

# HOUSE BILL REPORT

## SHB 1054

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### As Amended by the Senate

**Title:** An act relating to the revised uniform arbitration act.

**Brief Description:** Enacting the revised Uniform Arbitration Act.

**Sponsors:** By House Committee on Judiciary (originally sponsored by Representatives Lantz, Priest and Morrell).

### Brief History:

#### Committee Activity:

Judiciary: 1/18/05, 2/1/05 [DPS].

#### Floor Activity:

Passed House: 2/28/05, 95-0.

Senate Amended.

Passed Senate: 4/5/05, 49-0.

### Brief Summary of Substitute Bill

- Replaces the state's existing arbitration statute with the 2000 Revised Uniform Arbitration Act (RUAA).
- Prescribes procedures for initiating and conducting arbitration and for enforcing and appealing arbitration awards and rulings.
- Provides rules for appointing arbitrators and for disclosure of facts potentially affecting an arbitrator's impartiality.
- Establishes rules for allocating costs and fees associated with arbitration.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Campbell, Assistant Ranking Minority Member; Kirby, Serben, Springer and Wood.

**Staff:** Bill Perry (786-7123).

### Background:

## Arbitration

Arbitration is one form of non-judicial or "alternative" dispute resolution. Arbitration is done pursuant to an agreement made by two or more parties that they will submit a dispute to a third party for resolution. Arbitration has been described by its advocates as an economical and streamlined method of resolving disputes, particularly those that involve technical or highly specialized issues. Generally, procedural complexity is less in an arbitration than in a court proceeding.

Arbitration in Washington is exclusively statutory. That is, under the common law of the state, arbitration agreements are not enforceable.

## Washington's Arbitration Statute

Generally, to be enforceable an arbitration agreement must comply with the arbitration statute. An exception is made in the arbitration statute itself for labor disputes, which may be resolved by whatever method the parties choose.

Washington's current statute on arbitration was adopted by the Legislature in 1943 and has not been substantively amended since. The state's Arbitration Act authorizes the use of arbitration as an alternative to judicial resolution of disputes. Arbitrations conducted in accordance with the statute are enforceable in court.

An arbitration agreement may be entered into before any dispute has arisen or may be entered into after a legal action has already been begun in court. Courts may be asked to review arbitration agreements and procedures for compliance with the statute, but court review of arbitration decisions is limited to correction of an award or vacation of an award on specified grounds. Courts may not review the merits of an award.

Arbitration under the statute is an alternative to the use of the courts for resolving a dispute. There is no general right of appeal in the statute, and the parties to an arbitration agreement may not provide for a trial following an arbitration. In rejecting an arbitration agreement clause that did allow for a trial de novo following arbitration, the Washington State Supreme Court has characterized the purpose of Washington's arbitration statute as follows:

Encouraging parties voluntarily to submit their disputes to arbitration is an increasingly important objective in our ever more litigious society. This objective would be frustrated if a trial court were permitted to conduct a trial de novo when it reviews an arbitration award. Arbitration is attractive because it is a more expeditious and final alternative to litigation. (*Godfrey v. Hartford Cas. Ins. Co.*, 142 Wn.2d 885 (2001), citing earlier decisions.)

In other words, arbitration in Washington is "binding." (*Note*: This kind of binding arbitration done pursuant to an agreement is not to be confused with the "mandatory" arbitration that a separate Washington law imposes on parties in some cases. Mandatory arbitration applies only where the sole relief being sought is a relatively small money judgment. Mandatory arbitration, unlike binding arbitration, is followed by a right to a trial de novo precisely because entering mandatory arbitration is involuntary.)

The arbitration statute sets out various rights of the parties, as well as procedures for initiating and conducting arbitration that are generally less formal and complex than procedures that apply in a lawsuit.

- If a party to an agreement refuses to enter arbitration, the other party may petition a court to force compliance with the agreement. Either party may demand an "immediate trial by jury" to resolve issues of the validity of the agreement itself. However, once a party has notice of a demand for arbitration, a challenge to the validity of the agreement must be made within 20 days.
- A court may appoint arbitrators if an agreement does not otherwise provide for appointment or if for some reason the agreement's procedure for appointment fails. The default number of arbitrators to be appointed in a case is three. In any case with more than one arbitrator, a majority of the arbitrators may render an award.
- If a party has been given reasonable notice of an arbitration hearing, the failure of the party to appear at the hearing does not prevent the arbitrators from proceeding.
- Courts are authorized to oversee arbitration and to help ensure the prompt resolution of cases. Unless set otherwise by the agreement, the default time limit for issuance of an arbitration award is 30 days after the proceedings are closed. A court has authority to direct arbitrators to "proceed promptly," and if an arbitrator does not meet the initial deadline, the court may order the arbitrator to make an award by a fixed time. If the arbitrator fails to meet that deadline, the court may impose sanctions upon the arbitrator.
- Any party to an arbitration may be represented by an attorney. Arbitrators may use subpoenas to compel witnesses to appear, and witness fees are allowed in the same manner as in a superior court case. Depositions are also authorized. An arbitrator may also cause property to be preserved in anticipation of satisfying an award.
- Awards may be confirmed, or they may be vacated, corrected, or modified. Where an arbitration award is the product of fraud or corruption, for example, the award can be vacated by a court. A court may also correct an "evident miscalculation" in an award or modify an award made "upon a matter not submitted" to arbitration. The confirmation, vacation, correction, or modification of an award is entered as a judgment of the court. The court has discretion to order a party to pay another party up to \$25 of the costs of seeking one of these court reviews, plus disbursements.

#### The Uniform Arbitration Act

In the years since the enactment of Washington's law, arbitration has become widely accepted and is regularly used in this state and others. In 1955, the National Conference of Commissioners on Uniform State Laws (NCCUSL) drafted a proposed uniform state law on arbitration. That 1955 Uniform Act was based in large part on state statutes such as the one Washington had adopted in 1943. The 1955 Uniform Act, or modified versions of it, were eventually adopted in all 49 of the other states. Washington's law, as noted above, has remained virtually unchanged since 1943. In 2000, the NCCUSL proposed a revision to the

Uniform Arbitration Act. A few states have already adopted the 2000 revision, and several others are in the process of considering it.

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### **Summary of Substitute Bill:**

The 2000 Revised Uniform Arbitration Act (RUAA) is adopted to replace the state's 1943 arbitration statute.

Many changes are made to the previous law, including the addition of provisions to cover issues not addressed in the 1943 arbitration statute. Many of the RUAA's provisions deal with procedural matters. Among the new issues covered by the RUAA are:

- consolidation of proceedings. Courts are given explicit authority to consolidate some or all of the claims in multiple arbitration proceedings.
- arbitrator disclosure of facts potentially affecting impartiality. Arbitrators are generally required to disclose known facts that a reasonable person would consider likely to affect the arbitrator's impartiality. Special rules apply to disclosures by neutral arbitrators.
- arbitrator immunity from civil actions. Generally, arbitrators are given the same immunity as judges.
- requiring arbitrators to testify in other proceedings. Generally, arbitrators may not testify and cannot be required to produce records regarding an arbitration proceeding, to the same extent as a judge.
- nonwaivability of specific sections of the arbitration statute. The RUAA is generally a default statute that allows parties to customize arbitration agreements. However, certain provisions of the RUAA may not be waived or varied. Provisions that may never be waived include: application of the RUAA to arbitration agreements; compelling or staying proceedings; immunity of arbitrators; judicial enforcement of pre-award rulings; judicial authority to confirm, vacate, modify, clarify, or correct an award; and judicial entry of judgment and awarding of costs. In addition, stricter nonwaiver rules apply to the parties before any controversy has arisen. For example, before a controversy, nonwaivability applies to: procedural requirements for motions and notices; availability of provisional remedies; arbitrator impartiality disclosures; the right to counsel (except in labor disputes); subpoena and deposition authority; court jurisdiction; and the right of appeal.
- electronic technology in the arbitration process. Electronic means are expressly authorized for notice requirements in the RUAA. "Records" are defined to include electronic records, and the RUAA is expressly declared to conform to the federal Electronic Signatures in Global and National Commerce Act.

In addition to including these new provisions, the RUAA also makes changes with respect to issues previously addressed in the Washington arbitration statute. The authority of arbitrators

to issue provisional remedies during the pendency of an arbitration is expanded and generalized. Arbitrators may protect the effectiveness of an arbitration through provisional remedies, including interim awards, to the same extent as those remedies would be available in a judicial proceeding. In the same manner, the authority of arbitrators to award costs, fees, or exceptional damages is explicitly tied to the ability of a court to do the same in a judicial proceeding on the same kind of issue.

The RUAA applies to all agreements entered into after the effective date of the Act, January 1, 2006. After July 1, 2006, the RUAA also applies to arbitration agreements entered into before the effective date of the Act. In addition, parties to an agreement may choose to make the Act apply before the RUAA's effective date.

The RUAA does not apply to cases subject to mandatory arbitration and does not apply to labor disputes.

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#### **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment makes one technical clarification. The amendment removes part of a sentence that referred to labor disputes. The reference was inadvertently left in the substitute bill after labor disputes were exempted from the act. (Compare Section 4(d) in the Senate Striking amendment and in the Substitute House Bill.)

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect on January 1, 2006.

**Testimony For:** It has been 50 years since the state's basic Arbitration Act has been amended. The RUAA will add much needed detail with respect to arbitration procedures and will incorporate much case law that has developed over the years. The Act will provide better guidance to parties using arbitration. It is important for Washington to enact the RUAA in order to participate in a national effort toward inter-state uniformity.

(With concerns on original bill) The references in the bill to "punitive" and "exemplary" damages may imply to some readers the ability to impose those damages in situations where they are not now allowed. The RUAA should explicitly exempt mandatory arbitration and labor disputes. There may be a question regarding the possible stay of an arbitration proceeding due to coverage issues in an insurance policy.

**Testimony Against:** None.

**Persons Testifying:** (In support of original bill) Nicholas Wagner, Washington State Bar Association; Dennis Cooper, Code Reviser and Uniform Law Commissioner; and Susan Slagle, American Arbitration Association.

(With concerns on original bill) Kris Tefft, Association of Washington Business; Mel Sorensen, Property Casualty Insurance Association, Washington Defense Lawyers Association, Allstate Insurance, and Professional Insurance Agents; and Jean Leonard, State Farm Insurance.

**Persons Signed In To Testify But Not Testifying:** None.