

ESSB 5261 - H AMD TO HCW COMM AMD (H-5489.2/08) **1040**
By Representative Kessler

WITHDRAWN 02/29/2008

1 On page 6, line 25 of the amendment, after "(3)" insert "Any
2 disapproval of a rate filing shall, upon written demand of the carrier,
3 be submitted to hearing under chapters 48.04 and 34.05 RCW before an
4 administrative law judge assigned under chapter 34.12 RCW. The
5 administrative law judge shall review the issue presented for hearing
6 de novo and shall issue and enter a final order. The commissioner or
7 the insurer may appeal the final order of the administrative law judge
8 directly to superior court.

9 (4)"

10 Renumber the remaining subsections consecutively and correct any
11 internal references accordingly.

12 On page 9, line 29 of the amendment, after "(3)" insert "Any
13 disapproval of a rate filing shall, upon written demand of the carrier,
14 be submitted to hearing under chapters 48.04 and 34.05 RCW before an
15 administrative law judge assigned under chapter 34.12 RCW. The
16 administrative law judge shall review the issue presented for hearing
17 de novo and shall issue and enter a final order. The commissioner or
18 the insurer may appeal the final order of the administrative law judge
19 directly to superior court.

20 (4)"

21 Renumber the remaining subsections consecutively and correct any
22 internal references accordingly.

23 On page 12, line 33 of the amendment, after "(3)" insert "Any
24 disapproval of a rate filing shall, upon written demand of the carrier,
25 be submitted to hearing under chapters 48.04 and 34.05 RCW before an
26 administrative law judge assigned under chapter 34.12 RCW. The
27 administrative law judge shall review the issue presented for hearing

1 de novo and shall issue and enter a final order. The commissioner or
2 the insurer may appeal the final order of the administrative law judge
3 directly to superior court.

4 (4)"

5 Renumber the remaining subsections consecutively and correct any
6 internal references accordingly.

7 On page 14, after line 13 of the amendment, insert the following:

8 "**Sec. 7.** RCW 34.05.461 and 1995 c 347 s 312 are each amended to
9 read as follows:

10 (1)(a) Except as provided in subsection (2) of this section:

11 (~~(a)~~) (i) If the presiding officer is the agency head or one or
12 more members of the agency head, the presiding officer may enter an
13 initial order if further review is available within the agency, or a
14 final order if further review is not available;

15 (~~(b)~~) (ii) If the presiding officer is a person designated by the
16 agency to make the final decision and enter the final order, the
17 presiding officer shall enter a final order; and

18 (~~(c)~~) (iii) If the presiding officer is one or more
19 administrative law judges, the presiding officer shall enter an initial
20 order.

21 (b) This subsection does not apply to rate filings under RCW
22 48.20.025, 48.44.017, and 48.46.062.

23 (2) With respect to agencies exempt from chapter 34.12 RCW or an
24 institution of higher education, the presiding officer shall transmit
25 a full and complete record of the proceedings, including such comments
26 upon demeanor of witnesses as the presiding officer deems relevant, to
27 each agency official who is to enter a final or initial order after
28 considering the record and evidence so transmitted.

29 (3) Initial and final orders shall include a statement of findings
30 and conclusions, and the reasons and basis therefor, on all the
31 material issues of fact, law, or discretion presented on the record,
32 including the remedy or sanction and, if applicable, the action taken
33 on a petition for a stay of effectiveness. Any findings based
34 substantially on credibility of evidence or demeanor of witnesses shall
35 be so identified. Findings set forth in language that is essentially

1 a repetition or paraphrase of the relevant provision of law shall be
2 accompanied by a concise and explicit statement of the underlying
3 evidence of record to support the findings. The order shall also
4 include a statement of the available procedures and time limits for
5 seeking reconsideration or other administrative relief. An initial
6 order shall include a statement of any circumstances under which the
7 initial order, without further notice, may become a final order.

8 (4) Findings of fact shall be based exclusively on the evidence of
9 record in the adjudicative proceeding and on matters officially noticed
10 in that proceeding. Findings shall be based on the kind of evidence on
11 which reasonably prudent persons are accustomed to rely in the conduct
12 of their affairs. Findings may be based on such evidence even if it
13 would be inadmissible in a civil trial. However, the presiding officer
14 shall not base a finding exclusively on such inadmissible evidence
15 unless the presiding officer determines that doing so would not unduly
16 abridge the parties' opportunities to confront witnesses and rebut
17 evidence. The basis for this determination shall appear in the order.

18 (5) Where it bears on the issues presented, the agency's
19 experience, technical competency, and specialized knowledge may be used
20 in the evaluation of evidence.

21 (6) If a person serving or designated to serve as presiding officer
22 becomes unavailable for any reason before entry of the order, a
23 substitute presiding officer shall be appointed as provided in RCW
24 34.05.425. The substitute presiding officer shall use any existing
25 record and may conduct any further proceedings appropriate in the
26 interests of justice.

27 (7) The presiding officer may allow the parties a designated time
28 after conclusion of the hearing for the submission of memos, briefs, or
29 proposed findings.

30 (8)(a) Except as otherwise provided in (b) of this subsection,
31 initial or final orders shall be served in writing within ninety days
32 after conclusion of the hearing or after submission of memos, briefs,
33 or proposed findings in accordance with subsection (7) of this section
34 unless this period is waived or extended for good cause shown.

35 (b) This subsection does not apply to the final order of the
36 shorelines hearings board on appeal under RCW 90.58.180(3).

37 (9) The presiding officer shall cause copies of the order to be
38 served on each party and the agency."

1 Renumber the remaining section consecutively and correct any
2 internal references accordingly.

3 Correct the title.

EFFECT: Provides that orders of an administrative law judge related to individual rates are final and may be appealed directly to Superior Court.

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