

HOUSE BILL REPORT

ESHB 1248

As Passed House:
February 3, 2016

Title: An act relating to court proceedings.

Brief Description: Concerning court proceedings.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Shea, Sawyer, Rodne, Jinkins, Walkinshaw, Fitzgibbon, Kilduff and Pollet).

Brief History:

Committee Activity:

Judiciary: 1/21/15, 1/29/15 [DPS].

Floor Activity:

Passed House: 2/19/15, 78-19.

Floor Activity:

Passed House: 2/3/16, 85-12.

Brief Summary of Engrossed Substitute Bill

- Makes various changes to mandatory arbitration statutes addressing the cases subject to mandatory arbitration, time periods for setting hearing dates, permitted discovery, arbitrator qualifications, and filing fees for a request for mandatory arbitration or appeal of an arbitration award.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Orwall and Walkinshaw.

Minority Report: Do not pass. Signed by 2 members: Representatives Rodne, Ranking Minority Member; Muri.

Minority Report: Without recommendation. Signed by 1 member: Representative Stokesbary.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Edie Adams (786-7180).

Background:

Arbitration is a form of alternative dispute resolution where a neutral third party is selected to hear both sides of the case and then render a specific decision or award. Mandatory arbitration is required for certain civil actions in counties with a population of more than 100,000. In counties with a population of 100,000 or less, the superior court of the county may authorize mandatory arbitration with a majority vote of the county's superior court judges or it may be authorized by the county legislative authority. Mandatory arbitration applies to all superior court civil actions where the sole relief requested does not exceed \$15,000, or if approved by a two-thirds vote of the superior court judges, up to \$50,000. In addition, a majority of the superior court judges may vote to use mandatory arbitration in child support cases.

An arbitrator must be a member of the Washington State Bar Association (WSBA) who has been admitted to practice for a minimum of five years or who is a retired judge. The parties to an arbitration may stipulate to a nonlawyer arbitrator.

Court rules governing mandatory arbitration establish procedures for conducting the arbitration. The arbitrator must set the time, date, and place of the hearing and give reasonable notice of the hearing date to the parties. The hearing must be scheduled no sooner than 21 days, nor later than 63 days, from the date or assignment of the case to the arbitrator, unless otherwise stipulated or ordered by the arbitrator. With respect to discovery, the court rules provide that a party may demand a specification of damages, request a physical or mental examination of a party, request admissions from a party, and take the deposition of another party, unless otherwise ordered by the arbitrator. Additional discovery is not allowed unless stipulated to by the parties or ordered by the arbitrator when reasonably necessary.

An award by an arbitrator may be appealed to the superior court. The superior court will hear the appeal "de novo," which means that the court will conduct a trial on all issues of fact and law as if the arbitration had not occurred.

The fee for filing a request for mandatory arbitration may not exceed \$250 as established by local ordinance. This fee must be used solely to offset the cost of the mandatory arbitration program. The fee for filing a request for a trial de novo of an arbitration award may not exceed \$250 as set by local ordinance.

Summary of Engrossed Substitute Bill:

Superior court judges of a county that has approved arbitration may require mandatory arbitration for civil actions with amounts at issue of up to \$75,000.

A person may not serve as an arbitrator unless the person has completed a minimum of three credits of continuing legal education (CLE) approved by the WSBA on the professional and ethical considerations for serving as an arbitrator. Within 10 days of appointment, an arbitrator must file a declaration or affidavit with the court stating or certifying that the arbitrator is in compliance with the CLE requirement.

An arbitrator must set the time, date, and place of the arbitration hearing and give reasonable notice to the parties of the hearing date. This hearing date may be set no sooner than 21 days and no later than 75 days from the date of the assignment of the case to the arbitrator.

Guidelines for how to conduct discovery are provided for parties to mandatory arbitration. A party conducting discovery may demand a specification of damages, request physical and mental health examinations, request an admission from a party, and take the deposition of another party. A party may request additional discovery from an arbitrator, but arbitrators may allow discovery only as reasonably necessary.

A written notice of appeal of an arbitration must be signed by the aggrieved party. Filing fees for a request for mandatory arbitration are raised from \$220 to \$250, and filing fees for a request for trial de novo of an arbitration award are raised from \$250 to \$350. The \$30 differential between the current fee for filing a request for mandatory arbitration and the fee as increased must be used for indigent defense services.

A technical change is made to replace "a water rights statement" with "an adjudication claim." This makes the language of this section match the statutory language of RCW 90.03.180.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect on January 1, 2017.

Staff Summary of Public Testimony:

(In support) This bill will save money for everyone involved, it will lead to a more efficient court system, and it will promote access to justice.

All parties involved will save money. Mandatory arbitration hearings are much shorter than court hearings, and a case that could take three to four days in court may only take three to four hours in arbitration. The relaxed rules of evidence also save all parties money because you can call expert witnesses instead of paying for them to come to a courtroom and wait for their time to testify.

Arbitration is a process that resolves disputes efficiently and effectively, and increasing the number of arbitrations will promote efficiency. Roughly 80 percent of mandatory arbitration cases are resolved without taking a single moment of judicial docket time, and only 2 percent of cases that go through arbitration end up in trial. It also accomplishes this without taking away anyone's constitutionally vested right for a trial by jury. A trial is always an option, this just helps resolve cases in a more efficient way.

This will also promote access to justice by giving more people and businesses the opportunity to have their case heard. The current \$50,000 limit for mandatory arbitration and \$75,000 limit for district court are not enough when compared with the high costs of medical

bills and expert witnesses. Cases that have \$20,000-\$50,000 in medical damages just can't be brought if the case will cost \$20,000-\$30,000 to go to trial. Arbitration for these cases is essential. Arbitration is also necessary in many commercial cases, and businesses would benefit from these changes.

The signature requirement will give proper notice to the parties and increase their likelihood of using arbitration.

District court judges are particularly interested in the increased jurisdictional limit for district court and they do not want this aspect to get bogged down by anything else.

(Opposed) The fee increases here are significant and will increase the number of trials de novo. Defense attorneys do not want to go to arbitration because arbitrators often are plaintiff oriented and tend to split the difference in awards instead of coming to a fair and just position. Mandatory arbitration is appropriate when amounts at issue are relatively small, but when the amounts at issue are significant the case should go to court.

Persons Testifying: (In support) Representative Shea, prime sponsor; Steve Toole, Marshall Casey, Shelley Speier, and Celia Rivera, Washington State Association of Justice; Melanie Stewart, Washington District Municipal Court Judges Association; Larry Shannon, Washington State Association of Justice; and Patrick Connor, National Federation of Independent Business.

(Opposed) Mel Sorenson, Washington Defense Trial Lawyers.

Persons Signed In To Testify But Not Testifying: None.