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## Labor & Workplace Standards Committee

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### HB 2409

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

**Sponsors:** Representatives Kilduff, Pollet, Sells, Gregerson, Valdez and Ormsby.

#### Brief Summary of Bill

- Increases certain employer penalties under workers' compensation.
- Specifies an employer fiduciary duty to workers, to be regulated by the Department of Labor and Industries.
- Requires licensure of claims administrators by the Department of Labor and Industries.

**Hearing Date:** 1/21/20

**Staff:** Lily Smith (786-7175).

#### Background:

##### Employer Insurance Obligations.

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, 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 Director of the Department all information the self-insurer has relating to a disputed claim. Self-insurers may contract with a third-party administrator to administer claims.

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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.*

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 the Department 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 a Department rule.

Penalties 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 a Department 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 Bill:**

##### Employer Insurance Obligations.

An employer fiduciary duty to workers of good faith and fair dealing is specified. The Department must issue rules related to the fiduciary duty and enforce violations.

An employer's options for claims administration are specified. The Department must license claims administrators and issue related rules.

##### Penalties.

Employer penalties are increased as follows:

- the greater of \$1,700 or 25 percent of the amount due, for a self-insurer who unreasonably delays or refuses to pay benefits;
- the greater of \$1,700 or double the amount of premiums incurred, for failure to pay premiums;
- a maximum of \$1,700 for failure to comply with a Department rule; and
- a maximum of \$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 minimum penalties must be adjusted annually based on wages.

**Appropriation:** None.

**Fiscal Note:** Requested on January 14, 2020.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.