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SENATE BILL 5295

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State of Washington                      55th Legislature                      1997 Regular Session

By Senators Roach, Goings, Kohl, Wojahn, Zarelli, Schow and Patterson

Read first time 01/22/97. Referred to Committee on Law & Justice.

1            AN ACT Relating to district court proceedings; amending RCW  
2 12.40.030, 12.40.040, 12.40.080, 12.40.120, 4.14.010, 12.36.010,  
3 12.36.020, 12.36.030, 12.36.050, 12.36.080, 12.36.090, and 2.24.040;  
4 adding a new section to chapter 12.40 RCW; adding a new section to  
5 chapter 12.36 RCW; and repealing RCW 12.36.040 and 12.36.070.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7            **Sec. 1.** RCW 12.40.030 and 1984 c 258 s 60 are each amended to read  
8 as follows:

9            Upon filing of a claim, the court shall set a time for hearing  
10 ~~((of))~~ on the matter ((and cause to be issued)). The court shall issue  
11 a notice of the claim which shall be served upon the defendant to  
12 notify the defendant of the hearing date. A trial need not be held on  
13 this first appearance, if dispute resolution services are offered  
14 instead of trial, or local practice rules provide that trials will be  
15 held on different days.

16            **Sec. 2.** RCW 12.40.040 and 1984 c 258 s 61 are each amended to read  
17 as follows:

1 The notice of claim can be served either as provided for the  
2 service of summons or complaint and notice in civil actions or by  
3 registered or certified mail if a return receipt with the signature of  
4 the party being served is filed with the court. No other (~~paper~~)  
5 legal document or process is to be served with the notice of claim.  
6 Information from the court regarding the small claims department, local  
7 small claims procedure, dispute resolution services, or other matters  
8 related to litigation in the small claims department may be included  
9 with the notice of claim when served.

10 The notice of claim shall be served promptly after filing the  
11 claim. Service must be complete at least ten days prior to the first  
12 hearing.

13 The (~~officer~~) person serving the notice of claim shall be  
14 entitled to receive from the plaintiff, besides mileage, the fee  
15 specified in RCW 36.18.040 for such service; which sum, together with  
16 the filing fee (~~named in RCW 12.40.030~~) set forth in RCW 12.40.020,  
17 shall be added to any judgment given for plaintiff.

18 **Sec. 3.** RCW 12.40.080 and 1991 c 71 s 2 are each amended to read  
19 as follows:

20 (1) No attorney at law, legal paraprofessional, nor any person  
21 other than the plaintiff and defendant, shall (~~concern himself or~~  
22 ~~herself or in any manner interfere~~) appear or participate with the  
23 prosecution or defense of litigation in the small claims department  
24 without the consent of the (~~judge of the district court~~) judicial  
25 officer hearing the case. A corporation (~~plaintiff~~) may not be  
26 represented by an attorney at law(~~τ~~) or legal paraprofessional except  
27 as set forth in RCW 12.40.025.

28 (2) In the small claims department it shall not be necessary to  
29 summon witnesses, but the plaintiff and defendant in any claim shall  
30 have the privilege of offering evidence in their behalf by witnesses  
31 appearing at (~~such hearing, and~~) trial. On motion of a party, the  
32 court may, at its discretion, allow otherwise admissible witness  
33 testimony to be presented in the form of an affidavit, properly  
34 executed or attested to be true under penalty of perjury.

35 (3) The judge may informally consult witnesses or otherwise  
36 investigate the controversy between the parties(~~τ~~) and give judgment  
37 or make such orders as the judge may deem to be right, just, and  
38 equitable for the disposition of the controversy.

1       **Sec. 4.** RCW 12.40.120 and 1988 c 85 s 2 are each amended to read  
2 as follows:

3       No appeal shall be permitted from a judgment of the small claims  
4 department of the district court where the amount claimed was less than  
5 (~~one~~) two hundred fifty dollars. No appeal shall be permitted by a  
6 party who requested the exercise of jurisdiction by the small claims  
7 department where the amount claimed by that party was less than one  
8 thousand dollars. A party in default may seek to have the default  
9 judgment set aside according to the court rules applicable to setting  
10 aside judgments in district court.

11       NEW SECTION. **Sec. 5.** A new section is added to chapter 12.40 RCW  
12 to read as follows:

13       RCW 4.14.010 regarding removal of actions to superior court shall  
14 not apply to cases originally filed in small claims court, or  
15 transferred to the small claims court pursuant to RCW 12.40.025. No  
16 defendant or third party defendant may remove a small claims case from  
17 small claims court as a matter of right by merely filing a claim or  
18 counterclaim or other request for relief that is beyond the  
19 jurisdiction of the small claims court. Claims, counterclaims, or  
20 other requests for relief filed by a defendant or third party defendant  
21 in excess of the jurisdiction of small claims court may be maintained  
22 simultaneously in superior court as a separate action brought by such  
23 defendant or third party defendant. Such a superior court action does  
24 not affect the jurisdiction of the small claims court to hear the  
25 original small claims case. The decision of the small claims court  
26 shall have no preclusive effect on a superior court action brought  
27 pursuant to this section. If the small claims case is appealed, it  
28 shall be automatically joined with any superior court case filed  
29 pursuant to this section, and the procedures set forth in section 11 of  
30 this act shall not apply.

31       Nothing in this section may be construed to limit the small claims  
32 court from transferring a small claims case to district court or  
33 superior court after notice and hearing.

34       **Sec. 6.** RCW 4.14.010 and 1967 ex.s. c 46 s 4 are each amended to  
35 read as follows:

36       Whenever the removal of such action to superior court is required  
37 in order to acquire jurisdiction over a third party defendant, who is

1 or may be liable to the defendant for all or part of the judgment and  
2 resides outside the county wherein the action was commenced, any civil  
3 action which could have been brought in superior court may, if  
4 commenced in ~~((justice))~~ district court, be removed by the defendant or  
5 defendants to the superior court for the county where such action is  
6 pending if the district court determines that there are reasonable  
7 grounds to believe that a third party may be liable to the plaintiff  
8 and issues an order so stating.

9 Whenever a separate or independent claim or cause of action which  
10 would be removable if sued upon alone is joined with one or more  
11 otherwise nonremovable claims or causes of action, the entire case may  
12 be removed and the superior court may determine all issues therein, or,  
13 in its discretion, may remand all matters not otherwise within its  
14 original jurisdiction.

15 This section does not apply to cases originally filed in the small  
16 claims department of a district court, or transferred to the small  
17 claims department pursuant to RCW 12.40.025, except as set forth in  
18 section 5 of this act.

19 **Sec. 7.** RCW 12.36.010 and 1979 ex.s. c 136 s 21 are each amended  
20 to read as follows:

21 Any person ~~((considering himself aggrieved by the))~~ wishing to  
22 appeal a judgment or decision ((of)) in a ((justice of the peace in a  
23 civil)) small claims action may, in person or by his or her agent ~~((or~~  
24 ~~attorney))~~, appeal ~~((therefrom))~~ to the superior court of the county  
25 where the judgment was rendered or decision made: PROVIDED, There  
26 shall be no appeal allowed unless the amount in controversy, exclusive  
27 of costs, ~~((shall exceed the sum of twenty))~~ exceeds two hundred fifty  
28 dollars: PROVIDED FURTHER, That an appeal from the court's  
29 determination or order on a traffic infraction proceeding may be taken  
30 only in accordance with RCW 46.63.090(5).

31 **Sec. 8.** RCW 12.36.020 and 1929 c 58 s 2 are each amended to read  
32 as follows:

33 ~~((Such appeal shall be taken by serving a copy of notice of appeal~~  
34 ~~on the adverse party or his attorney, and filing such notice of appeal~~  
35 ~~with the justice, and, unless such appeal be by a county, city, town or~~  
36 ~~school district, filing a bond or undertaking, as herein provided,~~  
37 ~~within twenty)) (1) To appeal a judgment or decision in a small claims~~

1 action, an appellant shall file a notice of appeal in the district  
2 court, pay the statutory superior court filing fee, and serve a copy of  
3 the notice of appeal on all parties of record within thirty days after  
4 the judgment is rendered or decision made.

5 ~~(2) No appeal((, except when such appeal is by a county, city, town~~  
6 ~~or school district, shall)) may be allowed ((in any case)), nor~~  
7 ~~proceedings on the judgment or decision stayed, unless a bond or~~  
8 ~~undertaking shall be executed on the part of the appellant and filed~~  
9 ~~with and approved by the ((justice, with one or more sureties, in the~~  
10 ~~sum of one hundred dollars, conditioned that the appellant will pay all~~  
11 ~~costs that may be awarded against him on appeal; or if a stay of~~  
12 ~~proceedings before the justice be claimed, except by a county, city,~~  
13 ~~town or school district, a bond or undertaking,)) district court. The~~  
14 bond or undertaking shall be executed with two or more personal  
15 sureties, or a surety company as surety, to be approved by the  
16 ((justice)) district court, in a sum equal to twice the amount of the  
17 judgment and costs, or twice the amount in controversy, whichever is  
18 greater, conditioned that the appellant will pay ((such)) any judgment,  
19 including costs, as may be rendered ((against him)) on appeal((, be so  
20 executed and filed)). No bond is required if the appellant is a  
21 county, city, town, or school district.

22 (3) When an appellant has filed a notice of appeal, paid the  
23 statutory filing fee, and posted bond as required, the clerk of the  
24 district court shall immediately file a copy of the notice of appeal  
25 with the superior court.

26 **Sec. 9.** RCW 12.36.030 and 1929 c 58 s 3 are each amended to read  
27 as follows:

28 ~~((Upon an appeal being taken and a bond filed to stay all~~  
29 ~~proceedings, the justice shall allow the same and make an entry of such~~  
30 ~~allowance in his docket, and all further proceedings on the judgment~~  
31 ~~before the justice shall thereupon be suspended; and if in the meantime~~  
32 ~~execution shall have been issued, the justice shall give the appellant~~  
33 ~~a certificate that such appeal has been allowed.)) When an appeal and~~  
34 any necessary bond are properly filed in the district court, and the  
35 appeal filed in superior court pursuant to RCW 12.36.010, the appellant  
36 may move to stay all further proceedings in the district court. If the  
37 stay is granted, the district court shall order that all further  
38 proceedings on the judgment be suspended. If proceedings have

1 commenced on motion of the appellant the district court may order the  
2 proceedings halted and such process recalled.

3 If any property is held pursuant to such proceedings at the time  
4 the stay is granted and the process recalled, such property shall be  
5 returned immediately to the party entitled to such property.

6 **Sec. 10.** RCW 12.36.050 and 1929 c 58 s 5 are each amended to read  
7 as follows:

8 (1) Within ~~((ten))~~ fourteen days after ~~((the))~~ a small claims  
9 appeal has been ~~((taken))~~ filed in ~~((a civil action or proceeding))~~  
10 superior court by the clerk of the district court, the appellant shall  
11 file with the clerk of the ~~((superior))~~ district court, and serve on  
12 all parties, a designation of that portion of the complete record which  
13 the appellant wishes to have transmitted to superior court. The  
14 designation may be supplemented by any party within fourteen days of  
15 such filing.

16 (2) The complete record shall consist of a transcript of all  
17 entries made in the ~~((justice's))~~ district court docket relating to the  
18 case, together with all the process and other papers relating to the  
19 case filed with the ~~((justice which))~~ district court and any  
20 contemporaneous recording made of the proceeding.

21 (3) The record as designated shall be made and certified by ~~((such~~  
22 justice)) the clerk of the district court to be correct ~~((upon the~~  
23 payment of the fees allowed by law therefor, and upon the filing of  
24 such transcript,)). The clerk shall notify all parties designating  
25 portions of the record that the designated record is complete, and the  
26 amount to be paid for preparation of that portion of the record  
27 requested by each party. Payment of such costs by each party for  
28 preparation of that portion of the record they designate must be made  
29 within ten days of such notice from the clerk. Upon payment of such  
30 costs, the designated record shall be transmitted to the superior  
31 court. By such transmittal the superior court shall become possessed  
32 of the cause~~((, and shall proceed in the same manner, as near as may~~  
33 be, as in actions originally commenced in that court, except as in this  
34 chapter otherwise provided. The issue before the justice shall be  
35 tried in the superior court without other or new pleadings, unless  
36 otherwise directed by the court)).

1        NEW SECTION.    **Sec. 11.** A new section is added to chapter 12.36 RCW  
2 to read as follows:

3        (1) The appeal from a small claims judgment or decision shall be a  
4 trial de novo in superior court. A trial de novo pursuant to this  
5 chapter shall be tried as nearly as possible in the manner of the  
6 original small claims trial. No jury may be allowed, or attorney or  
7 legal paraprofessional involved, without written order of the superior  
8 court, unless allowed in the original trial. No new pleadings other  
9 than the notice of appeal may be allowed without written permission of  
10 the superior court. Each party shall be allowed equal time, but no  
11 more than thirty minutes each without permission of the superior court.  
12 No new or other evidence, nor new or other testimony may be presented  
13 other than at the trial in small claims court, without permission of  
14 the superior court.

15        (2) The superior court judge hearing the trial may consider any  
16 contemporaneous recording made of the original small claims trial, and  
17 informally consult witnesses or otherwise investigate the controversy  
18 between the parties, and give judgment or make such orders as the judge  
19 may deem to be right, just, and equitable for the disposition of the  
20 controversy. Any judgment or decision granted after such a trial in  
21 superior court shall be enforced in superior court as any other  
22 judgment of that court.

23        (3) Any cases heard in superior court pursuant to this section may  
24 be heard by a duly appointed commissioner. As used in this chapter  
25 "judge" includes any duly appointed commissioner.

26        **Sec. 12.** RCW 12.36.080 and 1929 c 58 s 7 are each amended to read  
27 as follows:

28        No appeal (~~((allowed by a justice of the peace))~~) under this chapter  
29 shall be dismissed on account of any defect in the bond on appeal, if,  
30 within ten days of notice to appellant of such defect, the appellant(~~(~~  
31 ~~before the motion is determined, shall))~~) executes and files in the  
32 ~~((superior))~~ district court such bond as ~~((he))~~ should have been  
33 executed at the time of taking the appeal, and pay all costs that may  
34 have accrued by reason of such defect.

35        **Sec. 13.** RCW 12.36.090 and 1929 c 58 s 8 are each amended to read  
36 as follows:

1 In all cases of appeal to the superior court under this chapter, if  
2 (~~on the trial anew in such court,~~) the judgment (~~be~~) is against the  
3 appellant, in whole or in part, such judgment shall be rendered against  
4 (~~him~~) the appellant and his or her sureties on the bond on appeal.

5 **Sec. 14.** RCW 2.24.040 and 1991 c 33 s 6 are each amended to read  
6 as follows:

7 Such court commissioner shall have power, authority, and  
8 jurisdiction, concurrent with the superior court and the judge thereof,  
9 in the following particulars:

10 (1) To hear and determine all matters in probate, to make and issue  
11 all proper orders therein, and to issue citations in all cases where  
12 same are authorized by the probate statutes of this state.

13 (2) To grant and enter defaults and enter judgment thereon.

14 (3) To issue temporary restraining orders and temporary  
15 injunctions, and to fix and approve bonds thereon.

16 (4) To act as referee in all matters and actions referred to him or  
17 her by the superior court as such, with all the powers now conferred  
18 upon referees by law.

19 (5) To hear and determine all proceedings supplemental to  
20 execution, with all the powers conferred upon the judge of the superior  
21 court in such matters.

22 (6) To hear and determine all petitions for the adoption of  
23 children(~~, [and]~~) and for the dissolution of incorporations.

24 (7) To hear and determine all applications for the commitment of  
25 any person to the hospital for the insane, with all the powers of the  
26 superior court in such matters: PROVIDED, That in cases where a jury  
27 is demanded, same shall be referred to the superior court for trial.

28 (8) To hear and determine all complaints for the commitments of  
29 minors with all powers conferred upon the superior court in such  
30 matters.

31 (9) To hear and determine ex parte and uncontested civil matters of  
32 any nature.

33 (10) To grant adjournments, administer oaths, preserve order,  
34 compel attendance of witnesses, and to punish for contempts in the  
35 refusal to obey or the neglect of the court commissioner's lawful  
36 orders made in any matter before the court commissioner as fully as the  
37 judge of the superior court.

1 (11) To take acknowledgments and proofs of deeds, mortgages and all  
2 other instruments requiring acknowledgment under the laws of this  
3 state, and to take affidavits and depositions in all cases.

4 (12) To provide an official seal, upon which shall be engraved the  
5 words "Court Commissioner," and the name of the county for which he or  
6 she may be appointed, and to authenticate his official acts therewith  
7 in all cases where same is necessary.

8 (13) To charge and collect, for his or her own use, the same fees  
9 for the official performance of official acts mentioned in subsections  
10 (4) and (11) of this section as are provided by law for referees and  
11 notaries public.

12 (14) To hear and determine small claims appeals as provided in  
13 chapter 12.36 RCW.

14 NEW SECTION. **Sec. 15.** The following acts or parts of acts are  
15 each repealed:

16 (1) RCW 12.36.040 and 1929 c 58 s 4; and

17 (2) RCW 12.36.070 and 1929 c 58 s 6.

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