

**SHB 2409 - S AMD 1302**  
By Senator Keiser

ADOPTED 03/05/2020

1 Strike everything after the enacting clause and insert the  
2 following:

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

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

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

19 (~~¶~~) (1) Every time a self-insurer unreasonably delays or  
20 refuses to pay benefits as they become due (~~there shall be paid~~  
21 ~~by~~), the self-insurer (~~upon order of the director an additional~~  
22 ~~amount equal to five hundred dollars or twenty-five percent of the~~  
23 ~~amount then due, whichever is greater, which shall accrue for the~~  
24 ~~benefit of the claimant and shall be paid to him or her with the~~  
25 ~~benefits which may be assessed under this title.~~) shall pay a  
26 penalty not to exceed the greater of one thousand dollars or twenty-  
27 five percent of: (a) The amount due or (b) each underpayment made to  
28 the claimant. For purposes of this section, "the amount due" means  
29 the total amount of payments due at the time of the calculation of  
30 the penalty.

1       (2) In making the determination of the penalty amount, the  
2 department shall weigh at least the following factors: The amount of  
3 any payment delayed, employer communication of the basis for or  
4 calculation of the payment, history or past practice of underpayments  
5 by the employer, department orders directing the payment, and any  
6 required adjustments to the amount of the payment.

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

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

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

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

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

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

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

37       (1) The books, records and payrolls of the employer pertinent to  
38 the administration of this title shall always be open to inspection

1 by the department or its traveling auditor, agent or assistant, for  
2 the purpose of ascertaining the correctness of the payroll, the  
3 persons employed, and such other information as may be necessary for  
4 the department and its management under this title.

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

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

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

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

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

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

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

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

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

12       (3)    During the last quarter of the year preceding the scheduled  
13   inflationary adjustment, the department will gather stakeholder  
14   comment on the anticipated adjustment.

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

17       (1)    Self-insured employers may elect to have their claims  
18   administered by a third party or they may elect to self-administer  
19   their claims. Third-party administrators given the responsibility of  
20   administering the claims of workers by an employer shall be licensed  
21   by the department. All employer claims administrators given the  
22   responsibility of administering the claims of workers shall maintain  
23   certification established by the department.

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

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

28       (b)    Include criteria for determining appropriate penalties for  
29   violation of their responsibilities and duties, including managing  
30   claims, engaging in the department's management of claims,  
31   coordinating proper employment of injured workers during the pendency  
32   of the worker's claim, making requests of the department in  
33   individual cases, or participating in appeals involving a worker's  
34   benefits in a way that furthers the purpose of this title;

35       (c)    Consider recognized and approved claim processing practices  
36   within the industrial insurance industry, and the industrial  
37   insurance laws and rules of this state;

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

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

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

5 NEW SECTION. **Sec. 10.** Section 8 of this act takes effect July  
6 1, 2021."

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7 On page 1, line 2 of the title, after "administrators;" strike  
8 the remainder of the title and insert "amending RCW 51.48.010,  
9 51.48.017, 51.48.030, 51.48.040, 51.48.060, and 51.48.080; adding a  
10 new section to chapter 51.48 RCW; adding a new section to chapter  
11 51.14 RCW; prescribing penalties; and providing effective dates."

EFFECT: Doubles the penalties from current law. Modifies the calculation of penalties for self-insurers unreasonably delaying or refusing to pay benefits. Allows the department to waive penalties for first-time or de minimis violations of recordkeeping and filing provisions. Modifies the penalty adjustment provisions to be adjusted for inflation every 3 years beginning July 1, 2023, based on the consumer price index and allows for comment on the proposed increase. Removes provisions regarding fair conduct. Expands rule-making requirements and considerations regarding licensing third-party administrators.

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