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SENATE BILL 6049

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State of Washington

66th Legislature

2020 Regular Session

By Senators Llias and Das; by request of Insurance Commissioner

Prefiled 12/05/19.

1       AN    ACT    Relating   to   funding   the   commissioner's   criminal  
2   investigation   unit   by   creating   the   insurance   commissioner's   fraud  
3   account;   amending   RCW   48.02.190   and   48.14.040;   creating   a   new  
4   section;   and   providing   an   effective   date.

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

6       NEW SECTION.   **Sec. 1.**   The legislature finds that insurance fraud  
7   is not a victimless crime. The national insurance crime bureau has  
8   recognized as much as seven hundred dollars per year may be added to  
9   the average Washington household's insurance premium costs due to  
10   fraudulent insurance claims. For the 2017-2019 biennium, the  
11   insurance commissioner's insurance fraud program, known as its  
12   criminal investigations unit, reviewed over four thousand five  
13   hundred referrals from over one hundred fifty companies. The  
14   adjudicated cases from this review resulted in almost two million  
15   dollars of restitution and projected insurance claim savings.

16       The legislature finds it is critical to continue protecting  
17   Washington state insurance consumers from the cost of insurance fraud  
18   by funding the insurance fraud program through an insurance fraud  
19   surcharge and creating the insurance commissioner's fraud account to  
20   better manage the accountability of the funds.

1       **Sec. 2.** RCW 48.02.190 and 2011 c 47 s 3 are each amended to read  
2 as follows:

3       (1) As used in this section:

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

6       (b) "Organization" means every insurer, as defined in RCW  
7 48.01.050, having a certificate of authority to do business in this  
8 state, every health care service contractor, as defined in RCW  
9 48.44.010, every health maintenance organization, as defined in RCW  
10 48.46.020, or self-funded multiple employer welfare arrangement, as  
11 defined in RCW 48.125.010, registered to do business in this state.  
12 "Class one" organizations consist of all insurers as defined in RCW  
13 48.01.050. "Class two" organizations consist of all organizations  
14 registered under provisions of chapters 48.44 and 48.46 RCW. "Class  
15 three" organizations consist of self-funded multiple employer welfare  
16 arrangements as defined in RCW 48.125.010.

17       ~~((b))~~ (c)(i) "Receipts" means (A) net direct premiums  
18 consisting of direct gross premiums, as defined in RCW 48.18.170,  
19 paid for insurance written or renewed upon risks or property  
20 resident, situated, or to be performed in this state, less return  
21 premiums and premiums on policies not taken, dividends paid or  
22 credited to policyholders on direct business, and premiums received  
23 from policies or contracts issued in connection with qualified plans  
24 as defined in RCW 48.14.021, and (B) prepayments to health care  
25 service contractors, as defined in RCW 48.44.010, health maintenance  
26 organizations, as defined in RCW 48.46.020, or participant  
27 contributions to self-funded multiple employer welfare arrangements,  
28 as defined in RCW 48.125.010, less experience rating credits,  
29 dividends, prepayments returned to subscribers, and payments for  
30 contracts not taken.

31       (ii) Participant contributions, under chapter 48.125 RCW, used to  
32 determine the receipts in this state under this section are  
33 determined in the same manner as premiums taxable in this state are  
34 determined under RCW 48.14.090.

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

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

39       (a) A pro rata share of the cost, except for the cost of the  
40 insurance fraud program, is charged to all organizations as a

1 regulatory surcharge. Each class of organization must contribute a  
2 sufficient amount to the insurance commissioner's regulatory account  
3 to pay the reasonable costs, including overhead, of regulating that  
4 class of organization.

5 (b) The annual cost of operating the insurance fraud program is  
6 charged to all organizations as an insurance fraud surcharge. Each  
7 class of organization must contribute a sufficient amount to the  
8 insurance commissioner's fraud account to pay the reasonable costs of  
9 the program, including overhead.

10 (3)(a) The regulatory surcharge is calculated separately for each  
11 class of organization. The regulatory surcharge collected from each  
12 organization is that portion of the cost of operating the insurance  
13 commissioner's office, except for the cost of operating the insurance  
14 fraud program, for that class of organization, for the ensuing fiscal  
15 year that is represented by the organization's portion of the  
16 receipts collected or received by all organizations within that class  
17 on business in this state during the previous calendar year. However,  
18 the regulatory surcharge must not exceed one-eighth of one percent of  
19 receipts and the minimum regulatory surcharge is one thousand  
20 dollars.

21 (b) The insurance fraud surcharge collected from each  
22 organization is the cost of operating the insurance fraud program for  
23 the ensuing fiscal year that is represented by the organization's  
24 portion of the receipts collected or received on business in this  
25 state during the previous calendar year. However, the insurance fraud  
26 surcharge may not exceed one one-hundredths of one percent of  
27 receipts and the minimum insurance fraud surcharge is one hundred  
28 dollars.

29 (4) The commissioner must annually, on or before July 1st,  
30 calculate and bill each organization for the amount of the regulatory  
31 and insurance fraud surcharges. The ~~((regulatory))~~ surcharges ~~((is))~~  
32 are due and payable no later than July 15th of each year. However, if  
33 the necessary financial records are not available or if the amount of  
34 the legislative appropriation is not determined in time to carry out  
35 such calculations and bill ~~((such regulatory))~~ the surcharges within  
36 the time specified, the commissioner may use the ~~((regulatory))~~  
37 surcharge factors for the prior year as the basis for the  
38 ~~((regulatory))~~ surcharges and, if necessary, the commissioner may  
39 impose supplemental fees to fully and properly charge the  
40 organizations. Any organization failing to pay the ~~((regulatory))~~

1 surcharges by July 31st must pay the same penalties as the penalties  
2 for failure to pay taxes when due under RCW 48.14.060. The  
3 (~~regulatory~~) surcharges required by this section (~~is~~) are in  
4 addition to all other taxes and fees now imposed or that may be  
5 subsequently imposed.

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

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

12 (6) Unexpended funds in the insurance commissioner's regulatory  
13 and fraud accounts at the close of a fiscal year are carried forward  
14 (~~in the insurance commissioner's regulatory account~~) to the  
15 succeeding fiscal year and are used to reduce future regulatory and  
16 insurance fraud surcharges.

17 (7) (a) Each insurer may annually collect regulatory and insurance  
18 fraud surcharges remitted in preceding years by means of a  
19 policyholder surcharge on premiums charged for all kinds of  
20 insurance. The recoupment is at a uniform rate reasonably calculated  
21 to collect the regulatory and insurance fraud surcharges remitted by  
22 the insurer.

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

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

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

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

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

3       **Sec. 3.** RCW 48.14.040 and 2008 c 217 s 7 are each amended to  
4 read as follows:

5       (1) If pursuant to the laws of any other state or country, any  
6 taxes, licenses, fees, deposits, or other obligations or  
7 prohibitions, in the aggregate, or additional to or at a net rate in  
8 excess of any such taxes, licenses, fees, deposits or other  
9 obligations or prohibitions imposed by the laws of this state upon  
10 like foreign or alien insurers and their appointed insurance  
11 producers or title insurance agents, are imposed on insurers of this  
12 state and their appointed insurance producers or title insurance  
13 agents doing business in such other state or country, a like rate,  
14 obligation or prohibition may be imposed by the commissioner, as to  
15 any item or combination of items involved, upon all insurers of such  
16 other state or country and their appointed insurance producers or  
17 title insurance agents doing business in this state, so long as such  
18 laws remain in force or are so applied.

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

24       (3) For the purposes of this section, the regulatory and  
25 insurance fraud surcharges imposed by RCW 48.02.190 shall not be  
26 included in the calculation of any retaliatory taxes, licenses, fees,  
27 deposits, or other obligations or prohibitions imposed under this  
28 section.

29       NEW SECTION. **Sec. 4.** This act takes effect July 1, 2020.

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