

**SENATE SUBSTITUTE AMENDMENT 2,
TO 2003 SENATE BILL 197**

June 24, 2003 – Offered by Senator ERPENBACH.

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 (4) (f),
6 71.04 (4m), 71.04 (12), 71.25 (6) (a), 71.25 (6) (b), 71.25 (6) (c), 71.25 (6) (d), 71.25
7 (6) (e), 71.25 (6) (f), 71.25 (6m), 71.25 (16), 71.45 (3d), 71.45 (3e) and 71.45 (7)
8 of the statutes; **relating to:** single sales factor apportionment of income for
9 corporate income tax and franchise tax purposes and granting rule-making
10 authority.

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

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

1 71.04 (4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA. (intro.)
2 Nonresident individuals and nonresident estates and trusts engaged in business
3 within and without the state shall be taxed only on such income as is derived from
4 business transacted and property located within the state. The amount of such
5 income attributable to Wisconsin may be determined by an allocation and separate
6 accounting thereof, when the business of such nonresident individual or nonresident
7 estate or trust within the state is not an integral part of a unitary business, but the
8 department of revenue may permit an allocation and separate accounting in any case
9 in which it is satisfied that the use of such method will properly reflect the income
10 taxable by this state. In all cases in which allocation and separate accounting is not
11 permissible, the determination shall be made in the following manner: for all
12 businesses except air carriers, financial organizations, pipeline companies, public
13 utilities, railroads, sleeping car companies and car line companies there shall first
14 be deducted from the total net income of the taxpayer the part thereof (less related
15 expenses, if any) that follows the situs of the property or the residence of the
16 recipient. The remaining net income shall be apportioned to Wisconsin this state by
17 use of an ~~apportionment fraction composed of a sales factor representing 50% of the~~
18 ~~fraction, a property factor representing 25% of the fraction and a payroll factor~~
19 ~~representing 25% of the fraction.~~ the following:

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

21 71.04 (4) (a) Except as provided in par. (f), for taxable years beginning before
22 January 1, 2006, an apportionment fraction composed of a sales factor under sub. (7)
23 representing 50% of the fraction, a property factor under sub. (5) representing 25%
24 of the fraction, and a payroll factor under sub. (6) representing 25% of the fraction.

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

1 71.04 (4) (b) Except as provided in par. (f), for taxable years beginning after
2 December 31, 2005, and before January 1, 2007, an apportionment fraction
3 composed of a sales factor under sub. (7) representing 60% of the fraction, a property
4 factor under sub. (5) representing 20% of the fraction, and a payroll factor under sub.
5 (6) representing 20% of the fraction.

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

7 71.04 (4) (c) Except as provided in par. (f), for taxable years beginning after
8 December 31, 2006, and before January 1, 2008, an apportionment fraction
9 composed of a sales factor under sub. (7) representing 80% of the fraction, a property
10 factor under sub. (5) representing 10% of the fraction, and a payroll factor under sub.
11 (6) representing 10% of the fraction.

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

13 71.04 (4) (d) Except as provided in par. (f), for taxable years beginning after
14 December 31, 2007, an apportionment fraction composed of the sales factor under
15 sub. (7).

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

17 71.04 (4) (e) Except as provided in par. (f), for taxable years beginning after
18 December 31, 2005, and before January 1, 2008, the apportionment fraction for the
19 remaining net income of a financial organization shall include a sales factor that
20 represents more than 50% of the apportionment fraction, as determined by rule by
21 the department. For taxable years beginning after December 31, 2007, the
22 apportionment fraction for the remaining net income of a financial organization is
23 composed of a sales factor, as determined by rule by the department.

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

1 71.04 (4) (f) If a taxpayer who is subject to apportionment under this subsection
2 has a net gain of 100 employees in this state in any taxable year beginning after the
3 effective date of this paragraph [revisor inserts date], and before January 1, 2008,
4 the taxpayer's remaining net income may, at the taxpayer's option, be apportioned
5 to this state by an apportionment fraction composed of the sales factor under sub. (7)
6 or, for a financial organization, under par. (e) beginning with the taxable year in
7 which the employees are hired, except that if the taxpayer does not retain such
8 employees in this state for at least 3 consecutive taxable years, the taxpayer shall
9 apportion the taxpayer's remaining net income as provided under pars. (a) to (e), as
10 appropriate.

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

12 71.04 (4m) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
13 beginning before January 1, 2008, if both the numerator and the denominator of the
14 sales factor under sub. (7) related to a taxpayer's remaining net income are zero, the
15 sales factor under sub. (7) is eliminated from the apportionment formula to
16 determine the taxpayer's remaining net income under sub. (4).

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

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

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

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

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

16 **SECTION 9.** 71.04 (5) (intro.) of the statutes is amended to read:

17 71.04 (5) PROPERTY FACTOR. (intro.) For purposes of sub. (4) and for taxable
18 years beginning before January 1, 2008:

19 **SECTION 10.** 71.04 (6) (intro.) of the statutes is amended to read:

20 71.04 (6) PAYROLL FACTOR. (intro.) For purposes of sub. (4) and for taxable years
21 beginning before January 1, 2008:

22 **SECTION 11.** 71.04 (7) (d) of the statutes is amended to read:

23 71.04 (7) (d) Sales, other than sales of tangible personal property, are in this
24 state if the income-producing activity is performed in this state. If the
25 income-producing activity is performed both in and outside this state the sales shall

1 be divided between those states having jurisdiction to tax such business in
2 proportion to the direct costs of performance incurred in each such state in rendering
3 this service. Services performed in states which do not have jurisdiction to tax the
4 business shall be deemed to have been performed in the state to which compensation
5 is allocated by ~~sub. s. 71.04 (6), 2001 stats.~~

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

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

15 2. In this section, for taxable years beginning after December 31, 2005, “public
16 utility” also means any business entity providing service to the public and engaged
17 in the transportation of goods and persons for hire, as defined in s. 194.01 (4),
18 regardless of whether or not the entity’s rates or charges for services have been
19 established or approved by a federal, state or local government or governmental
20 agency.

21 **SECTION 13.** 71.04 (8) (c) of the statutes is amended to read:

22 71.04 **(8)** (c) The net business income of railroads, sleeping car companies, car
23 line companies, pipeline companies, financial organizations, air carriers, and public
24 utilities requiring apportionment shall be apportioned pursuant to rules of the

1 department of revenue, but the income taxed is limited to the income derived from
2 business transacted and property located within the state.

3 **SECTION 14.** 71.04 (10) of the statutes is amended to read:

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

15 **SECTION 15.** 71.04 (12) of the statutes is created to read:

16 71.04 (12) SUBSIDIES. Notwithstanding any contrary provision of the statutes,
17 an entity whose remaining net income is not subject to apportionment under this
18 section shall receive priority over any entity that is subject to apportionment under
19 this section with regard to the award or distribution of any state subsidy.

20 **SECTION 16.** 71.25 (6) of the statutes is renumbered 71.25 (6) (intro.) and
21 amended to read:

22 71.25 (6) ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA.
23 (intro.) Corporations engaged in business within and without the state shall be taxed
24 only on such income as is derived from business transacted and property located
25 within the state. The amount of such income attributable to Wisconsin may be

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

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

18 71.25 (6) (a) Except as provided in par. (f), for taxable years beginning before
19 January 1, 2006, an apportionment fraction composed of a sales factor under sub. (9)
20 representing 50% of the fraction, a property factor under sub. (7) representing 25%
21 of the fraction, and a payroll factor under sub. (8) representing 25% of the fraction.

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

23 71.25 (6) (b) Except as provided in par. (f), for taxable years beginning after
24 December 31, 2005, and before January 1, 2007, an apportionment fraction
25 composed of a sales factor under sub. (9) representing 60% of the fraction, a property

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

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

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

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

10 71.25 (6) (d) Except as provided in par. (f), for taxable years beginning after
11 December 31, 2007, an apportionment fraction composed of the sales factor under
12 sub. (9).

13 **SECTION 21.** 71.25 (6) (e) of the statutes is created to read:

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

21 **SECTION 22.** 71.25 (6) (f) of the statutes is created to read:

22 71.25 (6) (f) If a taxpayer who is subject to apportionment under this subsection
23 has a net gain of 100 employees in this state in any taxable year beginning after the
24 effective date of this paragraph [revisor inserts date], and before January 1, 2008,
25 the taxpayer's remaining net income may, at the taxpayer's option, be apportioned

1 to this state by an apportionment fraction composed of the sales factor under sub. (9)
2 or, for a financial organization, under par. (e) beginning with the taxable year in
3 which the employees are hired, except that if the taxpayer does not retain such
4 employees in this state for at least 3 consecutive taxable years, the taxpayer shall
5 apportion the taxpayer's remaining net income as provided under pars. (a) to (e), as
6 appropriate.

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

8 **71.25 (6m)** APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
9 beginning before January 1, 2008, if both the numerator and the denominator of the
10 sales factor under sub. (9) related to a taxpayer's remaining net income are zero, the
11 sales factor under sub. (9) is eliminated from the apportionment formula to
12 determine the taxpayer's remaining net income under sub. (6).

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

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

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

1 remaining net income is a positive number, a negative number, or zero, none of the
2 taxpayer's remaining net income is apportioned to this state.

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

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

13 **SECTION 24.** 71.25 (7) (intro.) of the statutes is amended to read:

14 71.25 (7) PROPERTY FACTOR. (intro.) For purposes of sub. (5) (6) and for taxable
15 years beginning before January 1, 2008:

16 **SECTION 25.** 71.25 (8) (intro.) of the statutes is amended to read:

17 71.25 (8) PAYROLL FACTOR. (intro.) For purposes of sub. (5) (6) and for taxable
18 years beginning before January 1, 2008:

19 **SECTION 26.** 71.25 (9) (d) of the statutes is amended to read:

20 71.25 (9) (d) Sales, other than sales of tangible personal property, are in this
21 state if the income-producing activity is performed in this state. If the
22 income-producing activity is performed both in and outside this state the sales shall
23 be divided between those states having jurisdiction to tax such business in
24 proportion to the direct costs of performance incurred in each such state in rendering
25 this service. Services performed in states which do not have jurisdiction to tax the

1 business shall be deemed to have been performed in the state to which compensation
2 is allocated by ~~sub. s. 71.25 (8), 2001 stats.~~

3 **SECTION 27.** 71.25 (10) (b) of the statutes is renumbered 71.25 (10) (b) 1. and
4 amended to read:

5 71.25 **(10)** (b) 1. In this section, for taxable years beginning before January 1,
6 2006, “public utility” means any business entity described under subd. 2. and any
7 business entity which owns or operates any plant, equipment, property, franchise,
8 or license for the transmission of communications or the production, transmission,
9 sale, delivery, or furnishing of electricity, water or steam the rates of charges for
10 goods or services of which have been established or approved by a federal, state or
11 local government or governmental agency. ~~“Public~~

12 2. In this section, for taxable years beginning after December 31, 2005, “public
13 utility” ~~also~~ means any business entity providing service to the public and engaged
14 in the transportation of goods and persons for hire, as defined in s. 194.01 (4),
15 regardless of whether or not the entity’s rates or charges for services have been
16 established or approved by a federal, state or local government or governmental
17 agency.

18 **SECTION 28.** 71.25 (10) (c) of the statutes is amended to read:

19 71.25 **(10)** (c) The net business income of railroads, sleeping car companies, car
20 line companies, pipeline companies, financial organizations, air carriers, and public
21 utilities requiring apportionment shall be apportioned pursuant to rules of the
22 department of revenue, but the income taxed is limited to the income derived from
23 business transacted and property located within the state.

24 **SECTION 29.** 71.25 (11) of the statutes is amended to read:

1 71.25 (11) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any corporation
2 engaged in business within in and without the outside this state of Wisconsin and
3 required to apportion its income as provided in sub. (6), it shall be shown to the
4 satisfaction of the department of revenue that the use of any one of the 3 factors
5 provided in sub. (6) gives an unreasonable or inequitable final average ratio because
6 of the fact that such corporation does not employ, to any appreciable extent in its
7 trade or business in producing the income taxed, the factors made use of in obtaining
8 such ratio, this factor may, with the approval of the department of revenue, be
9 omitted in obtaining the final average ratio which is to be applied to the remaining
10 net income. This subsection does not apply to taxable years beginning after
11 December 31, 2007.

12 **SECTION 30.** 71.25 (16) of the statutes is created to read:

13 71.25 (16) SUBSIDIES. Notwithstanding any contrary provision of the statutes,
14 an entity whose remaining net income is not subject to apportionment under this
15 section shall receive priority over any entity that is subject to apportionment under
16 this section with regard to the award or distribution of any state subsidy.

17 **SECTION 31.** 71.45 (3) (intro.) of the statutes is amended to read:

18 71.45 (3) APPORTIONMENT. (intro.) ~~With respect~~ Except as provided in sub. (3d),
19 to determine Wisconsin income for purposes of the franchise tax, domestic insurers
20 not engaged in the sale of life insurance but which that, in the taxable year, have
21 collected received premiums, other than life insurance premiums, written on
22 subjects of for insurance on property or risks resident, located or to be performed
23 outside this state, there shall be subtracted from multiply the net income figure
24 derived by application of sub. (2) (a) to arrive at Wisconsin income constituting the

1 ~~measure of the franchise tax an amount calculated by multiplying such adjusted~~
2 ~~federal taxable income by the arithmetic average of the following 2 percentages:~~

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

4 71.45 (3) (a) The Subject to sub. (3d), the percentage of total determined by
5 dividing the sum of direct premiums written on all property and risks for insurance
6 other than life insurance, with respect to all property and risks resident, located, or
7 to be performed in this state, and assumed premiums written for reinsurance, other
8 than life insurance, with respect to all property and risks resident, located, or to be
9 performed in this state, by the sum of direct premiums written for insurance on all
10 property and risks, other than life insurance, wherever located during the taxable
11 year, as reflects, and assumed premiums written on insurance for reinsurance on all
12 property and risks, other than life insurance, where the subject of insurance was
13 resident, located or to be performed outside this state wherever located. In this
14 paragraph, “direct premiums” means direct premiums as reported for the taxable
15 year on an annual statement that is filed by the insurer with the commissioner of
16 insurance under s. 601.42 (1g) (a). In this paragraph, “assumed premiums” means
17 assumed reinsurance premiums from domestic insurance companies as reported for
18 the taxable year on an annual statement that is filed with the commissioner of
19 insurance under s. 601.42 (1g) (a).

20 **SECTION 33.** 71.45 (3) (b) of the statutes is renumbered 71.45 (3) (b) 1. and
21 amended to read:

22 71.45 (3) (b) 1. The Subject to sub. (3d), the percentage of determined by
23 dividing the payroll, exclusive of life insurance payroll, paid in this state in the
24 taxable year by total payroll, exclusive of life insurance payroll, paid everywhere in

1 the taxable year as ~~reflects such compensation paid outside this state.~~
2 Compensation.

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

12 **SECTION 34.** 71.45 (3d) of the statutes is created to read:

13 71.45 **(3d)** PHASE IN; DOMESTIC INSURERS. (a) Except as provided in par. (d), for
14 taxable years beginning after December 31, 2005, and before January 1, 2007, a
15 domestic insurer that is subject to apportionment under sub. (3) and this subsection
16 shall multiply the net income figure derived by the application of sub. (2) by an
17 apportionment fraction composed of the percentage under sub. (3) (a) representing
18 60% of the fraction and the percentage under sub. (3) (b) 1. representing 40% of the
19 fraction.

20 (b) Except as provided in par. (d), for taxable years beginning after December
21 31, 2006, and before January 1, 2008, a domestic insurer that is subject to
22 apportionment under sub. (3) and this subsection shall multiply the net income
23 figure derived by the application of sub. (2) by an apportionment fraction composed
24 of the percentage under sub. (3) (a) representing 80% of the fraction and the
25 percentage under sub. (3) (b) 1. representing 20% of the fraction.

1 (c) Except as provided in par. (d), for taxable years beginning after December
2 31, 2007, a domestic insurer that is subject to apportionment under sub. (3) and this
3 subsection shall multiply the net income figure derived by the application of sub. (2)
4 by the percentage under sub. (3) (a).

5 (d) If a taxpayer who is subject to apportionment under sub. (3) has a net gain
6 of 100 employees in this state in any taxable year beginning after the effective date
7 of this paragraph [revisor inserts date], and before January 1, 2008, the
8 taxpayer's remaining net income may, at the taxpayer's option, be apportioned to this
9 state by an apportionment fraction composed of the percentage under sub. (3) (a)
10 beginning with the taxable year in which the employees are hired, except that if the
11 taxpayer does not retain such employees in this state for at least 3 consecutive
12 taxable years, the taxpayer shall apportion the taxpayer's remaining net income as
13 provided under pars. (a) to (c), as appropriate.

14 **SECTION 35.** 71.45 (3e) of the statutes is created to read:

15 71.45 **(3e)** APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
16 beginning before January 1, 2008, if both the numerator and the denominator used
17 to determine the percentage under sub. (3) (a) related to a taxpayer's net income are
18 zero, the percentage under sub. (3) (a) is eliminated from the apportionment formula
19 to determine the taxpayer's income under sub. (3).

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

24 (b) 1. For taxable years beginning before January 1, 2008, if the numerator
25 used to determine the percentage under sub. (3) (a) related to a taxpayer's net income

1 is 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, the percentage under sub. (3) (a) is zero.

4 2. For taxable years beginning after December 31, 2007, if the numerator used
5 to determine the percentage under sub. (3) (a) related to a taxpayer's net income is
6 a negative number and the denominator used to determine the percentage under
7 sub. (3) (a) related to a taxpayer's net income is a positive number, a negative number,
8 or zero, none of the taxpayer's net income is apportioned to this state.

9 (c) 1. For taxable years beginning before January 1, 2008, 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, the percentage
13 under sub. (3) (a) is one.

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

19 **SECTION 36.** 71.45 (3m) of the statutes is amended to read:

20 71.45 (3m) ARITHMETIC AVERAGE. ~~The Except as provided in sub. (3d), the~~
21 ~~arithmetic average of the 2 percentages referred to in sub. (3) shall be applied to the~~
22 ~~net income figure arrived at by the successive application of sub. (2) (a) and (b) with~~
23 ~~respect to Wisconsin insurers to which sub. (2) (a) and (b) applies and which have~~
24 ~~collected received premiums, other than life insurance premiums, written upon for~~
25 ~~insurance, other than life insurance, where the subject of such insurance was on~~

1 property or risks resident, located or to be performed outside this state, to arrive at
2 Wisconsin income constituting the measure of the franchise tax.

3 **SECTION 37.** 71.45 (7) of the statutes is created to read:

4 71.45 (7) SUBSIDIES. Notwithstanding any contrary provision of the statutes,
5 an entity whose net income is not subject to apportionment under this section shall
6 receive priority over any entity that is subject to apportionment under this section
7 with regard to the award or distribution of any state subsidy.

8 **SECTION 38. Nonstatutory provisions; revenue.**

9 (1) INCOME APPORTIONMENT FOR FINANCIAL ORGANIZATIONS; RULES. The
10 department of revenue shall submit in proposed form rules related to the
11 apportionment of the income of financial organizations under sections 71.04 (4) (e)
12 and 71.25 (6) (e) of the statutes, as created by this act, to the legislative council staff
13 under section 227.15 (1) of the statutes no later than the first day of the 4th month
14 beginning after the effective date of this subsection.

15 **SECTION 39. Initial applicability.**

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

19 (END)