

HOUSE BILL REPORT

HB 2409

As Reported by House Committee On:
Labor & Workplace Standards
Appropriations

Title: An act relating to industrial insurance employer penalties, duties, and the licensing of third-party administrators.

Brief Description: Concerning industrial insurance employer penalties, duties, and the licensing of third-party administrators.

Sponsors: Representatives Kilduff, Pollet, Sells, Gregerson, Valdez and Ormsby.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/21/20, 2/6/20 [DPS];

Appropriations: 2/10/20, 2/11/20 [DPS (LAWS)].

Brief Summary of Substitute Bill

- Increases certain employer penalties under workers' compensation.
- Specifies an employer responsibility of fair conduct, to be regulated by the Department of Labor and Industries.
- Requires licensure of claims administrators by the Department of Labor and Industries.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Sells, Chair; Chapman, Vice Chair; Gregerson and Ormsby.

Minority Report: Do not pass. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Hoff.

Staff: Lily Smith (786-7175).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Employer Insurance Obligations.

Under the state's workers' compensation laws, employers must either insure through the State Fund administered by the Department of Labor and Industries (Department) or, if qualified, may self-insure. Self-insurance is a program in which the employer, the self-insurer, provides any and all appropriate benefits to the injured worker.

Self-insurers manage some aspects of injured worker claims, including closing certain types of claims. Self-insurers must maintain records of all payments of compensation and provide to the Director of the Department all information the self-insurer has relating to a disputed claim. Self-insurers may contract with a third-party administrator (TPA) to administer claims.

All employers are required to keep, report, and make available certain records related to workers' compensation. Physicians and certain nurses are required to file a report to the Department within five days of treatment.

Penalties.

Employers are subject to penalties for violations of various workers' compensation requirements. Penalties include those assessed against a self-insurer that unreasonably delays or fails to pay benefits, or any employer that:

- fails to pay premiums;
- misrepresents the amount of payroll or employee hours;
- fails to keep, file, or provide adequate records and reports; or
- fails to comply with a Department rule.

Penalty amounts include the following:

- the greater of \$500 or 25 percent of the amount due, for a self-insurer who unreasonably delays or refuses to pay benefits;
- the greater of \$500 or double the amount of premiums incurred, for failure to pay premiums;
- a maximum of \$500 for failure to comply with a Department rule; and
- a maximum of \$250 for various recordkeeping and reporting violations.

Certain knowing or intentional violations, such as misrepresentation of payroll or hours, are subject to additional penalties.

Physicians and certain nurses are subject to a maximum penalty of \$250 for failure to file a required treatment report.

Summary of Substitute Bill:

Employer Insurance Obligations.

An employer responsibility of fair conduct is specified. The Department must issue rules related to the responsibility and enforce violations.

An employer's options for claims administration are specified. The Department must license claims administrators and issue related rules.

Penalties.

Employer penalties are increased to be a maximum of:

- the greater of \$1,700 or 25 percent of the amount due, for a self-insurer who unreasonably delays or refuses to pay benefits;
- the greater of \$1,700 or double the amount of premiums incurred, for failure to pay premiums;
- \$1,700 for failure to comply with a Department rule; and
- \$850 for various recordkeeping and reporting violations, including a physician's failure to file a required treatment report.

The assessment of penalties for a self-insurer's failure-to-pay is specified to be per act.

All penalties must be adjusted annually based on wages.

Substitute Bill Compared to Original Bill:

The substitute bill:

- makes the specified self-insurer penalties a maximum, rather than exact, amount;
- refers to "penalties" rather than "minimum penalties" in the annual adjustment provision;
- changes the new fiduciary duty to a responsibility of fair conduct, removes elements of a violation of the duty, and applies the responsibility to employers and their representatives instead of employers and their lay representatives;
- requires issuance of an order by the Department regarding a violation within 90 days, instead of within 30 days, of a request for an investigation; and
- adds effective dates of:
 - September 1, 2020, for the sections increasing penalties; and
 - July 1, 2021, for the sections regarding fair conduct and licensure of claims administrators.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Substitute Bill: Sections 1 through 7 of the bill, relating to penalties, take effect on September 1, 2020; sections 8 and 9 of the bill, relating to fair conduct and licensure of claims administrators, take effect July 1, 2021.

Staff Summary of Public Testimony:

(In support) The original grand compromise of the workers' compensation system was not intended to be the adversarial system it has become. This bill will make sure the intent of

that original compromise is honored. Some employers chose self insurance even though the workers are public employees. The TPAs often delay and fail to act in the best interests of the employee, and the absence of regulation maximizes the resulting harms. Lack of communication and delays after an injury can lead to worsening of a condition. For a firefighter with post-traumatic stress disorder, this can mean they have to battle for what they are owed. The fines under the bill would still be nominal, and an employer acting in good faith should not have concerns. The fines have not been updated since 1985 and have not kept up with the cost of living.

(Opposed) The bill creates a new duty to workers that is more akin to that owed by a labor union. The application of the new duty is unclear and would inappropriately import issues and legal standards from other types of insurance law. The Department already has this duty, and claim managers, not TPAs, have the authority and make all the decisions on TPA claims. It is in the employer's best interest to ensure their injured workers are treated properly. The TPAs work collaboratively with employers and claims managers, and the bill would jeopardize that collaboration and collaboration with workers. The Workers' Compensation Advisory Committee was created to vet proposals such as this one to ensure there is balance for the system as a whole. The penalty amounts under the bill are substantial. The original grand compromise of workers' compensation did not assume the process would not be controversial. The bill does not distinguish between state fund insurers and self-insurers. The bill does not address accountability in the Department's audit methods. The bill is unnecessary; there is an existing penalty process, ombuds office, and recent rulemaking addressing efficiencies and better communication in this area.

Persons Testifying: (In support) Representative Kilduff, prime sponsor; Sam Grad, United Food and Commercial Workers 21; Al Johnson, Washington State Council of Firefighters; and Doug Palmer, Washington State Association for Justice.

(Opposed) Tom Kwieciak, Building Industry Association of Washington; Bob Battles, Association of Washington Business; Tammie Hetrick, Washington Food Industry Association; Christine Brewer, Washington Self-Insurers Association; Bernie Pratt, Pratt Day & Stratton PLLC; Kelly Early, Employment Security Department 113; John Chriswell, Hoffman Structures; Brian Bishop, Association of Washington Cities Retro; Chris Van Dyk, Bainbridge Media Group; Richard Clyne, Washington State Farm Bureau; and Lauren Gubbe, Associated General Contractors.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 19 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Kilduff, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Sullivan, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 13 members: Representatives Stokesbary, Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Corry, Dye, Hoff, Kraft, Mosbrucker, Schmick, Steele, Sutherland and Ybarra.

Staff: Michael Hirsch (786-7157).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Labor & Workplace Standards:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available. New fiscal note requested on February 7, 2020.

Effective Date of Substitute Bill: Sections 1 through 7 of the bill, relating to penalties, take effect on September 1, 2020; sections 8 and 9 of the bill, relating to fair conduct and licensure of claims administrators, take effect July 1, 2021.

Staff Summary of Public Testimony:

(In support) This bill aims to level the playing field between workers and employers. It modernizes penalties on self-insured employers, which were last updated 35 years ago. Third-party administrators influence workers' claims experience. The bill gives the Department the ability to address the conduct of third-party administrators, many of which are located out of state. The Industrial Insurance Act is the remedy for workers injured on the job and this bill imposes a responsibility of fair conduct on the process. This bill would not use General Fund dollars. The changes in committee are expected to reduce the fiscal note. There will be more revenue as a result of the new penalty.

(Opposed) None.

Persons Testifying: Representative Kilduff, prime sponsor; Joe Kendo, Washington State Labor Council; and Larry Shannon, Washington State Association for Justice.

Persons Signed In To Testify But Not Testifying: None.