

Appendix to this Message. Eight States currently have domestically chartered insurance companies doing a significant volume of business beyond the borders of their home State. Seven States impose a tax of between 2 1/2% and 3%; eight impose a tax of more than 2% but less than 2 1/2%; and the rest tax premiums at 2%.

All but two States (Hawaii and New Mexico) have, in addition to the regular premium tax, a form of retaliatory tax. Although the wording of these retaliatory provisions varies from State to State, their effect is substantially the same; namely, to assess a higher tax against every company whose home State imposes taxes which are, in the aggregate, higher than the taxes imposed by the retaliating State. These retaliatory taxes can be traced back at least to the 1850's. Their purpose was to "demand equality for treatment for insurance companies of one state when they do business in a foreign state, and impose the same burdens and exactions on insurance companies from the foreign state if this equality is refused." See Insurance Retaliatory Laws, George A. Pelletier, Jr., 39 Notre Dame Lawyer 243 (1964). See also State Ins. Comm. v. Nationwide Mut. Ins. Co., 241 Md. 108 (1966); State ex rel. O'Brien v. Continental Ins. Co., 67 Ind. App. 536, 116 N.E. 929 (1917); Atlantic Insurance Co. v. State Board of Equalization, 62 Cal. Rptr. 784 (1967).

The fact that all but fifteen States impose a tax of 2 1/2% or less illustrates how successful these retaliatory provisions have been in creating and maintaining similarity in the tax rates among the various States. Although I seriously question the rationale and need for these provisions in today's world and, in fact, believe them to be an unconscionable restraint on the State's taxing power and fiscal integrity, I cannot contest either their existence or effect. When, in 1941, Maryland last increased its premium tax (from 1 1/2% to 2%), the three States which then had tax rates lower than 2% immediately invoked their retaliatory provisions; and I have no reason to suspect that the forty-two States currently having rates below 3% would not do the same thing. The Insurance Commissioner has, in fact, advised me that, based upon conversations with his counterparts in other States, it is his judgment that the retaliatory taxes will be imposed by these other States should House Bill 855 become law.

As a result of these concerns, I called the General Assembly into Special Session to reconsider this particular method of funding the appropriation. To its credit, the Legislature, in Special Session, swiftly enacted Senate Bill 1, which re-enacted the appropriation and funded it on a more equitable basis.