

# HOUSE BILL REPORT

## HB 1769

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### As Reported By House Committee On:

Finance

**Title:** An act relating to taxation of insurance agents, brokers, and solicitors.

**Brief Description:** Lowering business and occupation tax for insurance business.

**Sponsors:** Representatives Mielke, Morris, Campbell, Appelwick, Benton, Kremen, Fuhrman, Mulliken, G. Fisher, Basich, Brumsickle, Van Luven, Skinner, Grant, Boldt, Hymes, Carrell, Chandler, Beeksmas, L. Thomas, Foreman, McMahan, Schoesler, Blanton and Thompson.

### Brief History:

#### Committee Activity:

Finance: 2/28/95, 3/6/95 [DPS].

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### HOUSE COMMITTEE ON FINANCE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives B. Thomas, Chairman; Boldt, Vice Chairman; Carrell, Vice Chairman; Morris, Ranking Minority Member; Hymes; Mulliken; Pennington; Schoesler; Sheldon and Van Luven.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Dickerson, Ranking Minority Member; and Mason.

**Staff:** Bob Longman (786-7139).

**Background:** Washington's major business tax is the business and occupation (B&O) tax. Although there are several different rates, the principal rates are:

Manufacturing, wholesaling, & extracting	0.506%
Retailing	0.471%
Services:	
- Business Services	2.5%
- Financial Services	1.7%
- Other Activities	2.09%

For certain activities special B&O rates apply. Insurance agents, brokers, and solicitors have a permanent rate of 1.1 percent. In 1993, a surtax of 6.5 percent was imposed on all B&O tax classifications except selected business services, financial services, retailing, and public and nonprofit hospitals. The surtax was lowered to 4.5 percent on January 1, 1995. The surtax expires July 1, 1997. The surtax is calculated by multiplying each permanent rate to which it applies by 1.045. For example, the 1.1 percent rate for insurance agents becomes 1.15 percent during the time the 4.5 percent surtax is in effect.

The B&O tax does not apply to income received by employees. However, it is sometimes difficult to determine whether someone is an employee or independent contractor. The difficulties associated with determining whether life insurance agents are employees led to the adoption of legislation in 1991. That law defines life insurance salespersons as employees if they are treated as a "statutory" employees under certain federal employment taxes. Employers of these "statutory" employees must withhold social security and medicare taxes but are not required to withhold federal income tax or pay unemployment taxes. These statutory employees do not pay B&O taxes.

The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. Thus, the tax pyramids at each level of activity. For example, retailers are not allowed to deduct amounts paid to wholesalers; and contractors are not allowed to deduct amounts paid to a subcontractor. The portion of commissions for selling insurance that are shared with another insurance agent are also taxed twice. An exception to this rule is allowed for real estate brokers who may deduct commissions paid to another brokerage

**Summary of Substitute Bill:** The B&O tax rate for insurance agents, brokers, and solicitors is reduced from 1.15 percent to 0.57 percent. This rate is made up of a permanent rate of 0.55 percent plus the 4.5 percent surtax which expires July 1, 1997. In addition, insurance agents, brokers, and solicitors may deduct portions of commissions paid to other insurance agents, brokers, and solicitors before paying B&O tax.

**Substitute Bill Compared to Original Bill:** The substitute bill clarifies the deduction for commissions split with another insurance agent.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect on July 1, 1995.

**Testimony For:** The Insurance Commissioner's Office sets our contract rate. When taxes are raised after a contract has already been processed, there is no way for this industry to pass the cost of the tax onto the consumer. This is the only industry in the State of Washington that isn't able to pass on the cost of the tax. The B&O tax is a double tax since it must be paid by both the agent and the broker.

**Testimony Against:** None.

**Testified:** Clark Sitzes, Larry Turnow. Independent Insurance Agents of Washington; Fred Rapp, Professional Insurance Agents of Washington; Steve Wehrly, Insurance Brokers; Barbara Cox, Washington State Association of Life Underwriters; John Tee, State Farm Insurance; and Mike Kapphan, Farmers Insurance.