
SENATE BILL 5710

State of Washington

57th Legislature

2001 Regular Session

By Senators McCaslin, Kline, Thibaudeau, Costa, Johnson, Hargrove, Rasmussen, Hale and Shin

Read first time 01/31/2001. Referred to Committee on Judiciary.

1 AN ACT Relating to the equal access to justice act; amending RCW
2 4.84.340, 4.84.350, and 4.84.360; and adding new sections to chapter
3 4.84 RCW.

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

5 **Sec. 1.** RCW 4.84.340 and 1995 c 403 s 902 are each amended to read
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout RCW 4.84.340 through 4.84.360.

9 (1) "Administrative tribunal" means an independent agency that
10 conducts adjudicative proceedings, as defined in RCW 34.05.010, as its
11 sole or principal duty to: (a) Review decisions of another agency or
12 governmental unit; or (b) resolve disputes in which the tribunal is not
13 a party.

14 (2) "Agency" means any state board, commission, department,
15 institution of higher education, or officer, authorized by law to make
16 rules or to conduct adjudicative proceedings, except those in the
17 legislative or judicial branches, the governor, or the attorney general
18 except to the extent otherwise required by law.

1 (~~(2)~~) (3) "Agency action" means agency action as defined by
2 chapter 34.05 RCW.

3 (~~(3)~~) (4) "Fees and other expenses" includes the reasonable
4 expenses of expert witnesses, the reasonable cost of a study, analysis,
5 engineering report, test, or project that is found by the court
6 presiding officer or review officer to be necessary for the preparation
7 of the party's case, and reasonable attorneys' fees. Reasonable
8 attorneys' fees shall be based on the prevailing market rates for the
9 kind and quality of services furnished, except that (a) no expert
10 witness shall be compensated at a rate in excess of the highest rates
11 of compensation for expert witnesses paid by the state of Washington,
12 and (b) attorneys' fees shall not be awarded in excess of one hundred
13 fifty dollars per hour unless the court determines that an increase in
14 the cost of living or a special factor, such as the limited
15 availability of qualified attorneys for the proceedings involved,
16 justifies a higher fee.

17 (~~(4)~~) (5) "Judicial review" means a judicial review as defined by
18 chapter 34.05 RCW.

19 (~~(5)~~) (6) "Qualified party" means (a) an individual whose net
20 worth did not exceed one million dollars at the time the initial
21 petition for judicial review was filed or (b) a sole owner of an
22 unincorporated business, or a partnership, corporation, association, or
23 organization whose net worth did not exceed five million dollars at the
24 time the initial petition for judicial review was filed, except that an
25 organization described in section 501(c)(3) of the federal internal
26 revenue code of 1954 as exempt from taxation under section 501(a) of
27 the federal internal revenue code and a cooperative association as
28 defined in section 15(a) of the agricultural marketing act (12 U.S.C.
29 Sec. 1141J(a)), may be a party regardless of the net worth of such
30 organization or cooperative association.

31 (7) "Qualified administrative party" means (a) an individual whose
32 net worth did not exceed two hundred fifty thousand dollars at the time
33 the initial petition for an adjudicative proceeding was filed; or (b)
34 a sole owner of an unincorporated business, or a partnership,
35 corporation, association, or organization whose net worth did not
36 exceed one million two hundred fifty thousand dollars at the time the
37 initial petition for an adjudicative proceeding was filed, except that
38 an organization described in section 501(c)(3) of the federal internal
39 revenue code of 1954 as exempt from taxation under section 501(a) of

1 the federal internal revenue code and a cooperative association as
2 defined in section 15(a) of the agricultural marketing act (12 U.S.C.
3 Sec. 1141J(a)), may be a party regardless of the net worth of the
4 organization or cooperative association.

5 (8) "Adjudicative proceeding" means an adjudicative proceeding as
6 defined in RCW 34.05.010 and an administrative review pursuant to RCW
7 34.05.464. RCW 4.84.340 through 4.84.360 and sections 4 and 5 of this
8 act apply only to the following adjudicative proceedings:

9 (a) Cases conducted for the department of social and health
10 services, but excluding the division of child support and the division
11 of juvenile rehabilitation;

12 (b) Licensing cases conducted for the liquor control board;

13 (c) Business and professional licensing cases for the department of
14 licensing, but excluding motor vehicle franchise cases pursuant to
15 chapter 46.96 RCW;

16 (d) Employer assessment and penalty cases conducted pursuant to
17 chapters 50.24 and 50.29 RCW for the employment security department;

18 (e) Licensing cases conducted by the department of health.

19 (9) "Administrative review" means an adjudicative proceeding
20 pursuant to RCW 34.05.464.

21 (10) "Presiding officer" means a presiding officer pursuant to RCW
22 34.05.425.

23 (11) "Qualified party" means a qualified judicial party or a
24 qualified administrative party.

25 (12) "Reviewing officer" means a reviewing officer pursuant to RCW
26 34.05.464.

27 **Sec. 2.** RCW 4.84.350 and 1995 c 403 s 903 are each amended to read
28 as follows:

29 (1) Except as otherwise specifically provided by statute, a court
30 shall award a qualified judicial party that prevails in a judicial
31 review of an agency action and a presiding officer or reviewing officer
32 shall award a qualified administrative party that prevails in an
33 adjudicative proceeding challenging an agency action, fees and other
34 expenses, including reasonable attorneys' fees, unless the court,
35 presiding officer, or reviewing officer finds that the agency action
36 was substantially justified or that circumstances make an award unjust.
37 A qualified party shall be considered to have prevailed if the

1 qualified party obtained relief on a significant issue that achieves
2 some benefit that the qualified party sought.

3 (2) The amount awarded a qualified party under subsection (1) of
4 this section shall not exceed twenty-five thousand dollars for the
5 total request for the combined proceedings, administrative hearing,
6 administrative review, or superior court proceedings. Subsection (1)
7 of this section shall not apply unless all parties challenging the
8 agency action are qualified parties. If two or more qualified parties
9 join in an action, the award in total shall not exceed twenty-five
10 thousand dollars. The court, presiding officer, or reviewing officer,
11 in its discretion, may reduce the amount to be awarded pursuant to
12 subsection (1) of this section, or deny any award, to the extent that
13 a qualified party during the course of the proceedings engaged in
14 conduct that unduly or unreasonably protracted the final resolution of
15 the matter in controversy.

16 (3) The chief administrative law judge, and agencies whose actions
17 are subject to an award of fees and other expenses, are authorized to
18 adopt rules to implement RCW 4.84.340 through 4.84.360 and sections 4
19 and 5 of this act. The rules of the chief administrative law judge
20 shall be adopted as part of the model rules pursuant to RCW 34.05.250.
21 These rules may include reasonable requirements for notices of
22 appearances by authorized representatives, requirements for notices of
23 intent to seek fees pursuant to this section, and a schedule for hours,
24 rates, or limitations on amounts of fees and other expenses presumed
25 reasonable for the type of adjudicative proceeding. In addition, rules
26 may set a maximum total amount including all fees and expenses for
27 specific types of public assistance adjudicative proceedings.

28 **Sec. 3.** RCW 4.84.360 and 1995 c 403 s 904 are each amended to read
29 as follows:

30 Fees and other expenses awarded under RCW 4.84.340 and 4.84.350
31 shall be paid (~~by the agency over which the party prevails from~~
32 ~~operating funds appropriated to the agency~~) within sixty days after an
33 order becomes final by the agency over which the party prevails from
34 operating funds appropriated to the agency for administrative purposes.
35 Agencies paying fees and other expenses pursuant to RCW 4.84.340 and
36 4.84.350 shall report all payments to the office of financial
37 management within five days of paying the fees and other expenses.
38 Fees and other expenses awarded by the court, presiding officer, or

1 reviewing officer shall be subject to the provisions of chapter 39.76
2 RCW (~~and shall be deemed payable on the date the court announces the~~
3 ~~award~~)).

4 NEW SECTION. Sec. 4. A new section is added to chapter 4.84 RCW
5 to read as follows:

6 When an agency has made an offer to participate in an alternative
7 dispute resolution process, the appellant must participate in good
8 faith or be precluded from applying for an award of attorneys' fees or
9 expenses pursuant to RCW 4.84.340 through 4.84.360, this section, and
10 section 5 of this act.

11 NEW SECTION. Sec. 5. A new section is added to chapter 4.84 RCW
12 to read as follows:

13 Despite the provisions of RCW 4.84.350, no fees or other expenses
14 shall be awarded against an administrative tribunal for actions taken
15 solely as an adjudicative body.

--- END ---