

TAX ON INSURANCE PREMIUMS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Wayne A. Harper

Cosponsor: Mike Dmitrich

LONG TITLE

General Description:

This bill decreases the tax rate paid by corporations on certain insurance premiums for the purchase of variable life insurance.

Highlighted Provisions:

This bill:

- ▶ decreases the tax rate paid by corporations on certain insurance premiums for the purchase of variable life insurance;
- ▶ amends confidentiality provisions to allow the State Tax Commission to report information regarding taxes paid on certain variable life insurance premiums;
- ▶ requires the Revenue and Taxation Interim Committee to study the rate reduction on certain variable life insurance premiums; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill has retrospective operation to January 1, 2006.

Utah Code Sections Affected:

AMENDS:

59-1-403, as last amended by Chapter 204, Laws of Utah 2005

59-9-101, as last amended by Chapter 298, Laws of Utah 2003

30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **59-1-403** is amended to read:

32 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

33 (1) (a) Except as provided in this section, any of the following may not divulge or
34 make known in any manner any information gained by that person from any return filed with
35 the commission:

36 (i) a tax commissioner;

37 (ii) an agent, clerk, or other officer or employee of the commission; or

38 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or
39 town.

40 (b) Except as provided in Subsection (1)(c), an official charged with the custody of a
41 return filed with the commission is not required to produce the return or evidence of anything
42 contained in the return in any action or proceeding in any court, except:

43 (i) in accordance with judicial order;

44 (ii) on behalf of the commission in any action or proceeding under:

45 (A) this title; or

46 (B) other law under which persons are required to file returns with the commission;

47 (iii) on behalf of the commission in any action or proceeding to which the commission
48 is a party; or

49 (iv) on behalf of any party to any action or proceeding under this title if the report or
50 facts shown by the return are directly involved in the action or proceeding.

51 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may
52 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically
53 pertinent to the action or proceeding.

54 (2) This section does not prohibit:

55 (a) a person or that person's duly authorized representative from receiving a copy of
56 any return or report filed in connection with that person's own tax;

57 (b) the publication of statistics as long as the statistics are classified to prevent the

58 identification of particular reports or returns; and

59 (c) the inspection by the attorney general or other legal representative of the state of the
60 report or return of any taxpayer:

61 (i) who brings action to set aside or review a tax based on the report or return;

62 (ii) against whom an action or proceeding is contemplated or has been instituted under
63 this title; or

64 (iii) against whom the state has an unsatisfied money judgment.

65 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the
66 commission may by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative
67 Rulemaking Act, provide for a reciprocal exchange of information with:

68 (i) the United States Internal Revenue Service; or

69 (ii) the revenue service of any other state.

70 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
71 corporate franchise tax, the commission may by rule, made in accordance with Title 63,
72 Chapter 46a, Utah Administrative Rulemaking Act, share information gathered from returns
73 and other written statements with the federal government, any other state, any of the political
74 subdivisions of another state, or any political subdivision of this state, except as limited by
75 Sections 59-12-209 and 59-12-210, if these political subdivisions or the federal government
76 grant substantially similar privileges to this state.

77 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and
78 corporate franchise tax, the commission may by rule, in accordance with Title 63, Chapter 46a,
79 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the
80 identity and other information of taxpayers who have failed to file tax returns or to pay any tax
81 due.

82 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and
83 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as
84 requested by the executive secretary, any records, returns, or other information filed with the
85 commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5

86 regarding the environmental assurance program participation fee.

87 (e) Notwithstanding Subsection (1), at the request of any person the commission shall
88 provide that person sales and purchase volume data reported to the commission on a report,
89 return, or other information filed with the commission under:

90 (i) Chapter 13, Part 2, Motor Fuel; or

91 (ii) Chapter 13, Part 4, Aviation Fuel.

92 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,
93 as defined in Section 59-22-202, the commission shall report to the manufacturer:

94 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
95 manufacturer and reported to the commission for the previous calendar year under Section
96 59-14-407; and

97 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
98 manufacturer for which a tax refund was granted during the previous calendar year under
99 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

100 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,
101 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited
102 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

103 (h) Notwithstanding Subsection (1), the commission may:

104 (i) provide to the Division of Consumer Protection within the Department of
105 Commerce and the attorney general data:

106 (A) reported to the commission under Section 59-14-212; or

107 (B) related to a violation under Section 59-14-211; and

108 (ii) upon request provide to any person data reported to the commission under
109 Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

110 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee
111 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning
112 and Budget, provide to the committee or office the total amount of revenues collected by the
113 commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period

114 specified by the committee or office.

115 (j) Notwithstanding Subsection (1), the commission shall at the request of the
 116 Legislature provide to the Legislature the total amount of sales or uses exempt under
 117 Subsection 59-12-104 (50) reported to the commission in accordance with Section 59-12-105.

118 (k) Notwithstanding Subsection (1), the commission shall make the directory required
 119 by Section 59-14-603 available for public inspection.

120 (l) Notwithstanding Subsection (1), the commission shall comply with the reporting
 121 requirements of Section 10-1-409.

122 (m) Notwithstanding Subsection (1), the commission may share information with
 123 federal, state, or local agencies as provided in Subsection 59-14-606(3).

124 (n) Notwithstanding Subsection (1), the commission shall at the request of a
 125 committee, commission, or task force of the Legislature provide to the committee, commission,
 126 or task force of the Legislature any information relating to a tax imposed under Chapter 9,
 127 Taxation of Admitted Insurers, relating to the study required by Section 59-9-101.

128 (4) (a) Reports and returns shall be preserved for at least three years.

129 (b) After the three-year period provided in Subsection (4)(a) the commission may
 130 destroy a report or return.

131 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

132 (b) If the person described in Subsection (5)(a) is an officer or employee of the state,
 133 the person shall be dismissed from office and be disqualified from holding public office in this
 134 state for a period of five years thereafter.

135 (6) Except as provided in Section 59-1-404, this part does not apply to the property tax.

136 Section 2. Section **59-9-101** is amended to read:

137 **59-9-101. Tax basis -- Rates -- Exemptions -- Rate reductions.**

138 (1) (a) [~~Except for annuity considerations, insurance premiums paid by institutions~~
 139 ~~within the state system of higher education as specified in Section 53B-1-102, and ocean~~
 140 ~~marine insurance]~~ Except as provided in Subsection (1)(b), (1)(d), or (5), every admitted
 141 insurer shall pay to the commission on or before March 31 in each year, a tax of 2-1/4% of the

142 total premiums received by it during the preceding calendar year from insurance covering
143 property or risks located in this state.

144 (b) This Subsection (1) does not apply to:

145 (i) workers' compensation insurance, assessed under Subsection (2); [~~and~~]

146 (ii) title insurance premiums taxed under Subsection (3)[~~;~~];

147 (iii) annuity considerations;

148 (iv) insurance premiums paid by an institution within the state system of higher
149 education as specified in Section 53B-1-102; and

150 (v) ocean marine insurance.

151 (c) The taxable premium under this Subsection (1) shall be reduced by:

152 (i) all premiums returned or credited to policyholders on direct business subject to tax
153 in this state;

154 (ii) all premiums received for reinsurance of property or risks located in this state; and

155 (iii) the dividends, including premium reduction benefits maturing within the year[~~;~~];

156 (A) paid or credited to policyholders in this state; or

157 (B) applied in abatement or reduction of premiums due during the preceding calendar
158 year.

159 (d) (i) For purposes of this Subsection (1)(d):

160 (A) "Utah variable life insurance premium" means an insurance premium paid:

161 (I) by:

162 (Aa) a corporation; or

163 (Bb) a trust established or funded by a corporation; and

164 (II) for variable life insurance covering risks located within the state.

165 (B) "Variable life insurance" means an insurance policy that provides for life
166 insurance, the amount or duration of which varies according to the investment experience of
167 one or more separate accounts that are established and maintained by the insurer pursuant to
168 Title 31A, Insurance Code.

169 (ii) Notwithstanding Subsection (1)(a), beginning on January 1, 2006, the tax on that

170 portion of the total premiums subject to a tax under Subsection (1)(a) that is a Utah variable
171 life insurance premium shall be calculated as follows:

172 (A) 2-1/4% of the first \$100,000 of Utah variable life insurance premiums:

173 (I) paid for each variable life insurance policy; and

174 (II) received by the admitted insurer in the preceding calendar year; and

175 (B) 0.08% of the Utah variable life insurance premiums that exceed \$100,000:

176 (I) paid for the policy described in Subsection (1)(d)(ii)(A); and

177 (II) received by the admitted insurer in the preceding calendar year.

178 (iii) (A) On or before October 1, 2009, and every three years after October 1, 2009, the

179 Revenue and Taxation Interim Committee shall study the rate reduction contained in this

180 Subsection (1)(d).

181 (B) As part of the study required by Subsection (1)(d)(iii)(A) the Revenue and

182 Taxation Interim Committee shall:

183 (I) hear testimony from the commission and industry representatives;

184 (II) make recommendations concerning whether the rate reduction should be continued,
185 modified, or repealed; and

186 (III) make findings regarding:

187 (Aa) the cost of the rate reduction;

188 (Bb) the purpose and effectiveness of the rate reduction; and

189 (Cc) any benefits of the rate reduction to the state.

190 (2) (a) Every admitted insurer writing workers' compensation insurance in this state,
191 including the Workers' Compensation Fund created under Title 31A, Chapter 33, Workers'
192 Compensation Fund, shall pay to the tax commission, on or before March 31 in each year, a
193 premium assessment of between 1% and 8% of the total workers' compensation premium
194 income received by the insurer from workers' compensation insurance in this state during the
195 preceding calendar year.

196 (b) Total workers' compensation premium income means the net written premium as
197 calculated before any premium reduction for any insured employer's deductible, retention, or

198 reimbursement amounts and also those amounts equivalent to premiums as provided in Section
199 34A-2-202.

200 (c) The percentage of premium assessment applicable for a calendar year shall be
201 determined by the Labor Commission under Subsection (2)(d). The total premium income
202 shall be reduced in the same manner as provided in Subsections (1)(c)(i) and (1)(c)(ii), but not
203 as provided in Subsection (1)(c)(iii). The tax commission shall promptly remit from the
204 premium assessment collected under Subsection (2):

205 (i) an amount of up to 7.25% of the premium income to the state treasurer for credit to
206 the Employers' Reinsurance Fund created under Subsection 34A-2-702(1);

207 (ii) an amount equal to 0.25% of the premium income to the state treasurer for credit to
208 the restricted account in the General Fund, created by Section 34A-2-701; and

209 (iii) an amount of up to 0.50% and any remaining assessed percentage of the premium
210 income to the state treasurer for credit to the Uninsured Employers' Fund created under Section
211 34A-2-704.

212 (d) (i) The Labor Commission shall determine the amount of the premium assessment
213 for each year on or before each October 15 of the preceding year. The Labor Commission shall
214 make this determination following a public hearing. The determination shall be based upon the
215 recommendations of a qualified actuary.

216 (ii) The actuary shall recommend a premium assessment rate sufficient to provide
217 payments of benefits and expenses from the Employers' Reinsurance Fund and to project a
218 funded condition with assets greater than liabilities by no later than June 30, 2025.

219 (iii) The actuary shall recommend a premium assessment rate sufficient to provide
220 payments of benefits and expenses from the Uninsured Employers' Fund and to maintain it at a
221 funded condition with assets equal to or greater than liabilities.

222 (iv) At the end of each fiscal year the minimum approximate assets in the Employers'
223 Reinsurance Fund shall be \$5,000,000 which amount shall be adjusted each year beginning in
224 1990 by multiplying by the ratio that the total workers' compensation premium income for the
225 preceding calendar year bears to the total workers' compensation premium income for the

226 calendar year 1988.

227 (v) The requirements of Subsection (2)(d)(iv) cease when the future annual
228 disbursements from the Employers' Reinsurance Fund are projected to be less than the
229 calculations of the corresponding future minimum required assets. The Labor Commission
230 shall, after a public hearing, determine if the future annual disbursements are less than the
231 corresponding future minimum required assets from projections provided by the actuary.

232 (vi) At the end of each fiscal year the minimum approximate assets in the Uninsured
233 Employers' Fund shall be \$2,000,000, which amount shall be adjusted each year beginning in
234 1990 by multiplying by the ratio that the total workers' compensation premium income for the
235 preceding calendar year bears to the total workers' compensation premium income for the
236 calendar year 1988.

237 (e) A premium assessment that is to be transferred into the General Fund may be
238 collected on premiums received from Utah public agencies.

239 (3) Every admitted insurer writing title insurance in this state shall pay to the
240 commission, on or before March 31 in each year, a tax of .45% of the total premium received
241 by either the insurer or by its agents during the preceding calendar year from title insurance
242 concerning property located in this state. In calculating this tax, "premium" includes the
243 charges made to an insured under or to an applicant for a policy or contract of title insurance
244 for:

245 (a) the assumption by the title insurer of the risks assumed by the issuance of the policy
246 or contract of title insurance; and

247 (b) abstracting title, title searching, examining title, or determining the insurability of
248 title, and every other activity, exclusive of escrow, settlement, or closing charges, whether
249 denominated premium or otherwise, made by a title insurer, an agent of a title insurer, a title
250 insurance producer, or any of them.

251 (4) Beginning July 1, 1986, former county mutuals and former mutual benefit
252 associations shall pay the premium tax or assessment due under this chapter. All premiums
253 received after July 1, 1986, shall be considered in determining the tax or assessment.

254 (5) The following insurers are not subject to the premium tax on health care insurance
255 that would otherwise be applicable under Subsection (1):

256 (a) insurers licensed under Title 31A, Chapter 5, Domestic Stock and Mutual Insurance
257 Corporations;

258 (b) insurers licensed under Title 31A, Chapter 7, Nonprofit Health Service Insurance
259 Corporations;

260 (c) insurers licensed under Title 31A, Chapter 8, Health Maintenance Organizations
261 and Limited Health Plans;

262 (d) insurers licensed under Title 31A, Chapter 9, Insurance Fraternal;

263 (e) insurers licensed under Title 31A, Chapter 11, Motor Clubs;

264 (f) insurers licensed under Title 31A, Chapter 13, Employee Welfare Funds and Plans;
265 and

266 (g) insurers licensed under Title 31A, Chapter 14, Foreign Insurers.

267 (6) An insurer issuing multiple policies to an insured may not artificially allocate the
268 premiums among the policies for purposes of reducing the aggregate premium tax or
269 assessment applicable to the policies.

270 (7) The retaliatory provisions of Title 31A, Chapter 3, Department Funding, Fees, and
271 Taxes, apply to the tax or assessment imposed under this chapter.

272 Section 3. **Retrospective operation.**

273 This bill has retrospective operation to January 1, 2006.