

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2409

66th Legislature
2020 Regular Session

Passed by the House March 9, 2020
Yeas 57 Nays 39

**Speaker of the House of
Representatives**

Passed by the Senate March 5, 2020
Yeas 39 Nays 9

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2409** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2409

AS AMENDED BY THE SENATE

Passed Legislature - 2020 Regular Session

State of Washington 66th Legislature 2020 Regular Session

By House Labor & Workplace Standards (originally sponsored by Representatives Kilduff, Pollet, Sells, Gregerson, Valdez, and Ormsby)

READ FIRST TIME 02/07/20.

1 AN ACT Relating to industrial insurance employer penalties,
2 duties, and the licensing of third-party administrators; amending RCW
3 51.48.010, 51.48.017, 51.48.030, 51.48.040, 51.48.060, and 51.48.080;
4 adding a new section to chapter 51.48 RCW; adding a new section to
5 chapter 51.14 RCW; prescribing penalties; and providing effective
6 dates.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

3 ~~((If))~~ (1) Every time a self-insurer unreasonably delays or
4 refuses to pay benefits as they become due ~~((there shall be paid~~
5 ~~by))~~, the self-insurer ~~((upon order of the director an additional~~
6 ~~amount equal to five hundred dollars or twenty-five percent of the~~
7 ~~amount then due, whichever is greater, which shall accrue for the~~
8 ~~benefit of the claimant and shall be paid to him or her with the~~
9 ~~benefits which may be assessed under this title.))~~ shall pay a
10 penalty not to exceed the greater of one thousand dollars or twenty-
11 five percent of: (a) The amount due or (b) each underpayment made to
12 the claimant. For purposes of this section, "the amount due" means
13 the total amount of payments due at the time of the calculation of
14 the penalty.

15 (2) In making the determination of the penalty amount, the
16 department shall weigh at least the following factors: The amount of
17 any payment delayed, employer communication of the basis for or
18 calculation of the payment, history or past practice of underpayments
19 by the employer, department orders directing the payment, and any
20 required adjustments to the amount of the payment.

21 (3) The director shall issue an order determining whether there
22 was an unreasonable delay or refusal to pay benefits and the penalty
23 amount owed within thirty days upon the request of the claimant. Such
24 an order shall conform to the requirements of RCW 51.52.050.

25 (4) The penalty shall accrue for the benefit of the claimant and
26 shall be paid to the claimant with the benefits which may be assessed
27 under this title.

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

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

32 (1) Every employer who fails to keep and preserve the records
33 required by this title or fails to make the reports provided in this
34 title shall be subject to a penalty determined by the director but
35 not to exceed ~~((two))~~ five hundred ~~((fifty))~~ dollars or two hundred
36 percent of the quarterly tax for each such offense, whichever is
37 greater. Any employer who fails to keep and preserve the records
38 adequate to determine taxes due shall be forever barred from
39 questioning, in an appeal before the board of industrial insurance

1 appeals or the courts, the correctness of any assessment by the
2 department based on any period for which such records have not been
3 kept and preserved.

4 (2) The department may waive penalties for first-time or de
5 minimis violations of this section. Any penalty that is waived under
6 this section may be reinstated and imposed in addition to any
7 additional penalties associated with a subsequent violation or
8 failure within a year to correct the previous violation as required
9 by the department.

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

12 (1) The books, records and payrolls of the employer pertinent to
13 the administration of this title shall always be open to inspection
14 by the department or its traveling auditor, agent or assistant, for
15 the purpose of ascertaining the correctness of the payroll, the
16 persons employed, and such other information as may be necessary for
17 the department and its management under this title.

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

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

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

34 Any physician or licensed advanced registered nurse practitioner
35 who fails, neglects or refuses to file a report with the director, as
36 required by this title, within five days of the date of treatment,
37 showing the condition of the injured worker at the time of treatment,
38 a description of the treatment given, and an estimate of the probable

1 duration of the injury, or who fails or refuses to render all
2 necessary assistance to the injured worker, as required by this
3 title, shall be subject to a civil penalty determined by the director
4 but not to exceed (~~two~~) five hundred (~~fifty~~) dollars.

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

7 Every person, firm or corporation who violates or fails to obey,
8 observe or comply with any statutory provision of this act or rule of
9 the department promulgated under authority of this title, shall be
10 subject to a penalty of not to exceed (~~five hundred~~) one thousand
11 dollars.

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

14 (1) The penalties payable pursuant to this chapter shall be
15 adjusted for inflation every three years, beginning July 1, 2023,
16 based upon changes in the consumer price index during that time
17 period.

18 (2) For purposes of this section, "consumer price index" means,
19 for any calendar year, that year's average consumer price index for
20 the Seattle, Washington area for urban wage earners and clerical
21 workers, all items, compiled by the bureau of labor statistics,
22 United States department of labor.

23 (3) During the last quarter of the year preceding the scheduled
24 inflationary adjustment, the department will gather stakeholder
25 comment on the anticipated adjustment.

26 NEW SECTION. **Sec. 8.** A new section is added to chapter 51.14
27 RCW to read as follows:

28 (1) Self-insured employers may elect to have their claims
29 administered by a third party or they may elect to self-administer
30 their claims. Third-party administrators given the responsibility of
31 administering the claims of workers by an employer shall be licensed
32 by the department. All employer claims administrators given the
33 responsibility of administering the claims of workers shall maintain
34 certification established by the department.

35 (2) The department shall adopt rules to administer this section.
36 The rules for licensing third-party administrators must:

1 (a) Incorporate the department's rules for self-insurers in
2 effect as of March 2020;

3 (b) Include criteria for determining appropriate penalties for
4 violation of their responsibilities and duties, including managing
5 claims, engaging in the department's management of claims,
6 coordinating proper employment of injured workers during the pendency
7 of the worker's claim, making requests of the department in
8 individual cases, or participating in appeals involving a worker's
9 benefits in a way that furthers the purpose of this title;

10 (c) Consider recognized and approved claim processing practices
11 within the industrial insurance industry, and the industrial
12 insurance laws and rules of this state;

13 (d) Consider similar licensure rules under the insurance laws and
14 rules of this state; and

15 (e) Include requirements for maintaining a license, and any
16 penalties for violation of those licensing requirements.

17 NEW SECTION. **Sec. 9.** Sections 1 through 7 of this act take
18 effect September 1, 2020.

19 NEW SECTION. **Sec. 10.** Section 8 of this act takes effect July
20 1, 2021.

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