

# SENATE BILL REPORT

## HB 1128

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As Reported by Senate Committee On:  
Law & Justice, March 22, 2017

**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.

**Committee Activity:** Law & Justice: 3/16/17, 3/22/17 [DPA-WM, DNP].

### Brief Summary of Amended Bill

- Removes all references to the word "mandatory" throughout the mandatory arbitration laws, replaced with "civil" in some instances.
- Increases the maximum amount over time to \$65,000 on January 1, 2018, to \$70,000 on January 1, 2020, and to \$75,000 on January 1, 2022.
- Adopts certain procedural rules similar the court rules governing mandatory arbitration.
- 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.

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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 and Frockt.

**Minority Report:** Do not pass.

Signed by Senators Angel and Wilson.

**Staff:** Tim Ford (786-7423)

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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.*

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

- family law;
- personal injury;
- consumer complaints;
- business and commercial disputes;
- 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 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 Amended 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 increases over time: currently from \$50,000 to \$65,000 on January 1, 2018; then to \$70,000 on January 1, 2020; then to \$75,000 on January 1, 2022.

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. Additional discovery is not allowed unless stipulated to by the parties or ordered by the arbitrator when 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.

**EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):**

- Increases the maximum arbitration limit over time:
  - currently from \$50,000 to \$65,000 on January 1, 2018;
  - then to \$70,000 on January 1, 2020; and
  - then to \$75,000 on January 1, 2022.

**Appropriation:** None.

**Fiscal Note:** Available.

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

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

**Staff Summary of Public Testimony on House Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: Washington's arbitration program is a model for the country and has been a great success since its founding about 37 years ago. We have raised the maximum limit several times and this would be an increase that would encompass a very innovative change utilizing a program that has been a proven winner. There are about 9300 tort cases filed statewide last year. There are about 3000 cases a year that go to mandatory arbitration, and that amount could rise by 2000 cases a year if this bill is approved. About 48 percent of cases are settled before arbitration. During arbitration, another 80 percent are settled. Less than 2 percent go to trial. Arbitration really alleviates the court caseload and will save the counties money.

The medical bills are just going up and the reality is that the average auto accident case has medical bills from \$10,000 to \$25,000. To try a case in district court is way different because it costs more with expert testimony and trials lasting days. Arbitration is less expensive and quicker, from 2 to 4 hours. The law needs to be updated to allow for a higher maximum arbitration amount.

CON: The mandatory arbitration process is not a fair system and it is not working well. It needs to be fixed before we raise the limits. Most are arbitration cases for personal injuries and the statute of limitations is 3 years. They prepare a case for 3 years before filing for arbitration and once a case is filed then the law requires arbitration no later than 63 days after filing. The defense has less than 2 months to prepare for arbitration. Defense counsel has to request the arbitrator to allow discovery like a medical examination. All this takes time and the bill increases the time to 75 days, but that is simply not enough time. We do better in superior courts where we get full discovery. The arbitration process does not allow full discovery.

**Persons Testifying:** PRO: Representative Matt Shea, Prime Sponsor; Larry Shannon, WA State Assoc. of Justice; Allen Brecke, WA State Assoc. of Justice; Celia Rivera, WA State Assoc. of Justice; Greg Price, WA State Assoc. of Justice.

CON: Thomas Underbrink, Mutual of Enumclaw; James Skogman, PEDMCO; Jean Leonard, NAMIC; Bob Battles, Assoc. of WA Businesses; Lori O'Tool, WA Defense Trial Lawyers; Mel Sorenson, Property Casualty Insurance Assoc.

**Persons Signed In To Testify But Not Testifying:** CON: Cliff Webster, Liability Reform Coalition.