

CHAPTER 296

[Engrossed Senate Bill No. 3636]

INSURANCE—PREMIUM TAX—OFFICE OF INSURANCE COMMISSIONER
OPERATING COST, SHARE OF COST CHARGED TO INSURERS

AN ACT Relating to insurance; amending RCW 48.14.020, 48.14.025, 41.16.050, 41.24.030, 82.02.030, 48.44.145, and 48.46.120; adding a new section to chapter 48.02 RCW; creating new sections; repealing RCW 48.14.015; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section .14.02, chapter 79, Laws of 1947 as last amended by section 7, chapter 3, Laws of 1983 2nd ex. sess. and RCW 48.14.020 are each amended to read as follows:

(1) Subject to other provisions of this chapter, each authorized insurer except title insurers shall on or before the first day of March of each year pay to the state treasurer through the commissioner's office a tax on premiums. Except as provided in subsection (2) of this section, such tax shall be in the amount of two ~~((and sixteen one-hundredths))~~ percent of all premiums, excluding amounts returned to or the amount of reductions in premiums allowed to holders of industrial life policies for payment of premiums directly to an office of the insurer, collected or received by the insurer during the preceding calendar year ~~((in the case of foreign and alien insurers; and in the amount of one and sixteen one-hundredths percent of all such premiums in the case of domestic insurers, for direct insurances;))~~ other than ocean marine and foreign trade insurances, after deducting premiums paid to policyholders as returned premiums, upon risks or property resident, situated, or to be performed in this state. For the purposes of this section the consideration received by an insurer for the granting of an annuity shall not be deemed to be a premium.

(2) In the case of insurers which require the payment by their policyholders at the inception of their policies of the entire premium thereon in the form of premiums or premium deposits which are the same in amount, based on the character of the risks, regardless of the length of term for which such policies are written, such tax shall be in the amount of two ~~((and sixteen one-hundredths))~~ percent of the gross amount of such premiums and premium deposits upon policies on risks resident, located, or to be performed in this state, in force as of the thirty-first day of December next preceding, less the unused or unabsorbed portion of such premiums and premium deposits computed at the average rate thereof actually paid or credited to policyholders or applied in part payment of any renewal premiums or premium deposits on one-year policies expiring during such year.

(3) ~~((An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the taxes payable under subsections (1), (2), and~~

~~(4) of this section. All revenues from this additional tax shall be deposited in the state general fund:~~

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

~~((5))~~ (4) The state does hereby preempt the field of imposing excise or privilege taxes upon insurers or their agents, other than title insurers, and no county, city, town or other municipal subdivision shall have the right to impose any such taxes upon such insurers or their agents.

~~((6))~~ (5) If an authorized insurer collects or receives any such premiums on account of policies in force in this state which were originally issued by another insurer and which other insurer is not authorized to transact insurance in this state on its own account, such collecting insurer shall be liable for and shall pay the tax on such premiums.

~~((7) This section shall be effective as to and shall govern the payment of all taxes due for calendar year 1982 and thereafter:))~~

Sec. 2. Section 1, chapter 6, Laws of 1981 as amended by section 4, chapter 181, Laws of 1982 and RCW 48.14.025 are each amended to read as follows:

(1) Every insurer with a tax obligation under RCW 48.14.020 shall make prepayment of the tax obligations under RCW 48.14.020 for the current calendar year's business, if the sum of the tax obligations under RCW 48.14.020 for the preceding calendar year's business is four hundred dollars or more.

(2) The commissioner shall credit the prepayment toward the appropriate tax obligations of the insurer for the current calendar year under RCW 48.14.020.

(3) The minimum amounts of the prepayments shall be percentages of the insurer's preceding calendar year's tax obligation ~~((based on the preceding calendar year's business))~~ recomputed using the rate in effect for the current year and shall be paid to the state treasurer through the commissioner's office by the due dates and in the following amounts:

(a) On or before June 15, forty-five percent;

(b) On or before September 15, twenty-five percent; and

(c) On or before December 15, twenty-five percent.

For good cause demonstrated in writing, the commissioner may approve an amount smaller than the preceding calendar year's (~~(business-as-the-base)~~) tax obligation as recomputed for calculating the insurer's prepayment obligations.

(4) The effect of transferring policies of insurance from one insurer to another insurer is to transfer the tax prepayment obligation with respect to the policies.

(5) On or before June 1 of each year, the commissioner shall notify each insurer required to make prepayments in that year of the amount of each prepayment and shall provide remittance forms to be used by the insurer. However, an insurer's responsibility to make prepayments is not affected by failure of the commissioner to send, or the insurer to receive, the notice or forms.

Sec. 3. Section 5, chapter 91, Laws of 1947 as last amended by section 16, chapter 35, Laws of 1982 1st ex. sess. and RCW 41.16.050 are each amended to read as follows:

There is hereby created and established in the treasury of each municipality a fund which shall be known and designated as the firemen's pension fund, which shall consist of: (1) All bequests, fees, gifts, emoluments or donations given or paid thereto; (2) forty-five percent of all moneys received by the state from taxes on fire insurance premiums(~~(, except any such moneys received under RCW 48.14.020(3))~~); (3) taxes paid pursuant to the provisions of RCW 41.16.060; (4) interest on the investments of the fund; and (5) contributions by firemen as provided for herein. The (~~(forty-five percent of)~~) moneys received from the tax on fire insurance premiums under the provisions of this chapter shall be distributed in the proportion that the number of paid firemen in the city, town or fire protection district bears to the total number of paid firemen throughout the state to be ascertained in the following manner: The secretary of the firemen's pension board of each city, town and fire protection district now or hereafter coming under the provisions of this chapter shall within thirty days after (~~(the taking effect of this 1961 amendatory act)~~) June 7, 1961, and on or before the fifteenth day of January thereafter, certify to the state treasurer the number of paid firemen in the fire department in such city, town or fire protection district. The state treasurer shall on or before the first day of June of each year deliver to the treasurer of each city, town and fire protection district coming under the provisions of this chapter his warrant, payable to each city, town or fire protection district for the amount due such city, town or fire protection district ascertained as herein provided and the treasurer of each such city, town or fire protection district shall place the amount thereof to the credit of the firemen's pension fund of such city, town or fire protection district.

Sec. 4. Section 3, chapter 261, Laws of 1945 as last amended by section 17, chapter 35, Laws of 1982 1st ex. sess. and RCW 41.24.030 are each amended to read as follows:

There is created in the state treasury a trust fund for the benefit of the firemen of the state covered by this chapter, which shall be designated the volunteer firemen's relief and pension fund and shall consist of:

(1) All bequests, fees, gifts, emoluments, or donations given or paid to the fund.

(2) An annual fee for each member of its fire department to be paid by each municipal corporation for the purpose of affording the members of its fire department with protection from death or disability as herein provided as follows:

(a) Three dollars for each volunteer or part-paid member of its fire department;

(b) A sum equal to one-half of one percent of the annual salary attached to the rank of each full-paid member of its fire department, prorated for 1970 on the basis of services prior to March 1, 1970.

(3) Where a municipal corporation has elected to make available to the members of its fire department the retirement provisions as herein provided, an annual fee of thirty dollars for each of its firemen electing to enroll therein, ten dollars of which shall be paid by the municipality and twenty dollars of which shall be paid by the fireman.

(4) Forty percent of all moneys received by the state from taxes on fire insurance premiums(~~(, except any such moneys received under RCW 48.14.020(3);)~~) shall be paid into the state treasury and credited to the fund.

(5) The state investment board, upon request of the state treasurer shall invest such portion of the amounts credited to the fund as is not, in the judgment of the treasurer, required to meet current withdrawals. Such investments may be made in such bonds, notes or other obligations now or hereafter authorized as an investment for the funds of the public employees' retirement system.

(6) All bonds or other obligations purchased according to subsection (5) of this section shall be forthwith placed in the custody of the state treasurer, and he shall collect the principal thereof and interest thereon when due.

The state investment board may sell any of the bonds or obligations so acquired and the proceeds thereof shall be paid to the state treasurer.

The interest and proceeds from the sale and redemption of any bonds or other obligations held by the fund shall be credited to and form a part of the fund.

All amounts credited to the fund shall be available for making the payments required by this chapter.

The state treasurer shall make an annual report showing the condition of the fund.

Sec. 5. Section 31, chapter 35, Laws of 1982 1st ex. sess. as last amended by section 9, chapter 471, Laws of 1985 and RCW 82.02.030 are each amended to read as follows:

(1) The rate of the additional taxes under RCW 54.28.020(2), 54.28.025(2), 66.24.210(2), 66.24.290(2), 82.04.2901, 82.16.020(2), 82.26.020(2), 82.27.020(5), 82.29A.030(2), 82.44.020(5), and 82.45.060(2) shall be seven percent;

(2) The rate of the additional taxes under RCW 82.08.150(4) shall be fourteen percent; and

(3) The rate of the additional taxes under RCW 82.24.020(2) shall be fifteen percent(~~;~~ and

~~(4) The rate of the additional taxes under RCW 48.14.020(3) shall be four percent)).~~

****NEW SECTION. Sec. 6. It is the intent of the legislature that the fees charged in section 7 of this act shall be used to increase and improve the staff of the insurance commissioner. The legislature finds that this increase and improvement in staff is necessary to properly regulate the insurance industry and protect the insurance consumers of Washington state. The increases and improvements in staff shall be determined through the legislative appropriation process and shall be funded by section 7 of this act.***

*Sec. 6 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 7. A new section is added to chapter 48.02 RCW to read as follows:

(1) As used in this section:

(a) "Organization" means every insurer, as defined in RCW 48.01.050, having a certificate of authority to do business in this state and every health care service contractor registered to do business in this state. "Class one" organizations shall consist of all insurers as defined in RCW 48.01.050. "Class two" organizations shall consist of all organizations registered under provisions of chapter 48.44 RCW.

(b) "Receipts" means (i) 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 (ii) prepayments to health care service contractors as set forth in RCW 48.44.010(3) less experience rating credits, dividends, prepayments returned to subscribers, and payments for contracts not taken.

(2) The annual cost of operating the office of insurance commissioner shall be determined by legislative appropriation. A pro rata share of the cost shall be charged to all organizations. Each class of organization shall contribute sufficient in fees to the insurance commissioner's regulatory account to pay the reasonable costs, including overhead, of regulating that class of organization.

(3) Fees charged shall be calculated separately for each class of organization. The fee charged each organization shall be that portion of the cost of operating the insurance commissioner's office, 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: **PROVIDED**, That the fee shall not exceed one-eighth of one percent of receipts: **PROVIDED FURTHER**, That the minimum fee shall be one thousand dollars.

(4) The commissioner shall annually, on or before June 1, calculate and bill each organization for the amount of its fee. Fees shall be due and payable no later than June 15 of each year: **PROVIDED**, That 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 such fees within the time specified, the commissioner may use the fee factors for the prior year as the basis for the fees and, if necessary, the commissioner may impose supplemental fees to fully and properly charge the organizations. The penalties for failure to pay fees when due shall be the same as the penalties for failure to pay taxes pursuant to RCW 48.14.060. The fees required by this section are in addition to all other taxes and fees now imposed or that may be subsequently imposed. The commissioner shall report fees to the legislative committees responsible for insurance and appropriations concurrent with notification to the organizations.

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

(6) Unexpended funds in the insurance commissioner's regulatory account at the close of a fiscal year shall be carried forward in the insurance commissioner's regulatory account to the succeeding fiscal year and shall be used to reduce future fees.

Sec. 8. Section 12, chapter 115, Laws of 1969 as amended by section 1, chapter 63, Laws of 1983 and RCW 48.44.145 are each amended to read as follows:

(1) The commissioner may make an examination of the operations of any health care service contractor as often as he deems necessary in order to carry out the purposes of this chapter.

(2) Every health care service contractor shall submit its books and records relating to its operation for financial condition and market conduct

examinations and in every way facilitate them. For the purpose of examinations, the commissioner may issue subpoenas, administer oaths, and examine the officers and principals of the health care service contractor.

(3) The commissioner may elect to accept and rely on audit reports made by an independent certified public accountant for the health care service contractor in the course of that part of the commissioner's examination covering the same general subject matter as the audit. The commissioner may incorporate the audit report in his report of the examination.

~~(4) ((Health care service contractors licensed in the state shall be equitably assessed to cover the cost of financial condition and market conduct examinations. The assessments shall be levied not less frequently than once every twelve months and shall be in an amount expected to fund the examinations, including a reasonable margin for cost variations. The assessments shall be established by rules promulgated by the commissioner but shall not exceed one-half cent per month per person entitled to health care services pursuant to an agreement under RCW 48.44.020(1), excluding such persons who are not residents of this state. Assessment receipts shall be deposited in the general fund, shall be accounted for separately, and shall be used for the sole purpose of funding the examinations authorized in subsection (1) of this section. Amounts remaining in the separate account at the end of a biennium shall be applied to reduce the assessments in the succeeding biennium.~~

(5)) Whenever any health care service contractor applies for initial admission, the commissioner may make, or cause to be made, an examination of the applicant's business and affairs. Whenever such an examination is made, all of the provisions of chapter 48.03 RCW not inconsistent with this chapter shall be applicable. In lieu of making an examination himself the commissioner may, in the case of a foreign health care service contractor, accept an examination report of the applicant by the regulatory official in its state of domicile.

Sec. 9. Section 13, chapter 290, Laws of 1975 1st ex. sess. as last amended by section 115, chapter 7, Laws of 1985 and RCW 48.46.120 are each amended to read as follows:

(1) The commissioner may make an examination of the operations of any health maintenance organization as often as he deems necessary in order to carry out the purposes of this chapter.

(2) Every health maintenance organization shall submit its books and records relating its operation for financial condition and market conduct examinations and in every way facilitate them. The quality or appropriateness of medical services or systems shall not be examined except to the extent that such items are incidental to an examination of the financial condition or the market conduct of a health maintenance organization. For

the purpose of examinations, the commissioner may issue subpoenas, administer oaths, and examine the officers and principals of the health maintenance organization and the principals of such providers concerning their business.

(3) The commissioner may elect to accept and rely on audit reports made by an independent certified public accountant for the health maintenance organization in the course of that part of the commissioner's examination covering the same general subject matter as the audit. The commissioner may incorporate the audit report in his report of the examination.

(4) Health maintenance organizations licensed in the state shall be equitably assessed to cover the cost of financial condition and market conduct examinations, the costs of promulgating rules, and the costs of enforcing the provisions of this chapter. The assessments shall be levied not less frequently than once every twelve months and shall be in an amount expected to fund the examinations, promulgation of rules, and enforcement of the provisions of this chapter, including a reasonable margin for cost variations. The assessments shall be established by rules promulgated by the commissioner but shall not exceed five and one-half cents per month per person entitled to health care services pursuant to a health maintenance agreement, excluding such persons who are not residents of this state. Assessment receipts shall be deposited in the general fund, shall be accounted for separately, and shall be used for the sole purpose of funding the examinations authorized in subsection (1) of this section, the costs of promulgating rules, and the costs of enforcing the provisions of this chapter. Amounts remaining in the separate account at the end of a biennium shall be applied to reduce the assessments in the succeeding biennium.

NEW SECTION. Sec. 10. Section 35, chapter 9, Laws of 1982 1st ex. sess. and RCW 48.14.015 are each repealed.

NEW SECTION. Sec. 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 12. Section 1 of this act applies to the payment of taxes due beginning July 1, 1986, and thereafter.

NEW SECTION. Sec. 13. Section 7 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support

of the state government and its existing institutions, and shall take effect immediately. The remainder of this act shall take effect July 1, 1986.

Passed the Senate February 11, 1986.

Passed the House March 7, 1986.

Approved by the Governor April 4, 1986, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 4, 1986.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 6, Engrossed Senate Bill No. 3636, entitled:

"AN ACT Relating to insurance."

This legislation accomplishes two things: it equalizes the premium tax rates between domestic and foreign insurers, and it provides a mechanism so that the Office of the Insurance Commissioner is funded by fees collected from the entities regulated by the Commissioner.

Section 6 states the purpose for imposing the fees is to "increase and improve the staff of the insurance commissioner." While it is certainly a top priority to ensure that the Commissioner has increased staff to properly regulate insurance companies in this time of increasing rates, the move to self-fund the office was not solely for the purposes stated in section 6. The funds provided by the fees imposed on commercial insurers, health care service contractors and health maintenance organizations will be the sole basis of funding the existing staff as well as any new staff authorized by the Legislature. For this reason, I have vetoed section 6 of Engrossed Senate Bill No. 3636.

With the exception of section 6, Engrossed Senate Bill No. 3636 is approved."

CHAPTER 297

[Engrossed Substitute Senate Bill No. 4790]

SLUDGE

AN ACT Relating to sludge; and adding a new section to chapter 70.95 RCW.

Be it enacted by the Legislature of the State of Washington:

***NEW SECTION.** Sec. 1. A new section is added to chapter 70.95 RCW to read as follows:

After January 1, 1988, the department of ecology may prohibit disposal of municipal sewage sludge or septic tank sludge (septage) in landfills for final disposal, except on a temporary, emergency basis, if the jurisdictional health department determines that a potentially unhealthful circumstance exists. Beneficial uses of sludge in landfill reclamation is acceptable utilization and not considered disposal.

The department of ecology shall adopt rules that provide exemptions from this section on a case-by-case basis. Exemptions shall be based on the economic infeasibility of using or disposing of the sludge material other than in a landfill.

The department of ecology, after consulting with representatives from cities, counties, special purpose districts, and operators of septic tank pump-