

# SENATE BILL REPORT

## SB 5524

---

---

As of February 7, 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:** Senators Van De Wege, Keiser, Lovick, Cleveland, Conway, Hasegawa and Holy.

**Brief History:**

**Committee Activity:** Labor & Commerce: 2/07/23.

**Brief Summary of Bill**

- Creates a duty of good faith and fair dealing by self-insurers' and lay third party administrators to workers in the workers' compensation system.
- Requires investigations by the Department of Labor and Industries.
- Provides penalties for violations of the duty.

---

### SENATE COMMITTEE ON LABOR & COMMERCE

**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

---

*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.*

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 thirty 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 Bill:** Self-Insurers' and Lay Representative Third Party Administrators Duty of Good Faith and Fair Dealing to Workers. All self-insured employers and self-insured employers' lay representative third-party administrators have a duty of good faith and fair dealing to workers relating to all aspects of workers' compensation. An employer violates its duty to the worker if the self-insured employer or its representative wrongfully induces a worker to accept less than the workers' compensation due, or otherwise fails to act in good faith regarding its obligations under workers' compensation laws.

Rules for Duty of Good Faith and Fair Dealing. L&I must adopt by rule additional applications of the duty of good faith and fair dealing as well as criteria for determining appropriate penalties for violation of its duties. In adopting a rule, L&I must consider, among other factors, recognized and approved claim processing practices within the insurance industry, L&I's own experience, and the workers' compensation and insurance laws and rules of this state.

Labor and Industries Investigations. L&I must investigate each alleged violation upon filing of a written complaint or upon its own motion. L&I must require the employer or its representative to file a written, substantive response, and such response is due 15 working days after L&I's request. An L&I order determining whether a violation has occurred must be issued within 30 days of a request for an investigation.

Penalties for Violations of Duty of Good Faith and Fair Dealing. An order finding that a violation has occurred must also order the employer to pay a penalty of one to ten 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.

Additional Penalties. L&I may, for a violation of the duty of good faith and fair dealing, assess penalties not to exceed three times:

- the general penalties for violation of the workers' compensation laws and rules, up to

\$1,000;

- the penalties for a self-insurer delaying or refusing to pay benefits, not to exceed the greater of \$1,000 or 25 percent of the amount due or each underpayment; and

These penalties include adjustments for inflation.

These provisions apply to all claims regardless of the date of injury.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill makes sure that all workers in the state are covered to the same level as workers under the state fund by providing some penalties for third party administrators. The TPAs have the power to approve or deny treatments. Workers should not be forced to hire attorneys to get the health care that they need or pay for their own doctor visits. When a worker has to hire an attorney, they do not get the full amount of the claim.

Third party administrators stall and avoid their responsibilities of providing care. They file appeals at the last minute. They need to be monitored under a higher level of scrutiny from the state Legislature.

CON: Self-insured employers have little authority to do final and binding adjudication in a claim. Self-insured does not mean self-regulated. The authority falls to the oversight of L&I. There are tools that aren't being used from 2020 legislation: TPAs licenses, training, doubled penalties. L&I has developed rules to license TPAs. COVID slowed rolling out these tools. The Legislature should give L&I authority to get the word out about the new tools.

The majority of self-insurers are doing the right thing. If it passes, all self-insurers will be impacted. The bill sends a terrible message that self-insurers won't take care of their workers without the threat of fines. The bill assumes that there is a perfect benefit. There are disputes. Litigation is the least efficient and slowest method. There are tools to resolve claims with lower cost than litigation. The bill will chill resolution of claims. If worker resolves their claim and later decides they should have gotten more, they will have to re-litigate. There will be unintended consequences; and the main beneficiaries will be lawyers.

OTHER: L&I has some technical and rulemaking concerns on the timeframe of this bill.

This bill will require an iterative rule making process based on the subject matter. Good faith duty does not exist in worker comp. This is an insurance principal that is not currently applicable.

**Persons Testifying:** PRO: Senator Kevin Van De Wege, Prime Sponsor; Eric Becker; Jerry Underwood; Greg Weber; Jamison Smith; Steve Austin; Steve Bradley; Jarl Peterson; Doug Palmer, Washington State Association for Justice; Craig Patti, 1069 Adams st; Brenda Wiest, Teamsters Local 117.

CON: Kris Tefft, Washington Self-Insurers Association; Sheri Sundstrom, Hoffman Construction Company/WSIA; Bernie Pratt, Pratt Day & Stratton/WSIA; Candice Bock, Association of Washington Cities.

OTHER: Tammy Fellin, Labor & Industries.

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