

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5443**

60th Legislature  
2007 Regular Session

Passed by the Senate March 10, 2007  
YEAS 34 NAYS 12

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**President of the Senate**

Passed by the House April 4, 2007  
YEAS 63 NAYS 33

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**Speaker of the House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5443** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 5443**

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Passed Legislature - 2007 Regular Session

**State of Washington                      60th Legislature                      2007 Regular Session**

**By** Senate Committee on Labor, Commerce, Research & Development  
(originally sponsored by Senators Kohl-Welles and Keiser; by request  
of Department of Labor & Industries)

READ FIRST TIME 02/27/07.

1            AN ACT Relating to the suppression of workers' compensation claims;  
2 amending RCW 51.28.010, 51.28.025, and 51.28.050; creating a new  
3 section; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            **Sec. 1.** RCW 51.28.010 and 2001 c 231 s 1 are each amended to read  
6 as follows:

7            (1) Whenever any accident occurs to any worker it shall be the duty  
8 of such worker or someone in his or her behalf to forthwith report such  
9 accident to his or her employer, superintendent, or supervisor in  
10 charge of the work, and of the employer to at once report such accident  
11 and the injury resulting therefrom to the department pursuant to RCW  
12 51.28.025 where the worker has received treatment from a physician, has  
13 been hospitalized, disabled from work, or has died as the apparent  
14 result of such accident and injury.

15            (2) Upon receipt of such notice of accident, the department shall  
16 immediately forward to the worker or his or her beneficiaries or  
17 dependents notification, in nontechnical language, of their rights  
18 under this title. The notice must specify the worker's right to

1 receive health services from a physician of the worker's choice under  
2 RCW 51.36.010, including chiropractic services under RCW 51.36.015, and  
3 must list the types of providers authorized to provide these services.

4 (3) Employers shall not engage in claim suppression.

5 (4) For the purposes of this section, "claim suppression" means  
6 intentionally:

7 (a) Inducing employees to fail to report injuries;

8 (b) Inducing employees to treat injuries in the course of  
9 employment as off-the-job injuries; or

10 (c) Acting otherwise to suppress legitimate industrial insurance  
11 claims.

12 (5) In determining whether an employer has engaged in claim  
13 suppression, the department shall consider the employer's history of  
14 compliance with industrial insurance reporting requirements, and  
15 whether the employer has discouraged employees from reporting injuries  
16 or filing claims. The department has the burden of proving claim  
17 suppression by a preponderance of the evidence.

18 (6) Claim suppression does not include bona fide workplace safety  
19 and accident prevention programs or an employer's provision at the  
20 worksite of first aid as defined by the department. The department  
21 shall adopt rules defining bona fide workplace safety and accident  
22 prevention programs and defining first aid.

23 **Sec. 2.** RCW 51.28.025 and 1987 c 185 s 32 are each amended to read  
24 as follows:

25 (1) Whenever an employer has notice or knowledge of an injury or  
26 occupational disease sustained by any worker in his or her employment  
27 who has received treatment from a physician, has been hospitalized,  
28 disabled from work or has died as the apparent result of such injury or  
29 occupational disease, the employer shall immediately report the same to  
30 the department on forms prescribed by it. The report shall include:

31 (a) The name, address, and business of the employer;

32 (b) The name, address, and occupation of the worker;

33 (c) The date, time, cause, and nature of the injury or occupational  
34 disease;

35 (d) Whether the injury or occupational disease arose in the course  
36 of the injured worker's employment;

1 (e) All available information pertaining to the nature of the  
2 injury or occupational disease including but not limited to any visible  
3 signs, any complaints of the worker, any time lost from work, and the  
4 observable effect on the worker's bodily functions, so far as is known;  
5 and

6 (f) Such other pertinent information as the department may  
7 prescribe by regulation.

8 ~~(2) ((Failure or refusal to file the report required by subsection~~  
9 ~~(1) shall subject the offending employer to a penalty determined by the~~  
10 ~~director but not to exceed two hundred fifty dollars for each offense,~~  
11 ~~to be collected in a civil action in the name of the department and~~  
12 ~~paid into the supplemental pension fund.))~~ The employer shall not  
13 engage in claim suppression. An employer found to have engaged in  
14 claim suppression shall be subject to a penalty of at least two hundred  
15 fifty dollars, not to exceed two thousand five hundred dollars, for  
16 each offense. The penalty shall be payable to the supplemental pension  
17 fund. The department shall adopt rules establishing the amount of  
18 penalties, taking into account the size of the employer and whether  
19 there are prior findings of claim suppression. When a determination of  
20 claim suppression has been made, the employer shall be prohibited from  
21 any current or future participation in a retrospective rating program.  
22 If self-insured, the director shall withdraw certification as provided  
23 in RCW 51.14.080.

24 (3) When a determination of claim suppression is made and the  
25 penalty is assessed, the department shall serve the employer and any  
26 affected retrospective rating group with a determination as provided in  
27 RCW 51.52.050. The determination may be protested to the department or  
28 appealed to the board of industrial insurance appeals. Once the order  
29 is final, the amount due shall be collected in accordance with the  
30 provisions of RCW 51.48.140 and 51.48.150.

31 (4) The director, or the director's designee, shall investigate  
32 reports or complaints that an employer has engaged in claim suppression  
33 as prohibited in RCW 51.28.010(3). The complaints or allegations must  
34 be received in writing, and must include the name or names of the  
35 individuals or organizations submitting the complaint. In cases where  
36 the department can show probable cause, the director may subpoena  
37 records from the employer, medical providers, and any other entity that  
38 the director believes may have relevant information. The director's

1 investigative and subpoena authority in this subsection is limited  
2 solely to investigations into allegations of claim suppression or where  
3 the director has probable cause that claim suppression might have  
4 occurred.

5 (5) If the director determines that an employer has engaged in  
6 claim suppression and, as a result, the worker has not filed a claim  
7 for industrial insurance benefits as prescribed by law, then the  
8 director in his or her sole discretion may waive the time limits for  
9 filing a claim provided in RCW 51.28.050, if the complaint or  
10 allegation of claim suppression is received within two years of the  
11 worker's accident or exposure. For the director to exercise this  
12 discretion, the claim must be filed with the department within ninety  
13 days of the date the determination of claim suppression is issued.

14 (6) For the purposes of this section, "claim suppression" has the  
15 same meaning as in RCW 51.28.010(4).

16 **Sec. 3.** RCW 51.28.050 and 1984 c 159 s 1 are each amended to read  
17 as follows:

18 No application shall be valid or claim thereunder enforceable  
19 unless filed within one year after the day upon which the injury  
20 occurred or the rights of dependents or beneficiaries accrued, except  
21 as provided in RCW 51.28.055 and 51.28.025(5).

22 NEW SECTION. **Sec. 4.** The department of labor and industries shall  
23 adopt rules necessary to implement this act.

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