
HOUSE BILL 2297

State of Washington 60th Legislature 2007 Regular Session

By Representatives Roach, McDonald, Ross, Rodne, McCune, Dunn and
Clibborn

Read first time 02/19/2007. Referred to Committee on Insurance,
Financial Services & Consumer Protection.

1 AN ACT Relating to a regulatory surcharge under the insurance code;
2 and amending RCW 48.18.170, 48.18.180, 48.02.190, and 48.14.040.

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

4 **Sec. 1.** RCW 48.18.170 and 1947 c 79 s .18.17 are each amended to
5 read as follows:

6 "Premium" as used in this code means all sums charged, received, or
7 deposited as consideration for an insurance contract or the continuance
8 thereof. "Premium" does not include the regulatory surcharge imposed
9 by RCW 48.02.190. Except as otherwise provided, any assessment, or any
10 "membership," "policy," "survey," "inspection," "service" or similar
11 fee or charge made by the insurer in consideration for an insurance
12 contract is deemed part of the premium.

13 **Sec. 2.** RCW 48.18.180 and 1994 c 203 s 2 are each amended to read
14 as follows:

15 (1) The premium stated in the policy shall be inclusive of all
16 fees, charges, premiums, or other consideration charged for the
17 insurance or for the procurement thereof.

1 (2) No insurer or its officer, employee, agent, solicitor, or other
2 representative shall charge or receive any fee, compensation, or
3 consideration for insurance which is not included in the premium
4 specified in the policy.

5 (3) Each violation of this section is a gross misdemeanor.

6 (4) This section does not apply to a fee paid to a broker by an
7 insured as provided in RCW 48.17.270.

8 (5) This section does not apply to the regulatory surcharge imposed
9 by RCW 48.02.190.

10 **Sec. 3.** RCW 48.02.190 and 2004 c 260 s 22 are each amended to read
11 as follows:

12 (1) As used in this section:

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

22 (b)(i) "Receipts" means (A) net direct premiums consisting of
23 direct gross premiums, as defined in RCW 48.18.170, paid for insurance
24 written or renewed upon risks or property resident, situated, or to be
25 performed in this state, less return premiums and premiums on policies
26 not taken, dividends paid or credited to policyholders on direct
27 business, and premiums received from policies or contracts issued in
28 connection with qualified plans as defined in RCW 48.14.021, and (B)
29 prepayments to health care service contractors as set forth in RCW
30 48.44.010(3) or participant contributions to self-funded multiple
31 employer welfare arrangements as defined in RCW 48.125.010 less
32 experience rating credits, dividends, prepayments returned to
33 subscribers, and payments for contracts not taken.

34 (c) "Regulatory surcharge" means the fees imposed by this section.

35 (ii) Participant contributions, under chapter 48.125 RCW, used to
36 determine the receipts in this state under this section shall be

1 determined in the same manner as premiums taxable in this state are
2 determined under RCW 48.14.090.

3 (2) The annual cost of operating the office of insurance
4 commissioner shall be determined by legislative appropriation. A pro
5 rata share of the cost shall be charged to all organizations as a
6 regulatory surcharge. Each class of organization shall contribute a
7 sufficient ~~((in—fees))~~ amount to the insurance commissioner's
8 regulatory account to pay the reasonable costs, including overhead, of
9 regulating that class of organization.

10 (3) ~~((Fees—charged))~~ The regulatory surcharge shall be calculated
11 separately for each class of organization. The ~~((fee—charged))~~
12 regulatory surcharge collected from each organization shall be that
13 portion of the cost of operating the insurance commissioner's office,
14 for that class of organization, for the ensuing fiscal year that is
15 represented by the organization's portion of the receipts collected or
16 received by all organizations within that class on business in this
17 state during the previous calendar year: PROVIDED, That the ~~((fee))~~
18 regulatory surcharge shall not exceed one-eighth of one percent of
19 receipts: PROVIDED FURTHER, That the minimum ~~((fee))~~ regulatory
20 surcharge shall be one thousand dollars.

21 (4) The regulatory surcharge shall not be included in any
22 retaliatory calculations pursuant to RCW 48.14.040.

23 (5) The commissioner shall annually, on or before June 1, calculate
24 and bill each organization for the amount of ~~((its—fee))~~ the regulatory
25 surcharge. ~~((Fees))~~ The regulatory surcharge shall be due and payable
26 no later than June 15 of each year: PROVIDED, That if the necessary
27 financial records are not available or if the amount of the legislative
28 appropriation is not determined in time to carry out such calculations
29 and bill such fees within the time specified, the commissioner may use
30 the ~~((fee))~~ regulatory surcharge factors for the prior year as the
31 basis for the ~~((fees))~~ regulatory surcharge and, if necessary, the
32 commissioner may impose supplemental fees to fully and properly charge
33 the organizations. The penalties for failure to pay ~~((fees))~~ the
34 regulatory surcharge when due shall be the same as the penalties for
35 failure to pay taxes pursuant to RCW 48.14.060. The ~~((fees))~~
36 regulatory surcharge required by this section ~~((are))~~ is in addition to
37 all other taxes and fees now imposed or that may be subsequently
38 imposed.

1 ~~((+5))~~ (6) All moneys collected shall be deposited in the
2 insurance commissioner's regulatory account in the state treasury which
3 is hereby created.

4 ~~((+6))~~ (7) Unexpended funds in the insurance commissioner's
5 regulatory account at the close of a fiscal year shall be carried
6 forward in the insurance commissioner's regulatory account to the
7 succeeding fiscal year and shall be used to reduce future ~~((fees))~~
8 regulatory surcharges. During the 2003-2005 fiscal biennium, the
9 legislature may transfer from the insurance commissioner's regulatory
10 account to the state general fund such amounts as reflect excess fund
11 balance in the account.

12 (8)(a) Each insurer may annually collect the regulatory surcharge
13 remitted in preceding years by recouping the amount from policyholders
14 of all kinds of insurance. The recoupment shall be at a uniform rate
15 reasonably calculated to collect the regulatory surcharge remitted by
16 the insurer.

17 (b) If an insurer fails to collect the entire amount of the
18 recoupment in the first year under this section, it may repeat the
19 recoupment procedure provided in this section in succeeding years until
20 the regulatory surcharge is fully collected or a de minimis amount
21 remains uncollected. Any such de minimis amount may be collected as
22 provided in this subsection.

23 (c)(i) The amount and nature of any recoupment shall be separately
24 stated on either a billing or policy declaration sent to an insured.

25 (ii) The amount of the recoupment shall not be considered premium
26 for any purpose, including the premium tax or agents' commissions.

27 (d) An insurer may elect not to recoup the regulatory surcharge
28 from its insured when, for example, the expense of recouping the
29 regulatory surcharge would exceed the amount to be recouped. In such
30 case, the insurer may recoup the regulatory surcharge through its
31 rates. However, the insurer shall be obligated to remit the amount not
32 recouped by election under this subsection and (c)(ii) of this
33 subsection does not apply.

34 **Sec. 4.** RCW 48.14.040 and 1988 c 248 s 8 are each amended to read
35 as follows:

36 (1) If pursuant to the laws of any other state or country, any
37 taxes, licenses, fees, deposits, or other obligations or prohibitions,

1 in the aggregate, or additional to or at a net rate in excess of any
2 such taxes, licenses, fees, deposits or other obligations or
3 prohibitions imposed by the laws of this state upon like foreign or
4 alien insurers and their agents and solicitors, are imposed on insurers
5 of this state and their agents doing business in such other state or
6 country, a like rate, obligation or prohibition may be imposed by the
7 commissioner, as to any item or combination of items involved, upon all
8 insurers of such other state or country and their agents doing business
9 in this state, so long as such laws remain in force or are so applied.

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

15 (3) For the purposes of this section, the regulatory surcharge
16 imposed by RCW 48.02.190 shall not be included in the calculation of
17 any retaliatory taxes, licenses, fees, deposits, or other obligations
18 or prohibitions imposed under this section.

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