
SUBSTITUTE SENATE BILL 5295

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Roach, Goings, Kohl, Wojahn, Zarelli, Schow and Patterson)

Read first time 02/11/97.

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) Any cases heard in superior court pursuant to this section may
16 be heard by a duly appointed commissioner. As used in this chapter
17 "judge" includes any duly appointed commissioner.

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

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

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

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

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

1 Such court commissioner shall have power, authority, and
2 jurisdiction, concurrent with the superior court and the judge thereof,
3 in the following particulars:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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