
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-4874.2/20 2nd draft

ATTY/TYPIST: AV:akl

BRIEF DESCRIPTION: Exempting health care and veterinary services
from the business and occupation surcharge.

1 AN ACT Relating to exempting health care and veterinary services
2 from the business and occupation surcharge; amending RCW 82.04.299;
3 creating new sections; and providing an effective date.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that a tax increase
6 on health care providers increases the cost of health care services
7 for all Washingtonians. The legislature further finds that taxes on
8 health care providers reduce their ability to provide needed care for
9 the most vulnerable Washingtonians, particularly those on medicaid.
10 As taxes increase and medicaid reimbursement rates progressively
11 become more insufficient, many physician offices are choosing not to
12 accept medicaid as a form of payment. This leaves nearly half of all
13 children and one in six adults in Washington with fewer health care
14 options. The legislature intends to encourage and assist health care
15 providers in providing care to as many Washingtonians as possible, at
16 the lowest rate possible, by removing the 2019 business and
17 occupation tax increase on health care providers. The legislature
18 further finds that over sixty percent of Washington households own
19 some type of pet. The legislature further finds that a pet-owning
20 household spends hundreds of dollars each year on veterinary costs.
21 Therefore, the legislature intends to reduce the costs to households

1 by also removing the 2019 business and occupation tax increase on
2 veterinary care providers that would otherwise get passed on to the
3 household consumer.

4 **Sec. 2.** RCW 82.04.299 and 2019 c 406 s 74 are each amended to
5 read as follows:

6 The legislature intends to secure additional revenue via
7 surcharges targeted towards certain industries including select
8 advanced computing businesses.

9 The legislature intends the provisions of chapter 406, Laws of
10 2019 to be applied broadly in favor of application of the surcharges.
11 To achieve this intent, any provision within chapter 406, Laws of
12 2019 that is deemed to be ambiguous by a court of competent
13 jurisdiction, the board of tax appeals, or any other judicial or
14 administrative body, should be construed in favor of application of
15 the surcharges. The rule of statutory construction in favor of the
16 application of the surcharge under this paragraph does not apply on
17 or after January 1, 2022.

18 (1)(a) Beginning with business activities occurring on or after
19 January 1, 2020, in addition to the taxes imposed under RCW
20 82.04.290(2), a workforce education investment surcharge is imposed
21 on specified persons. The surcharge is equal to the total amount of
22 tax payable by the person on business activities taxed under RCW
23 82.04.290(2), before application of any tax credits, multiplied by
24 the rate of twenty percent.

25 (b) For specified persons who report under one or more tax
26 classifications, this surcharge applies only to business activities
27 taxed under RCW 82.04.290(2).

28 (c) The surcharge imposed under this subsection (1) must be
29 reported and paid in a manner and frequency as required by the
30 department.

31 (2) For the purposes of this section, "specified person" means a
32 person who is not subject to the surcharge under subsection (4) of
33 this section and who is primarily engaged within this state in any
34 combination of the following activities:

35 (a) Computer software publishing or publishing and reproduction.
36 Establishments in this industry carry out operations necessary for
37 producing and distributing computer software, such as designing,
38 providing documentation, assisting in installation, and providing
39 support services to software purchasers. These establishments may

1 design, develop, and publish, or publish only. These establishments
2 may publish and distribute software remotely through subscriptions
3 and downloads;

4 (b) Conducting original investigation undertaken on a systematic
5 basis to gain new knowledge or the application of research findings
6 or other scientific knowledge for the creation of new or
7 significantly improved products or processes. Techniques may include
8 modeling and simulation. The industries within this industry group
9 are defined on the basis of the domain of research and on scientific
10 expertise of the establishment;

11 (c) Putting capital at risk in the process of underwriting
12 securities issues or in making markets for securities and commodities
13 and those acting as agents or brokers between buyers and sellers of
14 securities and commodities, usually charging a commission;

15 (d) Providing expertise in the field of information technologies
16 through one or more of the following activities: (i) Writing,
17 modifying, testing, and supporting computer software to meet the
18 needs of a particular customer; (ii) planning and designing computer
19 systems that integrate computer hardware, computer software, and
20 communication technologies; (iii) on-site management and operation of
21 clients' computer systems and data processing facilities; or (iv)
22 other professional and technical computer-related advice and
23 services;

24 (e) Performing central banking functions, such as issuing
25 currency, managing the nation's money supply and international
26 reserves, holding deposits that represent the reserves of other banks
27 and other central banks, and acting as a fiscal agent for the central
28 government;

29 (f) (i) Purchasing access and network capacity from owners and
30 operators of telecommunications networks and reselling wired and
31 wireless telecommunications services, except satellite, to businesses
32 and households; (ii) providing specialized telecommunications
33 services, such as satellite tracking, communications telemetry, and
34 radar station operation; (iii) providing satellite terminal stations
35 and associated facilities connected with one or more terrestrial
36 systems and capable of transmitting telecommunications to, and
37 receiving telecommunications from, satellite systems; or (iv)
38 providing internet access services or voice over internet protocol
39 services via client-supplied telecommunications connections.
40 Establishments in this industry do not operate as telecommunications

1 carriers. Mobile virtual network operators are included in this
2 industry;

3 (g) (i) Acting as principals in buying or selling financial
4 contracts, except investment bankers, securities dealers, and
5 commodity contracts dealers; (ii) acting as agents or brokers, except
6 securities brokerages and commodity contracts brokerages, in buying
7 or selling financial contracts; or (iii) providing other investment
8 services except securities and commodity exchanges, such as portfolio
9 management, investment advice, and trust, fiduciary, and custody
10 services;

11 (h) Supplying information, such as news reports, articles,
12 pictures, and features, to the news media. This industry comprises
13 establishments primarily engaged in providing library or archive
14 services. These establishments are engaged in maintaining collections
15 of documents and facilitating the use of these documents as required
16 to meet the informational, research, educational, or recreational
17 needs of their user. These establishments may also acquire, research,
18 store, preserve, and generally make accessible to the public
19 historical documents, photographs, maps, audio material, audiovisual
20 material, and other archival material of historical interest. All or
21 portions of these collections may be accessible electronically. This
22 industry comprises establishments engaged in: (i) Publishing and
23 broadcasting content on the internet exclusively; or (ii) operating
24 web sites that use a search engine to generate and maintain extensive
25 databases of internet addresses and content in an easily searchable
26 format, known as web search portals. The publishing and broadcasting
27 establishments in this industry do not provide traditional versions
28 of the content they publish or broadcast. They provide textual,
29 audio, or video content of general or specific interest on the
30 internet exclusively. Establishments known as web search portals
31 often provide additional internet services, such as email,
32 connections to other web sites, auctions, news, and other limited
33 content, and serve as a home base for internet users. This industry
34 comprises establishments primarily engaged in providing other
35 information services, except news syndicates, libraries, archives,
36 internet publishing and broadcasting, and web search portals;

37 (i) Architectural, engineering, and related services, such as
38 drafting services, building inspection services, geophysical
39 surveying and mapping services, surveying and mapping, except
40 geophysical services and testing services;

1 (j) Retailing all types of merchandise using nonstore means, such
2 as catalogs, toll-free telephone numbers, electronic media, such as
3 interactive television or the internet, or selling directly to
4 consumers in a nonretail, physical environment. Included in this
5 industry are establishments primarily engaged in retailing from
6 catalog showrooms of mail-order houses;

7 (k) Providing advice and assistance to businesses and other
8 organizations on management, environmental, scientific, and technical
9 issues;

10 (l) Providing infrastructure for hosting or data processing
11 services. These establishments may provide specialized hosting
12 activities, such as web hosting, streaming services, or application
13 hosting, or they may provide general time-share mainframe facilities
14 to clients. Data processing establishments provide complete
15 processing and specialized reports from data supplied by clients or
16 provide automated data processing and data entry services;

17 (m) Facilitating credit intermediation by performing activities,
18 such as arranging loans by bringing borrowers and lenders together
19 and clearing checks and credit card transactions;

20 (n) Offering legal services, such as those offered by offices of
21 lawyers, offices of notaries, and title abstract and settlement
22 offices, and paralegal services;

23 (o) Operating or providing access to transmission facilities and
24 infrastructure that they own or lease for the transmission of voice,
25 data, text, sound, and video using wired telecommunications networks.
26 Transmission facilities may be based on a single technology or a
27 combination of technologies. Establishments in this industry use the
28 wired telecommunications network facilities that they operate to
29 provide a variety of services, such as wired telephony services,
30 including voice over internet protocol services, wired audio and
31 video programming distribution, and wired broadband internet
32 services. By exception, establishments providing satellite television
33 distribution services using facilities and infrastructure that they
34 operate are included in this industry;

35 (p) Providing telecommunications services to other establishments
36 in the telecommunications and broadcasting industries by forwarding
37 and receiving communications signals via a system of satellites or
38 reselling satellite telecommunications;

39 (q) Operating and maintaining switching and transmission
40 facilities to provide communications via the airwaves. Establishments

1 in this industry have spectrum licenses and provide services using
2 that spectrum, such as cellular phone services, paging services,
3 wireless internet access, and wireless video services;

4 (r) Extending credit or lending funds raised by credit market
5 borrowing, such as issuing commercial paper or other debt instruments
6 or by borrowing from other financial intermediaries;

7 (s) Underwriting annuities and insurance policies and investing
8 premiums to build up a portfolio of financial assets to be used
9 against future claims. Direct insurance carriers are establishments
10 that are primarily engaged in initially underwriting and assuming the
11 risk of annuities and insurance policies. Reinsurance carriers are
12 establishments that are primarily engaged in assuming all or part of
13 the risk associated with an existing insurance policy originally
14 underwritten by another insurance carrier. Industries are defined in
15 terms of the type of risk being insured against, such as death, loss
16 of employment because of age or disability, or property damage.
17 Contributions and premiums are set on the basis of actuarial
18 calculations of probable payouts based on risk factors from
19 experience tables and expected investment returns on reserves;

20 (t) Merchant wholesale distribution of photographic equipment and
21 supplies and office, computer, and computer peripheral equipment and
22 medical, dental, hospital, ophthalmic, and other commercial and
23 professional equipment and supplies;

24 (u) Operating studios and facilities for the broadcasting of
25 programs on a subscription or fee basis. The broadcast programming is
26 typically narrowcast in nature. These establishments produce
27 programming in their own facilities or acquire programming from
28 external sources. The programming material is usually delivered to a
29 third party, such as cable systems or direct-to-home satellite
30 systems, for transmission to viewers;

31 (v) Publishing newspapers, magazines, other periodicals, books,
32 directories and mailing lists, and other works, such as calendars,
33 greeting cards, and maps. These works are characterized by the
34 intellectual creativity required in their development and are usually
35 protected by copyright. Publishers distribute or arrange for the
36 distribution of these works. Publishing establishments may create the
37 works in-house, or contract for, purchase, or compile works that were
38 originally created by others. These works may be published in one or
39 more formats, such as print or electronic form, including proprietary
40 electronic networks. Establishments in this industry may print,

1 reproduce, or offer direct access to the works themselves or may
2 arrange with others to carry out such functions. Establishments that
3 both print and publish may fill excess capacity with commercial or
4 job printing. However, the publishing activity is still considered to
5 be the primary activity of these establishments;

6 (w) Generating, transmitting, or distributing electric power.
7 Establishments in this industry group may perform one or more of the
8 following activities: (i) Operate generation facilities that produce
9 electric energy; (ii) operate transmission systems that convey the
10 electricity from the generation facility to the distribution system;
11 or (iii) operate distribution systems that convey electric power
12 received from the generation facility or the transmission system to
13 the final consumer;

14 (x) Providing specialized design services including interior
15 design, industrial design, graphic design, and others, but not
16 including architectural, engineering, and computer systems design;

17 (y) Assigning rights to assets, such as patents, trademarks,
18 brand names, or franchise agreements, for which a royalty payment or
19 licensing fee is paid to the asset holder;

20 (z) Acting as agents in selling annuities and insurance policies
21 or providing other employee benefits and insurance related services,
22 such as claims adjustment and third-party administration;

23 (aa) Business-to-business electronic markets that bring together
24 buyers and sellers of goods using the internet or other electronic
25 means and generally receive a commission or fee for the service.
26 Business-to-business electronic markets for durable and nondurable
27 goods are included in this industry. This industry comprises
28 wholesale trade agents and brokers acting on behalf of buyers or
29 sellers in the wholesale distribution of goods. Agents and brokers do
30 not take title to the goods being sold but rather receive a
31 commission or fee for their service. Agents and brokers for all
32 durable and nondurable goods are included in this industry;

33 (bb) Accepting deposits or share deposits and in lending funds
34 from these deposits. Within this group, industries are defined on the
35 basis of differences in the types of deposit liabilities assumed and
36 in the nature of the credit extended;

37 (cc) (i) Manufacturing complete aircraft, missiles, or space
38 vehicles; (ii) manufacturing aerospace engines, propulsion units,
39 auxiliary equipment or parts; (iii) developing and making prototypes

1 of aerospace products; (iv) aircraft conversion; or (v) complete
2 aircraft or propulsion systems overhaul and rebuilding;

3 (dd) Advertising, public relations, and related services, such as
4 media buying, independent media representation, outdoor advertising,
5 direct mail advertising, advertising material distribution services,
6 and other services related to advertising;

7 (ee) Providing services, such as auditing of accounting records,
8 designing accounting systems, preparing financial statements,
9 developing budgets, preparing tax returns, processing payrolls,
10 bookkeeping, and billing;

11 ~~((The independent practice of general or specialized
12 medicine or surgery by businesses comprised of one or more health
13 practitioners having the degree of doctor of medicine or doctor of
14 osteopathy. These practitioners operate private or group practices in
15 their own offices or in the facilities of others, such as hospitals
16 or health maintenance organization medical centers;~~

17 ~~((gg) Providing a range of outpatient services, such as family
18 planning, diagnosis and treatment of mental health disorders and
19 alcohol and other substance abuse, and other general or specialized
20 outpatient care by businesses with medical staff;~~

21 ~~((hh))~~ Pooling securities or other assets, except insurance and
22 employee benefit funds, on behalf of shareholders, unit holders, or
23 beneficiaries, by legal entities such as investment pools or funds;

24 ~~((+ii))~~ (gg) Promoting the interests of an organization's
25 members, except religious organizations, social advocacy
26 organizations, and civic and social organizations. Examples of
27 establishments in this industry are business associations,
28 professional organizations, labor unions, and political
29 organizations;

30 ~~((+jj))~~ (hh) Holding the securities of or other equity interests
31 in companies and enterprises for the purpose of owning a controlling
32 interest or influencing management decisions or businesses that
33 administer, oversee, and manage other establishments of the company
34 or enterprise and that normally undertake the strategic or
35 organizational planning and decision-making role of the company or
36 enterprise. Establishments that administer, oversee, and manage may
37 hold the securities of the company or enterprise;

38 ~~((+kk) For medical and diagnostic laboratories, providing
39 analytic or diagnostic services, including body fluid analysis and~~

1 ~~diagnostic imaging, generally to the medical profession or to the~~
2 ~~patient on referral from a health practitioner;~~

3 ~~(ll))~~ (ii) Serving as offices of chief executives and their
4 advisory committees and commissions. This industry includes offices
5 of the president, governors, and mayors, in addition to executive
6 advisory commissions. This industry comprises government
7 establishments serving as legislative bodies and their advisory
8 committees and commissions. Included in this industry are legislative
9 bodies, such as congress, state legislatures, and advisory and study
10 legislative commissions. This industry comprises government
11 establishments primarily engaged in public finance, taxation, and
12 monetary policy. Included are financial administration activities,
13 such as monetary policy, tax administration and collection, custody
14 and disbursement of funds, debt and investment administration,
15 auditing activities, and government employee retirement trust fund
16 administration. This industry comprises government establishments
17 serving as councils and boards of commissioners or supervisors and
18 such bodies where the chief executive is a member of the legislative
19 body itself. This industry comprises American Indian and Alaska
20 Native governing bodies. Establishments in this industry perform
21 legislative, judicial, and administrative functions for their
22 American Indian and Alaska Native lands. Included in this industry
23 are American Indian and Alaska Native councils, courts, and law
24 enforcement bodies. This industry comprises government establishments
25 primarily engaged in providing general support for government. Such
26 support services include personnel services, election boards, and
27 other general government support establishments that are not
28 classified elsewhere in public administration;

29 ~~((mm))~~ (jj) Providing a range of office administrative
30 services, such as financial planning, billing and recordkeeping,
31 personnel, and physical distribution and logistics, for others on a
32 contract or fee basis. These establishments do not provide operating
33 staff to carry out the complete operations of a business;

34 ~~((nn))~~ (kk) Providing professional, scientific, or technical
35 services including marketing research, public opinion polling,
36 photographic services, and translation and interpretation services(
37 ~~and veterinary services~~). This category does not include veterinary
38 services, legal services, accounting, tax preparation, bookkeeping,
39 architectural, engineering, and related services, specialized design
40 services, computer systems design, management, scientific and

1 technical consulting services, scientific research and development
2 services, or advertising services(†

3 ~~(oo) The independent practice of general or specialized dentistry~~
4 ~~or dental surgery by businesses comprised of one or more health~~
5 ~~practitioners having the degree of doctor of dental medicine, doctor~~
6 ~~of dental surgery, or doctor of dental science. These practitioners~~
7 ~~operate private or group practices in their own offices or in the~~
8 ~~facilities of others, such as hospitals or health maintenance~~
9 ~~organization medical centers. They may provide either comprehensive~~
10 ~~preventive, cosmetic, or emergency care, or specialize in a single~~
11 ~~field of dentistry;~~

12 ~~(pp) The independent practice of general or specialized medicine~~
13 ~~or surgery, or general or specialized dentistry or dental surgery, by~~
14 ~~businesses comprised of one or more independent health practitioners,~~
15 ~~other than physicians and dentists;~~

16 ~~(qq) Providing ambulatory health care services).~~

17 (3) (a) (i) For the purposes of this section, a person is primarily
18 engaged within this state in any combination of the activities
19 described in subsection (2) of this section if more than fifty
20 percent of the person's cumulative gross amount reportable under this
21 chapter during the entire current or immediately preceding calendar
22 year was generated from engaging in any one or more of the activities
23 described in subsection (2) of this section. For purposes of this
24 subsection, "gross amount reportable" means the total value of
25 products, gross proceeds of sales, and gross income of the business,
26 reportable to the department before application of any tax
27 deductions.

28 (ii) If a person was not primarily engaged within this state in
29 any combination of the activities described in subsection (2) of this
30 section during the immediately preceding year, and the person is
31 unsure whether the person will be subject to the workforce investment
32 surcharge for the current calendar year until the close of the
33 current calendar year, the person must, if necessary, file corrected
34 returns with the department of revenue to pay any additional tax due
35 under this section for the current calendar year. Payment of
36 additional tax, along with corrected returns, is due and payable when
37 the person's last return for the calendar year during which the tax
38 liability accrued is due and payable. Additional tax due under this
39 section is subject to penalties and interest as provided under

1 chapter 82.32 RCW only if the tax is not paid in full by the date due
2 as provided in this subsection (3) (a) (ii).

3 (b) The entire amount of gross income of the business received by
4 a person pursuant to a contract under which the person is obligated
5 to perform any activity described under subsection (2) of this
6 section is deemed to be generated from engaging in any one or more of
7 the activities described in subsection (2) of this section.

8 (4) (a) Beginning with business activities occurring on or after
9 January 1, 2020, in addition to the taxes imposed under RCW
10 82.04.290(2), a workforce education investment surcharge is imposed
11 on select advanced computing businesses as follows:

12 (i) For an affiliated group that has worldwide gross revenue of
13 more than twenty-five billion dollars, but not more than one hundred
14 billion dollars, during the entire current or immediately preceding
15 calendar year, the surcharge is equal to the total amount of tax
16 payable by each member of the affiliated group on all business
17 activities taxed under RCW 82.04.290(2), before application of any
18 tax credits, multiplied by the rate of thirty-three and one-third
19 percent.

20 (ii) For an affiliated group that has worldwide gross revenue of
21 more than one hundred billion dollars during the entire current or
22 immediately preceding calendar year, the surcharge is equal to the
23 total amount of tax payable by each member of the affiliated group on
24 all business activities taxed under RCW 82.04.290(2), before
25 application of any tax credits, multiplied by the rate of sixty-six
26 and two-thirds percent.

27 (b) In no case will the combined surcharge imposed under this
28 subsection (4) paid by all members of an affiliated group be less
29 than four million dollars or more than seven million dollars
30 annually.

31 (c) For persons subject to the surcharge imposed under this
32 subsection (4) that report under one or more tax classifications, the
33 surcharge applies only to business activities taxed under RCW
34 82.04.290(2).

35 (d) The surcharge imposed under this subsection (4) must be
36 reported and paid in a manner and frequency as required by the
37 department.

38 (e) To aid in the effective administration of the surcharge in
39 this subsection (4), the department may require persons believed to
40 be engaging in advanced computing or affiliated with a person

1 believed to be engaging in advanced computing to disclose whether
2 they are a member of an affiliated group and, if so, to identify all
3 other members of the affiliated group subject to the surcharge. If
4 the department determines that a person, with intent to evade the
5 surcharge under this subsection (4), failed to fully comply with this
6 subsection (4) (e), the seven million dollar limitation in (b) of this
7 subsection (4) does not apply to the person's affiliated group.

8 (f) For the purposes of this subsection (4) the following
9 definitions apply:

10 (i) "Advanced computing" means designing or developing computer
11 software or computer hardware, whether directly or contracting with
12 another person, including modifications to computer software or
13 computer hardware, cloud computing services, or operating an online
14 marketplace, an online search engine, or online social networking
15 platform;

16 (ii) "Affiliate" and "affiliated" means a person that directly or
17 indirectly, through one or more intermediaries, controls, is
18 controlled by, or is under common control with another person;

19 (iii) "Affiliated group" means a group of two or more persons
20 that are affiliated with each other;

21 (iv) "Cloud computing services" means on-demand delivery of
22 computing resources, such as networks, servers, storage,
23 applications, and services, over the internet;

24 (v) "Control" means the possession, directly or indirectly, of
25 more than fifty percent of the power to direct or cause the direction
26 of the management and policies of a person, whether through the
27 ownership of voting shares, by contract, or otherwise; and

28 (vi) "Select advanced computing business" means a person who is a
29 member of an affiliated group with at least one member of the
30 affiliated group engaging in the business of advanced computing, and
31 the affiliated group has worldwide gross revenue of more than twenty-
32 five billion dollars during the entire current or immediately
33 preceding calendar year. A person who is primarily engaged within
34 this state in the provision of commercial mobile service, as that
35 term is defined in 47 U.S.C. Sec. 332(d) (1), shall not be considered
36 a select advanced computing business. A person who is primarily
37 engaged in this state in the operation and provision of access to
38 transmission facilities and infrastructure that the person owns or
39 leases for the transmission of voice, data, text, sound, and video

1 using wired telecommunications networks shall not be considered a
2 select advanced computing business.

3 (5) The workforce education investment surcharges under this
4 section do not apply to any hospital as defined in RCW 70.41.020,
5 including any hospital that comes within the scope of chapter 71.12
6 RCW if the hospital is also licensed under chapter 70.41 RCW.

7 (6) Revenues from the surcharges under this section must be
8 deposited directly into the workforce education investment account
9 established in RCW 43.79.195.

10 (7) The department has the authority to determine through an
11 audit or other investigation whether a person is subject to the
12 surcharges imposed in this section. The department's determination
13 that a person is subject to the surcharge is presumed to be correct
14 unless the person shows by clear, cogent, and convincing evidence
15 that the department's determination was incorrect. The increased
16 evidentiary standard under this subsection (7) does not apply after
17 January 1, 2022.

18 NEW SECTION. **Sec. 3.** The provisions of RCW 82.32.805 and
19 82.32.808 do not apply to this act.

20 NEW SECTION. **Sec. 4.** This act takes effect July 1, 2020.

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