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**SUBSTITUTE HOUSE BILL 2409**

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**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 new sections 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~~) one thousand seven hundred dollars or in a sum double  
19 the amount of premiums incurred prior to securing payment of  
20 compensation under this title, whichever is greater, for the benefit  
21 of the 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       (~~It~~) Every time a self-insurer unreasonably delays or refuses  
4 to pay benefits as they become due there shall be paid by the self-  
5 insurer (~~upon order of the director~~) an additional amount (~~equal~~  
6 ~~to five~~) not to exceed one thousand seven hundred dollars or twenty-  
7 five percent of the amount then due, whichever is greater, per each  
8 act of unreasonable delay by the self-insurer, which shall accrue for  
9 the benefit of the claimant and shall be paid to him or her with the  
10 benefits which may be assessed under this title. The director shall  
11 issue an order determining whether there was an unreasonable delay or  
12 refusal to pay benefits and the penalty amount owed within thirty  
13 days upon the request of the claimant. Such an order shall conform to  
14 the requirements of RCW 51.52.050.

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

17       Every employer who fails to keep and preserve the records  
18 required by this title or fails to make the reports provided in this  
19 title shall be subject to a penalty determined by the director but  
20 not to exceed (~~two~~) eight hundred fifty dollars or two hundred  
21 percent of the quarterly tax for each such offense, whichever is  
22 greater. Any employer who fails to keep and preserve the records  
23 adequate to determine taxes due shall be forever barred from  
24 questioning, in an appeal before the board of industrial insurance  
25 appeals or the courts, the correctness of any assessment by the  
26 department based on any period for which such records have not been  
27 kept and preserved.

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

30       (1) The books, records and payrolls of the employer pertinent to  
31 the administration of this title shall always be open to inspection  
32 by the department or its traveling auditor, agent or assistant, for  
33 the purpose of ascertaining the correctness of the payroll, the  
34 persons employed, and such other information as may be necessary for  
35 the department and its management under this title.

36       (2) Refusal on the part of the employer to submit his or her  
37 books, records and payrolls for such inspection to the department, or  
38 any assistant presenting written authority from the director, shall

1 subject the offending employer to a penalty determined by the  
2 director but not to exceed (~~two~~) eight hundred fifty dollars for  
3 each offense and the individual who personally gives such refusal is  
4 guilty of a misdemeanor.

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

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

14 Any physician or licensed advanced registered nurse practitioner  
15 who fails, neglects or refuses to file a report with the director, as  
16 required by this title, within five days of the date of treatment,  
17 showing the condition of the injured worker at the time of treatment,  
18 a description of the treatment given, and an estimate of the probable  
19 duration of the injury, or who fails or refuses to render all  
20 necessary assistance to the injured worker, as required by this  
21 title, shall be subject to a civil penalty determined by the director  
22 but not to exceed (~~two~~) eight hundred fifty dollars.

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

25 Every person, firm or corporation who violates or fails to obey,  
26 observe or comply with any statutory provision of this title or rule  
27 of the department promulgated under authority of this title, shall be  
28 subject to a penalty of not to exceed (~~five~~) one thousand seven  
29 hundred dollars.

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

32 The penalties payable pursuant to this chapter shall be adjusted  
33 every July 1st by the percentage change in the average monthly wage  
34 in the state under RCW 51.08.018 for the preceding calendar year,  
35 rounded to the nearest whole cent.

1        NEW SECTION.    **Sec. 8.**    A new section is added to chapter 51.48  
2    RCW to read as follows:

3        (1)    All employers and employers' representatives have a  
4    responsibility of fair conduct relating to all aspects of a claim.

5        (2)    The department shall adopt by rule applications of the  
6    responsibility of fair conduct as well as criteria for determining  
7    appropriate penalties for violation of its duties. In adopting a rule  
8    under this subsection, the department shall consider, among other  
9    factors, recognized and approved claim processing practices within  
10   the industrial insurance industry, the department's own experience,  
11   and the industrial insurance and insurance laws and rules of this  
12   state.

13       (3)    The department shall investigate each alleged violation of  
14   this section upon the filing of a written complaint or upon its own  
15   motion. The department shall require the employer or its  
16   representative to file a written, substantive response and such  
17   response shall be due within fifteen working days of the department's  
18   request. A department order determining whether a violation has  
19   occurred and conforming with RCW 51.52.050 shall be issued within  
20   ninety days of a request for an investigation. An order finding that  
21   a violation of subsection (2) of this section has occurred shall also  
22   order the employer to pay a penalty of one to ten times the average  
23   weekly wage at the time of the order, depending upon the severity of  
24   the violation, which accrues for the benefit of the worker.

25       NEW SECTION.    **Sec. 9.**    A new section is added to chapter 51.14  
26   RCW to read as follows:

27       (1)    Self-insured employers may elect to have their claims  
28   administered by a third party or they may elect to self-administer  
29   their claims. Regardless of which method of claims administration  
30   chosen by self-insured employers, persons, and businesses who are  
31   given the responsibility of administering the claims of workers shall  
32   be licensed by the department.

33       (2)    The department shall adopt rules to administer this section.

34       NEW SECTION.    **Sec. 10.**   Sections 1 through 7 of this act take  
35   effect September 1, 2020.

1        NEW SECTION.    **Sec. 11.**    Sections 8 and 9 of this act take effect  
2    July 1, 2021.

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