
SENATE BILL 5670

State of Washington

61st Legislature

2009 Regular Session

By Senator Berkey; by request of Insurance Commissioner

Read first time 01/28/09. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to insurance; and amending RCW 48.02.190,
2 48.13.450, 48.14.020, 48.14.090, and 48.66.045.

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

4 **Sec. 1.** RCW 48.02.190 and 2008 c 328 s 6003 are each amended to
5 read as follows:

6 (1) As used in this section:

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

18 (b)(i) "Receipts" means (A) net direct premiums consisting of
19 direct gross premiums, as defined in RCW 48.18.170, paid for insurance

1 written or renewed upon risks or property resident, situated, or to be
2 performed in this state, less return premiums and premiums on policies
3 not taken, dividends paid or credited to policyholders on direct
4 business, and premiums received from policies or contracts issued in
5 connection with qualified plans as defined in RCW 48.14.021, and (B)
6 prepayments to health care service contractors, as defined in RCW
7 48.44.010, health maintenance organizations, as defined in RCW
8 48.46.020, or participant contributions to self-funded multiple
9 employer welfare arrangements, as defined in RCW 48.125.010, less
10 experience rating credits, dividends, prepayments returned to
11 subscribers, and payments for contracts not taken.

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

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

17 (2) The annual cost of operating the office of insurance
18 commissioner shall be determined by legislative appropriation. A pro
19 rata share of the cost shall be charged to all organizations as a
20 regulatory surcharge. Each class of organization shall contribute a
21 sufficient amount to the insurance commissioner's regulatory account to
22 pay the reasonable costs, including overhead, of regulating that class
23 of organization.

24 (3) The regulatory surcharge shall be calculated separately for
25 each class of organization. The regulatory surcharge collected from
26 each organization shall be that portion of the cost of operating the
27 insurance commissioner's office, for that class of organization, for
28 the ensuing fiscal year that is represented by the organization's
29 portion of the receipts collected or received by all organizations
30 within that class on business in this state during the previous
31 calendar year. However, the regulatory surcharge must not exceed one-
32 eighth of one percent of receipts and the minimum regulatory surcharge
33 shall be one thousand dollars.

34 (4) The commissioner shall annually, on or before June 1st,
35 calculate and bill each organization for the amount of the regulatory
36 surcharge. The regulatory surcharge shall be due and payable no later
37 than June 15th of each year. However, if the necessary financial
38 records are not available or if the amount of the legislative

1 appropriation is not determined in time to carry out such calculations
2 and bill such regulatory surcharge within the time specified, the
3 commissioner may use the regulatory surcharge factors for the prior
4 year as the basis for the regulatory surcharge and, if necessary, the
5 commissioner may impose supplemental fees to fully and properly charge
6 the organizations. Any organization failing to pay the regulatory
7 surcharges by June 30th shall pay the same penalties as the penalties
8 for failure to pay taxes when due under RCW 48.14.060. The regulatory
9 surcharge required by this section is in addition to all other taxes
10 and fees now imposed or that may be subsequently imposed.

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

14 (6) Unexpended funds in the insurance commissioner's regulatory
15 account at the close of a fiscal year shall be carried forward in the
16 insurance commissioner's regulatory account to the succeeding fiscal
17 year and shall be used to reduce future regulatory surcharges.
18 (~~During the 2007-2009 fiscal biennium, the legislature may transfer~~
19 ~~from the insurance commissioner's regulatory account to the Washington~~
20 ~~state heritage center account such amounts as reflect excess fund~~
21 ~~balance in the account.))~~

22 (7)(a) Each insurer may annually collect regulatory surcharges
23 remitted in preceding years by means of a policyholder surcharge on
24 premiums charged for all kinds of insurance. The recoupment shall be
25 at a uniform rate reasonably calculated to collect the regulatory
26 surcharge remitted by the insurer.

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

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

37 (d) An insurer may elect not to collect the regulatory surcharge

1 from its insured. In such a case, the insurer may recoup the
2 regulatory surcharge through its rates, if the following requirements
3 are met:

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

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

8 **Sec. 2.** RCW 48.13.450 and 2008 c 234 s 1 are each amended to read
9 as follows:

10 The definitions in this section apply throughout RCW 48.13.450
11 through 48.13.475 unless the context clearly requires otherwise.

12 (1) "Agent" means a national bank, state bank, trust company, or
13 broker/dealer that maintains an account in its name in a clearing
14 corporation or that is a member of the federal reserve system and
15 through which a custodian participates in a clearing corporation,
16 including the treasury/reserve automated debt entry securities system
17 (TRADES) or treasury direct systems; except that with respect to
18 securities issued by institutions organized or existing under the laws
19 of a foreign country or securities used to meet the deposit
20 requirements pursuant to laws of a foreign country as a condition of
21 doing business therein, "agent" may include a corporation that is
22 organized or existing under the laws of a foreign country and that is
23 legally qualified under those laws to accept custody of securities.

24 (2) "Broker/dealer" means a broker or dealer as defined in RCW
25 62A.8-102(1)(c), that is registered with and subject to the
26 jurisdiction of the securities and exchange commission, maintains
27 membership in the securities investor protection corporation, and has
28 a tangible net worth equal to or greater than two hundred fifty million
29 dollars.

30 (3) "Clearing corporation" means a corporation as defined in RCW
31 62A.8-102(1)(e) that is organized for the purpose of effecting
32 transactions in securities by computerized book-entry, except that with
33 respect to securities issued by institutions organized or existing
34 under the laws of any foreign country or securities used to meet the
35 deposit requirements pursuant to the laws of a foreign country as a
36 condition of doing business therein, "clearing corporation" may include
37 a corporation that is organized or existing under the laws of any

1 foreign country and is legally qualified under such laws to effect
2 transactions in securities by computerized book-entry. "Clearing
3 corporation" also includes treasury/reserve automated debt entry
4 securities system and treasury direct book-entry securities systems
5 established pursuant to 31 U.S.C. Sec. 3100 et seq., 12 U.S.C. pt. 391,
6 and 5 U.S.C. pt. 301.

7 (4) "Commissioner" means the insurance commissioner of the state of
8 Washington.

9 (5) "Custodian" means:

10 (a) A national bank, state bank, or trust company that shall, at
11 all times acting as a custodian, be no less than adequately capitalized
12 as determined by the standards adopted by United States banking
13 regulators and that is regulated by either state banking laws or is a
14 member of the federal reserve system and that is legally qualified to
15 accept custody of securities; except that with respect to securities
16 issued by institutions organized or existing under the laws of a
17 foreign country, or securities used to meet the deposit requirements
18 pursuant to laws of a foreign country as a condition of doing business
19 therein, "custodian" may include a bank or trust company incorporated
20 or organized under the laws of a country other than the United States
21 that is regulated as such by that country's government or an agency
22 thereof that shall at all times acting as a custodian be no less than
23 adequately capitalized as determined by the standards adopted by the
24 international banking authorities and legally qualified to accept
25 custody of securities; or

26 (b) A broker/dealer.

27 (6) "Custodied securities" means securities held by the custodian
28 or its agent or in a clearing corporation, including the
29 treasury/reserve automated debt (~~equity~~) entry securities system
30 (TRADES) or treasury direct systems.

31 (7) "Securities" means instruments as defined in RCW 62A.8-
32 102(1)(o).

33 (8) "Securities certificate" has the same meaning as in RCW
34 62A.8-102(1)(d).

35 (9) "Tangible net worth" means shareholders equity, less intangible
36 assets, as reported in the broker/dealer's most recent annual or
37 transition report pursuant to section 13 or 15(d) of the securities

1 exchange act of 1934 (S.E.C. Form 10-K) filed with the securities and
2 exchange commission.

3 (10) "Treasury/reserve automated debt entry securities system"
4 ("TRADES") and "treasury direct" mean book-entry securities systems
5 established pursuant to 31 U.S.C. Sec. 3100 et seq., 12 U.S.C. pt. 391,
6 and 5 U.S.C. pt. 301, with the operation of TRADES and treasury direct
7 subject to 31 C.F.R. pt. 357 et seq.

8 **Sec. 3.** RCW 48.14.020 and 2008 c 217 s 6 are each amended to read
9 as follows:

10 (1) Subject to other provisions of this chapter, each authorized
11 insurer except title insurers shall on or before the first day of March
12 of each year pay to the state treasurer through the commissioner's
13 office a tax on premiums. Except as provided in subsection (2) of this
14 section, such tax shall be in the amount of two percent of all
15 premiums, excluding amounts returned to or the amount of reductions in
16 premiums allowed to holders of industrial life policies for payment of
17 premiums directly to an office of the insurer, collected or received by
18 the insurer under RCW 48.14.090 during the preceding calendar year
19 other than ocean marine and foreign trade insurances, after deducting
20 premiums paid to policyholders as returned premiums, upon risks or
21 property resident, situated, or to be performed in this state. For tax
22 purposes, the reporting of premiums shall be on a written basis or on
23 a paid-for basis consistent with the basis required by the annual
24 statement. For the purposes of this section the consideration received
25 by an insurer for the granting of an annuity shall not be deemed to be
26 a premium.

27 (2) In the case of insurers which require the payment by their
28 policyholders at the inception of their policies of the entire premium
29 thereon in the form of premiums or premium deposits which are the same
30 in amount, based on the character of the risks, regardless of the
31 length of term for which such policies are written, such tax shall be
32 in the amount of two percent of the gross amount of such premiums and
33 premium deposits upon policies on risks resident, located, or to be
34 performed in this state, in force as of the thirty-first day of
35 December next preceding, less the unused or unabsorbed portion of such
36 premiums and premium deposits computed at the average rate thereof

1 actually paid or credited to policyholders or applied in part payment
2 of any renewal premiums or premium deposits on one-year policies
3 expiring during such year.

4 (3) Each authorized insurer shall with respect to all ocean marine
5 and foreign trade insurance contracts written within this state during
6 the preceding calendar year, on or before the first day of March of
7 each year pay to the state treasurer through the commissioner's office
8 a tax of ninety-five one-hundredths of one percent on its gross
9 underwriting profit. Such gross underwriting profit shall be
10 ascertained by deducting from the net premiums (i.e., gross premiums
11 less all return premiums and premiums for reinsurance) on such ocean
12 marine and foreign trade insurance contracts the net losses paid (i.e.,
13 gross losses paid less salvage and recoveries on reinsurance ceded)
14 during such calendar year under such contracts. In the case of
15 insurers issuing participating contracts, such gross underwriting
16 profit shall not include, for computation of the tax prescribed by this
17 subsection, the amounts refunded, or paid as participation dividends,
18 by such insurers to the holders of such contracts.

19 (4) The state does hereby preempt the field of imposing excise or
20 privilege taxes upon insurers or their appointed insurance producers,
21 other than title insurers, and no county, city, town or other municipal
22 subdivision shall have the right to impose any such taxes upon such
23 insurers or these insurance producers.

24 (5) If an authorized insurer collects or receives any such premiums
25 on account of policies in force in this state which were originally
26 issued by another insurer and which other insurer is not authorized to
27 transact insurance in this state on its own account, such collecting
28 insurer shall be liable for and shall pay the tax on such premiums.

29 **Sec. 4.** RCW 48.14.090 and 1963 c 195 s 14 are each amended to read
30 as follows:

31 In determining the amount of direct premium taxable in this state,
32 all such premiums written, procured, or received in this state shall be
33 deemed written upon risks or property resident, situated, or to be
34 performed in this state except such premiums as are properly allocated
35 or apportioned and reported as taxable premiums of any other state or
36 states. For tax purposes, the reporting of premiums shall be on a

1 written basis or on a paid-for basis consistent with the basis required
2 by the annual statement.

3 **Sec. 5.** RCW 48.66.045 and 2005 c 41 s 4 are each amended to read
4 as follows:

5 (1) Every issuer of a medicare supplement insurance policy or
6 certificate providing coverage to a resident of this state issued on or
7 after January 1, 1996, and before June 1, 2010, shall:

8 ~~((1))~~ (a) Unless otherwise provided for in RCW 48.66.055, issue
9 coverage under its standardized benefit plans B, C, D, E, F, G, K, and
10 L without evidence of insurability to any resident of this state who is
11 eligible for both medicare hospital and physician services by reason of
12 age or by reason of disability or end-stage renal disease, if the
13 medicare supplement policy replaces another medicare supplement
14 standardized benefit plan policy or certificate B, C, D, E, F, G, K, or
15 L, or other more comprehensive coverage than the replacing policy; and

16 ~~((2))~~ (b) Unless otherwise provided for in RCW 48.66.055, issue
17 coverage under its standardized plans A, H, I, and J without evidence
18 of insurability to any resident of this state who is eligible for both
19 medicare hospital and physician services by reason of age or by reason
20 of disability or end-stage renal disease, if the medicare supplement
21 policy replaces another medicare supplement policy or certificate which
22 is the same standardized plan as the replaced policy. After December
23 31, 2005, plans H, I, and J may be replaced only by the same plan if
24 that plan has been modified to remove outpatient prescription drug
25 coverage(~~+~~and)).

26 (2)(a) Unless otherwise provided for in RCW 48.66.055, every issuer
27 of a medicare supplement insurance policy or certificate providing
28 coverage to a resident of this state issued on or after June 1, 2010,
29 shall issue coverage under its standardized plans B, C, D, E, F with
30 high deductible, G, K, L, M, or N without evidence of insurability to
31 any resident of this state who is eligible for both medicare hospital
32 and physician services by reason of age or by reason of disability or
33 end-stage renal disease, if the medicare supplement policy or
34 certificate replaces another medicare supplement policy or certificate
35 or other more comprehensive coverage; and

36 (b) Unless otherwise provided for in RCW 48.66.055, issue coverage
37 under its standardized plan A without evidence of insurability to any

1 resident of this state who is eligible for both medicare hospital and
2 physician services by reason of age or by reason of disability or end-
3 stage renal disease, if the medicare supplement policy or certificate
4 replaces another standardized plan A medicare supplement policy or
5 certificate.

6 (3) Every issuer of a medicare supplement insurance policy or
7 certificate providing coverage to a resident of this state issued on or
8 after January 1, 1996, shall set rates only on a community-rated basis.
9 Premiums shall be equal for all policyholders and certificate holders
10 under a standardized medicare supplement benefit plan form, except that
11 an issuer may vary premiums based on spousal discounts, frequency of
12 payment, and method of payment including automatic deposit of premiums
13 and may develop no more than two rating pools that distinguish between
14 an insured's eligibility for medicare by reason of:

15 (a) Age; or

16 (b) Disability or end-stage renal disease.

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