
SENATE BILL 5408

State of Washington

66th Legislature

2019 Regular Session

By Senators Mullet, Das, and Liias; by request of Insurance
Commissioner

1 AN ACT Relating to the creation of the insurance fraud surcharge
2 account; amending RCW 48.02.190; providing an effective date; and
3 declaring an emergency.

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

5 **Sec. 1.** RCW 48.02.190 and 2011 c 47 s 3 are each amended to read
6 as follows:

7 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (6) Unexpended funds in the insurance commissioner's regulatory
36 account and the insurance commissioner's insurance fraud account at
37 the close of a fiscal year are carried forward ~~((in the insurance~~
38 ~~commissioner's regulatory account))~~ to the succeeding fiscal year and
39 are used to reduce future regulatory and insurance fraud surcharges.

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

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

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

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

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

24 (ii) The surcharges (~~is~~) are not considered a premium for any
25 purpose, including the premium tax or agents' commission.

26 NEW SECTION. **Sec. 2.** This act is necessary for the immediate
27 preservation of the public peace, health, or safety, or support of
28 the state government and its existing public institutions, and takes
29 effect July 1, 2019.

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