
Judiciary Committee

HB 1128

Title: An act relating to civil arbitration.

Brief Description: Concerning civil arbitration.

Sponsors: Representatives Shea, Jinkins, Holy, Sawyer, Kilduff, Nealey, Hansen, McCaslin, Fitzgibbon, Ormsby and Haler.

Brief Summary of Bill

- Makes various changes to the mandatory arbitration laws concerning the cases subject to mandatory arbitration, the time periods for setting hearing dates, permitted discovery, arbitrator qualifications, and filing fees.
- Removes all references to the word "mandatory" throughout the mandatory arbitration laws, replacing "mandatory" with "civil" in some instances.

Hearing Date: 1/18/17

Staff: Audrey Frey (786-7289).

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.

Authorization.

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 county legislative authority may authorize mandatory arbitration, or the superior court of the county may authorize it with a majority vote of the county's superior court judges.

Actions Subject to Mandatory Arbitration.

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.

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 and maintenance cases.

Arbitrator Qualifications.

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 an arbitrator who is not a lawyer.

Mandatory Arbitration Rules.

The Washington Supreme Court is required to adopt rules establishing procedures to implement mandatory arbitration. These procedural rules are known as the Superior Court Mandatory Arbitration Rules (MAR). Under the MAR, 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 of the assignment of the case to the arbitrator, except by stipulation or for good cause. 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.

Decision, Award, and Appeals.

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.

Filing Fees.

The fee for filing a request for mandatory arbitration is set by authority of local ordinance and may not exceed \$220. 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 is set by authority of local ordinance and may not exceed \$250.

Summary of Bill:

All references to the word "mandatory" are removed from the mandatory arbitration laws. In some instances, "mandatory" is replaced with the word "civil" to the effect that where the law formerly required "mandatory arbitration," the law now requires "civil arbitration."

Actions Subject to Civil Arbitration.

Superior court judges may require civil arbitration for civil actions with amounts at issue of up to \$100,000, increased from a former maximum of \$50,000, if approved by a two-thirds vote of the superior court judges.

Civil Arbitration Rules.

Certain procedural rules, similar but not identical to the rules regarding notice of hearing and discovery as provided in the Superior Court Mandatory Arbitration Rules (MAR), are added to statute. The arbitrator shall 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 75 days, from the date of assignment of the case to the arbitrator, except by stipulation or for good cause. With respect to discovery, a party may 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. The differences between the procedural rules added to statute and the MAR are highlighted in the table below:

	MAR	HB 1128
Notice of Hearing	The hearing must be scheduled no sooner than 21 days, nor later than 63 days , from the date of the assignment of the case to the arbitrator, except by stipulation or for good cause.	The hearing must be scheduled no sooner than 21 days, nor later than 75 days , from the date of assignment of the case to the arbitrator, except by stipulation or for good cause.
Discovery	A party may: (1) demand a specification of damages ; (2) request a physical or mental examination of a party; (3) request admissions from a party; and (4) take the deposition of another party, unless otherwise ordered by the arbitrator.	A party may: (1) request a physical or mental examination of a party; (2) request admissions from a party; and (3) take the deposition of another party, unless otherwise ordered by the arbitrator.

Arbitrator Qualifications.

A person may not serve as an arbitrator unless the person has completed a minimum of three continuing legal education (CLE) credits approved by the Washington State Bar Association on the professional and ethical considerations for serving as an arbitrator. A person serving as an arbitrator must file a declaration or affidavit stating or certifying to the appointing court that the person is in compliance with the CLE credit requirement. The superior court judge or judges in any county may choose to waive the CLE credit requirement for arbitrators who have acted as an arbitrator five or more times previously.

Decision, Award, and Appeals.

A written notice of appeal of a civil arbitration must be signed by the aggrieved party.

Filing Fees.

The maximum filing fee for a request for civil arbitration is raised from \$220 to \$250, as established by authority of local ordinance. Of this fee, \$220 shall be used to offset the cost of the civil arbitration program, and \$30 of each fee must be used for indigent defense services. The maximum filing fee for a request for trial de novo of a civil arbitration award is raised from \$250 to \$400, as established by authority of local ordinance.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect on January 1, 2018.