

# SENATE BILL REPORT

## SHB 1248

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As Reported by Senate Committee On:  
Law & Justice, March 31, 2015

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

**Committee Activity:** Law & Justice: 3/16/15, 3/31/15 [DPA-WM].

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Kohl-Welles, Pearson and Roach.

**Staff:** Melissa Burke-Cain (786-7755)

**Background:** The Legislature limits the district court's jurisdiction based on the case's value, or the amount at issue, in specific civil cases. The Legislature periodically adjusts this case value limit. In 2008, the most recent change, the Legislature raised the civil case jurisdiction from \$50,000 per case to \$75,000 per case exclusive of interest, costs, and attorneys' fees.

Mandatory superior court arbitration is required in counties with more than 100,000 persons, and voluntary for less-populous counties. Mandatory arbitration applies to all claims for money damages, except appeals from municipal and district courts, up to a case value limit of \$15,000 per party. Currently, in counties where mandatory arbitration is required or authorized, a county's superior court judges may raise the mandatory arbitration limit up to \$50,000 by a two-thirds vote.

A \$25 fee must be charged for filing a water rights statement. Water rights statement is not a defined term or a term found in the water rights law.

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*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.*

**Summary of Bill (Recommended Amendments):** Civil Claims Jurisdictional Limit in District Courts. The jurisdictional limit for civil claims in district courts is \$100,000 exclusive of interest, costs, and attorneys' fees. The \$100,000 case value limit applies to each claimant if a case has multiple claimants.

Mandatory Arbitration in Superior Courts.

- The case value limit for mandatory arbitration may be increased from \$15,000 to \$75,000 when approved by a two-thirds vote of a county's superior court judges.
- Mandatory arbitration arbitrators must complete a one-time training of a minimum of three Washington State Bar Association-approved continuing legal education credits on the professional and ethical considerations for serving as an arbitrator. The superior court clerk must verify the required training has been completed when attorneys seek appointment as an arbitrator.
- Arbitrators must set the time, date, and place of an arbitration hearing and must give parties reasonable notice of the arbitration date.
- The arbitration date must be between 21 days and 75 days from the date the arbitrator is assigned, unless the parties stipulate otherwise or good cause is shown for a different date.
- Parties may conduct limited pre-arbitration discovery. In personal injury cases, defendants may demand a statement of damages. Parties may request a physical and mental health examination, request admissions, or take another party's deposition.
- The arbitrator may allow additional pre-arbitration discovery when reasonably necessary.
- A party appealing an arbitration award must sign a written notice of appeal.
- The filing fee for mandatory arbitration is \$250. The filing fee for a trial de novo after arbitration is \$275. From each of these filing fees, \$30 dollars must fund indigent defense in the county where the arbitration is filed.
- A \$25 filing fee must be charged for a water rights adjudication claim.

**EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended Amendments):** The mandatory arbitration upper limit is \$75,000. Prospective Mediation Arbitration Resolution Services arbitrators must complete at least three hours of Washington State Bar Association-approved arbitrator training on the ethics of professional aspects of serving as an arbitrator. The superior court must verify that new arbitrators have completed the training. Of the maximum mandatory arbitration filing fee, \$30 must be used for indigent defense in the county where mandatory arbitration is filed.

**Appropriation:** None.

**Fiscal Note:** Requested on March 12, 2015.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Substitute House Bill:** PRO: This bill will save money for everyone involved, it will lead to a more efficient court system, and it will promote access to justice. Mandatory Arbitration (MAR) is an important process that allows

counsel to give good options to clients. The Mediation Arbitration Resolution Services (MARS) system has been used in Washington for approximately 30 years. MARS works. It is the most successful model MAR system in the country. In the last three years in Washington, an average of over 4400 cases per year were put into mandatory arbitration, and over 80 percent of those cases resolved either before or at the arbitration level. Approximately 2 percent of the cases noted for MAR go to a trial de novo. Current MAR limits are too low and should be increased to \$100,000 because of the increased costs of health care over time. Cases that should go to arbitration are bumping up against the \$50,000 limit. For example, an emergency department visit after an accident routinely costs \$15,000 to \$19,000 for one person with a non-severe injury. MAR serves well for business-related or injury-related disputes. Often the fees charged for arbitration completely cover the cost of the MAR program.

CON: Testimony opposing this bill relates only to section 2 the proposed increase for the MAR limit from \$50,000 to \$100,000. The bill creates an unfair situation in which defendants would be required to go to arbitration for a significant case – damages up to \$100,000 with very little discovery and not enough time to prepare for the arbitration meeting. The MAR system results in unfair rewards skewed in plaintiffs' favor. Cases would not be expedited since many would go to trial de novo following arbitration. MAR causes the claims values to go up regardless of the case facts. MAR fosters a "split the difference" mentality that leverages defendants into a higher settlement than the case is worth. MAR is not a fair process for insurers and lacks the appearance of fairness. The real effect of the bill will be in increased insurance premium costs. The increase from \$50,000 to \$100,000 is out of proportion to inflation since the last MAR increase.

OTHER: The municipal and district courts favor an increase in the jurisdictional amount to \$100,000 but take no position on the arbitration proposal in Section 2 of the bill.

**Persons Testifying:** PRO: Representative Shea, prime sponsor; Marshall Casey, Larry Shannon, Celia Rivera, Allen Brecke, Frank Ladenburg, WA State Assn. for Justice.

CON: Melissa Roeder, Maggie Sweeney, WA Defense Trial Lawyers; Mel Sorensen, Property Casualty Insurers Assn., Allstate Insurance, American Family Insurance; Tom Underbrink, Mutual of Enumclaw Insurance; James Skogman, Pemco Insurance; Cliff Webster, Liability Reform Coalition.

OTHER: Judge Sam Meyer, District and Municipal Judges Assn.

**Persons Signed in to Testify But Not Testifying:** OTHER: Melanie Steward, District and Municipal Court Judges Assn.