

HB 112 INTRODUCED BY ADDY
REQUIRES ARBITRATION OF CIVIL ACTIONS INVOLVING
CLAIMS OF WRONGFUL DISCHARGE

1/08 INTRODUCED
1/08 REFERRED TO JUDICIARY
1/08 FISCAL NOTE REQUESTED
1/16 FISCAL NOTE RECEIVED
1/28 HEARING
2/14 TABLED IN COMMITTEE

1 HB BILL NO. 112
2 INTRODUCED BY Alley

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING PROGRAMS
5 IN EACH JUDICIAL DISTRICT TO PROVIDE MANDATORY ARBITRATION
6 OF WRONGFUL DISCHARGE CASES; GRANTING RULEMAKING AUTHORITY;
7 AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Purpose. It is the purpose of [this act] to
11 prevent persons from filing in court a civil action for
12 wrongful discharge without first attempting to reach a
13 settlement of the dispute through arbitration.

14 Section 2. Wrongful discharge defined. As used in
15 [this act], the term "wrongful discharge" means the
16 termination of employment under circumstances in which an
17 employee may have a cause of action against an employer for
18 wrongful termination of the employment relationship.

19 Section 3. Establishment and administration of
20 arbitration programs. For the purpose stated in [section 1],
21 there is established in each judicial district a program to
22 provide for mandatory arbitration of civil actions involving
23 claims of wrongful discharge. Subject to rules adopted under
24 [section 6], the district court in each judicial district
25 shall administer the program and provide arbitrators or

1 arbitration panels to hear claims concerning alleged
2 wrongful discharge.

3 Section 4. Mandatory arbitration. Except as provided
4 in [section 5], no person may file a claim in district court
5 seeking redress for wrongful discharge until such claim has
6 been submitted to arbitration and a decision has been
7 rendered as provided for in [section 7].

8 Section 5. Exceptions. The provisions of [section 4]
9 do not apply to:

10 (1) any claim of wrongful discharge for which there is
11 a remedy or procedure for contesting the discharge under
12 state or federal statutes, including statutes that:

13 (a) forbid the discharge of an employee in retaliation
14 for filing a complaint, charge, or claim with a governmental
15 agency; and

16 (b) prohibit unlawful discrimination in employment for
17 reasons of race, color, creed, religion, national origin,
18 sex, age, or handicap;

19 (2) an employee whose employment is governed by the
20 terms of a written collective bargaining agreement or by a
21 written contract of employment for a specific term; or

22 (3) an employee covered by a written agreement that
23 provides for final and binding arbitration before a neutral
24 third party.

25 Section 6. Adoption of rules. The supreme court may



1 adopt rules governing mandatory arbitration under [this
2 act]. Such rules may prescribe:

3 (1) the qualifications, appointment, and compensation
4 of arbitrators;

5 (2) a procedure for the conduct of arbitration
6 hearings; and

7 (3) reasonable fees that may be assessed by the
8 district courts to cover the costs associated with providing
9 mandatory arbitration as required under [sections 3 and 4].

10 Section 7. Decision and award. Following a hearing as
11 prescribed under rules of the supreme court, an arbitrator
12 shall file his decision and award in writing with the clerk
13 of the district court and send a copy thereof to the parties
14 concerned.

15 Section 8. Judgment on award. If within 20 days after
16 the arbitration award is filed no party has filed for a
17 trial de novo as provided for in [section 9], the prevailing
18 party shall present to the district court a judgment on the
19 award of arbitration to be entered as the final judgment in
20 the cause. A judgment so ordered has the same force and
21 effect as judgments in other civil actions.

22 Section 9. Trial de novo. (1) Within 20 days after the
23 arbitration award is filed with the clerk of the district
24 court, a party to the discharge dispute may file with the
25 clerk of the district court a written request for a trial de

1 novo on all issues of law and fact.

2 (2) The trial de novo must be conducted as if no
3 arbitration had occurred. If the case is tried before a
4 jury, no reference may be made during the trial regarding:

5 (a) the arbitration award;

6 (b) the fact that there had been an arbitration
7 proceeding; or

8 (c) any other aspect of the arbitration proceeding.

9 Section 10. Costs and attorney fees. (1) The district
10 court shall assess costs and reasonable attorney fees
11 against a party who appeals the arbitration award and fails
12 to improve his position on the trial de novo.

13 (2) The court may assess costs and reasonable attorney
14 fees against a party who voluntarily withdraws a request for
15 a trial de novo.

16 Section 11. Confidentiality of records. All memoranda,
17 notes, files, and other records received during arbitration
18 are confidential and are not subject to examination or
19 disclosure as public information.

20 Section 12. Closed hearings. Hearings conducted as
21 part of arbitration under [this act] are not open to public
22 participation and are not subject to the provisions of the
23 open meeting law contained in 2-3-203.

24 Section 13. Statute of limitations tolled. During the
25 period of arbitration, any applicable statute of limitations

1 is tolled as to the parties participating in arbitration.
2 Such tolling commences on the day the claim is submitted for
3 arbitration under [section 4] and ends on the day a decision
4 is rendered by an arbitrator.

5 Section 14. Immunity of arbitrators from civil
6 liability. No arbitrator is subject to civil liability for
7 any actions undertaken in the course and scope of his
8 official duties.

9 Section 15. Construction. Nothing in [this act] may be
10 construed to abridge the right of any individual to a trial
11 by jury.

12 Section 16. Applicability. This act applies to all
13 wrongful discharge cases filed in district court after July
14 1, 1987.

15 Section 17. Effective date. This act is effective July
16 1, 1987.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB112, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing programs in each Judicial District to provide mandatory arbitration of wrongful discharge cases; granting rule-making authority; and providing an applicability date and an effective date.

ASSUMPTIONS:

1. An average of 9 claims are brought against the state each year.
2. All cases go to arbitration.
3. All cases go from arbitration to trial.
4. Legal representation in preparation for and during arbitration would be provided by Legal Services Division, Department of Justice.

FISCAL IMPACT:

	Proposed Law	
	FY88	FY89
<u>Expenditures:</u>		
Department of Justice	\$ 41,400	\$ 41,400
<u>Funding:</u>		
Proprietary Account	\$ 41,400	\$ 41,400

Agencies would require funding authority to pay Legal Services Division for services provided. If the Supreme Court set up a commission on mandatory arbitration rules, it would cost \$10,000 of general fund.

Revenues:

N/A

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

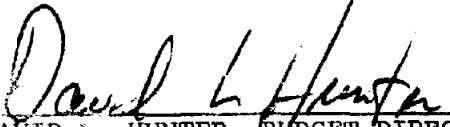
N/A

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

N/A

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

N/A

 DATE 1/15/87
 DAVID L. HUNTER, BUDGET DIRECTOR
 Office of Budget and Program Planning

DATE _____
 KELLY ADDY, PRIMARY SPONSOR
 Fiscal Note for HB112, as introduced.

HB 112