

SENATE BILL 1189

By Norris

AN ACT to amend Tennessee Code Annotated, Title 9 and Title 56, relative to retaliatory taxes and requirements.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-4-218, is amended by deleting the section in its entirety and substituting instead the following language:

(a) When any other state or foreign country, or any agency or official of any other state or foreign country acting under authority of law, imposes any premium or income or other taxes, or any fees, assessments, fines, penalties, licenses, deposit requirements or other obligations, prohibitions, or restrictions upon Tennessee insurance companies doing business, or that might seek to do business in the other state or foreign country, or upon their agents in the other state or foreign country, that are in excess of the taxes, fees, assessments, fines, penalties, licenses, deposit requirements, or other obligations, prohibitions, or restrictions imposed upon the insurance companies of the other state or foreign country doing business, or that might seek to do business in this state, or upon their agents in this state, so long as the impositions continue, the same premium or income or other taxes, or fees, assessments, fines, penalties, licenses, deposit requirements, or other obligations, prohibitions, and restrictions of whatever kind shall be imposed upon the companies of the other state or foreign country doing business in this state, or upon their agents in this state. The commissioner shall compute the burden of premium taxes on the basis of the basic premium tax rate levied by the other state or foreign country for the kind of business transacted without reduction in the basic premium rate for investments that a like Tennessee company may qualify

for, or as a result of investments the company may have made in Tennessee securities. Any tax, license, or other obligation imposed by any city, county, or other political subdivision of a state or foreign country on the Tennessee insurance companies shall be deemed to be imposed by the state or foreign country within the meaning of this section, and the commissioner, for the purpose of this section, shall compute the burden of the tax, license, assessment, or other obligation on an aggregate statewide or foreign countrywide basis as an addition to the rate of tax and to the charges that are or would be payable by similar Tennessee insurance companies in the state or foreign country. This section shall be applied on a retaliatory basis without consideration of any reciprocity an insurance company domiciled in another state or foreign country may claim due to lower premium or income or other taxes, or lower fees, assessments, fines, penalties, licenses, deposit requirements or other obligations, prohibitions, or restrictions that are imposed upon the insurance companies of other states or foreign countries doing business in this state. Each foreign insurance company doing business in this state shall furnish, over the signature and oath of its responsible officers, the necessary information for the computation of the taxes upon forms prescribed by the commissioner. The commissioner may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to effectuate the purposes of this section. This section shall not apply to ad valorem taxes on real or personal property, to personal income taxes, or to any examination fees provided in § 56-1-413.

(b) The burden imposed on insurance companies by another state or foreign country shall include all monetary charges and other obligations, regardless of how designated or described in the laws or regulations of that state or country, that require payment of such monetary charge or compliance with such other obligation by insurance companies.

(c) The right or ability of an insurance company to make itself whole for the payment to another state or foreign country of a monetary charge, whether through

premiums, surcharges on premiums, or otherwise, shall not exclude that charge from the burden imposed by that state or country.

(d) The designation of a charge as a "special fund assessment" or the like by another state or foreign country shall not exclude that charge from the burden imposed by that state or country.

(e) The designation by another state or foreign country of a charge as being imposed on policyholders, of insurance companies as being collection agents for that state or country, of a charge as not being subject to retaliation, of a charge as being a "pass-through," or any like provision or policy that purports to exclude a charge from retaliation by other states, shall be considered in the light of the actual practices of the state or country making such designation or declaration. In considering whether a charge is imposed on insurance companies, the commissioner and the courts shall examine the relevant statutes, regulations, policy statements, and administrative practices of the state or country, and shall apply the following principles without regard to designations or declarations to the contrary by the state or country:

(1) A monetary charge shall be deemed "imposed" on an insurance company if the insurance company is required, to the extent possible, to pay the charge in full to the state or country prior to any attempt to make itself whole as a result of the charge;

(2) A monetary charge shall not be deemed to be imposed exclusively on the policyholder if the state or country, by its laws, regulations, or practices, requires the insurance company to pay any shortfall in the event that its policyholders remit to the insurance company less than the aggregate amount required by the state or country to be paid by that company's policyholders; and

(3) If a state or country has designated a monetary charge as being imposed exclusively on policyholders, or otherwise declared that a charge is imposed on policyholders and not on insurance companies, the commissioner and the courts shall make a determination to that effect only upon finding that all of the following conditions are substantially met:

(A) The state or country calculates specific assessment amounts for each policyholder;

(B) The state or country issues assessment notices for each policyholder, either to the policyholder itself or to its insurer for forwarding to the policyholder;

(C) The state or country imposes penalties on the policyholder for failure to pay assessed amounts, whether directly to the state or country or to the insurance company for remittance to the state or country;

(D) If the payment scheme purports to require policyholders to pay assessed amounts to their insurers for remittance to the state or country, payment of assessed amounts by policyholders actually precedes remittance of those amounts to the state by the insurance companies, meaning insurance companies actually serve as collection agents and are not obligated to make payments to the state or country in the first instance;

(E) The only penalties, if any, imposed on insurance companies by the state or country are imposed for failure to pay over amounts already collected from policyholders and not for failure to pay any assessed amounts in the first instance; and

(F) When considered as a whole, the statutes, regulations, policy statements, and administrative practices of the other state or foreign country indicate that that state or country relies exclusively on policyholders for payment of the charges and enforces that reliance through penalties and prohibitions imposed on policyholders.

(f) All monetary charges or other obligations, as described in subsection (a), however designated, shall be included in calculating the burden imposed by the foreign state or country, regardless of whether Tennessee imposes a charge or obligation having the same or similar designation, method of calculation, or purpose. The existence of a charge or obligation imposed by Tennessee and having the same purpose as a charge or obligation imposed by a foreign state or country shall, however, create a rebuttable presumption that a like charge or obligation levied by that foreign state or country is imposed on insurance companies.

(g) The time, period, and manner of payment of the retaliatory tax shall be the same in all cases as that of the gross premium tax provided for in § 56-4-205, and no interest charges or credits shall be made or allowed for use or loss of use of funds due to any conflict of the time, period, or manner of payment in this state and the time, period, or manner in a foreign state or country.

SECTION 2. Tennessee Code Annotated, Section 9-8-307, is amended by deleting subdivision (a)(1)(O) in its entirety and substituting instead the following language:

(O) Claims for the recovery of taxes collected or administered by the state, except any tax collected or administered by the commissioner of revenue, the commissioner of commerce and insurance pursuant to title 56, and any unemployment insurance tax collected or administered by the commissioner of labor and workforce development;

SECTION 3. Tennessee Code Annotated, Title 56, Chapter 1, Part 1, is amended by adding the following language as a new, appropriately designated section:

(a) The commissioner has the authority and shall perform the duties conferred and imposed in this title in addition to such other powers and duties as may be conferred and imposed upon the commissioner by law. The commissioner is vested with the authority to promulgate rules not inconsistent with law and to prepare such forms as the commissioner may deem proper for the administration of the duties of the commissioner's office.

(b) The commissioner has the power to administer the assessment and collection of all taxes, fees, assessments, fines, penalties, licenses, deposit requirements, and other obligations or liabilities imposed by this title or other laws explicitly granting authority to the commissioner.

(c) Claims challenging liability imposed by this title shall be brought in the chancery court of Davidson County pursuant to the procedures set out in title 67, chapter 1, part 18.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to all tax years beginning on or after January 1, 2017.