H-2108.1

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**HOUSE BILL 2168**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Representatives Alvarado, Bronoske, Berry, Reed, Nance, Fosse, and Pollet

AN ACT Relating to the duties of industrial insurance self-insured employers and third-party administrators; amending RCW 51.14.080 and 51.14.180; creating a new section; and providing an effective date.

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

**Sec.**  RCW 51.14.080 and 2023 c 293 s 4 are each amended to read as follows:

(1) Certification of a self-insurer shall be withdrawn by the director upon one or more of the following grounds:

(a) The employer no longer meets the requirements of a self-insurer; or

(b) The self-insurer's deposit is insufficient; or

(c) 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; or

(d) The self-insurer habitually fails to comply with rules and regulations of the director regarding reports or other requirements necessary to carry out the purposes of this title; or

(e) The self-insurer habitually engages in a practice of arbitrarily or unreasonably refusing employment to applicants for employment or discharging employees because of nondisabling bodily conditions; or

(f) The self-insurer fails to pay an insolvency assessment under the procedures established pursuant to RCW 51.14.077; or

(g)((~~(i) For a self-insured municipal employer, the~~)) The self-insurer has been found to have violated the ((~~self-insurer's~~)) duty of good faith and fair dealing under RCW 51.14.180 three times within a three-year period.

((~~(ii)~~)) (i) For purposes of determining whether there have been three violations within a three-year period, the director must use the date of the department's order. Any subsequent order of the department, board of industrial insurance appeals, or courts affirming a violation occurred relates back to the date of the department's order.

((~~(iii)~~)) (ii) Errors or delays that are inadvertent or minor are not considered violations of good faith and fair dealing for purposes of this subsection (1)(g).

(2) The director may delay withdrawing the certification of the self-insured ((~~municipal~~)) employer while the employer has an enforceable contract with a licensed third-party administrator that may not be legally terminated. However, the self-insured ((~~municipal~~)) employer may not renew or extend the contract.

((~~(3) For the purposes of this section, "municipal" has the same meaning as defined in RCW 51.14.180.~~))

**Sec.**  RCW 51.14.180 and 2023 c 293 s 3 are each amended to read as follows:

(1) All self-insured ((~~municipal employers and self-insured private sector firefighter~~)) employers and ((~~their~~)) third-party administrators have a duty of good faith and fair dealing to workers relating to all aspects of this title. The duty of good faith requires fair dealing and equal consideration for the worker's interests.

(2) ((~~A self-insured municipal employer or self-insured private sector firefighter~~)) An employer or ((~~their~~)) third-party administrator violates its duty to the worker if it coerces a worker to accept less than the compensation due under this title, or otherwise fails to act in good faith and fair dealing regarding its obligations under this title.

(3) The department shall adopt by rule additional applications of the duty of good faith and fair dealing as well as criteria for determining appropriate penalties for violations. In adopting a rule under this subsection, the department shall consider, among other factors, recognized and approved claim processing practices within the insurance industry, the department's own experience, and the industrial insurance and insurance laws and rules of this state.

(4) The department shall investigate each alleged violation of this section upon the filing of a written complaint or upon its own motion. After receiving notice and a request for a response from the department, the ((~~municipal employer or private sector firefighter~~)) employer or ((~~their~~)) third-party administrator may file a written response within 10 working days. If the ((~~municipal employer or private sector firefighter~~)) employer or ((~~their~~)) third-party administrator fails to file a timely response, the department shall issue an order based on available information.

(5) The department shall issue an order determining whether a violation of this section has occurred, in conformance with RCW 51.52.050, within 30 calendar days of receipt of a complete complaint or its own motion. An order finding that a violation has occurred must also order the ((~~municipal employer or private sector firefighter~~)) employer 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.

((~~(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.~~

~~(a) "Municipal" means any counties, cities, towns, port districts, water-sewer districts, school districts, metropolitan park districts, fire districts, public hospital districts, regional fire protection service authorities, education service districts, or such other units of local government.~~

~~(b) "Private sector firefighter employer" means any private sector employer who 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.~~))

NEW SECTION. **Sec.**  This act applies to all claims regardless of the date of injury.

NEW SECTION. **Sec.**  This act takes effect July 1, 2024.

**--- END ---**