to this section, filed prior to the  
 18 operative date of this act, if a pretrial conference has not been  
 19 concluded thereon.

1 2. Submission of a controversy to arbitration shall toll the stat-  
 2 ute of limitations for filing an action until the filing of the arbitra-  
 3 tion decision in accordance with section 6 of this act.

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill  
 is not enacted and is intended to be omitted in the law.  
 Matter enclosed in asterisks or stars has been adopted as follows:**

\*—Senate committee amendment adopted October 30, 1986.

1 3. a. The number or selection of arbitrators may be stipulated  
2 by mutual consent of all of the parties to the action, which stipula-  
3 tion shall be made in writing prior to or at the time notice is  
4 given that the controversy is to be submitted to arbitration. The  
5 assignment judge shall approve the arbitrators agreed to by the  
6 parties, whether or not the designated arbitrators satisfy the re-  
7 quirements of subsection b. of this section, upon a finding that the  
8 designees are qualified and their serving would not prejudice the  
9 interest of any of the parties.

10 b. If the parties fail to stipulate the number or names of the  
11 arbitrators, the arbitrators shall be selected, in accordance with  
12 rules of court adopted by the Supreme Court of New Jersey,  
13 from a list of arbitrators compiled by the assignment judge, to  
14 be comprised of retired judges and qualified attorneys in this State  
15 with at least seven years' negligence experience and recommended  
16 by the county or State bar association.

1 4. Compensation for arbitrators shall be set by the rules adopted  
2 by the Supreme Court of New Jersey. The Supreme Court may  
3 also establish a schedule of fees for attorneys representing the  
4 parties to the dispute and for witnesses in arbitration proceedings  
5 subject to the provisions of N. J. S. 59:9-5. Attorney's fees may  
6 exceed these limits upon application made to the assignment judge  
7 in accordance with the Rules Governing The Courts of the State  
8 of New Jersey for the purpose of determining a reasonable fee  
9 in light of all the circumstances.

10 The Supreme Court may adopt rules governing offers of judg-  
11 ment by the claimant or defendant prior to the start of arbitration,  
12 including the assessment of the costs of arbitration proceedings  
13 and attorney's fees, where an offer is made but refused by the  
14 other party to the controversy.

1 5. The arbitrators may, at their initiative or at the request of  
2 any party to the arbitrators, issue subpoenas for the attendance  
3 of witnesses and the production of books, records, documents and  
4 other evidence. Subpoenas shall be served and shall be enforce-  
5 able in the manner provided by law.

1 6. Notwithstanding that a controversy was submitted pursuant  
2 to subsection a. of section 1 of this act, the arbitration award  
3 may exceed \$20,000.00. The arbitration decision shall be in writing,  
4 and shall set forth the issues in controversy, and the arbitrators'  
5 findings and conclusions of law and fact.

1 7. The court shall, upon motion of any of the parties, confirm  
2 the arbitration decision, and the action of the court shall have the  
3 same effect and be enforceable as a judgment in any other action;

4 unless one of the parties petitions the court within 30 days of  
5 the filing of the arbitration decision for a trial de novo or for  
6 modification or vacation of the arbitration decision for any of  
7 the reasons set forth in chapter 24 of Title 2A of the New Jersey  
8 Statutes, or an error of law or factual inconsistencies in the  
9 arbitration findings.

1 8. Except in the case of an arbitration decision vacated by the  
2 court or offers of judgment made pursuant to court rules, the  
3 party petitioning the court for a trial de novo shall pay to the  
4 court the fees of the arbitrators.

1 9. No statements, admissions or testimony made at the arbi-  
2 tration proceedings, nor the arbitration decision, as confirmed or  
3 modified by the court, shall be used or referred to at the trial  
4 de novo by any of the parties, except that the court may consider  
5 any of those matters in determining the amount of any reduction  
6 in assessments made pursuant to section 10 of this act.

1 10. The party having filed for a trial de novo shall be assessed  
2 court costs and other reasonable costs of the other party to the  
3 judicial proceeding, including attorneys' fees, investigation ex-  
4 penses and expenses for expert or other testimony or evidence,  
5 which amount shall be, if the party assessed the costs is the one  
6 to whom the award is made, offset against any damages awarded  
7 to that party by the court, and only to that extent; except that if  
8 the judgment is more favorable to the party having filed for a  
9 trial de novo, the court may reduce or eliminate the amount of  
10 the assessment in accordance with the extent to which the decision  
11 of the court is more favorable to that party than the arbitration  
12 decision, and as best serves the interest of justice. The court may  
13 waive an assessment of costs required by this section upon a  
14 finding that the imposition of costs would create a substantial  
15 economic hardship as not to be in the interest of justice.

1 11. The Supreme Court of New Jersey shall adopt rules of  
2 court appropriate or necessary to effectuate the purpose of this  
3 act. The Administrative Office of the Courts shall not later than  
4 March 1 of each year file with the Governor and Legislature a  
5 report on the impact of the implementation of this act on insurance  
6 settlement practices and costs, and on court calendars and work-  
7 load.

1 12. This act shall take effect immediately and shall apply to all  
2 causes of action arising on or after that date.

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### COURTS

Establishes a system of arbitration for certain tort actions up to  
\$20,000.

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## STATEMENT

This bill provides that any civil action brought for personal injury, except for actions involving private passenger automobiles, must be submitted to arbitration by the assignment judge if it is determined by the court that the amount in controversy is, exclusive of costs, \$20,000.00 or less.

The bill provides that the number or selection of arbitrators may be stipulated in writing by mutual consent of all of the parties. If the parties failed to stipulate the number or names of the arbitrators, they would be required to be selected from a list of arbitrators compiled by the assignment judge; the list would be comprised of retired judges and qualified attorneys in the State with at least seven years' negligence experience.

Compensation for the arbitrators would be required to be set by the rules adopted by the Supreme Court of New Jersey. The Supreme Court would also be required to establish a schedule of fees for attorneys representing the parties to the dispute and for witnesses in arbitration proceedings.

Arbitrators would be permitted to issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence.

The bill also provides that the arbitration award may exceed the limit set in the bill and that the decision of the arbitrators must be in writing, setting forth the issues in the controversy and the arbitrators' findings and conclusions of law and fact.

The bill further provides that the court shall, upon the motion of any of the parties, confirm the arbitration decision, and the action of the court would have the same effect and be enforceable as a judgment in any other action, unless one of the parties petitions the court within 30 days of the filing of the arbitration decision for a trial de novo or for the vacation of the arbitration decision for any of the reasons set forth in chapter 24 of Title 2A of the New Jersey Statutes. The party petitioning the court for a trial de novo would be required to pay the fees of the arbitrators unless the arbitration decision is vacated by the courts.

No statements, admissions or testimony which is made at the arbitration proceeding, nor the arbitration decision itself could be used or referred to at the trial de novo would be required to be assessed court costs and other reasonable costs of the other party to the judicial proceeding, including attorney's fees, investigation expenses and expenses for expert witnesses. The amounts so charged to the party bringing the action would be required to be offset from any reward.

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The Supreme Court would be charged with adopting rules of court to implement the act.

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**COURTS**

Establishes a system of arbitration for certain tort actions up to \$20,000.00.

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ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

**SENATE, No. 2709**

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**STATE OF NEW JERSEY**

DATED: SEPTEMBER 1, 1987

This bill provides that any civil action brought for personal injury, except actions involving private passenger automobiles, must be submitted to arbitration by the assignment judge if it is determined by the court that the amount in controversy is \$20,000.00 or less, exclusive of costs. The court could also refer matters to arbitration in excess of \$20,000.00 if the court determines that the controversy does not involve novel legal or unduly complex factual issues.

The bill provides that the number or selection of the arbitrators may be stipulated in writing by mutual consent of all of the parties to the action. The assignment judge would be required to approve the arbitrators agreed to by the parties. If the parties fail to stipulate the number or names of the arbitrators, they would be required to be selected from a list of arbitrators compiled by the assignment judge; the list would be comprised of retired judges and qualified attorneys in the State with at least seven years' negligence experience. Compensation for the arbitrators would be required to be set by rules adopted by the Supreme Court of New Jersey. The Supreme Court would also be required to establish a schedule of fees for attorneys representing the parties to the dispute and for witnesses in arbitration proceedings.

Arbitrators would be permitted to issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence. The arbitration award may exceed \$20,000.00 and the decision of the arbitrators must be in writing, setting forth the issues in the controversy and the arbitrators' findings and conclusions of law and of fact.

The bill also provides that the court shall, upon the motion of any of the parties, confirm the arbitration decision, and the action of the court would have the same effect and be enforceable as a judgment in any other action, unless one of the parties petitions the court within 30 days of the filing of the arbitration decision for a trial *de novo* or

for the vacation of the arbitration decision for any of the reasons set forth in chapter 24 of Title 2A of the New Jersey Statutes. The party petitioning the court for a trial *de novo* would be required to pay the fees of the arbitrators unless the arbitration decision is vacated by the court.

Neither statements, admissions or testimony which are made at the arbitration proceeding nor the arbitration decision itself could be used or referred to at the trial *de novo* by any of the parties to the action. The party who petitions for the trial *de novo* would be required to be assessed court costs and other reasonable costs of the other party to the judicial proceeding, including attorneys' fees, investigation expenses and expenses for expert witnesses. The amounts so charged to the party bringing the action would be required to be offset from any award.

The Supreme Court would be charged with adopting rules of court to implement the act.

Arbitration is generally viewed as a cost containment device. By requiring the submission of disputes involving relatively small sums of money to an arbitration proceeding, the high costs of trial are avoided. Mandatory arbitration has been used for personal injuries arising from accidents involving private passenger automobiles, and has generally been regarded to be successful.

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SENATE JUDICIARY COMMITTEE  
STATEMENT TO  
**SENATE, No. 2709**  

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**STATE OF NEW JERSEY**  

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DATED: OCTOBER 30, 1986

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2709.

This bill provides that any civil action brought for personal injury, except for actions involving private passenger automobiles, must be submitted to arbitration by the assignment judge if it is determined by the court that the amount in controversy is, exclusive of costs, \$20,000.00 or less.

The bill provides that the number or selection of arbitrators may be stipulated in writing by mutual consent of all of the parties. If the parties failed to stipulate the number or names of the arbitrators, they would be required to be selected from a list of arbitrators compiled by the assignment judge; the list would be comprised of retired judges and qualified attorneys in the State with at least seven years' negligence experience.

Compensation for the arbitrators would be required to be set by the rules adopted by the Supreme Court of New Jersey. The Supreme Court would also be required to establish a schedule of fees for attorneys representing the parties to the dispute and for witnesses in arbitration proceedings.

Arbitrators would be permitted to issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence.

The bill also provides that the arbitration award may exceed the limit set in the bill and that the decision of the arbitrators must be in writing, setting forth the issues in the controversy and the arbitrators' findings and conclusions of law and fact.

The bill further provides that the court shall, upon the motion of any of the parties, confirm the arbitration decision, and the action of the court would have the same effect and be enforceable as a judgment in any other action, unless one of the parties petitions the court within 30 days of the filing of the arbitration decision for a trial de novo or for the vacation of the arbitration decision for any of the reasons set

forth in chapter 24 of Title 2A of the New Jersey Statutes. The party petitioning the court for a trial de novo would be required to pay the fees of the arbitrators unless the arbitration decision is vacated by the courts.

No statements, admissions or testimony which is made at the arbitration proceeding, nor the arbitration decision itself could be used or referred to at the trial de novo by any of the parties to the action. The party who petitions for the trial de novo would be required to be assessed court costs and other reasonable costs of the other party to the judicial proceeding, including attorney's fees, investigation expenses and expenses for expert witnesses. The amounts so charged to the party bringing the action would be required to be offset from any reward.

The Supreme Court would be responsible for adopting any court rules necessary to implement the act.

The purpose of the amendments adopted by the committee is to clarify that the bill's provisions are only inapplicable to actions brought pursuant to New Jersey's "no fault" statute. The original language of the bill might have been construed as making the bill inapplicable in other cases such as product liability actions where an automobile was involved.

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