

Eighty-Eighth Regular Session

WEDNESDAY, December 30, 1987

The chief clerk makes the following entries under the above date.

INTRODUCTION OF BILLS

Read first time and referred:

Senate Bill 466

Relating to various changes to the fair dealership law.

By Senators Van Sistine, Roshell, Kincaid, Kreul, Lorman, Strohl, and Chilsen; cosponsored by Representatives S. Coggs, Fergus, Grobschmidt, Rosenzweig, Boyle, Hasenohrl, Van Gorden, Van Dreel, and Hauke.

To committee on Labor, Business, Insurance, Veterans' and Military Affairs.

Senate Bill 467

Relating to eliminating certain limits on deposits received by a mutual savings bank.

By Senators Weeden and Feingold; cosponsored by Representative Robson.

To committee on Aging, Banking, Commercial Credit and Taxation.

Senate Bill 468

Relating to operating snowmobiles on a highway.

By Senator Kincaid; cosponsored by Representative Vanderperren.

To committee on Transportation, Tourism and Conservation.

Senate Bill 469

Relating to eliminating private motor carrier permits and certain nonresident reciprocity permits, instalment payment of international registration plan fees, prorated registration fees, issuance of certain 72-hour trip permits, granting rule-making authority and making an appropriation.

By Senator Kincaid; cosponsored by Representative Vanderperren.

To committee on Transportation, Tourism and Conservation.

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Claims Board

December 18, 1987

To the Honorable the Senate

Enclosed is the report of the State Claims Board covering claims heard on December 9, 1987.

The amounts recommended for payment under \$1000 on claims included in this report have, under the

provisions of s. 16.007, Wisconsin Statutes, been paid directly by the Board.

The Board is preparing the bill(s) on the recommended award(s) over \$1,000, and will submit such to the Joint Finance Committee for legislative introduction.

This report is for the information of the Legislature. The Board would appreciate your acceptance and spreading of it upon the Journal to inform the members of the Legislature.

Sincerely,
EDWARD D. MAIN
Secretary

STATE OF WISCONSIN CLAIMS BOARD

The State Claims Board conducted hearings at the State Capitol Building, Madison, Wisconsin on December 9, 1987 upon the following claims:

Claimant	Amount
Michael and Rosane Bockhop	\$ 105,000.00
Glenn Petrie	750.00
Mark Kraklow	3,000,000.00

In addition, the following claims were considered and decided without hearings:

Francis Witkins	19,500.00
James Fletty	468.22
Paul Mueller	505.10
Barry and Linda Brehmer	73.00
James and Michelle Piech	445.16
Ruth Topp	955.00
Shannon Kennedy-Sheahan	15.99
Karol Galbraith	38.85
Anne Roche	315.00
B. Michael Pallasch	1,527.21
Randall Link	79.15
Edward Zimny	68.00

THE BOARD FINDS:

1. Michael and Rosane Bockhop of Belmont, Wisconsin, claim \$105,000.00 for loss of their swine herd and monthly operating losses allegedly due to the exposure of their swine to the infectious disease pseudorabies in 1986. The Department of Agriculture authorized the move of 700 pseudorabies exposed swine to a farm approximately one-half mile away from claimants' farm between July 29, and August 1, 1986. In October, 1986, claimants' swine herd tested positive for pseudorabies and on October 13, 1986, the Department of Agriculture placed claimants' swine herd under quarantine. Under s. 95.27(4), Wis. States., claimants are entitled to an indemnity of \$10 or \$25 per animal. While the Department of Agriculture cannot say that its action did not cause the pseudorabies in claimants' swine herd, the Board finds no evidentiary showing of negligence on the part of the state, its officers, agents or

employees and the Board concludes this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

2. Glenn Petrie of Madison, Wisconsin, claims \$750.00 for damages to his vehicle allegedly caused by a tree which fell on top of his vehicle while it was parked in lot 5 on the University of Wisconsin-Madison campus on June 27, 1987. The car was totaled as a result of the damages caused by the tree. The Board concludes the claim should be paid in the reduced amount of \$225, based on equitable principles. The Board further concludes under authority of s. 16.007(6m), Stats., the claim should be paid from the Claims Board Appropriation s. 20.505(4)(d), Stats.

3. Mark Kraklow of Iola, Wisconsin, claims \$3,000,000.00 for pain and suffering, ongoing medical and prescription costs and physical limitations allegedly resulting from his exposure to lung irritants and hazardous chemicals while employed as a custodian at the University of Wisconsin-La Crosse from November, 1983 to 1987. Claimant contends that his exposure to toxic cleaning chemicals, dust, dirt and asbestos caused his bronchial disease. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

4. Francis Witkins of Beloit, Wisconsin, claims \$19,500.00 for loss of rent and attorney fees resulting from the state's refusal to honor an alleged lease agreement. Claimant had leased his building located in Beloit, Wisconsin, to the Department of Transportation, Division of Motor Vehicles, since July 1969. Claimant contends that the state agreed to lease his building for another one-year period beginning January 31, 1987, at a monthly rate of \$1,500.00. In August, 1985, the state advised claimant that upon expiration of his current lease on December 31, 1986, a five or six-year lease would be developed from January, 1987, and that his facility along with other locations would be considered. On December 3, 1986, the state sent claimant a letter advising that the Department of Transportation would vacate his building by December 31, 1986. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

5. James Fletty of Eau Claire, Wisconsin, claims \$468.22 for damages to his vehicle allegedly caused by a television antenna which was blown against his vehicle which was parked in the lot at the Eau Claire armory. The antenna had been removed from the roof of the armory and placed on the ground next to the building. It appears that claimant does have vehicle insurance coverage for this type of damage. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is not one for which the state is legally liable

nor one which the state should assume and pay based on equitable principles.

6. Paul Mueller of Bloomington, Minnesota, claims \$505.10 for damages to his vehicle allegedly incurred when the vehicle struck an object on highway I 90-94 on August 9, 1987. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

7. Barry and Linda Brehmer of Oshkosh, Wisconsin, claim \$73.00 for medical expenses incurred on July 8, 1987, when their daughter, Ann Marie, allegedly cut her knee on a piece of glass at the Congress Avenue soccer field on the University of Wisconsin-Oshkosh campus. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

8. James and Michelle Piech of Milwaukee, Wisconsin, claim \$445.16 for taxes assessed by the Department of Revenue in 1984, as a result of an assessment made by the Internal Revenue Service on their income tax return for 1980. In 1987, claimants filed an amended tax return for 1980 with the Internal Revenue Service and received a refund of the assessment plus interest. The Department of Revenue would have issued a refund if claimant had filed a claim for refund with two years after the tax assessment pursuant to s. 71.10(10)(e), Wis. Stats. The Board concludes the claim should be paid based on equitable principles. The board further concludes under authority of s. 16.007(6m), Stats., payment should be made from the Claims Board appropriation s. 20.505(4)(d), Stats. The Board recommends that the Secretary of the Department of Revenue request the Governor and the Legislature to consider changing the law such that the running of the time for the two year statute of limitations does not commence until after completion of any federal audit if a federal audit occurs.

9. Ruth Topp of Wisconsin Rapids, Wisconsin, claims \$955.00 as the amount she was required to pay to the unemployment reserve fund when the Department of Industry, Labor and Human Relations (DILHR), determined she was overpaid unemployment compensation benefits. In February 1982, Claimant applied for and became eligible to receive 34 weeks of unemployment compensation. In April, Claimant applied for social security benefits and began to receive monthly benefits shortly after. Claimant contends that DILHR did not advise her of the requirement of reporting social security benefits which would result in a decrease in unemployment compensation benefits. In August when claimant applied for extended unemployment benefits. In August when claimant applied for extended unemployment benefits, she became aware that she was required to report the receipt of

social security benefits and she notified DILHR. As a result, DILHR reduced claimants's unemployment benefits by 50% and assessed an overpayment of \$1,192.50. Claimant requested DILHR to waive recovery of the overpayment. Ann Appeal Tribunal concluded that a higher departmental authority must decide whether to waive recovery and affirmed the assessment. Claimant then appealed to the Labor and Industry Review Commission which affirmed the Appeal Tribunal's decision. Claimant filed a petition for review in the Dane County Circuit Court and on August 10, 1984, the court remanded the case to the Labor and Industry Review Commission to decide whether grounds existed to waive recovery from claimant. The Commission petitioned the Wisconsin Court of Appeals for review of this decision. The Court of Appeals concluded that only DILHR may waive collection of overpayments of unemployment compensation from an individual. The board concludes the claim should be paid based on equitable principles. The Board further concludes under authority of s. 16.007(6m), Stats., payment should be made from the Department of Industry, Labor and Human Relations appropriation s. 20.445(1)(pz), Stats. coat was taken from the employe lounge by a patient at the Institute. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

10. Shannon Kennedy-Sheahen of Madison, Wisconsin, claims \$15.99 for replacement fo her skirt allegedly damaged by ink or grease while she was operating an OCR scanner on August 10, 1987, as part of her duties as an employe of the Department of Industry, Labor and Human Relations. Due to the Board's change in policy in August, 1987, it will no longer award payment for this type of claim. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

11. Karol Galbraith of McFarland, Wisconsin, claims \$38.85 for replacement of two pair of pants allegedly damaged on September 21 and 22, 1987, at the Department of Industry, Labor and Human Relations where she is employed. Due to the Board's change in policy in August, 1987 it will no longer award payment for this type of claim. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one ofr which the state is legally liable nor one which the state should assume and pay based on equitable principles.

12. Anne Roche of Baraboo, Wisconsin, claims \$315.00 for reimbursement of dental expenses allegedly resulting from an injury she sustained at the Devil's Lake State Park on August 16, 1986. A group of people were playing volleyball next to the beach and claimant was hit

in the face with the volley ball. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

13. B. Michael Pallasch of Chicago, Illinois, claims \$1,527.21 as compensation for timber removed from his land by the Department of Natural Resources in 1981. The Department of Natural Resources inaccurately marked the property boundary between claimant's land and state land, resulting in the unauthorized removal of timber from claimant's land. The Board concludes the claim should be paid in the reduced amount of \$796.23, based on equitable principles. The Board further concludes under authority of s. 16.007(6m), Stats., payment should be made from the Department of Natural Resources appropriation s. 20.370(1)(mu), Stats.

14. Randall Link of Adell, Wisconsin, claims \$79.15 for replacement of his vehicle window allegedly damaged by a stone thrown from a lawn mower being operated by a Department of Natural Resources limited term employe at the Kettle Moraine Springs fish Hatchery on August 3, 1987. The Board concludes the claim should be paid based on equitable principles. The Board further concludes under authority of s. 16.007(6m), Stats., payment should be made from the Department of Natural Resources appropriation s. 20.370(mu), Stats.

15. Edward Zimny of Kenosha, Wisconsin, claims \$68.00 for replacement of his eyeglasses which were damaged while he was performing his duties as a limited term employe for the Department of Natural Resources on July 9, 1987. Claimant was clearing a hiking trail at the Bong State Recreation area when a branch knocked his glasses off his face. The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employes and this claim is not one for which the state is legally liable nor one which the state should assume and apy based on equitable principles (Member Schneider dissenting).

THE BOARD CONCLUDES:

1. The claims of the following claimants should be denied:

Michael and Rosane Bockhop
 Mark Kraklow
 Francis Witkins
 James Fletty
 Paul Mueller
 Bary and Linda Brehmer
 Shannon Kennedy-Sheahen
 Karol Galbraith
 Anne Roche
 Edward Zimny

2. Payment of the following amounts to the following claimants is justified under s. 16.007, Stats.

Edward Karl	385.00
Glenn Petrie	255.00
James and Michelle Piech	445.16
Ruth Topp	955.00

B. Michael Pallasch 796.23
Randall Link 79.15

GARY R. GEORGE
Senate Finance Committee
MARLIN D. SCHNEIDER
Assembly Finance Committee
RAYMOND P. TAFFORA
Representative of Governor
EDWARD D. MAIN
Representative of Secretary of
Administration
WILLIAM H. WILKER
Representative of Attorney
General

Senate Clearinghouse Rule 87-112

Relating to use restrictions on the pesticide aldicarb.
Submitted by Department of Agriculture, Trade and
Consumer Protection.

Report received from agency, December 23, 1987.
Referred to committee on Agriculture, Health and
Human Services, December 30, 1987.

Senate Clearinghouse Rule 87-121

Relating to disclosure of confidential claims
information by the Wisconsin health care liability
insurance plan and the patients compensation fund.

Submitted by Office of the Commissioner of
Insurance.

Report received from agency, December 23, 1987.
Referred to committee on Labor, Business,
Insurance, Veterans' and Military Affairs, December 30,
1987.

EXECUTIVE COMMUNICATIONS

State of Wisconsin
Office of the Governor
December 18, 1987

To the Honorable, the Senate:

I am pleased to nominate and with the advice and
consent of the Senate, do appoint A. HENRY HEMPE
of Beloit to the Wisconsin Employment Relations
Commission, pursuant to the statute governing, to serve
a term to expire March 1, 1991.

Respectfully,
TOMMY THOMPSON
Governor

Read and referred to committee on Housing,
Government Operations and Cultural Affairs.

State of Wisconsin
Office of the Governor
December 30, 1987

To the Honorable, the Senate:

By this letter, I officially withdraw Robert D. Johns,
Jr. of La Crosse from consideration for appointment to
the Chiropractic Examining Board.

Respectfully,
TOMMY THOMPSON
Governor

SENATE CLEARINGHOUSE ORDERS

Senate Clearinghouse Rule 86-162

Relating to rules of the secretary of the department of
employment relations.

Submitted by Department of Employment Relations.
Report received from agency, December 23, 1987.

Referred to committee on Housing, Government
Operations and Cultural Affairs, December 30, 1987.

Senate Clearinghouse Rule 86-161

Relating to rules of the division of merit recruitment
and selection in the department of employment relations.

Submitted by Department of Employment Relations.
Report received from agency, December 23, 1987.

Referred to committee on Housing, Government
Operations and Cultural Affairs, December 30, 1987.

The committee on Transportation, Tourism and
Conservation reports and recommends:

Senate Clearinghouse Rule 86-249

Relating to van converters as manufacturers,
requirements for motor home conversions and the
records required to be kept by motor vehicle dealers
selling new converted vans.

No action taken.

LLOYD H. KINCAID
Chair

The committee on Labor, Business, Insurance,
Veterans' and Military Affairs reports and recommends:

Senate Clearinghouse Rule 87-122

Relating to establishing a procedure for imposing a
surcharge on the premiums and fees of certain high-risk
health care providers participating in the Wisconsin
health care liability insurance plan and the patients
compensation fund.

No action taken.

JEROME VAN SISTINE
Chair