
SUBSTITUTE SENATE BILL 6550

State of Washington

56th Legislature

2000 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Kline, Johnson, Patterson, Prentice, Thibaudeau, McCaslin, Deccio, Long, Oke, Hargrove, Goings, Bauer, Winsley, Shin, Rasmussen, Roach, Kohl-Welles, Hochstatter, T. Sheldon and Haugen)

Read first time 02/04/2000.

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) "Adjudicative proceeding" means an adjudicative proceeding as
10 defined in RCW 34.05.010 and an administrative review pursuant to RCW
11 34.05.464. RCW 4.84.340 through 4.84.360 and sections 4 and 5 of this
12 act apply only to the following adjudicative proceedings:

13 (a) Cases conducted for the department of social and health
14 services, but excluding the division of child support and the division
15 of juvenile rehabilitation;

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

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

1 (d) Business and professional licensing cases for the department of
2 labor and industries;

3 (e) Employer assessment and penalty cases conducted by the board of
4 industrial insurance appeals pursuant to chapters 49.17, 51.48, and
5 51.52 RCW for the department of labor and industries, except for
6 redetermination or reconsideration proceedings conducted by the
7 department; and

8 (f) Employer assessment and penalty cases conducted pursuant to
9 chapters 50.24 and 50.29 RCW for the employment security department.

10 (2) "Administrative review" means an adjudicative proceeding
11 pursuant to RCW 34.05.464.

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

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

22 ~~((+2))~~ (5) "Agency action" means agency action as defined by
23 chapter 34.05 RCW.

24 ~~((+3))~~ (6) "Fees and other expenses" includes the reasonable
25 expenses of expert witnesses, the reasonable cost of a study, analysis,
26 engineering report, test, or project that is found by the court,
27 presiding officer, or reviewing officer to be necessary for the
28 preparation of the party's case, and reasonable attorneys' fees.
29 Reasonable attorneys' fees shall be based on the prevailing market
30 rates for the kind and quality of services furnished, except that (a)
31 no expert witness shall be compensated at a rate in excess of the
32 highest rates of compensation for expert witnesses paid by the state of
33 Washington, and (b) attorneys' fees shall not be awarded in excess of
34 one hundred fifty dollars per hour unless the court, presiding officer,
35 or reviewing officer determines that an increase in the cost of living
36 or a special factor, such as the limited availability of qualified
37 attorneys for the proceedings involved, justifies a higher fee.

38 ~~((+4))~~ (7) "Judicial review" means a judicial review as defined by
39 chapter 34.05 RCW.

1 (8) "Presiding officer" means a presiding officer pursuant to RCW
2 34.05.425.

3 (9) "Qualified administrative party" means (a) an individual whose
4 net worth did not exceed two hundred fifty thousand dollars at the time
5 the initial petition for an adjudicatory proceeding was filed, or (b)
6 a sole owner of an unincorporated business, or a partnership,
7 corporation, association, or organization whose net worth did not
8 exceed one million two hundred fifty thousand dollars at the time the
9 initial petition for an adjudicatory proceeding was filed, except that
10 an organization described in section 501(c)(3) of the federal internal
11 revenue code of 1954 as exempt from taxation under section 501(a) of
12 the code and a cooperative association as defined in section 15(a) of
13 the agricultural marketing act (12 U.S.C. 1141J(a)), may be a party
14 regardless of the net worth of such organization or cooperative
15 association.

16 ~~((+5))~~ (10) "Qualified judicial party" means (a) an individual
17 whose net worth did not exceed one million dollars at the time the
18 initial petition for judicial review was filed, or (b) a sole owner of
19 an unincorporated business, or a partnership, corporation, association,
20 or organization whose net worth did not exceed five million dollars at
21 the time the initial petition for judicial review was filed, except
22 that an organization described in section 501(c)(3) of the federal
23 internal revenue code of 1954 as exempt from taxation under section
24 501(a) of the code and a cooperative association as defined in section
25 15(a) of the agricultural marketing act (12 U.S.C. 1141J(a)), may be a
26 party regardless of the net worth of such organization or cooperative
27 association.

28 (11) "Qualified party" means a qualified judicial party or a
29 qualified administrative party.

30 (12) "Reviewing officer" means a reviewing officer pursuant to RCW
31 34.05.464.

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

34 (1) Except as otherwise specifically provided by statute, a court
35 shall award a qualified judicial party that prevails in a judicial
36 review of an agency action and a presiding officer or reviewing officer
37 shall award a qualified administrative party that prevails in an
38 adjudicative proceeding challenging an agency action, fees and other

1 expenses, including reasonable attorneys' fees, unless the court,
2 presiding officer, or reviewing officer finds that the agency action
3 was substantially justified or that circumstances make an award unjust.
4 A qualified party shall be considered to have prevailed if the
5 qualified party obtained relief on a significant issue that achieves
6 some benefit that the qualified party sought.

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

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

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

35 Fees and other expenses awarded under RCW 4.84.340 and 4.84.350
36 shall be paid within sixty days after an order becomes final by the
37 agency over which the party prevails from operating funds appropriated
38 to the agency (~~within sixty days~~) for administrative purposes.

1 Agencies paying fees and other expenses pursuant to RCW 4.84.340 and
2 4.84.350 shall report all payments to the office of financial
3 management within five days of paying the fees and other expenses.
4 Fees and other expenses awarded by the court, presiding officer, or
5 reviewing officer shall be subject to the provisions of chapter 39.76
6 RCW (~~and shall be deemed payable on the date the court announces the~~
7 ~~award~~)).

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

10 When an agency has made an offer to participate in an alternative
11 dispute resolution process, the appellant must participate in good
12 faith or be precluded from applying for an award of attorneys' fees or
13 expenses pursuant to RCW 4.84.340 through 4.84.360 and sections 4 and
14 5 of this act.

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

17 Notwithstanding the provisions of RCW 4.84.350, no fees or other
18 expenses shall be awarded against an administrative tribunal for
19 actions taken solely as an adjudicative body.

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