

**2003 DRAFTING REQUEST**

**Bill**

Received: **04/30/2003**

Received By: **jkreye**

Wanted: **Soon**

Identical to LRB:

For: **John Gard (608) 266-3387**

By/Representing: **ellen**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax - corp. inc. and fran.**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gard@legis.state.wi.us**

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Single sales factor

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 04/30/2003	kgilfoy 04/30/2003		_____			State
/1			jfrantze 04/30/2003	_____	lemery 04/30/2003	mbarman 06/10/2003	

FE Sent For: \*

<END>

→ 06-11-2003  
(11/11)  
requested  
by Ellen Nowak

2003 DRAFTING REQUEST

Bill

Received: 04/30/2003

Received By: jkreyc

Wanted: Soon

Identical to LRB:

For: John Gard (608) 266-3387

By/Representing: ellen

This file may be shown to any legislator: NO

Drafter: jkreyc

May Contact:

Addl. Drafters:

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No specific pre topic given

Topic:

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Instructions:

See Attached

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/?	jkreyc 04/30/2003	kgilfoy 04/30/2003					State
/1			jfrantze 04/30/2003		lemery 04/30/2003		

Jacketed

for Assembly per JK

FE Sent For:

**<END>**

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By/Representing: ellen

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1/?	jkreye	1 - 4/30 kmq	4/30	Self 4/30			

FE Sent For:

<END>

2636/1

**2003 BILL**

in 4-30-03  
due Tues 5-6-03  
D-N

1 **AN ACT to renumber and amend** 71.04 (4), 71.04 (8) (b), 71.25 (6), 71.25 (10)  
2 (b) and 71.45 (3) (b); **to amend** 71.04 (5) (intro.), 71.04 (6) (intro.), 71.04 (7) (d),  
3 71.04 (8) (c), 71.04 (10), 71.25 (7) (intro.), 71.25 (8) (intro.), 71.25 (9) (d), 71.25  
4 (10) (c), 71.25 (11), 71.45 (3) (intro.), 71.45 (3) (a) and 71.45 (3m); and **to create**  
5 71.04 (4) (a), 71.04 (4) (b), 71.04 (4) (c), 71.04 (4) (d), 71.04 (4) (e), 71.04 (4m),  
6 71.25 (6) (a), 71.25 (6) (b), 71.25 (6) (c), 71.25 (6) (d), 71.25 (6) (e), 71.25 (6m),  
7 71.45 (3d) and 71.45 (3e) of the statutes; **relating to:** single sales factor  
8 apportionment of income for corporate income tax and franchise tax purposes  
9 and granting rule-making authority.

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***Analysis by the Legislative Reference Bureau***

Under current law, when computing corporate income taxes and franchise taxes, a formula is used to attribute a portion of a corporation's income to this state. The formula has three factors: a sales factor, a property factor, and a payroll factor. The sales factor represents 50% of the formula and the property and payroll factors each represent 25% of the formula. When computing income taxes and franchise taxes for an insurance company, a formula with a premium factor and a payroll factor is used to attribute a portion of an insurance company's income to this state.

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Under this bill, beginning on January 1, 2008, the sales factor will be the only factor used to attribute a portion of a corporation's income to this state. The property and payroll factors will be decreased, and eventually phased out, over four years as the sales factor is increased and becomes the only factor. Beginning on January 1, 2008, the premium factor will be the only factor used to attribute a portion of an insurance company's income to this state. The payroll factor will be decreased, and eventually phased out, over four years as the premium factor is increased and becomes the only factor.

Under current law, the income of an electric or gas utility is apportioned by rules established by the Department of Revenue (DOR). Under the bill, for taxable years beginning after December 31, 2005, and before January 1, 2008, the income of an electric or gas utility is apportioned in the same manner as the income of a corporation under the bill. Beginning on January 1, 2008, the sales factor will be the only factor used to attribute a portion of the income of an electric or gas utility to this state.

Under current law, the income of a financial organization is apportioned, for corporate income tax and franchise tax purposes, by rules established by DOR. Under the bill, for taxable years beginning after December 31, 2005, and before January 1, 2008, the income of a financial organization is apportioned by multiplying that income by a fraction that includes a sales factor representing more than 50% of the fraction, as determined by rule by DOR. For taxable years beginning after December 31, 2007, the income of a financial organization is apportioned by using a sales factor, as determined by DOR.

Under current law and under the bill, the income of air carriers and pipeline companies is apportioned by rules established by DOR.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 71.04 (4) of the statutes is renumbered 71.04 (4) (intro.) and  
2 amended to read:

3           **71.04 (4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA.** (intro.)  
4 Nonresident individuals and nonresident estates and trusts engaged in business  
5 within and without the state shall be taxed only on such income as is derived from  
6 business transacted and property located within the state. The amount of such  
7 income attributable to Wisconsin may be determined by an allocation and separate

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1 accounting thereof, when the business of such nonresident individual or nonresident  
2 estate or trust within the state is not an integral part of a unitary business, but the  
3 department of revenue may permit an allocation and separate accounting in any case  
4 in which it is satisfied that the use of such method will properly reflect the income  
5 taxable by this state. In all cases in which allocation and separate accounting is not  
6 permissible, the determination shall be made in the following manner: for all  
7 businesses except air carriers, financial organizations, pipeline companies, public  
8 utilities, railroads, sleeping car companies and car line companies there shall first  
9 be deducted from the total net income of the taxpayer the part thereof (less related  
10 expenses, if any) that follows the situs of the property or the residence of the  
11 recipient. The remaining net income shall be apportioned to ~~Wisconsin~~ this state by  
12 use of ~~an apportionment fraction composed of a sales factor representing 50% of the~~  
13 ~~fraction, a property factor representing 25% of the fraction and a payroll factor~~  
14 ~~representing 25% of the fraction.~~ the following:

15 **SECTION 2.** 71.04 (4) (a) of the statutes is created to read:

16 71.04 (4) (a) For taxable years beginning before January 1, 2006, an  
17 apportionment fraction composed of a sales factor under sub. (7) representing 50%  
18 of the fraction, a property factor under sub. (5) representing 25% of the fraction, and  
19 a payroll factor under sub. (6) representing 25% of the fraction.

20 **SECTION 3.** 71.04 (4) (b) of the statutes is created to read:

21 71.04 (4) (b) For taxable years beginning after December 31, 2005, and before  
22 January 1, 2007, an apportionment fraction composed of a sales factor under sub. (7)  
23 representing 60% of the fraction, a property factor under sub. (5) representing 20%  
24 of the fraction, and a payroll factor under sub. (6) representing 20% of the fraction.

25 **SECTION 4.** 71.04 (4) (c) of the statutes is created to read:

**BILL****SECTION 4**

1           71.04 (4) (c) For taxable years beginning after December 31, 2006, and before  
2           January 1, 2008, an apportionment fraction composed of a sales factor under sub. (7)  
3           representing 80% of the fraction, a property factor under sub. (5) representing 10%  
4           of the fraction, and a payroll factor under sub. (6) representing 10% of the fraction.

5           **SECTION 5.** 71.04 (4) (d) of the statutes is created to read:

6           71.04 (4) (d) For taxable years beginning after December 31, 2007, an  
7           apportionment fraction composed of the sales factor under sub. (7).

8           **SECTION 6.** 71.04 (4) (e) of the statutes is created to read:

9           71.04 (4) (e) For taxable years beginning after December 31, 2005, and before  
10          January 1, 2008, the apportionment fraction for the remaining net income of a  
11          financial organization shall include a sales factor that represents more than 50% of  
12          the apportionment fraction, as determined by rule by the department. For taxable  
13          years beginning after December 31, 2007, the apportionment fraction for the  
14          remaining net income of a financial organization is composed of a sales factor, as  
15          determined by rule by the department.

16          **SECTION 7.** 71.04 (4m) of the statutes is created to read:

17          71.04 (4m) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years  
18          beginning before January 1, 2008, if both the numerator and the denominator of the  
19          sales factor under sub. (7) related to a taxpayer's remaining net income are zero, the  
20          sales factor under sub. (7) is eliminated from the apportionment formula to  
21          determine the taxpayer's remaining net income under sub. (4).

22          2. For taxable years beginning after December 31, 2007, if both the numerator  
23          and the denominator of the sales factor under sub. (7) related to a taxpayer's  
24          remaining net income are zero, none of the taxpayer's remaining net income is  
25          apportioned to this state.

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1 (b) 1. For taxable years beginning before January 1, 2008, if the numerator of  
2 the sales factor under sub. (7) related to a taxpayer's remaining net income is a  
3 negative number and the denominator of the sales factor under sub. (7) related to a  
4 taxpayer's remaining net income is a positive number, a negative number, or zero,  
5 the sales factor under sub. (7) is zero.

6 2. For taxable years beginning after December 31, 2007, if the numerator of the  
7 sales factor under sub. (7) related to a taxpayer's remaining net income is a negative  
8 number and the denominator of the sales factor under sub. (7) related to a taxpayer's  
9 remaining net income is a positive number, a negative number, or zero, none of the  
10 taxpayer's remaining net income is apportioned to this state.

11 (c) 1. For taxable years beginning before January 1, 2008, if the numerator of  
12 the sales factor under sub. (7) related to a taxpayer's remaining net income is a  
13 positive number and the denominator of the sales factor under sub. (7) related to a  
14 taxpayer's remaining net income is zero or a negative number, the sales factor under  
15 sub. (7) is one.

16 2. For taxable years beginning after December 31, 2007, if the numerator of the  
17 sales factor under sub. (7) related to a taxpayer's remaining net income is a positive  
18 number and the denominator of the sales factor under sub. (7) related to a taxpayer's  
19 remaining net income is zero or a negative number, all of the taxpayer's remaining  
20 net income is apportioned to this state.

21 **SECTION 8.** 71.04 (5) (intro.) of the statutes is amended to read:

22 71.04 (5) PROPERTY FACTOR. (intro.) For purposes of sub. (4) and for taxable  
23 years beginning before January 1, 2008:

24 **SECTION 9.** 71.04 (6) (intro.) of the statutes is amended to read:

**BILL****SECTION 9**

1           71.04 (6) PAYROLL FACTOR. (intro.) For purposes of sub. (4) and for taxable years  
2 beginning before January 1, 2008:

3           **SECTION 10.** 71.04 (7) (d) of the statutes is amended to read:

4           71.04 (7) (d) Sales, other than sales of tangible personal property, are in this  
5 state if the income-producing activity is performed in this state. If the  
6 income-producing activity is performed both in and outside this state the sales shall  
7 be divided between those states having jurisdiction to tax such business in  
8 proportion to the direct costs of performance incurred in each such state in rendering  
9 this service. Services performed in states which do not have jurisdiction to tax the  
10 business shall be deemed to have been performed in the state to which compensation  
11 is allocated by sub. s. 71.04 (6), 2001 stats.

12           **SECTION 11.** 71.04 (8) (b) of the statutes is renumbered 71.04 (8) (b) 1. and  
13 amended to read:

14           71.04 (8) (b) 1. ~~“Public~~ For taxable years beginning before January 1, 2006,  
15 “public utility”, as used in this section, means any business entity described under  
16 subd. 2. and any business entity which owns or operates any plant, equipment,  
17 property, franchise, or license for the transmission of communications or the  
18 production, transmission, sale, delivery, or furnishing of electricity, water or steam,  
19 the rates of charges for goods or services of which have been established or approved  
20 by a federal, state or local government or governmental agency. “Public

21           2. In this section, for taxable years beginning after December 31, 2005, “public  
22 utility” also means any business entity providing service to the public and engaged  
23 in the transportation of goods and persons for hire, as defined in s. 194.01 (4),  
24 regardless of whether or not the entity’s rates or charges for services have been

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1 established or approved by a federal, state or local government or governmental  
2 agency.

3 **SECTION 12.** 71.04 (8) (c) of the statutes is amended to read:

4 71.04 (8) (c) The net business income of railroads, sleeping car companies, car  
5 line companies, pipeline companies, financial organizations, air carriers, and public  
6 utilities requiring apportionment shall be apportioned pursuant to rules of the  
7 department of revenue, but the income taxed is limited to the income derived from  
8 business transacted and property located within the state.

9 **SECTION 13.** 71.04 (10) of the statutes is amended to read:

10 71.04 (10) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any nonresident  
11 individual or nonresident estate or trust engaged in business ~~within in~~ and ~~without~~  
12 ~~the outside of this state of Wisconsin~~ and required to apportion its income as provided  
13 in this section, it shall be shown to the satisfaction of the department of revenue that  
14 the use of any one of the 3 factors provided under sub. (4) gives an unreasonable or  
15 inequitable final average ratio because of the fact that such nonresident individual  
16 or nonresident estate or trust does not employ, to any appreciable extent in its trade  
17 or business in producing the income taxed, the factors made use of in obtaining such  
18 ratio, this factor may, with the approval of the department of revenue, be omitted in  
19 obtaining the final average ratio which is to be applied to the remaining net income.  
20 This subsection does not apply to taxable years beginning after December 31, 2007.

21 **SECTION 14.** 71.25 (6) of the statutes is renumbered 71.25 (6) (intro.) and  
22 amended to read:

23 71.25 (6) ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA.  
24 (intro.) Corporations engaged in business within and without the state shall be taxed  
25 only on such income as is derived from business transacted and property located

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1 within the state. The amount of such income attributable to Wisconsin may be  
2 determined by an allocation and separate accounting thereof, when the business of  
3 such corporation within the state is not an integral part of a unitary business, but  
4 the department of revenue may permit an allocation and separate accounting in any  
5 case in which it is satisfied that the use of such method will properly reflect the  
6 income taxable by this state. In all cases in which allocation and separate accounting  
7 is not permissible, the determination shall be made in the following manner: for all  
8 businesses except air carriers, financial organizations, pipeline companies, public  
9 utilities, railroads, sleeping car companies, car line companies and corporations or  
10 associations that are subject to a tax on unrelated business income under s. 71.26 (1)  
11 (a) there shall first be deducted from the total net income of the taxpayer the part  
12 thereof (less related expenses, if any) that follows the situs of the property or the  
13 residence of the recipient. The remaining net income shall be apportioned to  
14 Wisconsin this state by use of an ~~apportionment fraction composed of a sales factor~~  
15 ~~under sub. (9) representing 50% of the fraction, a property factor under sub. (7)~~  
16 ~~representing 25% of the fraction and a payroll factor under sub. (8) representing 25%~~  
17 ~~of the fraction.~~ the following:

18 **SECTION 15.** 71.25 (6) (a) of the statutes is created to read:

19 71.25 (6) (a) For taxable years beginning before January 1, 2006, an  
20 apportionment fraction composed of a sales factor under sub. (9) representing 50%  
21 of the fraction, a property factor under sub. (7) representing 25% of the fraction, and  
22 a payroll factor under sub. (8) representing 25% of the fraction.

23 **SECTION 16.** 71.25 (6) (b) of the statutes is created to read:

24 71.25 (6) (b) For taxable years beginning after December 31, 2005, and before  
25 January 1, 2007, an apportionment fraction composed of a sales factor under sub. (9)

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1 representing 60% of the fraction, a property factor under sub. (7) representing 20%  
2 of the fraction, and a payroll factor under sub. (8) representing 20% of the fraction.

3 **SECTION 17.** 71.25 (6) (c) of the statutes is created to read:

4 71.25 (6) (c) For taxable years beginning after December 31, 2006, and before  
5 January 1, 2008, an apportionment fraction composed of a sales factor under sub. (9)  
6 representing 80% of the fraction, a property factor under sub. (7) representing 10%  
7 of the fraction, and a payroll factor under sub. (8) representing 10% of the fraction.

8 **SECTION 18.** 71.25 (6) (d) of the statutes is created to read:

9 71.25 (6) (d) For taxable years beginning after December 31, 2007, an  
10 apportionment fraction composed of the sales factor under sub. (9).

11 **SECTION 19.** 71.25 (6) (e) of the statutes is created to read:

12 71.25 (6) (e) For taxable years beginning after December 31, 2005, and before  
13 January 1, 2008, the apportionment fraction for the remaining net income of a  
14 financial organization shall include a sales factor that represents more than 50% of  
15 the apportionment fraction, as determined by rule by the department. For taxable  
16 years beginning after December 31, 2007, the apportionment fraction for the  
17 remaining net income of a financial organization is composed of a sales factor, as  
18 determined by rule by the department.

19 **SECTION 20.** 71.25 (6m) of the statutes is created to read:

20 71.25 (6m) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years  
21 beginning before January 1, 2008, if both the numerator and the denominator of the  
22 sales factor under sub. (9) related to a taxpayer's remaining net income are zero, the  
23 sales factor under sub. (9) is eliminated from the apportionment formula to  
24 determine the taxpayer's remaining net income under sub. (6).

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1           2. For taxable years beginning after December 31, 2007, if both the numerator  
2 and the denominator of the sales factor under sub. (9) related to a taxpayer's  
3 remaining net income are zero, none of the taxpayer's remaining net income is  
4 apportioned to this state.

5           (b) 1. For taxable years beginning before January 1, 2008, if the numerator of  
6 the sales factor under sub. (9) related to a taxpayer's remaining net income is a  
7 negative number and the denominator of the sales factor under sub. (9) related to a  
8 taxpayer's remaining net income is a positive number, a negative number, or zero,  
9 the sales factor under sub. (9) is zero.

10           2. For taxable years beginning after December 31, 2007, if the numerator of the  
11 sales factor under sub. (9) related to a taxpayer's remaining net income is a negative  
12 number and the denominator of the sales factor under sub. (9) related to a taxpayer's  
13 remaining net income is a positive number, a negative number, or zero, none of the  
14 taxpayer's remaining net income is apportioned to this state.

15           (c) 1. For taxable years beginning before January 1, 2008, if the numerator of  
16 the sales factor under sub. (9) related to a taxpayer's remaining net income is a  
17 positive number and the denominator of the sales factor under sub. (9) related to a  
18 taxpayer's remaining net income is zero or a negative number, the sales factor under  
19 sub. (9) is one.

20           2. For taxable years beginning after December 31, 2007, if the numerator of the  
21 sales factor under sub. (9) related to a taxpayer's remaining net income is a positive  
22 number and the denominator of the sales factor under sub. (9) related to a taxpayer's  
23 remaining net income is zero or a negative number, all of the taxpayer's remaining  
24 net income is apportioned to this state.

25           **SECTION 21.** 71.25 (7) (intro.) of the statutes is amended to read:

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1           71.25 (7) PROPERTY FACTOR. (intro.) For purposes of sub. ~~(5)~~ (6) and for taxable  
2 years beginning before January 1, 2008:

3           **SECTION 22.** 71.25 (8) (intro.) of the statutes is amended to read:

4           71.25 (8) PAYROLL FACTOR. (intro.) For purposes of sub. ~~(5)~~ (6) and for taxable  
5 years beginning before January 1, 2008:

6           **SECTION 23.** 71.25 (9) (d) of the statutes is amended to read:

7           71.25 (9) (d) Sales, other than sales of tangible personal property, are in this  
8 state if the income-producing activity is performed in this state. If the  
9 income-producing activity is performed both in and outside this state the sales shall  
10 be divided between those states having jurisdiction to tax such business in  
11 proportion to the direct costs of performance incurred in each such state in rendering  
12 this service. Services performed in states which do not have jurisdiction to tax the  
13 business shall be deemed to have been performed in the state to which compensation  
14 is allocated by ~~sub. s. 71.25 (8), 2001 stats.~~

15           **SECTION 24.** 71.25 (10) (b) of the statutes is renumbered 71.25 (10) (b) 1. and  
16 amended to read:

17           71.25 (10) (b) 1. In this section, for taxable years beginning before January 1,  
18 2006, “public utility” means any business entity described under subd. 2. and any  
19 business entity which owns or operates any plant, equipment, property, franchise,  
20 or license for the transmission of communications or the production, transmission,  
21 sale, delivery, or furnishing of electricity, water or steam the rates of charges for  
22 goods or services of which have been established or approved by a federal, state or  
23 local government or governmental agency. “Public

24           2. In this section, for taxable years beginning after December 31, 2005, “public  
25 utility” also means any business entity providing service to the public and engaged

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1 in the transportation of goods and persons for hire, as defined in s. 194.01 (4),  
2 regardless of whether or not the entity's rates or charges for services have been  
3 established or approved by a federal, state or local government or governmental  
4 agency.

5 **SECTION 25.** 71.25 (10) (c) of the statutes is amended to read:

6 71.25 (10) (c) The net business income of railroads, sleeping car companies, car  
7 line companies, pipeline companies, financial organizations, air carriers, and public  
8 utilities requiring apportionment shall be apportioned pursuant to rules of the  
9 department of revenue, but the income taxed is limited to the income derived from  
10 business transacted and property located within the state.

11 **SECTION 26.** 71.25 (11) of the statutes is amended to read:

12 71.25 (11) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any corporation  
13 engaged in business ~~within in~~ and ~~without the~~ outside of this state of Wisconsin and  
14 required to apportion its income as provided in sub. (6), it shall be shown to the  
15 satisfaction of the department of revenue that the use of any one of the 3 factors  
16 provided in sub. (6) gives an unreasonable or inequitable final average ratio because  
17 of the fact that such corporation does not employ, to any appreciable extent in its  
18 trade or business in producing the income taxed, the factors made use of in obtaining  
19 such ratio, this factor may, with the approval of the department of revenue, be  
20 omitted in obtaining the final average ratio which is to be applied to the remaining  
21 net income. This subsection does not apply to taxable years beginning after  
22 December 31, 2007.

23 **SECTION 27.** 71.45 (3) (intro.) of the statutes is amended to read:

24 71.45 (3) APPORTIONMENT. (intro.) ~~With respect~~ Except as provided in sub. (3d),  
25 to determine Wisconsin income for purposes of the franchise tax, domestic insurers

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1 ~~not engaged in the sale of life insurance but which~~ that, in the taxable year, have  
2 ~~collected~~ received premiums, ~~other than life insurance premiums,~~ written on  
3 ~~subjects of~~ for insurance on property or risks resident, located or to be performed  
4 outside this state, ~~there shall be subtracted from~~ multiply the net income figure  
5 derived by application of sub. (2) (a) ~~to arrive at Wisconsin income constituting the~~  
6 ~~measure of the franchise tax an amount calculated by multiplying such adjusted~~  
7 ~~federal taxable income~~ by the arithmetic average of the following 2 percentages:

8 **SECTION 28.** 71.45 (3) (a) of the statutes is amended to read:

9 71.45 (3) (a) The Subject to sub. (3d), the percentage of total determined by  
10 dividing the sum of direct premiums written on all property and risks for insurance  
11 other than life insurance, with respect to all property and risks resident, located, or  
12 to be performed in this state, and assumed premiums written for reinsurance, other  
13 than life insurance, with respect to all property and risks resident, located, or to be  
14 performed in this state, by the sum of direct premiums written for insurance on all  
15 property and risks, other than life insurance, wherever located during the taxable  
16 year, as reflects, and assumed premiums written on insurance for reinsurance on all  
17 property and risks, other than life insurance, where the subject of insurance was  
18 resident, located or to be performed outside this state wherever located. In this  
19 paragraph, “direct premiums” means direct premiums as reported for the taxable  
20 year on an annual statement that is filed by the insurer with the commissioner of  
21 insurance under s. 601.42 (1g) (a). In this paragraph, “assumed premiums” means  
22 assumed reinsurance premiums from domestic insurance companies as reported for  
23 the taxable year on an annual statement that is filed with the commissioner of  
24 insurance under s. 601.42 (1g) (a).

## BILL

## SECTION 29

1           **SECTION 29.** 71.45 (3) (b) of the statutes is renumbered 71.45 (3) (b) 1. and  
2 amended to read:

3           71.45 (3) (b) 1. The Subject to sub. (3d), the percentage of determined by  
4 dividing the payroll, exclusive of life insurance payroll, paid in this state in the  
5 taxable year by total payroll, exclusive of life insurance payroll, paid everywhere in  
6 the taxable year as ~~reflects such compensation paid outside this state.~~  
7 Compensation.

8           2. Under subd. 1., payroll is paid outside in this state if the individual's service  
9 is performed entirely outside in this state; or the individual's service is performed  
10 both ~~within and without~~ in and outside of this state, but the service performed ~~within~~  
11 outside of this state is incidental to the individual's service ~~without in~~ this state; or  
12 some service is performed ~~without in~~ this state and the base of operations, or if there  
13 is no base of operations, the place from which the service is directed or controlled is  
14 ~~without in~~ this state, or the base of operations or the place from which the service is  
15 directed or controlled is not in any state in which some part of the service is  
16 performed, but the individual's residence is ~~outside in~~ this state.

17           **SECTION 30.** 71.45 (3d) of the statutes is created to read:

18           71.45 (3d) PHASE IN; DOMESTIC INSURERS. (a) For taxable years beginning after  
19 December 31, 2005, and before January 1, 2007, a domestic insurer that is subject  
20 to apportionment under sub. (3) and this subsection shall multiply the net income  
21 figure derived by the application of sub. (2) by an apportionment fraction composed  
22 of the percentage under sub. (3) (a) representing 60% of the fraction and the  
23 percentage under sub. (3) (b) 1. representing 40% of the fraction.

24           (b) For taxable years beginning after December 31, 2006, and before January  
25 1, 2008, a domestic insurer that is subject to apportionment under sub. (3) and this

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1 subsection shall multiply the net income figure derived by the application of sub. (2)  
2 by an apportionment fraction composed of the percentage under sub. (3) (a)  
3 representing 80% of the fraction and the percentage under sub. (3) (b) 1. representing  
4 20% of the fraction.

5 (c) For taxable years beginning after December 31, 2007, a domestic insurer  
6 that is subject to apportionment under sub. (3) and this subsection shall multiply the  
7 net income figure derived by the application of sub. (2) by the percentage under sub.  
8 (3) (a).

9 **SECTION 31.** 71.45 (3e) of the statutes is created to read:

10 **71.45 (3e) APPORTIONMENT FORMULA COMPUTATION.** (a) 1. For taxable years  
11 beginning before January 1, 2008, if both the numerator and the denominator used  
12 to determine the percentage under sub. (3) (a) related to a taxpayer's net income are  
13 zero, the percentage under sub. (3) (a) is eliminated from the apportionment formula  
14 to determine the taxpayer's income under sub. (3).

15 2. For taxable years beginning after December 31, 2007, if both the numerator  
16 and the denominator used to determine the percentage under sub. (3) (a) related to  
17 a taxpayer's net income are zero, none of the taxpayer's net income is apportioned  
18 to this state.

19 (b) 1. For taxable years beginning before January 1, 2008, if the numerator  
20 used to determine the percentage under sub. (3) (a) related to a taxpayer's net income  
21 is a negative number and the denominator used to determine the percentage under  
22 sub. (3) (a) related to a taxpayer's net income is a positive number, a negative number,  
23 or zero, the percentage under sub. (3) (a) is zero.

24 2. For taxable years beginning after December 31, 2007, if the numerator used  
25 to determine the percentage under sub. (3) (a) related to a taxpayer's net income is

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1 a negative number and the denominator used to determine the percentage under  
2 sub. (3) (a) related to a taxpayer's net income is a positive number, a negative number,  
3 or zero, none of the taxpayer's net income is apportioned to this state.

4 (c) 1. For taxable years beginning before January 1, 2008, if the numerator used  
5 to determine the percentage under sub. (3) (a) related to a taxpayer's net income is  
6 a positive number and the denominator used to determine the percentage under sub.  
7 (3) (a) related to a taxpayer's net income is zero or a negative number, the percentage  
8 under sub. (3) (a) is one.

9 2. For taxable years beginning after December 31, 2007, if the numerator used  
10 to determine the percentage under sub. (3) (a) related to a taxpayer's net income is  
11 a positive number and the denominator used to determine the percentage under sub.  
12 (3) (a) related to a taxpayer's net income is zero or a negative number, all of the  
13 taxpayer's net income is apportioned to this state.

14 **SECTION 32.** 71.45 (3m) of the statutes is amended to read:

15 71.45 (3m) ARITHMETIC AVERAGE. The Except as provided in sub. (3d), the  
16 arithmetic average of the 2 percentages referred to in sub. (3) shall be applied to the  
17 net income figure arrived at by the successive application of sub. (2) (a) and (b) with  
18 respect to Wisconsin insurers to which sub. (2) (a) and (b) applies and which have  
19 ~~collected~~ received premiums, ~~other than life insurance premiums,~~ written upon ~~for~~  
20 insurance, ~~other than life insurance,~~ where the subject of such insurance was on  
21 property or risks resident, located or to be performed outside this state, to arrive at  
22 Wisconsin income constituting the measure of the franchise tax.

23 **SECTION 33. Nonstatutory provisions; revenue.**

24 (1) INCOME APPORTIONMENT FOR FINANCIAL ORGANIZATIONS; RULES. The  
25 department of revenue shall submit in proposed form rules related to the

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1 appportionment of the income of financial organizations under sections 71.04 (4) (e)  
2 and 71.25 (6) (e) of the statutes, as created by this act, to the legislative council staff  
3 under section 227.15 (1) of the statutes no later than the first day of the 4th month  
4 beginning after the effective date of this subsection.

**SECTION 34. Initial applicability.**

5  
6 (1) SINGLE SALES FACTOR APPORTIONMENT. The treatment of section 71.45 (3)  
7 (intro.), (a), and (b) and (3m) of the statutes first applies to taxable years beginning  
8 after December 31, 2005.

9 (END)

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2386/1dn  
JK:kmg:rs

2636



~~April 1, 2003~~  
*date*

Representative *Ward*  
*Ward*

Please review this draft carefully to ensure that it is consistent with your intent. To ensure that the bill has no fiscal effect in the 2003-2005 biennium and that calendar year and fiscal year taxpayers are treated equally, the bill first applies to taxable years beginning on January 1, 2006.

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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2636/1dn  
JK:kmg:jf

April 30, 2003

Representative Gard:

Please review this draft carefully to ensure that it is consistent with your intent. To ensure that the bill has no fiscal effect in the 2003-2005 biennium and that calendar year and fiscal year taxpayers are treated equally, the bill first applies to taxable years beginning on January 1, 2006.

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