

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5919

60th Legislature
2007 Regular Session

Passed by the Senate March 8, 2007
YEAS 49 NAYS 0

President of the Senate

Passed by the House April 6, 2007
YEAS 77 NAYS 20

Speaker of the House of Representatives

Approved

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 5919** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5919

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By Senate Committee on Financial Institutions & Insurance (originally sponsored by Senators Hobbs, Benton, Berkey, Schoesler, Hatfield, Roach and Shin)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to retaliatory tax relief on insurance premium
2 taxes; 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 a regulatory surcharge imposed by
9 RCW 48.02.190, except as otherwise provided in this section. Any
10 assessment, or any "membership," "policy," "survey," "inspection,"
11 "service" or similar fee or charge made by the insurer in consideration
12 for an insurance 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:

7 (a) A fee paid to a broker by an insured as provided in RCW
8 48.17.270; or

9 (b) A regulatory surcharge imposed 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 (ii) Participant contributions, under chapter 48.125 RCW, used to
35 determine the receipts in this state under this section shall be
36 determined in the same manner as premiums taxable in this state are
37 determined under RCW 48.14.090.

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

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

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

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

36 (5) All moneys collected shall be deposited in the insurance
37 commissioner's regulatory account in the state treasury which is hereby
38 created.

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

8 (7)(a) Each insurer may annually collect regulatory surcharges
9 remitted in preceding years by means of a policyholder surcharge on
10 premiums charged for all kinds of insurance. The recoupment shall be
11 at a uniform rate reasonably calculated to collect the regulatory
12 surcharge remitted by the insurer.

13 (b) If an insurer fails to collect the entire amount of the
14 recoupment in the first year under this section, it may repeat the
15 recoupment procedure provided for in this subsection (7) in succeeding
16 years until the regulatory surcharge is fully collected or a de minimis
17 amount remains uncollected. Any such de minimis amount may be
18 collected as provided in (d) of this subsection.

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

23 (d) An insurer may elect not to collect the regulatory surcharge
24 from its insured. In such a case, the insurer may recoup the
25 regulatory surcharge through its rates, if the following requirements
26 are met:

27 (i) The insurer remits the amount of surcharge not collected by
28 election under this subsection; and

29 (ii) The surcharge is not considered a premium for any purpose,
30 including the premium tax or agents' commission.

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

33 (1) If pursuant to the laws of any other state or country, any
34 taxes, licenses, fees, deposits, or other obligations or prohibitions,
35 in the aggregate, or additional to or at a net rate in excess of any
36 such taxes, licenses, fees, deposits or other obligations or
37 prohibitions imposed by the laws of this state upon like foreign or

1 alien insurers and their agents and solicitors, are imposed on insurers
2 of this state and their agents doing business in such other state or
3 country, a like rate, obligation or prohibition may be imposed by the
4 commissioner, as to any item or combination of items involved, upon all
5 insurers of such other state or country and their agents doing business
6 in this state, so long as such laws remain in force or are so applied.

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

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

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