

HOUSE BILL REPORT

SB 5463

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

Title: An act relating to the duties of industrial insurance self-insured employers and third-party administrators.

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

Sponsors: Senators Alvarado, Conway, Saldaña, Salomon, Nobles, Valdez, Hasegawa, Stanford, Robinson, Shewmake, Trudeau, Bateman, Chapman, Harris, Liias, Cleveland, Holy, Lovelett and Wilson, C..

Brief History:

Committee Activity:

Labor & Workplace Standards: 3/18/25, 3/21/25 [DP];

Appropriations: 4/3/25, 4/5/25 [DPA].

Brief Summary of Bill
(As Amended by Committee)

- Extends the duty of good faith and fair dealing to all workers' compensation self-insured employers and third-party administrators.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Scott, Vice Chair; Bronoske, Obras and Ortiz-Self.

Minority Report: Without recommendation. Signed by 3 members: Representatives Schmidt, Ranking Minority Member; Ybarra, Assistant Ranking Minority Member; McEntire.

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.

Staff: Kelly Leonard (786-7147).

Background:

Self-Insured Employers.

Workers who, in the course of employment, are injured or disabled from an occupational disease are entitled to workers' compensation benefits, which may include medical, temporary time-loss, vocational rehabilitation benefits, and permanent disability benefits. The Department of Labor and Industries (L&I) administers the state's workers' compensation system. Employers in Washington must obtain coverage either through the industrial insurance fund administered by the Department of Labor and Industries (L&I) or by qualifying to self-insure.

Self-insurance is a program in which the employer covers all costs associated with an on-the-job injury or occupational disease. Self-insured employers administer their own claims and maintain a long-term obligation to pay benefits during the lifetime of their claims. Self-insured employers must meet certain requirements and maintain certification through L&I. Self-insured employers may contract with a third-party administrator (TPA) to administer claims. L&I licenses TPAs and certifies claims administrators.

Duty of Good Faith and Fair Dealing.

Effective July 1, 2024, the state established a specific duty of good faith and fair dealing in certain instances. All self-insured municipal employers, self-insured private sector firefighter employers, and their TPAs have a duty of good faith and fair dealing to workers. A "municipal employer" includes any county, city, town, port district, water-sewer district, school district, metropolitan park district, fire district, public hospital district, regional fire protection service authority, education service district, or such other units of local government. A "private sector firefighter employer" includes any private sector employer that 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.

A self-insured municipal employer, self-insured private sector firefighter employer, or its TPA violates the duty if it coerces a worker to accept less than the compensation due to him or her, or otherwise fails to act in good faith or fair dealing regarding its obligations. L&I must investigate each alleged violation of the duty of good faith and fair dealing, and issue an order determining whether a violation has occurred within 30 calendar days. If the duty has been violated, the applicable employer must be ordered to pay a penalty of 1 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 municipal employer, self-insured private sector firefighter employer, or its TPA 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 unreasonably delaying or refusing 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.

L&I must decertify a self-insured municipal employer if it violates the duty of good faith and fair dealing three times within a three-year period, excluding violations constituting errors or delays that are inadvertent or minor.

Delaying Decertification.

L&I may delay decertification while a self-insured municipal employer has an enforceable contract with a licensed TPA that may not be legally terminated; however, the self-insured municipal employer may not renew or extend the contract.

Summary of Bill:

Duty of Good Faith and Fair Dealing.

The duty of good faith and fair dealing is extended to all self-insured employers and TPAs, including its requirements and applicable penalties. L&I must decertify a self-insured employer when L&I finds it has violated the duty of good faith and fair dealing three times in a three-year period. The requirements in the bill apply to all claims regardless of the date of injury.

Delaying Decertification.

L&I may delay this decertification of a self-insured employer while it has an enforceable contract with a licensed TPA that may not be legally terminated; however, the self-insured employer may not renew or extend the contract.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2026.

Staff Summary of Public Testimony:

(In support) There is an expectation that workers will be treated fairly by administrators in the workers' compensation system. However, some self-insured employers and TPAs do not have a legal duty to treat these workers fairly. To the contrary, courts have found that they have an inherently adversarial relationship. This needs to be addressed. In 2023 there was legislation to establish a duty of good faith and fair dealing, but it was amended to apply only to self-insured municipalities and private firefighters. This created a two-tiered system. But there are bad actors amongst the private self-insured employers too. A person

should not have different legal protections in different contexts. The bill corrects this by extending this duty to all self-insured employers. The duty of good faith and fair dealing is already an established concept in other insurance industries. L&I has already adopted rules for implementing it for self-insured employers. There have been a limited number of complaints with no sanctions yet. This will not be a radical change, but it will provide fairness to workers.

(Opposed) Washington is one of the few states that do not allow employers to use private insurance for workers' compensation. There are only two options: self-insurance or insuring through L&I. Self-insured employers are committed to their workers, and their approach often leads to better outcomes for workers. Self-insured employers do not dispute the importance of good faith. But this bill will not improve outcomes or help workers. It imposes vague and difficult to implement legal standards, which are exclusively controlled by L&I. The bill introduces uncertainty into the system without any material benefits to workers.

Persons Testifying: (In support) Senator Emily Alvarado, prime sponsor; Joe Kendo, Washington State Labor Council, AFL-CIO; April Frazier, SEIU Healthcare 1199NW; Brian Wright, Washington State Association for Justice; Rondi Thorp, Washington State Association for Justice; Christina Bayaniyan, Sheet Metal Workers Local 66; and Chris Shepard.

(Opposed) Lindsey Hueer, Association of Washington Business; and Christine Brewer, Washington Self Insurers Association.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended. Signed by 19 members: Representatives Ormsby, Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Bergquist, Callan, Cortes, Doglio, Fitzgibbon, Leavitt, Lekanoff, Peterson, Pollet, Ryu, Springer, Stonier, Street, Thai and Tharinger.

Minority Report: Do not pass. Signed by 8 members: Representatives Couture, Ranking Minority Member; Penner, Assistant Ranking Minority Member; Burnett, Corry, Dye, Keaton, Manjarrez and Marshall.

Minority Report: Without recommendation. Signed by 3 members: Representatives Connors, Assistant Ranking Minority Member; Schmick, Assistant Ranking Minority Member; Caldier.

Staff: Xianyu Li (786-7094).

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

The amended bill removes from the underlying bill and current law the requirement for the Department of Labor and Industries (L&I) to decertify a self-insured employer if the self-insured employer violates the duty of good faith and fair dealing three times within a three-year period. Instead, it requires L&I to impose a corrective action with a period of probationary status if it determines that the self-insurer has violated the duty of good faith and fair dealing two or more times in a three-year period. For purposes of the corrective action, L&I must impose appropriate restrictions and changes that are necessary for preventing future violations, for which L&I must audit compliance. L&I must withdraw certification if the self-insurer is found to have committed a subsequent violation while subject to corrective action. Following the corrective action, L&I may withdraw the self-insurer's certification based on an assessment of whether the self-insurer has complied with the terms of the corrective action, or is likely to commit future violations of the duty of good faith and fair dealing. L&I must withdraw certification if the employer triggers the requirement for a subsequent corrective action within 10 years of completing the prior corrective action and probationary period. The amended bill shifts language regarding minor or inadvertent errors or delays not constituting violations from the provisions governing decertification to the provisions establishing the duty of good faith and fair dealing.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect on January 1, 2026.

Staff Summary of Public Testimony:

(In support) There will be an updated fiscal note coming from L&I to accommodate some accidental double counting in some of the penalties, and that will consequently change the assumptions in the Office of the Attorney General and Board of Industrial Insurance Appeals (BIIA). This bipartisan bill does not have a fiscal impact on the State General Fund, instead it uses workers' compensation dollars. This bill is also a self-insurance regulation; related costs will be reimbursed by self-insured employers. The fiscal assumptions about increased penalty requests and appeals might be inflated. Since Chapter 293, Laws of 2023 (SHB 1521) established the duty of good faith and fair dealing for municipal employers, no bad faith penalties have been issued, only four have been requested and none have been appealed. The BIIA appeals typically adjudicates 4 to 10 self-insurance penalty appeals per year, and this fiscal note assumes that it will spike to 46 penalty appeals per month. Finally, delayed and denied treatments lead to permanent disability for our workforce. This bill is helpful to address issues of ignoring requests, abrupt cancellation of medications for patients from chronic medications that are not

controlled substances, and abrupt discontinuation of therapy services.

(Opposed) The workers compensation self-insurance market relies on reinsurance and collateral like any insurance market. If there's increased uncertainty in the market, then costs will go up for everyone who is insured, and the effects are not actually limited to just self-insured employers. As the fiscal note describes, the uncertainty created has a strong potential to increase pressures on the program management and the state fund itself. An amendment that eliminates the three strikes provision in the bill would maintain the bill's intent, while providing some needed certainty for employers and for the reinsurance market.

Persons Testifying: (In support) Joe Kendo, Washington State Labor Council; Louis Lim; and Daniel Goodman, Washington State Association for Justice.

(Opposed) Lindsey Hueer, Association of Washington Business; and Kris Tefft, Washington Self-Insurers Association.

Persons Signed In To Testify But Not Testifying: None.