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HOUSE BILL 1069

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State of Washington

66th Legislature

2019 Regular Session

By Representatives Stanford, Reeves, and Santos; by request of Insurance Commissioner

Prefiled 12/28/18.

1 AN ACT Relating to the creation of the insurance fraud surcharge  
2 account; amending RCW 48.02.190 and 48.14.040; providing an effective  
3 date; and declaring an emergency.

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

5 **Sec. 1.** RCW 48.02.190 and 2011 c 47 s 3 are each amended to read  
6 as follows:

7 (1) As used in this section:

8 (a) "Insurance fraud surcharge" means the fees imposed by  
9 subsection (2)(b) of this section.

10 (b) "Organization" means every insurer, as defined in RCW  
11 48.01.050, having a certificate of authority to do business in this  
12 state, every health care service contractor, as defined in RCW  
13 48.44.010, every health maintenance organization, as defined in RCW  
14 48.46.020, or self-funded multiple employer welfare arrangement, as  
15 defined in RCW 48.125.010, registered to do business in this state.  
16 "Class one" organizations consist of all insurers as defined in RCW  
17 48.01.050. "Class two" organizations consist of all organizations  
18 registered under provisions of chapters 48.44 and 48.46 RCW. "Class  
19 three" organizations consist of self-funded multiple employer welfare  
20 arrangements as defined in RCW 48.125.010.

1       (~~(b)~~)   (c)(i) "Receipts" means (A) net direct premiums  
2 consisting of direct gross premiums, as defined in RCW 48.18.170,  
3 paid for insurance written or renewed upon risks or property  
4 resident, situated, or to be performed in this state, less return  
5 premiums and premiums on policies not taken, dividends paid or  
6 credited to policyholders on direct business, and premiums received  
7 from policies or contracts issued in connection with qualified plans  
8 as defined in RCW 48.14.021, and (B) prepayments to health care  
9 service contractors, as defined in RCW 48.44.010, health maintenance  
10 organizations, as defined in RCW 48.46.020, or participant  
11 contributions to self-funded multiple employer welfare arrangements,  
12 as defined in RCW 48.125.010, less experience rating credits,  
13 dividends, prepayments returned to subscribers, and payments for  
14 contracts not taken.

15       (ii) Participant contributions, under chapter 48.125 RCW, used to  
16 determine the receipts in this state under this section are  
17 determined in the same manner as premiums taxable in this state are  
18 determined under RCW 48.14.090.

19       (~~(e)~~)   (d) "Regulatory surcharge" means the fees imposed by  
20 subsection (2)(a) of this section.

21       (2) The annual cost of operating the office of the insurance  
22 commissioner is determined by legislative appropriation.

23       (a) A pro rata share of the cost, except for the cost of the  
24 insurance fraud program, is charged to all organizations as a  
25 regulatory surcharge. Each class of organization must contribute a  
26 sufficient amount to the insurance commissioner's regulatory account  
27 to pay the reasonable costs, including overhead, of regulating that  
28 class of organization.

29       (b) The annual cost of operating the insurance fraud program is  
30 charged to all organizations as an insurance fraud surcharge. Each  
31 class of organization must contribute a sufficient amount to the  
32 insurance commissioner's fraud account to pay the reasonable costs of  
33 the program, including overhead.

34       (3) (a) The regulatory surcharge is calculated separately for each  
35 class of organization. The regulatory surcharge collected from each  
36 organization is that portion of the cost of operating the insurance  
37 commissioner's office, except for the cost of operating the insurance  
38 fraud program, for that class of organization, for the ensuing fiscal  
39 year that is represented by the organization's portion of the  
40 receipts collected or received by all organizations within that class

1 on business in this state during the previous calendar year. However,  
2 the regulatory surcharge must not exceed one-eighth of one percent of  
3 receipts and the minimum regulatory surcharge is one thousand  
4 dollars.

5 (b) The insurance fraud surcharge collected from each  
6 organization is the cost of operating the insurance fraud program for  
7 the ensuing fiscal year that is represented by the organization's  
8 portion of the receipts collected or received on business in this  
9 state during the previous calendar year. However, the insurance fraud  
10 surcharge must not exceed one-eighth of one percent of receipts and  
11 the minimum insurance fraud surcharge is one hundred dollars.

12 (4) The commissioner must annually, on or before July 1st,  
13 calculate and bill each organization for the amount of the regulatory  
14 surcharge and the insurance fraud surcharge. The ~~((regulatory))~~  
15 surcharges ~~((is))~~ are due and payable no later than July 15th of each  
16 year. However, if the necessary financial records are not available  
17 or if the amount of the legislative appropriation is not determined  
18 in time to carry out such calculations and bill ~~((such regulatory))~~  
19 the surcharges within the time specified, the commissioner may use  
20 the ~~((regulatory))~~ surcharge factors for the prior year as the basis  
21 for the ~~((regulatory))~~ surcharges and, if necessary, the commissioner  
22 may impose supplemental fees to fully and properly charge the  
23 organizations. Any organization failing to pay the ~~((regulatory))~~  
24 surcharges by July 31st must pay the same penalties as the penalties  
25 for failure to pay taxes when due under RCW 48.14.060. The  
26 ~~((regulatory))~~ surcharges required by this section ~~((is))~~ are in  
27 addition to all other taxes and fees now imposed or that may be  
28 subsequently imposed.

29 (5) (a) All moneys collected for the regulatory surcharge must be  
30 deposited in the insurance commissioner's regulatory account in the  
31 state treasury which is hereby created.

32 (b) All moneys collected for the insurance fraud surcharge must  
33 be deposited in the insurance commissioner's fraud account in the  
34 state treasury which is hereby created.

35 (6) Unexpended funds in the insurance commissioner's regulatory  
36 account and the insurance commissioner's insurance fraud account at  
37 the close of a fiscal year are carried forward ~~((in the insurance~~  
38 ~~commissioner's regulatory account))~~ to the succeeding fiscal year and  
39 are used to reduce future regulatory and insurance fraud surcharges.

1 (7) (a) Each insurer may annually collect regulatory and insurance  
2 fraud surcharges remitted in preceding years by means of a  
3 policyholder surcharge on premiums charged for all kinds of  
4 insurance. The recoupment is at a uniform rate reasonably calculated  
5 to collect the regulatory and insurance fraud surcharges remitted by  
6 the insurer.

7 (b) If an insurer fails to collect the entire amount of the  
8 recoupment in the first year under this section, it may repeat the  
9 recoupment procedure provided for in this subsection (7) in  
10 succeeding years until the regulatory and insurance fraud surcharges  
11 (~~is~~) are fully collected or a de minimis amount remains  
12 uncollected. Any such de minimis amount may be collected as provided  
13 in (d) of this subsection.

14 (c) The amount and nature of any recoupment must be separately  
15 stated on either a billing or policy declaration sent to an insured.  
16 The amount of the recoupment must not be considered a premium for any  
17 purpose, including the premium tax or agents' commissions.

18 (d) An insurer may elect not to collect the regulatory and  
19 insurance fraud surcharges from its insured. In such a case, the  
20 insurer may recoup the regulatory and insurance fraud surcharges  
21 through its rates, if the following requirements are met:

22 (i) The insurer remits the amount of the surcharges not collected  
23 by election under this subsection; and

24 (ii) The surcharges (~~is~~) are not considered a premium for any  
25 purpose, including the premium tax or agents' commission.

26 **Sec. 2.** RCW 48.14.040 and 2008 c 217 s 7 are each amended to  
27 read as follows:

28 (1) If pursuant to the laws of any other state or country, any  
29 taxes, licenses, fees, deposits, or other obligations or  
30 prohibitions, in the aggregate, or additional to or at a net rate in  
31 excess of any such taxes, licenses, fees, deposits or other  
32 obligations or prohibitions imposed by the laws of this state upon  
33 like foreign or alien insurers and their appointed insurance  
34 producers or title insurance agents, are imposed on insurers of this  
35 state and their appointed insurance producers or title insurance  
36 agents doing business in such other state or country, a like rate,  
37 obligation or prohibition may be imposed by the commissioner, as to  
38 any item or combination of items involved, upon all insurers of such  
39 other state or country and their appointed insurance producers or

1 title insurance agents doing business in this state, so long as such  
2 laws remain in force or are so applied.

3 (2) For the purposes of this section, an alien insurer may be  
4 deemed to be domiciled in the state wherein it has established its  
5 principal office or agency in the United States. If no such office or  
6 agency has been established, the domicile of the alien insurer shall  
7 be deemed to be the country under the laws of which it is formed.

8 (3) For the purposes of this section, the regulatory and  
9 insurance fraud surcharges imposed by RCW 48.02.190 shall not be  
10 included in the calculation of any retaliatory taxes, licenses, fees,  
11 deposits, or other obligations or prohibitions imposed under this  
12 section.

13 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
14 preservation of the public peace, health, or safety, or support of  
15 the state government and its existing public institutions, and takes  
16 effect July 1, 2019.

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