SENATE BILL REPORT
SB 5463

As Amended by House, April 11, 2025

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 & Commerce: 2/04/25, 2/11/25 [DP, DNP].

Floor Activity: Passed Senate: 3/5/25, 29-20.
Passed House: 4/11/25, 64-32.

Brief Summary of Bill

- Applies the duty of good faith and fair dealing to all workers' compensation self-insurers and third-party administrators, rather than only self-insured municipal employers, self-insured private sector firefighter employers, and their third-party administrators.
- Allows the Department of Labor and Industries to withdraw any self-insurer's certification when the self-insurer has been found to have violated the duty of good faith and fair dealing three times within a three-year period, rather than just the certification of a municipal self-insurer.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass.

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.

Signed by Senators Saldaña, Chair; Conway, Vice Chair; Alvarado, Ramos and Stanford.

Minority Report: Do not pass.
Signed by Senators King, Ranking Member; Braun, MacEwen and Schoesler.

Staff: Susan Jones (786-7404)

Background: Workers' Compensation—General. 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. In Washington, all employers must provide workers' compensation coverage for their employees either by:

- insuring through the state fund by paying premiums to L&I; or
- qualifying as a self-insurer.

Self-Insured Employers. 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 must maintain records of all payments and disputes. Self-insured employers may contract with certain third-party administrator to administer claims.

An employer may qualify as a self-insurer by establishing to L&I's satisfaction that the employer has sufficient financial ability to make certain the prompt payment of all workers' compensation benefits and all assessments which may become due from the employer.

Duty of Good Faith and Fair Dealing for Certain Self-Insurers. 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 relating to all aspects of the workers' compensation laws. The duty of good faith requires fair dealing and equal consideration for the worker's interests. A self-insured municipal employer or self-insured private sector firefighter employer or their TPA violates its duty to the worker if it coerces a worker to accept less than the compensation due under the law, or otherwise fails to act in good faith and fair dealing regarding its obligations under the law.

L&I was required to and did adopt a rule providing for 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, L&I must consider recognized and approved claim processing practices within the insurance industry, L&I's own experience, and Washington State's worker's compensation and insurance laws and rules.

L&I must investigate alleged violations upon the filing of a written complaint or upon its own motion. After receiving notice and a request for a response from L&I, the municipal employer or private sector firefighter employer or their TPA may file a written response

within ten working days. If the municipal employer or private sector firefighter employer or their TPA fails to file a timely response, L&I shall 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. An order finding that a violation has occurred must also order the municipal employer or private sector firefighter employer 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.

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. 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.

Decertification. Certification of a self-insurer must be withdrawn under certain circumstances, including when the employer is a municipal employer and has been found to have violated the self-insurer's duty of good faith and fair dealing three times within a three-year period. The L&I 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. The self-insured municipal employer may not renew or extend the contract.

Summary of Bill: The duty of good faith and fair dealing applies to all workers' compensation self-insurers and third-party administrators, rather than only self-insured municipal employers and self-insured private sector firefighter employers and their third-party administrators. L&I's authority to withdraw a self-insurer's certification when an 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 applies to all self-insurers.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony: PRO: Washington's workers' compensation system is there to help injured workers heal and get back to work as safely as possible. Injured workers assume they'll be treated fairly and with good faith throughout the process. Some workers are fighting to get basic medical treatment covered, experiencing chronic delays, and misleading communications that pushes out necessary care and prevents injured

workers from making ends meet. This is a bipartisan bill that will help level the playing field by requiring that all self-insured employers and their third-party administrators act in good faith towards injured workers.

As background to this bill, in 2023, HB 1521 passed, requiring certain self-insured workers and third-party administrators to hold themselves to the standard of good faith and fair dealing. The bill was amended to deny this protection to workers in the private sector. This bill will fix that and ensure that all workers benefit from equal standards. There is no legal reason to have an unfair two-tiered system.

Good faith and fair dealing is a behavior that is intentional or coercive or part of a business practice. It's not a single error or a disagreement that doesn't rise to bad faith. The duty of good faith and fair dealing provides for equal consideration of the workers and the employer's interests. There have been many complaints that this bill creates a vague standard of good faith. This is a well-known standard and the same duty that our auto insurance companies owe to Washingtonians.

Injured workers provided examples of challenges with their claims working with self-insurers and their third-party administrators. The many workers just give up going without treatment, without pay, and suffering.

We're not talking about small businesses with solo business owners. We're talking about the largest companies in the state; sophisticated entities which by virtue of self-insuring their workers' compensation obligations have a potential but obvious financial incentive to spend less money on their claims because it directly affects the bottom line. This bill ensures that incentive is taken away requiring these employers to simply consider workers' interests as equal to their own.

The self-insurance industry is comprised of many multi-billion-dollar corporations. This is not an equal playing field for the injured workers with these corporations. The self-insurance industry argues that we already have penalties. What good does a $150 penalty do to a billion-dollar corporation? It means nothing to them. That is the system we have now. Sadly, the abuse of the system by these corporations is systemic and invasive. There is no logical justification for excluding private sector workers who need these protections.

CON: This bill is unnecessary. Self-insured employers want to take care of their workers, and they do. Workers are entitled to sure and certain relief, and businesses need their workers to be healthy and safe. Self-insured employers are regulated by L&I. Every claims' decision that a self-insured employer or their TPA makes is regulated by the Self-Insurance Department within L&I. The claims managers have rigorous standards, a code of ethics, and continuing education.

The bill imposes the vague legal standard of good faith and fair dealing, and the risk of excessive penalties any time there is a difference of opinion over an entitlement of workers

benefits. The 2023 legislation addressed the concerns that were raised in one city with one claim, and it was resolved; and therefore, the bill is unnecessary.

Businesses and workers alike benefit from predictability and certainty. This bill introduces an unnecessary a weakness into that. This is not a matter of simply requiring the self-insured employers to play by the rules. That is already under current law. There are already mechanisms in place allowing L&I to take action against self-insured employers if they do not meet the current legal requirements. The challenge with imposing this vague standard is that L&I alone would control the determination. That introduces an uncertainty into the self-insurance program that can risk critical financial re-insurance and collateral requirements, again, without any benefit to the workers' claims.

Persons Testifying: PRO: Senator Emily Alvarado, Prime Sponsor; Brian Wright, Washington State Association for Justice; April Frazier, SEIU Healthcare 1199NW; Christina Bayaniyan, Sheet Metal Workers Local 66; Rondi Thorp, Washington State Association for Justice; Steven Compton, UA Local 598; Samantha Grad, Teamsters 117.

CON: Lindsey Hueer, Association of Washington Business; Christine Brewer, Washington Self Insurers Association.

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

EFFECT OF HOUSE AMENDMENT(S):

- 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, 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. Requires L&I to impose appropriate restrictions and changes that are necessary for preventing future violations, for which L&I must audit compliance for the term of the applicable corrective action.
- Requires L&I to withdraw certification if the self-insurer is found to have committed a subsequent violation while subject to corrective action. Following the corrective action, allows L&I to 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. Requires L&I to withdraw certification if the employer triggers the requirement for a subsequent corrective action within ten years of completing the prior corrective action and probationary period.
- Provides that L&I must use the date of applicable orders for purposes of determining the timing of violations, rather than for purposes of determining whether there have been three violations within a three-year period.
- 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.