
SENATE BILL 6606

State of Washington

58th Legislature

2004 Regular Session

By Senators Roach, Hargrove, Mulliken, Swecker and Stevens

Read first time 01/27/2004. Referred to Committee on Government Operations & Elections.

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 under 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 under chapter
19 46.96 RCW;

1 (d) Employer assessment and penalty cases conducted under chapters
2 50.24 and 50.29 RCW for the employment security department.

3 (2) "Administrative review" means an adjudicative proceeding under
4 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 under RCW
34 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,

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

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

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

24 (12) "Reviewing officer" means a reviewing officer under RCW
25 34.05.464.

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

28 (1) Except as otherwise specifically provided by statute, a court
29 shall award a qualified judicial party that prevails in a judicial
30 review of an agency action and a presiding officer or reviewing officer
31 shall award a qualified administrative party that prevails in an
32 adjudicative proceeding challenging an agency action, fees and other
33 expenses, including reasonable attorneys' fees, unless the court,
34 presiding officer, or reviewing officer finds that the agency action
35 was substantially justified or that circumstances make an award unjust.
36 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 may adopt rules to
18 implement RCW 4.84.340 through 4.84.360 and sections 4 and 5 of this
19 act. The rules of the chief administrative law judge must be adopted
20 as part of the model rules under RCW 34.05.250. These rules may
21 include reasonable requirements for notices of appearances by
22 authorized representatives, requirements for notices of intent to seek
23 fees pursuant to this section, and a schedule for hours, rates, or
24 limitations on amounts of fees and other expenses presumed reasonable
25 for the type of adjudicative proceeding. In addition, rules may set a
26 maximum total amount including all fees and expenses for specific types
27 of 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 within sixty days after an order becomes final by the
32 agency over which the party prevails from operating funds appropriated
33 to the agency (~~within sixty days~~) for administrative purposes.
34 Agencies paying fees and other expenses pursuant to RCW 4.84.340 and
35 4.84.350 shall report all payments to the office of financial
36 management within five days of paying the fees and other expenses.
37 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 under RCW 4.84.340 through 4.84.360 and sections 4 and 5 of
10 this act.

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

13 Notwithstanding RCW 4.84.350, no fees or other expenses may be
14 awarded against an administrative tribunal for actions taken solely as
15 an adjudicative body.

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