
HOUSE BILL 1675

State of Washington 58th Legislature 2003 Regular Session

By Representatives Moeller, McMahan and Kirby

Read first time 02/04/2003. Referred to Committee on Judiciary.

1 AN ACT Relating to updating civil trial provisions; amending RCW
2 4.44.020, 4.44.025, 4.44.070, 4.44.120, 4.44.140, 4.44.150, 4.44.180,
3 4.44.190, 4.44.210, 4.44.220, 4.44.230, 4.44.240, 4.44.250, 4.44.260,
4 4.44.280, 4.44.290, 4.44.300, 4.44.310, 4.44.360, 4.44.370, 4.44.380,
5 4.44.390, 4.44.420, 4.44.440, 4.44.450, 4.44.460, and 4.44.480; and
6 repealing RCW 4.44.400.

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

8 **Sec. 1.** RCW 4.44.020 and 1893 c 127 s 35 are each amended to read
9 as follows:

10 At any time after the issues of fact are completed in any case by
11 the service of complaint and answer or reply when necessary, as herein
12 provided, either party may cause the issues of fact to be brought on
13 for trial, by serving upon the opposite party a notice of trial at
14 least three days before any day provided by rules of court for setting
15 causes for trial, which notice shall give the title of the cause as in
16 the pleadings, and notify the opposite party that the issues in such
17 action will be brought on for trial at the time set by the court; and
18 the party giving such notice of trial shall, at least (~~three~~) five
19 days before the day of setting such causes for trial file with the

1 clerk of the court a note of issue containing the title of the action,
2 the names of the attorneys and the date when the last pleading was
3 served; and the clerk shall thereupon enter the cause upon the trial
4 docket according to the date of the issue.

5 In case an issue of law raised upon the pleadings is desired to be
6 brought on for argument, either party shall, at least (~~three~~) five
7 days before the day set apart by the court under its rules for hearing
8 issues of law, serve upon the opposite party a like notice of trial and
9 furnish the clerk of the court with a note of issue as above provided,
10 which note of issue shall specify that the issue to be tried is an
11 issue of law; and the clerk of the court shall thereupon enter such
12 action upon the motion docket of the court.

13 When a cause has once been placed upon either docket of the court,
14 if not tried or argued at the time for which notice was given, it need
15 not be noticed for a subsequent session or day, but shall remain upon
16 the docket from session to session or from law day to law day until
17 final disposition or stricken off by the court. The party upon whom
18 notice of trial is served may file the note of issue and cause the
19 action to be placed upon the calendar without further notice (~~on his~~
20 ~~part~~)).

21 **Sec. 2.** RCW 4.44.025 and 1991 c 197 s 1 are each amended to read
22 as follows:

23 When setting civil cases for trial, unless otherwise provided by
24 statute, upon motion of a party, the court may give priority to cases
25 in which a party is frail and over seventy years of age (~~or~~), a party
26 is afflicted with a terminal illness, or other good cause is shown for
27 an expedited trial date.

28 **Sec. 3.** RCW 4.44.070 and Code 1881 s 222 are each amended to read
29 as follows:

30 In any case tried upon the facts without a jury or with an advisory
31 jury, any party may, when the evidence is closed, submit (~~in~~)
32 distinct and concise (~~propositions the conclusions~~) proposed findings
33 of fact (~~which he claims to be established, or the~~) and conclusions
34 of law (~~which he desires to be adjudged, or both~~)). They may be
35 written and handed to the court, or at the option of the court, oral,
36 and entered in the (~~judge's minutes~~) record.

1 **Sec. 4.** RCW 4.44.120 and 1996 c 40 s 1 are each amended to read as
2 follows:

3 When the action is called for trial, (~~the jurors~~) a panel of
4 potential jurors shall be selected at random from the (~~jurors~~)
5 citizens summoned for jury service who have appeared and have not been
6 excused. A voir dire examination of the panel shall be conducted for
7 the purpose of discovering any basis for challenge for cause and to
8 permit the intelligent exercise of peremptory challenges. Any
9 necessary additions to the panel shall be selected at random from the
10 list of qualified jurors. The jury shall consist of six persons,
11 unless the parties in their written demand for jury demand that the
12 jury be twelve in number or consent to a less number. The parties may
13 consent to a jury less than six in number but not less than three, and
14 such consent shall be entered (~~by the clerk on the minutes of the~~
15 ~~trial~~) in the record.

16 **Sec. 5.** RCW 4.44.140 and Code 1881 s 208 are each amended to read
17 as follows:

18 A peremptory challenge is an objection to a juror for which no
19 reason need be given, but upon which the court shall exclude (~~him~~)
20 the juror.

21 **Sec. 6.** RCW 4.44.150 and Code 1881 s 209 are each amended to read
22 as follows:

23 A challenge for cause is an objection to a juror, and may be
24 either:

25 (1) General; that the juror is disqualified from serving in any
26 action; or

27 (2) Particular; that (~~he~~) the juror is disqualified from serving
28 in the action on trial.

29 **Sec. 7.** RCW 4.44.180 and Code 1881 s 212 are each amended to read
30 as follows:

31 A challenge for implied bias may be taken for any or all of the
32 following causes, and not otherwise:

33 (1) Consanguinity or affinity within the fourth degree to either
34 party.

1 (2) Standing in the relation of guardian and ward, attorney and
2 client, master and servant or landlord and tenant, to ~~((the adverse))~~
3 a party; or being a member of the family of, or a partner in business
4 with, or in the employment for wages, of ~~((the adverse))~~ a party, or
5 being surety or bail in the action called for trial, or otherwise, for
6 ~~((the adverse))~~ a party.

7 (3) Having served as a juror on a previous trial in the same
8 action, or in another action between the same parties for the same
9 cause of action, or in a criminal action by the state against either
10 party, upon substantially the same facts or transaction.

11 (4) Interest on the part of the juror in the event of the action,
12 or the principal question involved therein, excepting always, the
13 interest of the juror as a member or citizen of the county or municipal
14 corporation.

15 **Sec. 8.** RCW 4.44.190 and Code 1881 s 213 are each amended to read
16 as follows:

17 A challenge for actual bias may be taken for the cause mentioned in
18 RCW 4.44.170(2). But on the trial of such challenge, although it
19 should appear that the juror challenged has formed or expressed an
20 opinion upon what he or she may have heard or read, such opinion shall
21 not of itself be sufficient to sustain the challenge, but the court
22 must be satisfied, from all the circumstances, that the juror cannot
23 disregard such opinion and try the issue impartially.

24 **Sec. 9.** RCW 4.44.210 and Code 1881 s 215 are each amended to read
25 as follows:

26 The jurors having been examined as to their qualifications, first
27 by the plaintiff and then by the defendant, and passed for cause, the
28 peremptory challenges shall be conducted as follows, to wit:

29 The plaintiff may challenge one, and then the defendant may
30 challenge one, and so alternately until the peremptory challenges shall
31 be exhausted. The panel being filled and passed for cause, after said
32 challenge shall have been made by either party, a refusal to challenge
33 by either party in the said order of alternation, shall not ~~((defeat))~~
34 prevent the adverse party ~~((of his))~~ from using the full number of
35 challenges ~~((, but such refusal on the part of the plaintiff to exercise~~
36 ~~his challenge in proper turn, shall conclude him as to the jurors once~~

1 ~~accepted by him, and if his right be not exhausted, his further~~
2 ~~challenges shall be confined, in his proper turn, to talesmen only)).~~
3 If a party declines to exercise a peremptory challenge with regard to
4 a particular group of jurors, that party may no longer peremptorily
5 challenge the jurors in that group and may only peremptorily challenge
6 any jurors later added to that group.

7 **Sec. 10.** RCW 4.44.220 and Code 1881 s 216 are each amended to read
8 as follows:

9 The challenges of either party shall be taken separately in the
10 following order, including in each challenge all the causes of
11 challenge belonging to the same class:

- 12 (1) ~~((For general disqualification))~~ Challenges for cause.
13 (2) ~~((For implied bias.~~
14 ~~(3) For actual bias.~~
15 ~~(4))~~ Peremptory challenges.

16 **Sec. 11.** RCW 4.44.230 and Code 1881 s 217 are each amended to read
17 as follows:

18 The challenge may be excepted to by the adverse party for
19 insufficiency, and if so, the court shall determine the sufficiency
20 thereof, assuming the facts alleged therein to be true. The challenge
21 may be denied by the adverse party, and if so, the court shall ~~((try~~
22 ~~the issue and determine the law and the facts))~~ determine the facts and
23 decide the issue.

24 **Sec. 12.** RCW 4.44.240 and Code 1881 s 218 are each amended to read
25 as follows:

26 ~~((Upon the trial of a challenge))~~ When facts are determined under
27 RCW 4.44.230, the rules of evidence applicable to testimony offered
28 upon the trial of an ordinary issue of fact shall govern. The juror
29 challenged, or any other person otherwise competent may be examined as
30 a witness by either party. ~~((If a challenge be determined to be~~
31 ~~sufficient, or found to be true, as the case may be, it shall be~~
32 ~~allowed, and the juror to whom it was taken excluded; but if determined~~
33 ~~or found otherwise, it shall be disallowed.))~~ If the challenge is
34 sustained, the juror shall be dismissed from the case; otherwise, the
35 juror shall be retained.

1 **Sec. 13.** RCW 4.44.250 and Code 1881 s 219 are each amended to read
2 as follows:

3 The challenge, the exception, and the denial may be made orally.
4 The judge (~~(of the court)~~) shall (~~(note)~~) enter the same upon (~~(his~~
5 ~~minutes, and)~~) the record, along with the substance of the testimony on
6 either side.

7 **Sec. 14.** RCW 4.44.260 and Code 1881 s 220 are each amended to read
8 as follows:

9 (~~(As soon as the number of the jury has been completed)~~) When the
10 jury has been selected, an oath or affirmation shall be administered to
11 the jurors, in substance that they and each of them, will well, and
12 truly try, the matter in issue between the plaintiff and defendant, and
13 a true verdict give, according to the law and evidence as given them on
14 the trial.

15 **Sec. 15.** RCW 4.44.280 and 1957 c 7 s 5 are each amended to read as
16 follows:

17 (~~(The jurors may be admonished by the court that it is their duty~~
18 ~~not to converse with any other person, or among themselves, on any~~
19 ~~subject connected with the trial, or to express any opinion thereon,~~
20 ~~until the case is finally submitted to them.)~~) The court may admonish
21 the jurors that they must not discuss among themselves any subject
22 connected with the trial until they begin their deliberations. The
23 court may also admonish the jurors that they must not discuss with
24 nonjurors any subject connected with the trial until the jurors have
25 been dismissed from the case.

26 **Sec. 16.** RCW 4.44.290 and Code 1881 s 227 are each amended to read
27 as follows:

28 If after the formation of the jury, and before verdict, a juror
29 becomes (~~(sick so as to be)~~) unable to perform his or her duty, the
30 court may (~~(order him to be discharged)~~) discharge the juror. In that
31 case, unless the parties agree to proceed with the other jurors(~~(7)~~):
32 (1) An alternate juror may replace the discharged juror and the jury
33 instructed to start their deliberations anew; (2) a new juror may be
34 sworn and the trial begin anew; or (3) the jury may be discharged and
35 a new jury then or afterwards formed.

1 **Sec. 17.** RCW 4.44.300 and Code 1881 s 229 are each amended to read
2 as follows:

3 (~~After hearing the charge, the jury may either decide in the jury~~
4 ~~box or retire for deliberation. If they retire~~) During deliberations,
5 the jury may be allowed to separate unless good cause is shown, on the
6 record, for sequestration of the jury. Unless the members of a
7 deliberating jury are allowed to separate, they must be kept together
8 in a room provided for them, or some other convenient place under the
9 charge of one or more officers, until they agree upon their verdict, or
10 are discharged by the court. The officer shall, to the best of his or
11 her ability, keep the jury (~~thus~~) separate from other persons(~~—~~
12 ~~without drink, except water, and without food, except [as] ordered by~~
13 ~~the court~~). (~~He must not suffer~~) The officer shall not allow any
14 communication to be made to them, nor make any himself or herself,
15 unless by order of the court, except to ask them if they have agreed
16 upon their verdict, and (~~he~~) the officer shall not, before the
17 verdict is rendered, communicate to any person the state of their
18 deliberations or the verdict agreed on.

19 **Sec. 18.** RCW 4.44.310 and Code 1881 s 230 are each amended to read
20 as follows:

21 If, while the jury are kept together, either during the progress of
22 the trial or after their retirement for deliberation, the court orders
23 them to be provided with suitable and sufficient food and lodging, they
24 shall be so provided (~~by the sheriff,~~) at the expense of the county.

25 **Sec. 19.** RCW 4.44.360 and Code 1881 s 236 are each amended to read
26 as follows:

27 When the jury have agreed upon their verdict they shall be
28 conducted into court by the officer having them in charge. (~~Their~~
29 ~~names shall then be called, and if all do not appear, the rest shall be~~
30 ~~discharged without giving a verdict.~~)

31 **Sec. 20.** RCW 4.44.370 and Code 1881 s 237 are each amended to read
32 as follows:

33 (~~If the jury appear, they~~) The jurors shall be asked by the court
34 or the clerk whether they have agreed upon their verdict, and if the

1 ((foreman)) presiding juror answers in the affirmative, ((he shall on
2 being required declare the same)) the presiding juror shall submit the
3 verdict to the court.

4 **Sec. 21.** RCW 4.44.380 and 1972 ex.s. c 57 s 4 are each amended to
5 read as follows:

6 In all trials by juries of six in the superior court, except
7 criminal trials, when five of the jurors agree upon a verdict, the
8 verdict so agreed upon shall be signed by the ((foreman)) presiding
9 juror, and the verdict shall stand as the verdict of the whole jury,
10 and have all the force and effect of a verdict agreed to by six jurors.
11 In cases where the jury is twelve in number, a verdict reached by ten
12 shall have the same force and effect as described above, and the same
13 procedures shall be followed.

14 **Sec. 22.** RCW 4.44.390 and 1972 ex.s. c 57 s 6 are each amended to
15 read as follows:

16 ((When the verdict is returned into court either party may poll the
17 jury, and if the number of jurors required for verdict answer that it
18 is the verdict said verdict shall stand. In case the number of jurors
19 required for verdict do not answer in the affirmative the jury shall be
20 returned to the jury room for further deliberation.)) After the verdict
21 is announced, but before it is filed, the jury may be polled at the
22 request of either party. Each juror may be asked whether the verdict
23 is his or her individual verdict and whether the verdict is the jury's
24 collective verdict. If it appears that the verdict is insufficient
25 because the required number of jurors have not reached agreement, the
26 jurors may be returned to the jury room for further deliberation.

27 **Sec. 23.** RCW 4.44.420 and Code 1881 s 241 are each amended to read
28 as follows:

29 In an action for the recovery of specific personal property, if the
30 property has not been delivered to the plaintiff, or the defendant by
31 his or her answer claims a return thereof, the jury shall assess the
32 value of the property if their verdict be in favor of the plaintiff, or
33 if they find in favor of the defendant and that ((he)) the defendant is
34 entitled to a return thereof, they may at the same time assess the

1 damages, if any are claimed in the complaint or answer, which the
2 prevailing party has sustained by reason of the detention or taking and
3 withholding such property.

4 **Sec. 24.** RCW 4.44.440 and Code 1881 s 243 are each amended to read
5 as follows:

6 ~~((When a special finding of facts shall be inconsistent with the
7 general verdict, the former shall control the latter, and the court
8 shall give judgment accordingly.))~~ When special findings of fact are
9 inconsistent with the general verdict, the judge may enter judgment
10 consistent with the findings of fact, may return the jurors to the jury
11 room for further deliberations, or may order a new trial.

12 **Sec. 25.** RCW 4.44.450 and 1891 c 60 s 3 are each amended to read
13 as follows:

14 When a verdict is found for the plaintiff in an action for the
15 recovery of money, or for the defendant when a setoff for the recovery
16 of money is established beyond the amount of the plaintiff's claim as
17 established, the jury shall also assess the amount of the recovery;
18 they may also, under the direction of the court, assess the amount of
19 the recovery when the court gives judgment for ~~((the plaintiff))~~ a
20 party on the pleadings.

21 **Sec. 26.** RCW 4.44.460 and Code 1881 s 239 are each amended to read
22 as follows:

23 ~~((When the verdict is given and is such as the court may receive,
24 and if no juror disagrees or the jury be not again sent out, the clerk
25 shall file the verdict.))~~ If the court determines that the verdict
26 meets the requirements contained in this chapter and in court rules,
27 the clerk shall file the verdict. The verdict is then complete and the
28 jury shall be discharged from the case. The verdict shall be in
29 writing, and under the direction of the court shall be substantially
30 entered in the ~~((journal))~~ record as of the day's proceedings on which
31 it was given.

32 **Sec. 27.** RCW 4.44.480 and Code 1881 s 195 are each amended to read
33 as follows:

34 When it is admitted by the pleading or examination of a party, that

1 (~~he has in his possession, or under his control,~~) the party possesses
2 or has control of any money, or other thing capable of delivery, which
3 being the subject of the litigation, is held by him or her as trustee
4 for another party, or which belongs or is due to another party, the
5 court may order the same to be deposited in court, or delivered to such
6 party, with or without security, subject to the further direction of
7 the court.

8 NEW SECTION. Sec. 28. RCW 4.44.400 (Correction of informal
9 verdict--Polling jury) and Code 1881 s 238, 1877 p 49 s 242, & 1869 p
10 58 s 242 are each repealed.

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