SENATE BILL REPORT
ESHB 1248

As Reported by Senate Committee On:
Law & Justice, February 23, 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: Passed House: 2/19/15, 78-19; 2/03/16, 85-12.
Committee Activity: Law & Justice: 2/18/16, 2/23/16 [DP-WM].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass and be referred to Committee on Ways & Means.
Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Frockt and Pearson.

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.

Summary of Bill:

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.

- The district court amount in controversy is not increased. The case value limit for mandatory arbitration may be increased 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. A newly-appointed arbitrator must supply the court with a declaration that the training is completed within 10 days of appointment.
- 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 $350. 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."
- The act takes effect on January 1, 2017 and applies to all cases filed on or after that date.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: Washington was the first state to have mandatory arbitration in 1981. $75,000 is a reasonable increase. Other counties are higher, for example Cook County Illinois is an upper mandatory arbitration limit of $250,000. Mandatory arbitration saves costs for the litigants and the courts. Not all Washington counties have adopted mandatory arbitration. Approximately 2% of mandatory arbitration cases go on to a trial de novo. If the mandatory arbitration is raised to $ 75,000 approximately 20% more cases would be eligible. Arbitration helps the parties work with an independent person to work through some of the emotional distress and allows attorneys for litigants to have a frank discussion about the value of the case, the risks of trial. The proposed $75 000 ceiling does not mean that cases are necessarily more complex. Instead it is more in keeping with increases in medical bills, cost of living, expert testimony, and discovery. The current $50,000 upper limit is too low. CON: The increase from $50,000 to $75,000 is a substantial jump. The last increase was in 2005. The proposed increase is far beyond inflation. If an increase is contemplated there should also be attention paid to who the

arbitrators are. The current estimate is that 2/3 of the panel arbitrators are plaintiff counsel and 1/3 are defense counsel. It should be equally balanced. This measure will not just affect insurance companies, it will affect mom-and-pop businesses, school districts and other local government entities such as school districts, port districts, and municipalities. Arbitration is not a true evaluation of the case; it is a "split-the-baby" every time. The costs of the increase will translate into higher insurance premiums for consumers. Discovery prior to a mandatory arbitration is too limited given the proposed increase in the arbitration amount. More trial de novo actions will occur in order to have the opportunity for a summary judgment motion. Arbitrators come with a "split the difference" mentality that inflates the value of the claim in the defense's view. It is hard to go to trial de novo because if you do not improve your position on appeal, you end up paying your own costs and the other side's costs. Some defendants just pay the claim and not incur the risks, so defendants are not fairly treated based on the claim's actual value. For consumers who can only afford the minimum mandatory car insurance, there can be significant exposure, for example in an auto accident where a person with the minimum insurance is exposed to $25,000 of direct loss for an above limits decision. It adversely affects limited means consumers in another way because they often cannot afford to put on a robust defense .

Persons Testifying: PRO: Representative Shea, prime sponsor; Larry Shannon, Wn State Assn for Justice; Celia Rivera, Wn. State Assn. for Justice; Marshall Casey, Wn State Assn for Justice; CON: James Skogman, Pemco Insurance; Maggie Sweeney, Washington Defense Trial Lawyers; Melissa Roeder, Washington Defense Trial Lawyers; Mel Sorenson, Property and Casualty Insurers Assn of America, Allstate, American Family Insurance; Brian Miller, Farmers Insurance; Cliff Webster, Liability Reform Coalition. Persons signing in to testify but not testifying: No one.

Persons Signed In To Testify But Not Testifying: No one