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**SENATE BILL 6059**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senator Becker

Prefiled 12/10/19.

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

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

5 **Sec. 1.** RCW 82.04.299 and 2019 c 406 s 74 are each amended to  
6 read as follows:

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

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

19 (1)(a) Beginning with business activities occurring on or after  
20 January 1, 2020, in addition to the taxes imposed under RCW  
21 82.04.290(2), a workforce education investment surcharge is imposed

1 on specified persons. The surcharge is equal to the total amount of  
2 tax payable by the person on business activities taxed under RCW  
3 82.04.290(2), before application of any tax credits, multiplied by  
4 the rate of twenty percent.

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

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

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

15 (a) Computer software publishing or publishing and reproduction.  
16 Establishments in this industry carry out operations necessary for  
17 producing and distributing computer software, such as designing,  
18 providing documentation, assisting in installation, and providing  
19 support services to software purchasers. These establishments may  
20 design, develop, and publish, or publish only. These establishments  
21 may publish and distribute software remotely through subscriptions  
22 and downloads;

23 (b) Conducting original investigation undertaken on a systematic  
24 basis to gain new knowledge or the application of research findings  
25 or other scientific knowledge for the creation of new or  
26 significantly improved products or processes. Techniques may include  
27 modeling and simulation. The industries within this industry group  
28 are defined on the basis of the domain of research and on scientific  
29 expertise of the establishment;

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

34 (d) Providing expertise in the field of information technologies  
35 through one or more of the following activities: (i) Writing,  
36 modifying, testing, and supporting computer software to meet the  
37 needs of a particular customer; (ii) planning and designing computer  
38 systems that integrate computer hardware, computer software, and  
39 communication technologies; (iii) on-site management and operation of  
40 clients' computer systems and data processing facilities; or (iv)

1 other professional and technical computer-related advice and  
2 services;

3 (e) Performing central banking functions, such as issuing  
4 currency, managing the nation's money supply and international  
5 reserves, holding deposits that represent the reserves of other banks  
6 and other central banks, and acting as a fiscal agent for the central  
7 government;

8 (f) (i) Purchasing access and network capacity from owners and  
9 operators of telecommunications networks and reselling wired and  
10 wireless telecommunications services, except satellite, to businesses  
11 and households; (ii) providing specialized telecommunications  
12 services, such as satellite tracking, communications telemetry, and  
13 radar station operation; (iii) providing satellite terminal stations  
14 and associated facilities connected with one or more terrestrial  
15 systems and capable of transmitting telecommunications to, and  
16 receiving telecommunications from, satellite systems; or (iv)  
17 providing internet access services or voice over internet protocol  
18 services via client-supplied telecommunications connections.  
19 Establishments in this industry do not operate as telecommunications  
20 carriers. Mobile virtual network operators are included in this  
21 industry;

22 (g) (i) Acting as principals in buying or selling financial  
23 contracts, except investment bankers, securities dealers, and  
24 commodity contracts dealers; (ii) acting as agents or brokers, except  
25 securities brokerages and commodity contracts brokerages, in buying  
26 or selling financial contracts; or (iii) providing other investment  
27 services except securities and commodity exchanges, such as portfolio  
28 management, investment advice, and trust, fiduciary, and custody  
29 services;

30 (h) Supplying information, such as news reports, articles,  
31 pictures, and features, to the news media. This industry comprises  
32 establishments primarily engaged in providing library or archive  
33 services. These establishments are engaged in maintaining collections  
34 of documents and facilitating the use of these documents as required  
35 to meet the informational, research, educational, or recreational  
36 needs of their user. These establishments may also acquire, research,  
37 store, preserve, and generally make accessible to the public  
38 historical documents, photographs, maps, audio material, audiovisual  
39 material, and other archival material of historical interest. All or  
40 portions of these collections may be accessible electronically. This

1 industry comprises establishments engaged in: (i) Publishing and  
2 broadcasting content on the internet exclusively; or (ii) operating  
3 web sites that use a search engine to generate and maintain extensive  
4 databases of internet addresses and content in an easily searchable  
5 format, known as web search portals. The publishing and broadcasting  
6 establishments in this industry do not provide traditional versions  
7 of the content they publish or broadcast. They provide textual,  
8 audio, or video content of general or specific interest on the  
9 internet exclusively. Establishments known as web search portals  
10 often provide additional internet services, such as email,  
11 connections to other web sites, auctions, news, and other limited  
12 content, and serve as a home base for internet users. This industry  
13 comprises establishments primarily engaged in providing other  
14 information services, except news syndicates, libraries, archives,  
15 internet publishing and broadcasting, and web search portals;

16 (i) Architectural, engineering, and related services, such as  
17 drafting services, building inspection services, geophysical  
18 surveying and mapping services, surveying and mapping, except  
19 geophysical services and testing services;

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

26 (k) Providing advice and assistance to businesses and other  
27 organizations on management, environmental, scientific, and technical  
28 issues;

29 (l) Providing infrastructure for hosting or data processing  
30 services. These establishments may provide specialized hosting  
31 activities, such as web hosting, streaming services, or application  
32 hosting, or they may provide general time-share mainframe facilities  
33 to clients. Data processing establishments provide complete  
34 processing and specialized reports from data supplied by clients or  
35 provide automated data processing and data entry services;

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

1 (n) Offering legal services, such as those offered by offices of  
2 lawyers, offices of notaries, and title abstract and settlement  
3 offices, and paralegal services;

4 (o) Operating or providing access to transmission facilities and  
5 infrastructure that they own or lease for the transmission of voice,  
6 data, text, sound, and video using wired telecommunications networks.  
7 Transmission facilities may be based on a single technology or a  
8 combination of technologies. Establishments in this industry use the  
9 wired telecommunications network facilities that they operate to  
10 provide a variety of services, such as wired telephony services,  
11 including voice over internet protocol services, wired audio and  
12 video programming distribution, and wired broadband internet  
13 services. By exception, establishments providing satellite television  
14 distribution services using facilities and infrastructure that they  
15 operate are included in this industry;

16 (p) Providing telecommunications services to other establishments  
17 in the telecommunications and broadcasting industries by forwarding  
18 and receiving communications signals via a system of satellites or  
19 reselling satellite telecommunications;

20 (q) Operating and maintaining switching and transmission  
21 facilities to provide communications via the airwaves. Establishments  
22 in this industry have spectrum licenses and provide services using  
23 that spectrum, such as cellular phone services, paging services,  
24 wireless internet access, and wireless video services;

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

28 (s) Underwriting annuities and insurance policies and investing  
29 premiums to build up a portfolio of financial assets to be used  
30 against future claims. Direct insurance carriers are establishments  
31 that are primarily engaged in initially underwriting and assuming the  
32 risk of annuities and insurance policies. Reinsurance carriers are  
33 establishments that are primarily engaged in assuming all or part of  
34 the risk associated with an existing insurance policy originally  
35 underwritten by another insurance carrier. Industries are defined in  
36 terms of the type of risk being insured against, such as death, loss  
37 of employment because of age or disability, or property damage.  
38 Contributions and premiums are set on the basis of actuarial  
39 calculations of probable payouts based on risk factors from  
40 experience tables and expected investment returns on reserves;

1 (t) Merchant wholesale distribution of photographic equipment and  
2 supplies and office, computer, and computer peripheral equipment and  
3 medical, dental, hospital, ophthalmic, and other commercial and  
4 professional equipment and supplies;

5 (u) Operating studios and facilities for the broadcasting of  
6 programs on a subscription or fee basis. The broadcast programming is  
7 typically narrowcast in nature. These establishments produce  
8 programming in their own facilities or acquire programming from  
9 external sources. The programming material is usually delivered to a  
10 third party, such as cable systems or direct-to-home satellite  
11 systems, for transmission to viewers;

12 (v) Publishing newspapers, magazines, other periodicals, books,  
13 directories and mailing lists, and other works, such as calendars,  
14 greeting cards, and maps. These works are characterized by the  
15 intellectual creativity required in their development and are usually  
16 protected by copyright. Publishers distribute or arrange for the  
17 distribution of these works. Publishing establishments may create the  
18 works in-house, or contract for, purchase, or compile works that were  
19 originally created by others. These works may be published in one or  
20 more formats, such as print or electronic form, including proprietary  
21 electronic networks. Establishments in this industry may print,  
22 reproduce, or offer direct access to the works themselves or may  
23 arrange with others to carry out such functions. Establishments that  
24 both print and publish may fill excess capacity with commercial or  
25 job printing. However, the publishing activity is still considered to  
26 be the primary activity of these establishments;

27 (w) Generating, transmitting, or distributing electric power.  
28 Establishments in this industry group may perform one or more of the  
29 following activities: (i) Operate generation facilities that produce  
30 electric energy; (ii) operate transmission systems that convey the  
31 electricity from the generation facility to the distribution system;  
32 or (iii) operate distribution systems that convey electric power  
33 received from the generation facility or the transmission system to  
34 the final consumer;

35 (x) Providing specialized design services including interior  
36 design, industrial design, graphic design, and others, but not  
37 including architectural, engineering, and computer systems design;

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

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

4 (aa) Business-to-business electronic markets that bring together  
5 buyers and sellers of goods using the internet or other electronic  
6 means and generally receive a commission or fee for the service.  
7 Business-to-business electronic markets for durable and nondurable  
8 goods are included in this industry. This industry comprises  
9 wholesale trade agents and brokers acting on behalf of buyers or  
10 sellers in the wholesale distribution of goods. Agents and brokers do  
11 not take title to the goods being sold but rather receive a  
12 commission or fee for their service. Agents and brokers for all  
13 durable and nondurable goods are included in this industry;

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

18 (cc)(i) Manufacturing complete aircraft, missiles, or space  
19 vehicles; (ii) manufacturing aerospace engines, propulsion units,  
20 auxiliary equipment or parts; (iii) developing and making prototypes  
21 of aerospace products; (iv) aircraft conversion; or (v) complete  
22 aircraft or propulsion systems overhaul and rebuilding;

23 (dd) Advertising, public relations, and related services, such as  
24 media buying, independent media representation, outdoor advertising,  
25 direct mail advertising, advertising material distribution services,  
26 and other services related to advertising;

27 (ee) Providing services, such as auditing of accounting records,  
28 designing accounting systems, preparing financial statements,  
29 developing budgets, preparing tax returns, processing payrolls,  
30 bookkeeping, and billing;

31 ~~(ff) ((The independent practice of general or specialized  
32 medicine or surgery by businesses comprised of one or more health  
33 practitioners having the degree of doctor of medicine or doctor of  
34 osteopathy. These practitioners operate private or group practices in  
35 their own offices or in the facilities of others, such as hospitals  
36 or health maintenance organization medical centers;~~

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

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

4       ~~((+ii))~~ (gg) Promoting the interests of an organization's  
5 members, except religious organizations, social advocacy  
6 organizations, and civic and social organizations. Examples of  
7 establishments in this industry are business associations,  
8 professional organizations, labor unions, and political  
9 organizations;

10       ~~((+jj))~~ (hh) Holding the securities of or other equity interests  
11 in companies and enterprises for the purpose of owning a controlling  
12 interest or influencing management decisions or businesses that  
13 administer, oversee, and manage other establishments of the company  
14 or enterprise and that normally undertake the strategic or  
15 organizational planning and decision-making role of the company or  
16 enterprise. Establishments that administer, oversee, and manage may  
17 hold the securities of the company or enterprise;

18       ~~((+kk) For medical and diagnostic laboratories, providing  
19 analytic or diagnostic services, including body fluid analysis and  
20 diagnostic imaging, generally to the medical profession or to the  
21 patient on referral from a health practitioner;~~

22       ~~(+ll))~~ (ii) Serving as offices of chief executives and their  
23 advisory committees and commissions. This industry includes offices  
24 of the president, governors, and mayors, in addition to executive  
25 advisory commissions. This industry comprises government  
26 establishments serving as legislative bodies and their advisory  
27 committees and commissions. Included in this industry are legislative  
28 bodies, such as congress, state legislatures, and advisory and study  
29 legislative commissions. This industry comprises government  
30 establishments primarily engaged in public finance, taxation, and  
31 monetary policy. Included are financial administration activities,  
32 such as monetary policy, tax administration and collection, custody  
33 and disbursement of funds, debt and investment administration,  
34 auditing activities, and government employee retirement trust fund  
35 administration. This industry comprises government establishments  
36 serving as councils and boards of commissioners or supervisors and  
37 such bodies where the chief executive is a member of the legislative  
38 body itself. This industry comprises American Indian and Alaska  
39 Native governing bodies. Establishments in this industry perform  
40 legislative, judicial, and administrative functions for their



1 American Indian and Alaska Native lands. Included in this industry  
2 are American Indian and Alaska Native councils, courts, and law  
3 enforcement bodies. This industry comprises government establishments  
4 primarily engaged in providing general support for government. Such  
5 support services include personnel services, election boards, and  
6 other general government support establishments that are not  
7 classified elsewhere in public administration;

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

13 ~~((nn))~~ (kk) Providing professional, scientific, or technical  
14 services including marketing research, public opinion polling,  
15 photographic services, translation and interpretation services, and  
16 veterinary services. This category does not include legal services,  
17 accounting, tax preparation, bookkeeping, architectural, engineering,  
18 and related services, specialized design services, computer systems  
19 design, management, scientific and technical consulting services,  
20 scientific research and development services, or advertising  
21 services(~~†~~

22 ~~(oo) The independent practice of general or specialized dentistry~~  
23 ~~or dental surgery by businesses comprised of one or more health~~  
24 ~~practitioners having the degree of doctor of dental medicine, doctor~~  
25 ~~of dental surgery, or doctor of dental science. These practitioners~~  
26 ~~operate private or group practices in their own offices or in the~~  
27 ~~facilities of others, such as hospitals or health maintenance~~  
28 ~~organization medical centers. They may provide either comprehensive~~  
29 ~~preventive, cosmetic, or emergency care, or specialize in a single~~  
30 ~~field of dentistry;~~

31 ~~(pp) The independent practice of general or specialized medicine~~  
32 ~~or surgery, or general or specialized dentistry or dental surgery, by~~  
33 ~~businesses comprised of one or more independent health practitioners,~~  
34 ~~other than physicians and dentists;~~

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

36 (3) (a) (i) For the purposes of this section, a person is primarily  
37 engaged within this state in any combination of the activities  
38 described in subsection (2) of this section if more than fifty  
39 percent of the person's cumulative gross amount reportable under this  
40 chapter during the entire current or immediately preceding calendar

1 year was generated from engaging in any one or more of the activities  
2 described in subsection (2) of this section. For purposes of this  
3 subsection, "gross amount reportable" means the total value of  
4 products, gross proceeds of sales, and gross income of the business,  
5 reportable to the department before application of any tax  
6 deductions.

7 (ii) If a person was not primarily engaged within this state in  
8 any combination of the activities described in subsection (2) of this  
9 section during the immediately preceding year, and the person is  
10 unsure whether the person will be subject to the workforce investment  
11 surcharge for the current calendar year until the close of the  
12 current calendar year, the person must, if necessary, file corrected  
13 returns with the department of revenue to pay any additional tax due  
14 under this section for the current calendar year. Payment of  
15 additional tax, along with corrected returns, is due and payable when  
16 the person's last return for the calendar year during which the tax  
17 liability accrued is due and payable. Additional tax due under this  
18 section is subject to penalties and interest as provided under  
19 chapter 82.32 RCW only if the tax is not paid in full by the date due  
20 as provided in this subsection (3)(a)(ii).

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

26 (4)(a) Beginning with business activities occurring on or after  
27 January 1, 2020, in addition to the taxes imposed under RCW  
28 82.04.290(2), a workforce education investment surcharge is imposed  
29 on select advanced computing businesses as follows:

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

38 (ii) For an affiliated group that has worldwide gross revenue of  
39 more than one hundred billion dollars during the entire current or  
40 immediately preceding calendar year, the surcharge is equal to the

1 total amount of tax payable by each member of the affiliated group on  
2 all business activities taxed under RCW 82.04.290(2), before  
3 application of any tax credits, multiplied by the rate of sixty-six  
4 and two-thirds percent.

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

9 (c) For persons subject to the surcharge imposed under this  
10 subsection (4) that report under one or more tax classifications, the  
11 surcharge applies only to business activities taxed under RCW  
12 82.04.290(2).

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

16 (e) To aid in the effective administration of the surcharge in  
17 this subsection (4), the department may require persons believed to  
18 be engaging in advanced computing or affiliated with a person  
19 believed to be engaging in advanced computing to disclose whether  
20 they are a member of an affiliated group and, if so, to identify all  
21 other members of the affiliated group subject to the surcharge. If  
22 the department determines that a person, with intent to evade the  
23 surcharge under this subsection (4), failed to fully comply with this  
24 subsection (4)(e), the seven million dollar limitation in (b) of this  
25 subsection (4) does not apply to the person's affiliated group.

26 (f) For the purposes of this subsection (4) the following  
27 definitions apply:

28 (i) "Advanced computing" means designing or developing computer  
29 software or computer hardware, whether directly or contracting with  
30 another person, including modifications to computer software or  
31 computer hardware, cloud computing services, or operating an online  
32 marketplace, an online search engine, or online social networking  
33 platform;

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

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

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

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

8 (vi) "Select advanced computing business" means a person who is a  
9 member of an affiliated group with at least one member of the  
10 affiliated group engaging in the business of advanced computing, and  
11 the affiliated group has worldwide gross revenue of more than twenty-  
12 five billion dollars during the entire current or immediately  
13 preceding calendar year. A person who is primarily engaged within  
14 this state in the provision of commercial mobile service, as that  
15 term is defined in 47 U.S.C. Sec. 332(d)(1), shall not be considered  
16 a select advanced computing business. A person who is primarily  
17 engaged in this state in the operation and provision of access to  
18 transmission facilities and infrastructure that the person owns or  
19 leases for the transmission of voice, data, text, sound, and video  
20 using wired telecommunications networks shall not be considered a  
21 select advanced computing business.

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

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

29 (7) The department has the authority to determine through an  
30 audit or other investigation whether a person is subject to the  
31 surcharges imposed in this section. The department's determination  
32 that a person is subject to the surcharge is presumed to be correct  
33 unless the person shows by clear, cogent, and convincing evidence  
34 that the department's determination was incorrect. The increased  
35 evidentiary standard under this subsection (7) does not apply after  
36 January 1, 2022.

37 NEW SECTION. **Sec. 2.** The provisions of RCW 82.32.805 and  
38 82.32.808 do not apply to this act.

1        NEW SECTION.    **Sec. 3.**    This act takes effect July 1, 2020.

--- **END** ---