

FINAL BILL REPORT

SHB 1521

C 293 L 23
Synopsis as Enacted

Brief Description: Concerning the duties of industrial insurance self-insured employers and third-party administrators.

Sponsors: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Bronoske, Stonier, Wylie, Berry and Pollet).

House Committee on Labor & Workplace Standards
Senate Committee on Labor & Commerce

Background:

Self-Insured Employers.

Under the state's workers' compensation laws, employers must either insure through the State Fund administered by the Department of Labor and Industries (Department) or, if qualified and certified by the Department, 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, including closing certain types of claims. Self-insurers must maintain records of all payments of compensation and provide to the Department all information the self-insurer has relating to a disputed claim. Self-insurers may contract with a third-party administrator (TPA) to administer claims. Third-party administrators must be licensed by the Department, and claims administrators must maintain certification through the Department.

Penalties.

Employers are subject to penalties for violations of various workers' compensation requirements, including, for example: unreasonably delaying or failing to pay benefits by a self-insurer; failing to pay premiums; misrepresenting the amount of payroll or employee hours; failing to keep, file, or provide adequate records and reports; or failing to comply with any other applicable workers' compensation laws or rules. The amounts of penalties

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

are adjusted every three years based on changes in the Consumer Price Index.

Penalty amounts vary, but include:

- a maximum of \$1,000 or 25 percent of the amount due, or the underpayment, for a self-insurer who unreasonably delays or refuses to pay benefits; and
- a maximum of \$1,000 for failure to comply with a rule or other provision pertaining to workers' compensation.

Decertification.

The Department must decertify a self-insurer in certain instances. This includes, for example, if the self-insurer intentionally or repeatedly induces employees to fail to report injuries, induces claimants to treat injuries in the course of employment as off-the-job injuries, persuades claimants to accept less than the compensation due, or unreasonably makes it necessary for claimants to resort to proceedings against the employer to obtain compensation.

Summary:

Duty of Good Faith and Fair Dealing.

All self-insured municipal employers, self-insured private sector firefighter employers, and their TPAs have a duty of good faith and fair dealing to workers. A "municipal employer" includes any county, city, town, port district, water-sewer district, school district, metropolitan park district, fire district, public hospital district, regional fire protection service authority, education service district, or such other units of local government. A "private sector firefighter employer" includes any private sector employer that employs over 50 firefighters, including supervisors, on a full-time, fully compensated basis as a firefighter of the employer's fire department, only with respect to their firefighters.

A self-insured municipal employer, self-insured private sector firefighter employer, or its TPA violates the duty if it coerces a worker to accept less than the compensation due to him or her, or otherwise fails to act in good faith or fair dealing regarding its obligations. The Department must adopt rules establishing additional applications of the duty of good faith and fair dealing as well as criteria for determining appropriate penalties for violations.

The Department must investigate each alleged violation of the duty of good faith and fair dealing upon the filing of a written complaint or upon its own motion. After receiving notice, the applicable employer or the TPA may file a written response within 10 working days. If the employer or the TPA fails to file a timely response, the Department must issue an order based on available information. The Department must issue an order determining whether a violation has occurred within 30 calendar days of receipt of a complete complaint or its own motion.'

The duty of good faith and fair dealing applies to all claims regardless of the date of injury.

Penalties.

If the duty has been violated, the employer must be ordered to pay a penalty of one to 52 times the average weekly wage at the time of the order, depending upon the severity of the violation, which accrues for the benefit of the worker. In addition, if an employer or its TPA violates the duty of good faith and fair dealing, the Department may impose the following penalties:

- a maximum of \$3,000 or 75 percent of the amount due, or the underpayment, for a self-insurer who unreasonably delays or refuses to pay benefits; and
- a maximum of \$3,000 for failure to comply with a rule or other provision pertaining to workers' compensation.

Decertification.

The grounds upon which the Department must decertify a self-insured employer is expanded to include circumstances where a self-insured municipal employer violates the duty of good faith and fair dealing three times within a three-year period, excluding violations constituting errors or delays that are inadvertent or minor. The Department may delay decertification while a self-insured municipal employer has an enforceable contract with a licensed TPA that may not be legally terminated; however, the self-insured municipal employer may not renew or extend the contract.

Votes on Final Passage:

House	69	27	
Senate	32	17	(Senate amended)
House			(House refused to concur/asked Senate to recede)
Senate	29	19	(Senate receded/amended)
House	84	14	(House concurred)

Effective: July 1, 2024