

RCW 48.02.190 Operating costs of office—Insurance commissioner's regulatory account—Insurance commissioner's fraud account—Regulatory and insurance fraud surcharges. (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The surcharges are not considered a premium for any purpose, including the premium tax or agents' commission. [2020 c 195 § 2; 2011 c 47 § 3; 2009 c 161 § 1; 2008 c 328 § 6003. Prior: 2007 c 468 § 1; 2007 c 153 § 3; 2004 c 260 § 22; 2003 1st sp.s. c 25 § 923; 2002 c 371 § 913; 1987 c 505 § 54; 1986 c 296 § 7.]

Findings—2020 c 195: "The legislature finds that insurance fraud is not a victimless crime. The national insurance crime bureau has recognized as much as seven hundred dollars per year may be added to the average Washington household's insurance premium costs due to fraudulent insurance claims. For the 2017-2019 biennium, the insurance commissioner's insurance fraud program, known as its criminal investigations unit, reviewed over four thousand five hundred referrals from over one hundred fifty companies. The adjudicated cases from this review resulted in almost two million dollars of restitution and projected insurance claim savings.

The legislature finds it is critical to continue protecting Washington state insurance consumers from the cost of insurance fraud by funding the insurance fraud program through an insurance fraud surcharge and creating the insurance commissioner's fraud account to better manage the accountability of the funds." [2020 c 195 § 1.]

Effective date—2020 c 195: "This act takes effect July 1, 2020." [2020 c 195 § 4.]

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

Effective date—2004 c 260: See RCW 48.125.901.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.