



2005 SENATE BILL 217

May 25, 2005 – Introduced by Senator KANAVAS. Referred to Committee on Job Creation, Economic Development and Consumer Affairs.

1 **AN ACT relating to:** expenditure of a sum sufficient from the general fund equal
2 to \$13,103,428 plus interest calculated at the legal rate in payment of the claims
3 against the state made by 10 claimants for overpayment of insurance license
4 fees.

Analysis by the Legislative Reference Bureau

This bill directs expenditure of \$13,103,428 plus interest from the general fund in payment of claims against the state made by ten claimants for overpayment of insurance license fees. Under ss. 76.63 (1) and 76.65 (2), stats., life and property insurers doing business in this state, other than those headquartered in this state, must pay an insurance license fee (tax) of 2 percent of their gross premiums collected on policies or contracts that are written on the lives of Wisconsin residents or on property located in this state. However, s. 76.67, stats., provides, with certain limitations, that if the state in which an insurer is headquartered imposes a lower tax on Wisconsin insurers doing business in that state, the total fee payable under ss. 76.63 (1) and 76.65 (2), stats., is reduced to the same amount that a Wisconsin insurer would be required to pay to that state. During one or more of the years 1992 to 1996, the claimants paid a 2 percent premium fee to this state because at that time they were all headquartered in the state of Illinois and they believed that Illinois would impose a tax at that rate upon Wisconsin insurers doing business in that state. However, in *Milwaukee Safeguard Ins. Co. v. Selcke*, 179 Ill. 2d. 94 (1997), the Illinois Supreme Court ruled that the Illinois tax was invalid, and as a result, Illinois imposed no tax on Wisconsin insurers doing business in that state for those years.

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The claimants claimed amounts totaling \$13,103,428, representing the full amount of insurance license fees that they paid to this state during the years 1992 to 1996, plus interest calculated at the legal rate of 5 percent from the date that the fees were paid to the date that the claims are paid. The Office of the Commissioner of Insurance contends that the claims should be denied under applicable Wisconsin case law, that the claimants should have brought suit for recovery of the claimed overpayments as permitted under s. 76.68 (2), stats., that the claimants failed to protest their payments at the time they were made, and that payment of the claims would unjustly enrich Illinois insurers to the detriment of Wisconsin insurers. In a report dated May 10, 2005, the Claims Board recommended denial of this claim (see *Senate Journal*, PP. 227-228).

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

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

1 **SECTION 1. Claims against the state.**

2 (1) There is directed to be expended from the appropriation under section
3 20.505 (4) (d) of the statutes, as affected by the acts of 2005, the following amounts
4 to the following claimants in payment of claims against the state for overpayment
5 of insurance license fees imposed under sections 76.63 (1) and 76.65 (2) of the
6 statutes for one or more of the calendar years 1992 to 1996, plus interest calculated
7 at the legal rate under section 138.04 of the statutes from the date of payment of the
8 fees to the date of payment of these claims:

Allstate Insurance Company, Northbrook, Illinois	\$ 6,595,649
Allstate Indemnity Company, Northbrook, Illinois	\$ 882,918
Allstate Life Insurance Company, Northbrook, Illinois	\$ 261,646
Northbrook National Insurance Company, St. Paul, Minnesota	\$ 270,349
Northbrook Property and Casualty Insurance Company, St. Paul, Minnesota	\$ 919,343
Northbrook Indemnity Company, Northbrook, Illinois	\$ 773,992

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American Manufacturers Mutual Insurance Company, Long Grove, Illinois	\$ 377,755
American Motorists Insurance Company, Long Grove, Illinois	\$ 718,024
American Protection Insurance Company , Long Grove, Illinois	\$ 182,041
Lumbermens Mutual Insurance Company, Long Grove, Illinois	\$ 2,121,711

1 (2) Acceptance of this payment releases this state and its officers, employees,
2 and agents from any further liability resulting from any overpayments by these
3 claimants of fees imposed under sections 76.63 (1) and 76.65 (2) of the statutes during
4 the years 1992 to 1996.

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(END)