CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5443

Chapter 77, Laws of 2007

60th Legislature
2007 Regular Session

WORKERS' COMPENSATION CLAIMS

EFFECTIVE DATE: 07/22/07

Passed by the Senate March 10, 2007
YEAS 34  NAYS 12

BRAD OWEN

President of the Senate

Passed by the House April 4, 2007
YEAS 63  NAYS 33

FRANK CHOPP

Speaker of the House of Representatives

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is SUBSTITUTE SENATE BILL 5443 as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN
Secretary

Approved April 18, 2007, 9:34 a.m.

FILED
April 18, 2007

CHRISTINE GREGOIRE

Governor of the State of Washington

Secretary of State
State of Washington
AN ACT Relating to the suppression of workers' compensation claims; amending RCW 51.28.010, 51.28.025, and 51.28.050; creating a new section; and prescribing penalties.

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

Sec. 1. RCW 51.28.010 and 2001 c 231 s 1 are each amended to read as follows:

(1) Whenever any accident occurs to any worker it shall be the duty of such worker or someone in his or her behalf to forthwith report such accident to his or her employer, superintendent, or supervisor in charge of the work, and of the employer to at once report such accident and the injury resulting therefrom to the department pursuant to RCW 51.28.025 where the worker has received treatment from a physician, has been hospitalized, disabled from work, or has died as the apparent result of such accident and injury.

(2) Upon receipt of such notice of accident, the department shall immediately forward to the worker or his or her beneficiaries or dependents notification, in nontechnical language, of their rights under this title. The notice must specify the worker's right to
receive health services from a physician of the worker's choice under
RCW 51.36.010, including chiropractic services under RCW 51.36.015, and
must list the types of providers authorized to provide these services.

(3) Employers shall not engage in claim suppression.

(4) For the purposes of this section, "claim suppression" means
intentionally:
   (a) Inducing employees to fail to report injuries;
   (b) Inducing employees to treat injuries in the course of
       employment as off-the-job injuries; or
   (c) Acting otherwise to suppress legitimate industrial insurance
       claims.

(5) In determining whether an employer has engaged in claim
suppression, the department shall consider the employer's history of
compliance with industrial insurance reporting requirements, and
whether the employer has discouraged employees from reporting injuries
or filing claims. The department has the burden of proving claim
suppression by a preponderance of the evidence.

(6) Claim suppression does not include bona fide workplace safety
and accident prevention programs or an employer's provision at the
worksite of first aid as defined by the department. The department
shall adopt rules defining bona fide workplace safety and accident
prevention programs and defining first aid.

Sec. 2. RCW 51.28.025 and 1987 c 185 s 32 are each amended to read
as follows:

(1) Whenever an employer has notice or knowledge of an injury or
occupational disease sustained by any worker in his or her employment
who has received treatment from a physician, has been hospitalized,
disabled from work or has died as the apparent result of such injury or
occupational disease, the employer shall immediately report the same to
the department on forms prescribed by it. The report shall include:
   (a) The name, address, and business of the employer;
   (b) The name, address, and occupation of the worker;
   (c) The date, time, cause, and nature of the injury or occupational
disease;
   (d) Whether the injury or occupational disease arose in the course
of the injured worker's employment;
(e) All available information pertaining to the nature of the injury or occupational disease including but not limited to any visible signs, any complaints of the worker, any time lost from work, and the observable effect on the worker's bodily functions, so far as is known; and

(f) Such other pertinent information as the department may prescribe by regulation.

(2) ((Failure or refusal to file the report required by subsection (1) shall subject the offending employer to a penalty determined by the director but not to exceed two hundred fifty dollars for each offense, to be collected in a civil action in the name of the department and paid into the supplemental pension fund.)) The employer shall not engage in claim suppression. An employer found to have engaged in claim suppression shall be subject to a penalty of at least two hundred fifty dollars, not to exceed two thousand five hundred dollars, for each offense. The penalty shall be payable to the supplemental pension fund. The department shall adopt rules establishing the amount of penalties, taking into account the size of the employer and whether there are prior findings of claim suppression. When a determination of claim suppression has been made, the employer shall be prohibited from any current or future participation in a retrospective rating program. If self-insured, the director shall withdraw certification as provided in RCW 51.14.080.

(3) When a determination of claim suppression is made and the penalty is assessed, the department shall serve the employer and any affected retrospective rating group with a determination as provided in RCW 51.52.050. The determination may be protested to the department or appealed to the board of industrial insurance appeals. Once the order is final, the amount due shall be collected in accordance with the provisions of RCW 51.48.140 and 51.48.150.

(4) The director, or the director's designee, shall investigate reports or complaints that an employer has engaged in claim suppression as prohibited in RCW 51.28.010(3). The complaints or allegations must be received in writing, and must include the name or names of the individuals or organizations submitting the complaint. In cases where the department can show probable cause, the director may subpoena records from the employer, medical providers, and any other entity that the director believes may have relevant information. The director's
investigative and subpoena authority in this subsection is limited solely to investigations into allegations of claim suppression or where the director has probable cause that claim suppression might have occurred.

(5) If the director determines that an employer has engaged in claim suppression and, as a result, the worker has not filed a claim for industrial insurance benefits as prescribed by law, then the director in his or her sole discretion may waive the time limits for filing a claim provided in RCW 51.28.050, if the complaint or allegation of claim suppression is received within two years of the worker's accident or exposure. For the director to exercise this discretion, the claim must be filed with the department within ninety days of the date the determination of claim suppression is issued.

(6) For the purposes of this section, "claim suppression" has the same meaning as in RCW 51.28.010(4).

Sec. 3. RCW 51.28.050 and 1984 c 159 s 1 are each amended to read as follows:

No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the rights of dependents or beneficiaries accrued, except as provided in RCW 51.28.055 and 51.28.025(5).

NEW SECTION. Sec. 4. The department of labor and industries shall adopt rules necessary to implement this act.

Passed by the Senate March 10, 2007.
Passed by the House April 4, 2007.
Approved by the Governor April 18, 2007.
Filed in Office of Secretary of State April 18, 2007.