

CHAPTER 31

(HB 18)

AN ACT relating to insurance premium surcharges.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 91A.080 is amended to read as follows:

- (1) The legislative body of each city, county, ***charter county, consolidated local government***, or urban-county government which elects to impose and collect license fees or taxes upon insurance companies for the privilege of engaging in the business of insurance may enact or change its license fee or rate of tax to be effective July 1 of each year on a prospective basis only and shall file with the commissioner of insurance at least one hundred (100) days prior to the effective date, a copy of all ordinances and amendments which impose any such license fee or tax. No less than eighty-five (85) days prior to the effective date, the commissioner of insurance shall promptly notify each insurance company engaged in the business of insurance in the Commonwealth of those city, county, ***charter county, consolidated local government***, or urban-county governments which have elected to impose the license fees or taxes and the current amount of the license fee or rate of tax.
- (2) Any license fee or tax imposed by a city, county, ***charter county, consolidated local government***, or urban-county government upon an insurance company with respect to life insurance policies, may be based upon the first year's premiums, and, if so based, shall be applied to the amount of the premiums actually collected within each calendar quarter upon the lives of persons residing within the corporate limits of the city, county, ***charter county, consolidated local government***, or urban-county government.
- (3) Any license fee or tax imposed by a city, county, ***charter county, consolidated local government***, or urban-county government upon any insurance company with respect to any policy which is not a life insurance policy shall be based upon the premiums actually collected by the company within each calendar quarter on risks located within the corporate limits of the city, county, ***charter county, consolidated local government***, or urban-county government on those classes of business which the company is authorized to transact, less all premiums returned to policyholders. In determining the amount of license fee or tax to be collected and to be paid to the city, county, ***charter county, consolidated local government***, or urban-county government, the insurance company shall use the tax rate effective on the first day of the policy term. When an insurance company collects a premium as a result of a change in the policy during the policy term, the tax rate used shall be the rate in effect on the effective date of the policy change. With respect to premiums returned to policyholders, the license fee or tax shall be returned by the insurance company to the policyholder pro rata on the unexpired amount of the premium at the same rate at which it was collected and shall be taken as a credit by the insurance company on its next quarterly report to the city, county, ***charter county, consolidated local government***, or urban-county government. Any license fee or tax imposed upon premium receipts shall not include premiums received for insuring employers against liability for personal injuries to their employees, or the death of their employees, caused thereby, under the provisions of the Workers' Compensation Act.
- (4) The Department of Insurance shall, by administrative regulation, provide for a reasonable collection fee to be retained by the insurance company or its agent as compensation for collecting the tax, except that the collection fee shall not be more than fifteen percent (15%) of the fee or tax collected and remitted to the city, county ***charter county, consolidated local***

government, or urban-county government or two percent (2%) of the premiums subject to the tax, whichever is less. To facilitate computation, collection, and remittance of the fee or tax and collection fee provided in this section, the fees or taxes set out in subsection (1), (2), or (3) of this section, together with the collection fee in this section, may be rounded off to the nearest dollar amount.

- (5) Pursuant to KRS 304.3-270, if any other state retaliates against any Kentucky domiciliary insurer because of the requirements of this section, the commissioner of insurance shall impose an equal tax upon the premiums written in this state by insurers domiciled in the other state.
- (6) Accounting and reporting procedures for collection and reporting of the fees or taxes and the collection fee herein provided shall be determined by administrative regulations promulgated by the Department of Insurance.
- (7)
 - (a) Upon written request of the legislative body of any city, county, **charter county**, **consolidated local government**, or urban-county government, at the expense of the requesting city, county, **charter county**, **consolidated local government**, or urban-county government, which shall be paid in advance by the city, county, **charter county**, **consolidated local government**, or urban-county government to the Department of Insurance, the Department of Insurance shall examine, or cause to be examined by contract with qualified auditors, the books or records of the insurance companies or agents subject to the fee or tax to determine whether the fee or tax is being properly collected and remitted, and the findings of the examination shall be reported to the city, county, **charter county**, **consolidated local government**, or urban-county government.
 - (b) Willful failure to properly collect and remit the fee or tax imposed by a city, county, **charter county**, **consolidated local government**, or urban-county government pursuant to the authority granted by this section shall constitute grounds for the revocation of the license issued to an insurance company or agent under the provisions of KRS Chapter 304.
 - (c) *If the Department of Insurance finds that an insurance company has willfully engaged in a pattern of business conduct that fails to properly collect and remit the fee or tax imposed by a city, county, charter county, consolidated local government, or urban-county government pursuant to the authority granted by this section, the Department of Insurance may assess the responsible insurance company an appropriate penalty fee no greater than ten percent (10%) of the additional license fees or taxes determined to be owed to the city, county, charter county, consolidated local government, or urban-county government. The penalty fee shall be collected by the Department of Insurance and payable to the city, county, charter county, consolidated local government, or urban-county government owed the license fee or tax less any administrative costs of the Department of Insurance in enforcing this section. Any insurance company or agent held responsible for a penalty fee may request a hearing with the Department of Insurance to be conducted pursuant to KRS 304.2-310 to 304.2-370 regarding the finding of a willful violation and the subsequent penalty fee.*
- (8) The license fees or taxes provided for by subsections (2) and (3) of this section shall be due thirty (30) days after the end of each calendar quarter. Annually, by March 31, each insurer shall furnish each city, county, **charter county**, **consolidated local government**, or urban-

county government to which the tax or fee is remitted with a breakdown of all collections in the preceding calendar year for the following categories of insurance:

- (a) Casualty;
 - (b) Automobile;
 - (c) Inland marine;
 - (d) Fire and allied perils;
 - (e) Health; and
 - (f) Life.
- (9) ***Any insurance company or agent that overpays any license fee or tax to a city, county, charter county, consolidated local government, or urban-county government shall be refunded the amount overpaid. If it is determined that an insurance company or agent paid a license fee or tax to a city, county, charter county, consolidated local government, or urban-county government based upon premiums collected upon lives or risks which are discovered to be located outside the legal corporate limits of the city, county, charter county, consolidated local government, or urban-county government which was paid the license fee or tax, the insurance company or agent shall be refunded those license fees and taxes within ninety (90) days of notice to the governmental entity paid.*** Any license fee or tax not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6) from the date due until paid. Such interest payable to the city, county, ***charter county, consolidated local government,*** or urban-county government is separate of penalties provided for in subsection (7) of this section.~~[- No city, county, or urban-county government may impose any penalties other than those provided for in this subsection.]~~
- (10) No license fee or tax imposed under this section shall apply to premiums received on policies of group health insurance provided for state employees under KRS 18A.225.
- (11) No county may impose the tax authorized by this section upon the premiums received on policies issued to public service companies which pay ad valorem taxes.
- (12) (a) Insurance companies which pay license fees or taxes pursuant to this section shall credit city license fees or taxes against the same license fees or taxes levied by the county, when the license fees or taxes are levied by the county on or after July 13, 1990.
- (b) If a county imposed and collected the license fee or tax authorized by this section before July 1, 2000, then insurance companies that pay license fees or taxes under this section shall not credit against the county license fee or tax that portion of a city license fee or tax that becomes effective for the first time on or after July 1, 2000, or is increased effective on or after July 1, 2000. The provisions of this paragraph shall expire on June 30, 2002, unless extended by the General Assembly.
- (13) No license fee or tax imposed under this section shall apply to premiums received on health insurance policies issued to individuals nor to policies issued through Kentucky Access created in KRS 304.17B-005.
- (14) No license fee or tax imposed under this section shall apply to premiums paid to insurers of municipal bonds, leases, or other debt instruments issued by or on behalf of a city, county, charter county government, urban-county government, consolidated local government,

special district, nonprofit corporation, or other political subdivision of the Commonwealth. However, this exemption shall not apply if the bonds, leases, or other debt instruments are issued for profit or on behalf of for-profit or private organizations.

Approved March 8, 2005.