

# Dedicated Funding Source to Fight Criminal Insurance Fraud

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*November 13, 2018*

Create a separate funding source for the Office of the Insurance Commissioner's Criminal Investigations Unit (CIU) by modifying RCW 48.02.190. The bill would need an effective date of 7/1/19. The recommendation mirrors the current regulatory surcharge process.

## Background

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The Criminal Investigation Unit (CIU) was created by the Office of the Insurance Commissioner (OIC) in 2006 to investigate criminal insurance fraud in Washington State and hold the line on insurance costs for all lines of business.

CIU's mission is to identify, investigate and bring to prosecution criminal organizations and individuals who perpetrate fraud against insurance companies.

The National Insurance Crime Bureau estimates that 10 percent of all insurance claims are fraudulent, adding as much as \$700 a year to the average household's insurance premiums. Insurance fraud is not a victimless crime—we all pay for it.

CIU receives referrals from several sources, including the NICB (spell out) and OIC's own website. Since 2015 the amount of referrals to CIU has increased from 1,692 in 2015 to 1,899 in 2017. As of October in 2018, CIU had already received 1,912 referrals, and has been receiving an average of 173 referrals per month.

CIU's investigations and prosecutions saved \$3,626,303 in immediate and projected insurance claim payouts. These efforts also resulted in \$857,353 of restitution ordered paid back to companies and \$26,760 in courts costs ordered back to the company, between January 1, 2015 and December 31, 2016

However, the marked increase in referrals means that CIU is unable to pursue all of them, which means that more fraud is continuing without investigation or prosecution.

## Proposal

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Expand the capacity of CIU to investigate and have fraud cases prosecuted by expanding staffing by four investigators, for a total of 10 along with 3 full-time researchers and one part-time, for a total of 14.

The funding for this expansion would be from a newly created Insurance Fraud Surcharge, which would be placed into the fraud account.

## Funding Mechanism

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### Advantages

- It spreads the CIU cost over the same entities that currently pay for the costs of operating the OIC (and currently pay for the CIU)
- It uses the same criteria as the Regulatory Surcharge including calculations (based on premium volume) and penalties
  - **Please note** that upon the establishment of the insurance fraud surcharge rate, the regulatory surcharge rates will be reduced accordingly.
- Any unexpended funds at the close of a fiscal year are carried forward to succeeding fiscal years and are used to reduce the future Insurance Fraud Surcharge.
- SIMBA/ORCA already has the mechanisms to calculate, bill, collect, and monitor the Regulatory Surcharge. Modifying the system to add the Insurance Fraud Surcharge should be fairly easy.
- The Insurance Fraud Surcharge, like the Regulatory Surcharge, would not be retaliatory because insurers/carriers have the ability to recover the surcharge costs. RCW 48.14.040(3) would also need to be modified to include the Insurance Fraud Surcharge and should read as follows:
  - For the purposes of this section, the regulatory and insurance fraud surcharges imposed by RCW 48.02.190 shall not be included in the calculation of any retaliatory taxes, licenses, fees, deposits, or other obligations or prohibitions imposed under this section.

### Cost

The estimated cost of the proposed 2019-21 decision package for CIU is \$1.9 million for the 19-21 biennium. Adding that to the current CIU allotments, we would need to generate approximately \$4.7 million per biennium or \$2.35 million per year. Below is the maximum rate allowed in statute the current Regulatory Surcharge rate, and the estimated Insurance Fraud Surcharge rate needed in order to generate \$2.35 million per year.

	Current surcharge rate	Proposed insurance fraud surcharge rate
<b>Maximum rate allowed</b>	<b>0.125% or 0.00125</b>	<b>0.125% or 0.00125</b>
Health carriers	0.0946% or 0.000946	0.0040% or 0.00040
Insurers	0.11% or 0.0011	0.0040% or 0.00040

## Insurance Fraud Surcharge

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A new insurance fraud surcharge, and the associated account in the State Treasury, is being proposed in order to establish a dedicated funding source for the Insurance Commissioner's Criminal Investigations Unit (CIU) to fight criminal insurance fraud in Washington State.

- Each year, the insurance fraud surcharge will be calculated based on legislative appropriation.
- The insurance fraud surcharge is calculated separately from the agency's regulatory surcharge.
- The current estimated rate for the insurance fraud surcharge is .0047% of receipts collected or received (same basis as the regulatory surcharge); with a minimum annual insurance fraud surcharge of \$100.
- Approximately 5% of the biennial appropriation will be maintained as an ending fund balance in the Insurance Commissioner's Fraud Account.
- Any excess funds in the Insurance Commissioner's Fraud Account at the close of a fiscal year will be carried forward to the succeeding fiscal year and be used to reduce future insurance fraud surcharges.

## One-time Impact on the Regulatory Surcharge

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The regulatory surcharge is calculated each year based on legislative appropriation. The normal process, if the regulatory surcharge rate generates more revenue than is needed based on legislative appropriation, is for the OIC to maintain the existing rate but return the excess revenue to the insurers/carriers in the form of a credit against the current year's regulatory surcharge. The OIC has given a credit every year since 2010.

However, for 2019, rather than simply crediting excess revenue back to the insurers/carriers, because it is a legislative change to implement a new insurance fraud surcharge, the OIC will do a one-time, but ongoing, reduction to the regulatory surcharge rate by the same amount of the newly established insurance fraud surcharge rate.

For all future annual rate calculations, the two surcharges will be treated independently.