

SENATE BILL REPORT

EHB 1128

As of February 5, 2018

Title: An act relating to civil arbitration.

Brief Description: Concerning civil arbitration.

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

Brief History: Passed House: 2/27/17, 71-25; 1/18/18, 77-19.

Committee Activity: Law & Justice: 2/01/18.

Brief Summary of Bill

- Removes all references to the word mandatory throughout the mandatory arbitration laws, replaced with civil in some instances.
- Increases the maximum arbitration limit up to \$100,000 if approved by the superior court of a county by two thirds or greater of judges.
- Adopts certain procedural rules for the timing of an arbitration hearing and permissible discovery.
- Sets qualifications for a person serving as an arbitrator.
- Requires a notice of appeal from arbitration to be signed.
- Increases the arbitration filing fee from \$220 to \$250, and the trial *de novo* filing fee from \$250 to \$400.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: Legal disputes can often be resolved without going to court. A common alternative is arbitration. Arbitration has been used in legal disputes for:

- family law;
- personal injury;
- consumer complaints;
- business and commercial disputes;

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- employment law;
- landlord-tenant issues;
- collections; and
- automobile sales.

In arbitration, a neutral third party is chosen to hear both sides of the case, then resolves it by rendering a specific decision or award. Although there are some similarities, an arbitration proceeding is typically shorter and designed to be less expensive than a regular court trial. One difference is that arbitration can be either binding or non-binding, as agreed in advance by the disputing parties. If binding arbitration has been chosen, the decision or award is final. If non-binding, then an appeal is permitted within 20 days of the arbitrator's award being filed with the clerk of the court.

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. 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 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 Engrossed 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 the specified maximum if approved by a two-thirds vote of the superior court judges. The maximum arbitration limit is increased from \$50,000 to \$100,000.

Civil Arbitration Rules. 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 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. The arbitrator will allow additional discovery only as reasonably necessary.

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 WSBA 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. A superior court judge 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 must 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: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Engrossed House Bill: PRO: The civil arbitration program takes approximately 3000 cases each year. That is 3000 cases that do not go on a

court docket and save courts money. The right to trial by jury is preserved, but many cases are settled about 98 percent of the time. Most of the time that there has been an appeal, a jury awards more than the arbitrator. Arbitration provides privacy. Many contractual issues can be resolved without a jury trial. Arbitration is much quicker. It is more cost efficient.

CON: The period of time is too short between the filing and hearing date. The limited discovery hampers the defense because we are not allowed to investigate any prior medical conditions or records. The limited discovery also means that we can not cross examine an expert evaluation. The increased maximum arbitration limit will mean that more cases are appealed by defense. Defense tends to do better in front of a real jury. A substantial amount of arbitrators come from a personal injury practice. They may not demonstrate bias in any individual case, but they come with a background disposed in favor of plaintiffs. Arbitrators tend to give the plaintiff an award and it is rare when an arbitrator gives a defense verdict. Arbitrators are incentivized to award a plaintiff judgment.

Persons Testifying: PRO: Larry Shannon, Washington Association for Justice; Brandon Casey, citizen; Greg Price, citizen; Katherine Mason, citizen.

CON: Tom Underbrink, Mutual of Enumclaw; Natalie Heineman, Washington Defense Trial Lawyers; Mel Sorensen, Property Casualty Insurers Association of America, Allstate, American Family Insurance; Cliff Webster, Liability Reform Coalition.

Persons Signed In To Testify But Not Testifying: No one.