

SHB 2409 - S COMM AMD

By Committee on Labor & Commerce

WITHDRAWN 03/05/2020

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 51.48.010 and 1985 c 347 s 2 are each amended to
4 read as follows:

5 Every employer shall be liable for the penalties described in
6 this title and may also be liable if an injury or occupational
7 disease has been sustained by a worker prior to the time he or she
8 has secured the payment of such compensation to a penalty in a sum
9 not less than fifty percent nor more than one hundred percent of the
10 cost for such injury or occupational disease. Any employer who has
11 failed to secure payment of compensation for his or her workers
12 covered under this title may also be liable to a maximum penalty in a
13 sum of (~~five~~) one thousand seven hundred dollars or in a sum double
14 the amount of premiums incurred prior to securing payment of
15 compensation under this title, whichever is greater, for the benefit
16 of the medical aid fund.

17 **Sec. 2.** RCW 51.48.017 and 2010 c 8 s 14011 are each amended to
18 read as follows:

19 (~~if~~) (1) Every time a self-insurer unreasonably delays or
20 refuses to pay benefits as they become due there shall be paid by the
21 self-insurer (~~upon order of the director~~) an additional amount
22 (~~equal to five~~) not to exceed one thousand seven hundred dollars or
23 twenty-five percent of the amount then due, whichever is greater, per
24 each act of unreasonable delay by the self-insurer, which shall
25 accrue for the benefit of the claimant and shall be paid to him or
26 her with the benefits which may be assessed under this title. The
27 director shall issue an order determining whether there was an
28 unreasonable delay or refusal to pay benefits and the penalty amount
29 owed within thirty days upon the request of the claimant. Such an
30 order shall conform to the requirements of RCW 51.52.050.

1 (2) This section applies to all requests for penalties made after
2 September 1, 2020.

3 **Sec. 3.** RCW 51.48.030 and 1986 c 9 s 8 are each amended to read
4 as follows:

5 Every employer who fails to keep and preserve the records
6 required by this title or fails to make the reports provided in this
7 title shall be subject to a penalty determined by the director but
8 not to exceed (~~two~~) eight hundred fifty dollars or two hundred
9 percent of the quarterly tax for each such offense, whichever is
10 greater. Any employer who fails to keep and preserve the records
11 adequate to determine taxes due shall be forever barred from
12 questioning, in an appeal before the board of industrial insurance
13 appeals or the courts, the correctness of any assessment by the
14 department based on any period for which such records have not been
15 kept and preserved.

16 **Sec. 4.** RCW 51.48.040 and 2003 c 53 s 282 are each amended to
17 read as follows:

18 (1) The books, records and payrolls of the employer pertinent to
19 the administration of this title shall always be open to inspection
20 by the department or its traveling auditor, agent or assistant, for
21 the purpose of ascertaining the correctness of the payroll, the
22 persons employed, and such other information as may be necessary for
23 the department and its management under this title.

24 (2) Refusal on the part of the employer to submit his or her
25 books, records and payrolls for such inspection to the department, or
26 any assistant presenting written authority from the director, shall
27 subject the offending employer to a penalty determined by the
28 director but not to exceed (~~two~~) eight hundred fifty dollars for
29 each offense and the individual who personally gives such refusal is
30 guilty of a misdemeanor.

31 (3) Any employer who fails to allow adequate inspection in
32 accordance with the requirements of this section is subject to having
33 its certificate of coverage revoked by order of the department and is
34 forever barred from questioning in any proceeding in front of the
35 board of industrial insurance appeals or any court, the correctness
36 of any assessment by the department based on any period for which
37 such records have not been produced for inspection.

1 **Sec. 5.** RCW 51.48.060 and 2004 c 65 s 14 are each amended to
2 read as follows:

3 Any physician or licensed advanced registered nurse practitioner
4 who fails, neglects or refuses to file a report with the director, as
5 required by this title, within five days of the date of treatment,
6 showing the condition of the injured worker at the time of treatment,
7 a description of the treatment given, and an estimate of the probable
8 duration of the injury, or who fails or refuses to render all
9 necessary assistance to the injured worker, as required by this
10 title, shall be subject to a civil penalty determined by the director
11 but not to exceed (~~two~~) eight hundred fifty dollars.

12 **Sec. 6.** RCW 51.48.080 and 1985 c 347 s 7 are each amended to
13 read as follows:

14 Every person, firm or corporation who violates or fails to obey,
15 observe or comply with any statutory provision of this title or rule
16 of the department promulgated under authority of this title, shall be
17 subject to a penalty of not to exceed (~~five~~) one thousand seven
18 hundred dollars.

19 NEW SECTION. **Sec. 7.** A new section is added to chapter 51.48
20 RCW to read as follows:

21 The penalties payable pursuant to this chapter shall be adjusted
22 every July 1st by the percentage change in the average monthly wage
23 in the state under RCW 51.08.018 for the preceding calendar year,
24 rounded to the nearest whole cent.

25 NEW SECTION. **Sec. 8.** A new section is added to chapter 51.48
26 RCW to read as follows:

27 (1) All self-insured employers and self-insured employers'
28 representatives have a responsibility of fair conduct relating to all
29 aspects of a claim.

30 (2) The department shall adopt by rule applications of the
31 responsibility of fair conduct as well as criteria for determining
32 appropriate penalties for violation of its duties. Fair conduct
33 responsibility includes managing claims, engaging in the department's
34 management of claims, employing injured workers during the pendency
35 of the worker's claim, making requests of the department in
36 individual cases, or participating in appeals involving a worker's
37 benefits in a way that furthers the purpose of this title. In

1 adopting a rule under this subsection, the department shall consider,
2 among other factors, recognized and approved claim processing
3 practices within the industrial insurance industry, and the
4 industrial insurance and insurance laws and rules of this state.

5 (3) The department shall investigate each alleged violation of
6 this section upon the filing of a written complaint or upon its own
7 motion. The department shall require the employer or its
8 representative to file a written, substantive response and such
9 response shall be due within fifteen working days of the department's
10 request. A department order determining whether a violation has
11 occurred and conforming with RCW 51.52.050 shall be issued within
12 ninety days of a request for an investigation. An order finding that
13 a violation of subsection (2) of this section has occurred shall also
14 order the employer to pay a penalty of one to ten times the average
15 weekly wage at the time of the order, depending upon the severity of
16 the violation, which accrues for the benefit of the worker.

17 NEW SECTION. **Sec. 9.** A new section is added to chapter 51.14
18 RCW to read as follows:

19 (1) Self-insured employers may elect to have their claims
20 administered by a third party or they may elect to self-administer
21 their claims. Third-party administrators given the responsibility of
22 administering the claims of workers by an employer shall be licensed
23 by the department. All employer claims administrators given the
24 responsibility of administering the claims of workers shall maintain
25 certification established by the department.

26 (2) The department shall adopt rules to administer this section.

27 NEW SECTION. **Sec. 10.** Sections 1 through 7 of this act take
28 effect September 1, 2020.

29 NEW SECTION. **Sec. 11.** Sections 8 and 9 of this act take effect
30 July 1, 2021."

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1 On page 1, line 2 of the title, after "administrators;" strike
2 the remainder of the title and insert "amending RCW 51.48.010,
3 51.48.017, 51.48.030, 51.48.040, 51.48.060, and 51.48.080; adding new
4 sections to chapter 51.48 RCW; adding a new section to chapter 51.14
5 RCW; prescribing penalties; and providing effective dates."

EFFECT: Describes fair conduct responsibilities. Makes fair
conduct responsibility to apply only to self-insured employers and
their representatives. Modifies the licensing for claims
administrators to require third-party administrators to be licensed
and employer claims administrators to be certified. Makes the
penalties related to unnecessary delay by self-insurers to apply when
a request for penalties is made after the effective date.

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