

# SENATE BILL REPORT

## SHB 1521

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As Passed Senate - Amended, April 20, 2023

**Title:** An act relating to industrial insurance self-insured employer and third-party administrator penalties and duties.

**Brief Description:** Concerning the duties of industrial insurance self-insured employers and third-party administrators.

**Sponsors:** House Committee on Labor & Workplace Standards (originally sponsored by Representatives Bronoske, Stonier, Wylie, Berry and Pollet).

**Brief History:** Passed House: 3/1/23, 69-27.

**Committee Activity:** Labor & Commerce: 3/14/23, 3/23/23 [DP, DNP, w/oRec].

**Floor Activity:** Passed Senate - Amended: 4/10/23, 32-17; 4/20/23, 29-19.

### Brief Summary of Bill (As Amended by Senate)

- Specifies that 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 with respect to all aspects of workers' compensation.
- Requires the Department of Labor and Industries (L&I) to enforce the duty of good faith and fair dealing.
- Provides penalties for violations of the duty.
- Allows the withdrawal of a self-insured municipal employer's certification as a self-insurer if the employer violates the self-insurer's duty of good faith and fair dealing three times within a three-year period.

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## SENATE COMMITTEE ON LABOR & COMMERCE

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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 part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** Do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; Robinson and Stanford.

**Minority Report:** Do not pass.

Signed by Senators King, Ranking Member; Braun and Schoesler.

**Minority Report:** That it be referred without recommendation.

Signed by Senator MacEwen.

**Staff:** Susan Jones (786-7404)

**Background:** General Penalty for Violation of Workers' Compensation Laws and Rules.

Every person, firm, or corporation who violates or fails to obey, observe, or comply with any statutory provision of Industrial Insurance (workers' compensation) laws or Department of Labor and Industry (L&I) rules is subject to a penalty not to exceed \$1,000.

Penalty for Self-insurer Delaying or Refusing to Pay Benefits. Every time a self-insurer unreasonably delays or refuses to pay benefits, the self-insurer must pay a penalty not to exceed the greater of \$1,000 or 25 percent of the amount due for each underpayment made to the claimant. The penalty accrues for the benefit of the claimant and must be paid to the claimant.

When making the determination of the penalty amount, L&I must weigh at least the following factors:

- the amount of any payment delayed;
- employer communication of the basis for or calculation of the payment;
- history or past practice of underpayments by the employer;
- L&I orders directing the payment; and
- any required adjustments to the amount of the payment.

The L&I director must issue an order determining whether there was an unreasonable delay or refusal to pay benefits and the penalty amount owed within 30 days upon the request of the claimant.

Penalties Adjusted for Inflation. These and other penalties are adjusted for inflation every three years, beginning July 1, 2023, based upon changes in the consumer price index.

**Summary of Amended Bill:** All self-insured municipal employers and self-insured private sector firefighter employers and their third-party administrators (TPAs) have a duty of good faith and fair dealing to workers. A self-insured municipal employer, self-insured private sector firefighter employer, or their TPA violates its duty if it coerces a worker to accept less than the compensation due to them, or otherwise fails to act in good faith or fair dealing regarding its obligations. L&I must adopt rules establishing additional applications of the duty of good faith and fair dealing as well as criteria for determining appropriate penalties

for violations. The duty of good faith requires fair dealing and equal consideration for the worker's interests.

L&I must investigate each alleged violation of the duty of good faith and fair dealing upon the filing of a written complaint or upon its own motion. After receiving notice, the employer or the TPA may file a written response within ten working days. If the employer or the TPA fails to file a timely response, L&I must issue an order based on available information. L&I must issue an order determining whether a violation has occurred within 30 calendar days of receipt of a complete complaint or its own motion.

If a municipal employer, private sector firefighter employers, or its TPA violates the duty of good faith and fair dealing, the employer must be ordered 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. In addition, if a self-insured employer violates the duty of good faith and fair dealing, L&I may impose the following penalties:

- a maximum of \$3,000 or 75 percent of the amount due, or the underpayment, for a self-insurer who unreasonably delays or refuses to pay benefits; and
- a maximum of \$3,000 for failure to comply with an L&I rule or other provision pertaining to workers' compensation.

The term 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. The term 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.

Nothing in this act may be interpreted as allowing a private cause of action outside of the original jurisdiction of L&I to assess penalties and rights to appeal as provided in the Industrial Insurance Act.

The duty of good faith and fair dealing applies to all claims regardless of the date of injury.

L&I may withdraw a self-insured municipal employer's certification if the self-insured municipal employer has been found to have violated the self-insurer's duty of good faith and fair dealing three times within a three-year period. Errors or delays that are inadvertent or minor are not considered violations of good faith and fair dealing for purposes of withdrawal of the certification. L&I may delay withdrawing the certification while the self-insured municipal 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.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill takes effect on July 1, 2024.

**Staff Summary of Public Testimony:** PRO: Some cities and jurisdictions have been managing claims in bad faith to save money. Passing this bill unamended will help solve this issue. Firefighters with health issues caused by their job are not receiving the care they need. Third party administrators have been the largest barrier to receiving care. The longer claims drag out, the less willing doctors and third-party administrators are to help them.

CON: This bill will create a new, undefined, unclear standard that is not consistent with the rest of workers' comp. This standard may be interpreted as prohibiting an employer from undertaking allowable questions and challenges of claims. It's unclear what would constitute a violation, and it could undermine the system and lead to civil action. This bill creates a statutory duty of good faith and fair dealing. This bill would affect all self-insured employers, including those who this bill was not intended for. Instead of passing this bill, all previous policies should be fully implemented.

**Persons Testifying:** PRO: Representative Dan Bronoske, Prime Sponsor; Doug Palmer, Washington State Association for Justice; Jamison Smith; Eric Becker; Teresa Taylor, (WACOPS) Washington Council of Police & Sheriffs; Samantha Grad, Teamsters 117.

CON: Candice Bock, Association of Washington Cities; Andy Cherullo, City of Tacoma; Christine Brewer, Washington Self-Insurers Association; Chris Hills, City of Kent, Risk Manager; Bob Battles, Association of Washington Business (AWB); Lacey Jane Wolfe, City of Bellevue.

**Persons Signed In To Testify But Not Testifying:** No one.