

---

**SUBSTITUTE SENATE BILL 5710**

---

**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senate Committee on Judiciary (originally sponsored by Senators McCaslin, Kline, Thibaudeau, Costa, Johnson, Hargrove, Rasmussen, Hale and Shin)

READ FIRST TIME 03/05/01.

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) Employer assessment and penalty cases conducted pursuant to  
2 chapters 50.24 and 50.29 RCW for the employment security department.

3 (2) "Administrative review" means an adjudicative proceeding  
4 pursuant to RCW 34.05.464.

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

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

15 ~~((+2))~~ (5) "Agency action" means agency action as defined by  
16 chapter 34.05 RCW.

17 ~~((+3))~~ (6) "Fees and other expenses" includes the reasonable  
18 expenses of expert witnesses, the reasonable cost of a study, analysis,  
19 engineering report, test, or project that is found by the court,  
20 presiding officer, or reviewing officer to be necessary for the  
21 preparation of the party's case, and reasonable attorneys' fees.  
22 Reasonable attorneys' fees shall be based on the prevailing market  
23 rates for the kind and quality of services furnished, except that (a)  
24 no expert witness shall be compensated at a rate in excess of the  
25 highest rates of compensation for expert witnesses paid by the state of  
26 Washington, and (b) attorneys' fees shall not be awarded in excess of  
27 one hundred fifty dollars per hour unless the court, presiding officer,  
28 or reviewing officer determines that an increase in the cost of living  
29 or a special factor, such as the limited availability of qualified  
30 attorneys for the proceedings involved, justifies a higher fee.

31 ~~((+4))~~ (7) "Judicial review" means a judicial review as defined by  
32 chapter 34.05 RCW.

33 ~~((+5))~~ (8) "Presiding officer" means a presiding officer pursuant  
34 to RCW 34.05.425.

35 (9) "Qualified administrative party" means (a) an individual whose  
36 net worth did not exceed two hundred fifty thousand dollars at the time  
37 the initial petition for an adjudicatory proceeding was filed, or (b)  
38 a sole owner of an unincorporated business, or a partnership,  
39 corporation, association, or organization whose net worth did not

1 exceed one million two hundred fifty thousand dollars at the time the  
2 initial petition for an adjudicatory proceeding was filed, except that  
3 an organization described in section 501(c)(3) of the federal internal  
4 revenue code of 1954 as exempt from taxation under section 501(a) of  
5 the code and a cooperative association as defined in section 15(a) of  
6 the agricultural marketing act (12 U.S.C. 1141J(a)), may be a party  
7 regardless of the net worth of such organization or cooperative  
8 association.

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

21 (11) "Qualified party" means a qualified judicial party or a  
22 qualified administrative party.

23 (12) "Reviewing officer" means a reviewing officer pursuant to RCW  
24 34.05.464.

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

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

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

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

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

28 Fees and other expenses awarded under RCW 4.84.340 and 4.84.350  
29 shall be paid within sixty days after an order becomes final by the  
30 agency over which the party prevails from operating funds appropriated  
31 to the agency (~~within sixty days~~) for administrative purposes.  
32 Agencies paying fees and other expenses pursuant to RCW 4.84.340 and  
33 4.84.350 shall report all payments to the office of financial  
34 management within five days of paying the fees and other expenses.  
35 Fees and other expenses awarded by the court, presiding officer, or  
36 reviewing officer shall be subject to the provisions of chapter 39.76  
37 RCW (~~and shall be deemed payable on the date the court announces the~~  
38 ~~award~~)).

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

3        When an agency has made an offer to participate in an alternative  
4 dispute resolution process, the appellant must participate in good  
5 faith or be precluded from applying for an award of attorneys' fees or  
6 expenses pursuant to RCW 4.84.340 through 4.84.360 and sections 4 and  
7 5 of this act.

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

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

--- END ---