

# SENATE BILL REPORT

## SHB 2409

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As Reported by Senate Committee On:  
Labor & Commerce, February 27, 2020

**Title:** An act relating to industrial insurance employer penalties, duties, and the licensing of third-party administrators.

**Brief Description:** Concerning industrial insurance employer penalties, duties, and the licensing of third-party administrators.

**Sponsors:** House Committee on Labor & Workplace Standards (originally sponsored by Representatives Kilduff, Pollet, Sells, Gregerson, Valdez and Ormsby).

**Brief History:** Passed House: 2/18/20, 52-44.

**Committee Activity:** Labor & Commerce: 2/24/20, 2/27/20 [DPA, DNP].

### Brief Summary of Amended Bill

- Increases certain employer penalties under the workers' compensation system.
- Specifies a self-insurers' responsibility of fair conduct, to be regulated by the Department of Labor and Industries (L&I).
- Requires licensure of third party claims administrators and certification of employer claims administrators by L&I.

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### SENATE COMMITTEE ON LABOR & COMMERCE

**Majority Report:** Do pass as amended.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Stanford and Wellman.

**Minority Report:** Do not pass.

Signed by Senators King, Ranking Member; Braun, Schoesler and Walsh.

**Staff:** Susan Jones (786-7404)

**Background:** Employer Insurance Obligations. Under the state's workers' compensation laws, employers must either insure through the state fund administered by the Department of

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Labor and Industries (L&I) or, if qualified, may self-insure. Self-insurance is a program in which the employer, the self-insurer, provides any and all appropriate benefits to the injured worker.

Self-insurers manage some aspects of injured worker claims. Self-insurers must maintain records of all payments of compensation and provide to the Director of L&I all information the self-insurer has relating to a disputed claim. Self-insurers may contract with a third-party administrator (TPA) to administer claims.

All employers are required to keep, report, and make available certain records related to workers' compensation. Physicians and certain nurses are required to file a report to L&I within five days of treatment.

Penalties. Employers are subject to penalties for violations of various workers' compensation requirements. Penalties include those assessed against a self-insurer that unreasonably delays or fails to pay benefits, or any employer that:

- fails to pay premiums;
- misrepresents the amount of payroll or employee hours;
- fails to keep, file, or provide adequate records and reports; or
- fails to comply with an L&I rule.

Penalty amounts include the following:

- the greater of \$500 or 25 percent of the amount due, for a self-insurer who unreasonably delays or refuses to pay benefits;
- the greater of \$500 or double the amount of premiums incurred, for failure to pay premiums;
- a maximum of \$500 for failure to comply with an L&I rule; and
- a maximum of \$250 for various recordkeeping and reporting violations.

Certain knowing or intentional violations, such as misrepresentation of payroll or hours, are subject to additional penalties.

Physicians and certain nurses are subject to a maximum penalty of \$250 for failure to file a required treatment report.

**Summary of Amended Bill:** Employer Insurance Obligations. All self-insurers and their representatives have a responsibility of fair conduct related to all aspects of a claim. Fair conduct includes managing claims, engaging in the department's management of claims, employing injured workers during the pendency of the worker's claim, making requests of the department in individual cases, or participating in appeals involving a worker's benefits in a way that furthers the purpose of this title. In adopting a rule under this subsection, the department shall consider, among other factors, recognized and approved claim processing practices within the industrial insurance industry, and the industrial insurance and insurance laws and rules of this state. L&I must issue rules related to the responsibility and criteria for determining appropriate penalties for violations, and investigate and enforce violations.

Claims Administrators' License. A self-insurer may elect to self-administer claims or have their claims administered by a third-party. Third-party administrators must shall be licensed

by L&I. Employer claims administrators must maintain certification with L&I. L&I must adopt related rules.

Penalties. Employer penalties are increased to be a maximum of:

- the greater of \$1,700 or 25 percent of the amount due, for a self-insurer who unreasonably delays or refuses to pay benefits, effective for requests for penalties made after September 1, 2020;
- the greater of \$1,700 or double the amount of premiums incurred, for failure to pay premiums;
- \$1,700 for failure to comply with an L&I rule, now also including also statutory violations; and
- \$850 for various recordkeeping and reporting violations, including a physician's failure to file a required treatment report.

The assessment of penalties for a self-insurer's failure-to-pay is specified to be per act.

All penalties must be adjusted annually based on wages.

**EFFECT OF LABOR & COMMERCE COMMITTEE AMENDMENT(S):** 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.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony on Substitute House Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: The penalties were last updated in 1985. The bill makes the same adjustment that workers get for time loss and continues to keep updating those penalties. These are maximum penalties and gives the department discretion. Some of these relate to unreasonable delays.

An example was given by an injured worker. He had to travel to Colorado for a surgeon to handle the type of claim. The employer has continued to appeal. The employer has failed to pay even after the BIIA ordered to pay.

Employers have used TPAs to delay or discourage claims. TPAs that follow the law and act in good faith should not be impacted by the change in the law. Examples were given about firefighters. Some TPAs do not operate in good faith. One typically refuses to answer the worker's attorney's calls, blocked their phone, and they have to use certified mail. It is more cost effective to delay and deny than to properly pay.

CON: This is not a simple bill. It creates penalties that are unjustified and unreasonable at least at the maximum. The bill adds in a whole new standards that is not defined. This was not brought by the department or the WCAC. The per occurrence is different than current law. The consequences can be astronomical. There is no need to double or quadruple the penalties. Fair conduct is not defined. The Legislature, not department, should determine the definition. This will cause increased litigation. We have never heard this raised as an issue at the department, WCAC, or the retro committee. The law is already in the workers' favor. Section 8 is unnecessary and punitive. Section 8 is hidden in bill. Section 8 might undermine the no fault system.

This will include state fund employers. A state fund employer does not handle claims. Small employers may not to be able to avoid penalties in this complex area.

This bill impacts state fund and self-insured employers. The per occurrence will impact city budgets. We have some concerns about certification.

OTHER: We want physicians to participate in the system. The increase does not match inflation.

**Persons Testifying:** PRO: Representative Christine Kilduff, Prime Sponsor; Doug Palmer, Washington State Association for Justice; Michael Hanlon, citizen; AJ Johnson, Washington State Council of Firefighters; Allison McCoy, Emery Reddy, PLLC.

CON: Bob Battles, Association of Washington Business; Aaron Bass, Sather Byerly and Holloway/WSIA; Bruce Beckett, Washington Retail Association; Carolyn Logue, Washington Food Industry Association, WA ACCA and NW Hearth, Patio and Barbecue Association; John Meier, Employer Resources Northwest; Lauren Gubbe, Associated General Contractors of Washington; Brian Bishop, Association of Washington Cities.

OTHER: Katie Kolan, Washington State Medical Association.

**Persons Signed In To Testify But Not Testifying:** No one.