FAMILY LEAVE INSURANCE

EFFECTIVE DATE: 07/22/07 - Except sections 3 through 18 and 26, which become effective 07/01/08; and sections 2 and 19 through 25, which become effective 05/08/07.

Passed by the Senate April 22, 2007
YEAS 26  NAYS 21

BRAD OWEN
President of the Senate

Passed by the House April 20, 2007
YEAS 57  NAYS 41

FRANK CHOPP
Speaker of the House of Representatives

CERTIFICATE
I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is ENGROSSED SECOND SUBSTITUTE SENATE BILL 5659 as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN
Secretary

Approved May 8, 2007, 3:12 p.m.

FILED
May 10, 2007

CHRISTINE GREGOIRE
Governor of the State of Washington

Secretary of State
State of Washington
AN ACT Relating to family and medical leave insurance; amending RCW 51.44.033; reenacting and amending RCW 43.79A.040; adding a new chapter to Title 49 RCW; creating new sections; making an appropriation; providing an effective date; providing expiration dates; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. FINDINGS AND DECLARATIONS. The legislature finds that, although family leave laws have assisted individuals to balance the demands of the workplace with their family responsibilities, more needs to be done to achieve the goals of parent and child bonding, workforce stability, and economic security. In particular, the legislature finds that many individuals do not have access to family leave laws, and those who do may not be in a financial position to take family leave that is unpaid, and that employer-paid benefits meet only a relatively small part of this need. The legislature declares it to be in the public interest to establish a program that: (1) Allows parents to bond with a newborn or newly placed child; (2) provides limited and additional income support for a reasonable period while an individual is away from work on family
leave; (3) reduces the impact on state income support programs by increasing an individual's ability to provide caregiving services for a child while maintaining an employment relationship; and (4) establishes a wage replacement benefit to be coordinated with current existing state and federal family leave laws.

NEW SECTION. Sec. 2. JOINT LEGISLATIVE TASK FORCE. (1)(a) The joint legislative task force on family leave insurance is established, with thirteen members as provided in this subsection.

(i) The chair and the ranking member of the senate labor, commerce, research and development committee.

(ii) The chair and the ranking member of the house commerce and labor committee.

(iii) The majority leader of the senate shall appoint one member from each of the two largest caucuses of the senate.

(iv) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives.

(v) The majority leader of the senate and the speaker of the house of representatives jointly shall appoint four nonlegislative members of the task force, which shall include one member representing large business, one member representing small business, one member representing labor, and one member representing advocates for family leave.

(vi) The governor shall appoint one member of the task force.

(b) The department of labor and industries and the employment security department shall cooperate with the task force and shall each maintain a liaison representative, who shall be a nonvoting member.

(c) The majority leader of the senate and the speaker of the house of representatives jointly shall appoint the cochairs of the task force from among the legislative members of the task force. The cochairs shall convene the initial meeting of the task force. A steering committee consisting of the legislative members of the task force shall advise the cochairs on the meetings and other activities of the task force.

(2) The task force shall study the establishment of a family leave insurance program including, but not limited to, the following:
(a) The manner in which the benefits and the administrative costs should be financed;

(b) The manner in which the program should be implemented and administered;

(c) Any government efficiencies that should be adopted to improve program administration and reduce program costs; and

(d) The impacts, if any, of the family leave insurance program on the unemployment compensation system, and options for mitigating such impacts.

(3) Staff support for the task force must be provided by the senate committee services and the house of representatives office of program research. The task force may hire additional staff with specific technical expertise if such expertise is necessary to carry out the mandates of this study, and only if an appropriation is specifically provided for this purpose.

(4) Legislative members of the task force must be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(5) The expenses of the task force must be paid jointly by the senate and the house of representatives. Task force expenditures are subject to approval by the senate facilities and operations committee and the house of representatives executive rules committee, or their successor committees.

(6) The task force shall report its findings and recommendations, which shall include recommendations as to the specific manner in which the benefits and the administrative costs should be financed as well as proposed legislation, to the legislature by January 1, 2008.

(7) This section expires July 1, 2009.

NEW SECTION. Sec. 3. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Application year" means the twelve-month period beginning on the first day of the calendar week in which an individual files an application for family leave insurance benefits and, thereafter, the twelve-month period beginning with the first day of the calendar week.
in which the individual next files an application for family leave
insurance benefits after the expiration of the individual's last
preceding application year.

(2) "Calendar quarter" means the same as in RCW 50.04.050.
(3) "Child" means a biological or an adopted child.
(4) "Department" means the state agency to be directed to
administer the family leave insurance program.
(5) "Director" means the director of the department.
(6) "Employer" means: (a) The same as in RCW 50.04.080; and (b) the state and its political subdivisions.
(7) "Employment" has the meaning provided in RCW 50.04.100.
(8) "Family leave" means leave: (a) Because of the birth of a child of the employee and in order to care for the child; or (b) because of the placement of a child with the employee for adoption.
(9) "Family leave insurance benefits" means the benefits payable under sections 7 and 8 of this act.
(11) "Qualifying year" means the first four of the last five completed calendar quarters or the last four completed calendar quarters immediately preceding the first day of the individual's application year.
(12) "Regularly working" means the average number of hours per workweek that an individual worked in the two quarters of the individual's qualifying year in which total wages were highest.

NEW SECTION. Sec. 4. FAMILY LEAVE INSURANCE PROGRAM. (1) The department shall establish and administer a family leave insurance program and pay family leave insurance benefits as specified in this chapter.
(2) The department shall establish procedures and forms for filing claims for benefits under this chapter. The department shall notify the employer within five business days of a claim being filed under section 5 of this act.
(3) The department shall use information sharing and integration technology to facilitate the disclosure of relevant information or
records by the employment security department, so long as an individual consents to the disclosure as required under section 5(4) of this act.

(4) Information contained in the files and records pertaining to an individual under this chapter are confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, the individual or an authorized representative of an individual may review the records or receive specific information from the records on the presentation of the signed authorization of the individual. An employer or the employer's duly authorized representative may review the records of an individual employed by the employer in connection with a pending claim. At the department's discretion, other persons may review records when such persons are rendering assistance to the department at any stage of the proceedings on any matter pertaining to the administration of this chapter.

(5) The department shall develop and implement an outreach program to ensure that individuals who may be eligible to receive family leave insurance benefits under this chapter are made aware of these benefits. Outreach information shall explain, in an easy to understand format, eligibility requirements, the claims process, weekly benefit amounts, maximum benefits payable, notice requirements, reinstatement and nondiscrimination rights, confidentiality, and coordination of leave under this chapter and other laws, collective bargaining agreements, and employer policies. Outreach information shall be available in English and other primary languages as defined in RCW 74.04.025.

NEW SECTION. Sec. 5. ELIGIBILITY FOR BENEFITS. Beginning October 1, 2009, family leave insurance benefits are payable to an individual during a period in which the individual is unable to perform his or her regular or customary work because he or she is on family leave if the individual:

(1) Files a claim for benefits in each week in which the individual is on family leave, and as required by rules adopted by the director;

(2) Has been employed for at least six hundred eighty hours in employment during the individual's qualifying year;

(3) Establishes an application year. An application year may not be established if the qualifying year includes hours worked before establishment of a previous application year;
(4) Consents to the disclosure of information or records deemed private and confidential under chapter 50.13 RCW. Initial disclosure of this information and these records by the employment security department to the department is solely for purposes related to the administration of this chapter. Further disclosure of this information or these records is subject to section 4(3) of this act;

(5) Discloses whether or not he or she owes child support obligations as defined in RCW 50.40.050; and

(6) Documents that he or she has provided the employer from whom family leave is to be taken with written notice of the individual's intention to take family leave in the same manner as an employee is required to provide notice in RCW 49.78.250.

NEW SECTION. Sec. 6. DISQUALIFICATION FROM BENEFITS. An individual is disqualified from family leave insurance benefits beginning with the first day of the calendar week, and continuing for the next fifty-two consecutive weeks, in which the individual willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this chapter.

NEW SECTION. Sec. 7. DURATION OF BENEFITS. (1) The maximum number of weeks during which family leave insurance benefits are payable in an application year is five weeks. However, benefits are not payable during a waiting period consisting of the first seven calendar days of family leave taken in an application year, whether the first seven calendar days of family leave are employer paid or unpaid.

(2)(a) The first payment of benefits must be made to an individual within two weeks after the claim is filed or the family leave began, whichever is later, and subsequent payments must be made semimonthly thereafter.

(b) The payment of benefits under this chapter shall not be considered a binding determination of the obligations of the department under this chapter. The acceptance of compensation by the individual shall likewise not be considered a binding determination of his or her rights under this chapter. Whenever any payment of benefits under this chapter has been made and timely appeal therefrom has been made where the final decision is that the payment was improper, the individual
shall repay it and recoupment may be made from any future payment due to the individual on any claim under this chapter. The director may exercise his or her discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(c) If an individual dies before he or she receives a payment of benefits, the payment shall be made by the department and distributed consistent with the terms of the decedent's will or, if the decedent dies intestate, consistent with the terms of RCW 11.04.015.

NEW SECTION. Sec. 8. AMOUNT OF BENEFITS. The amount of family leave insurance benefits shall be determined as follows:

(1) The weekly benefit shall be two hundred fifty dollars per week for an individual who at the time of beginning family leave was regularly working thirty-five hours or more per week.

(2) If an individual who at the time of beginning family leave was regularly working thirty-five hours or more per week is on family leave for less than thirty-five hours but at least eight hours in a week, the individual's weekly benefit shall be .025 times the maximum weekly benefit times the number of hours of family leave taken in the week. Benefits are not payable for less than eight hours of family leave taken in a week.

(3) For an individual who at the time of beginning family leave was regularly working less than thirty-five hours per week, the department shall calculate a prorated schedule for a weekly benefit amount and a minimum number of hours of family leave that must be taken in a week for benefits to be payable, with the prorated schedule based on the amounts and the calculations specified under subsections (1) and (2) of this section.

(4) If an individual discloses that he or she owes child support obligations under section 5 of this act and the department determines that the individual is eligible for benefits, the department shall notify the applicable state or local child support enforcement agency and deduct and withhold an amount from benefits in a manner consistent with RCW 50.40.050.

(5) If the internal revenue service determines that family leave insurance benefits under this chapter are subject to federal income tax and an individual elects to have federal income tax deducted and
withheld from benefits, the department shall deduct and withhold the
amount specified in the federal internal revenue code in a manner
consistent with section 9 of this act.

NEW SECTION. Sec. 9. FEDERAL INCOME TAX. (1) If the internal
revenue service determines that family leave insurance benefits under
this chapter are subject to federal income tax, the department must
advise an individual filing a new claim for family leave insurance
benefits, at the time of filing such claim, that:
(a) The internal revenue service has determined that benefits are
subject to federal income tax;
(b) Requirements exist pertaining to estimated tax payments;
(c) The individual may elect to have federal income tax deducted
and withheld from the individual's payment of benefits at the amount
specified in the federal internal revenue code; and
(d) The individual is permitted to change a previously elected
withholding status.
(2) Amounts deducted and withheld from benefits must remain in the
family leave insurance account until transferred to the federal taxing
authority as a payment of income tax.
(3) The director shall follow all procedures specified by the
federal internal revenue service pertaining to the deducting and
withholding of income tax.

NEW SECTION. Sec. 10. ADJUSTMENT TO BENEFITS. If family leave
insurance benefits are paid erroneously or as a result of willful
misrepresentation, or if a claim for family leave benefits is rejected
after benefits are paid, RCW 51.32.240 shall apply, except that appeals
are governed by section 14 of this act, penalties are paid into the
family leave insurance account, and the department shall seek repayment
of benefits from the recipient.

NEW SECTION. Sec. 11. LEAVE AND EMPLOYMENT PROTECTION. (1)
During a period in which an individual receives family leave insurance
benefits or earns waiting period credits under this chapter, the
individual is entitled to family leave and, at the established ending
date of leave, to be restored to a position of employment with the
employer from whom leave was taken.
(2) The individual entitled to leave under this section shall be restored to a position of employment in the same manner as an employee entitled to leave under chapter 49.78 RCW is restored to a position of employment, as specified in RCW 49.78.280.

(3) This section applies only to an individual if:
   (a) The employer from whom the individual takes family leave employs more than twenty-five employees; and
   (b) The individual has been employed for at least twelve months by that employer, and for at least one thousand two hundred fifty hours of service with that employer during the previous twelve-month period.

(4) This section shall be enforced as provided in chapter 49.78 RCW.

NEW SECTION. Sec. 12. EMPLOYMENT BY SAME EMPLOYER. If spouses or people involved in a legal relationship established under chapter 26.--RCW (sections 1, 2, and 4 through 8, chapter . . . (Substitute Senate Bill No. 5336), Laws of 2007) who are entitled to leave under this chapter are employed by the same employer, the employer may require that spouses or people involved in such a relationship governed by Title 26 RCW not take such leave concurrently.

NEW SECTION. Sec. 13. ELECTIVE COVERAGE. (1) An employer of individuals not covered by this chapter or a self-employed person, including a sole proprietor, partner, or joint venturer, may elect coverage under this chapter for all individuals in its employ for an initial period of not less than three years or a subsequent period of not less than one year immediately following another period of coverage. The employer or self-employed person must file a notice of election in writing with the director, as required by the department. The election becomes effective on the date of filing the notice.

(2) An employer or self-employed person who has elected coverage may withdraw from coverage within thirty days after the end of the three-year period of coverage, or at such other times as the director may prescribe by rule, by filing written notice with the director, such withdrawal to take effect not sooner than thirty days after filing the notice. Within five days of filing written notice of the withdrawal with the director, an employer must provide written notice of the withdrawal to all individuals in the employer's employ.
NEW SECTION. Sec. 14. APPEALS. (1) A person aggrieved by a decision of the department under this chapter must file a notice of appeal with the director, by mail or personally, within thirty days after the date on which a copy of the department's decision was communicated to the person. Upon receipt of the notice of appeal, the director shall request the assignment of an administrative law judge in accordance with chapter 34.05 RCW to conduct a hearing and issue a proposed decision and order. The hearing shall be conducted in accordance with chapter 34.05 RCW.

(2) The administrative law judge's proposed decision and order shall be final and not subject to further appeal unless, within thirty days after the decision is communicated to the interested parties, a party petitions for review by the director. If the director's review is timely requested, the director may order additional evidence by the administrative law judge. On the basis of the evidence before the administrative law judge and such additional evidence as the director may order to be taken, the director shall render a decision affirming, modifying, or setting aside the administrative law judge's decision. The director's decision becomes final and not subject to further appeal unless, within thirty days after the decision is communicated to the interested parties, a party files a petition for judicial review as provided in chapter 34.05 RCW. The director is a party to any judicial action involving the director's decision and shall be represented in the action by the attorney general.

(3) If, upon administrative or judicial review, the final decision of the department is reversed or modified, the administrative law judge or the court in its discretion may award reasonable attorneys' fees and costs to the prevailing party. Attorneys' fees and costs owed by the department, if any, are payable from the family leave insurance account.

NEW SECTION. Sec. 15. PROHIBITED ACTS. An employer, temporary help company, employment agency, employee organization, or other person may not discharge, expel, or otherwise discriminate against a person because he or she has filed or communicated to the employer an intent to file a claim, a complaint, or an appeal, or has testified or is about to testify or has assisted in any proceeding, under this chapter, at any time, including during the waiting period described in section
7 of this act and the period in which the person receives family leave
insurance benefits under this chapter. This section shall be enforced
as provided in RCW 51.48.025.

NEW SECTION. Sec. 16. COORDINATION OF LEAVE. (1)(a) Leave taken
under this act must be taken concurrently with any leave taken under
the federal family and medical leave act of 1993 (Act Feb. 5, 1993,
P.L. 103-3, 107 Stat. 6) or under chapter 49.78 RCW.

(b) An employer may require that leave taken under this act be
taken concurrently or otherwise coordinated with leave allowed under
the terms of a collective bargaining agreement or employer policy, as
applicable, for the birth or placement of a child. The employer must
give individuals in its employ written notice of this requirement.

(2)(a) This act does not diminish an employer's obligation to
comply with a collective bargaining agreement or employer policy, as
applicable, that provides greater leave for the birth or placement of
a child.

(b) An individual's right to leave under this act may not be
diminished by a collective bargaining agreement entered into or renewed
or an employer policy adopted or retained after the effective date of
this section. Any agreement by an individual to waive his or her
rights under this act is void as against public policy.

NEW SECTION. Sec. 17. NO CONTINUING ENTITLEMENT OR CONTRACTUAL
RIGHT. This chapter does not create a continuing entitlement or
contractual right. The legislature reserves the right to amend or
repeal all or part of this chapter at any time, and a benefit or other
right granted under this chapter exists subject to the legislature's
power to amend or repeal this chapter. There is no vested private
right of any kind against such amendment or repeal.

NEW SECTION. Sec. 18. RULES. The director may adopt rules as
necessary to implement this chapter. In adopting rules, the director
shall maintain consistency with the rules adopted to implement the
federal family and medical leave act, and chapter 49.78 RCW, to the
extent such rules are not in conflict with this chapter.
NEW SECTION. Sec. 19. ACCOUNT. The family leave insurance account is created in the custody of the state treasurer. Expenditures from the account may be used only for the purposes of the family leave insurance program. Only the director of the department of labor and industries or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW. An appropriation is required for administrative expenses, but not for benefit payments.

NEW SECTION. Sec. 20. INVESTMENT OF FAMILY LEAVE INSURANCE ACCOUNT. Whenever, in the judgment of the state investment board, there shall be in the family leave insurance account funds in excess of that amount deemed by the state investment board to be sufficient to meet the current expenditures properly payable therefrom, the state investment board shall have full power to invest, reinvest, manage, contract, or sell or exchange investments acquired with such excess funds in the manner prescribed by RCW 43.84.150, and not otherwise.

Sec. 21. RCW 43.79A.040 and 2006 c 311 s 21 and 2006 c 120 s 2 are each reenacted and amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury.

(2) All income received from investment of the treasurer's trust fund shall be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer shall distribute the earnings credited to the investment income account to the state general fund except under (b) and (c) of this subsection.
(b) The following accounts and funds shall receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington promise scholarship account, the college savings program account, the Washington advanced college tuition payment program account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the students with dependents grant account, the basic health plan self-insurance reserve account, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the Washington international exchange scholarship endowment fund, the developmental disabilities endowment trust fund, the energy account, the fair fund, the family leave insurance account, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the grain inspection revolving fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the produce railcar pool account, the regional transportation investment district account, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the sulfur dioxide abatement account, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account (earnings from the Washington horse racing commission operating account must be credited to the Washington horse racing commission class C purse fund account), the life sciences discovery fund, and the reading achievement account. However, the earnings to be distributed shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(c) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right of way revolving fund, the advanced environmental mitigation revolving account, the city and county advance right-of-way revolving fund, the
federal narcotics asset forfeitures account, the high occupancy vehicle
account, the local rail service assistance account, and the
miscellaneous transportation programs account.

(5) In conformance with Article II, section 37 of the state
Constitution, no trust accounts or funds shall be allocated earnings
without the specific affirmative directive of this section.

NEW SECTION. Sec. 22. LOANS. If necessary to ensure that money
is available in the family leave insurance account for the initial
administration of the family leave insurance program, the director of
labor and industries may, from time to time before July 1, 2009, lend
funds from the supplemental pension fund to the family leave insurance
account. These loaned funds may be expended solely for the initial
administration of the program under this chapter. The director of
labor and industries shall repay the supplemental pension fund, plus
its proportionate share of earnings from investment of moneys in the
supplemental pension fund during the loan period, from the family leave
insurance account within two years of the date of the loan. This
section expires October 1, 2011.

Sec. 23. RCW 51.44.033 and 1975 1st ex.s. c 224 s 16 are each
amended to read as follows:

There shall be, in the office of the state treasurer, a fund to be
known and designated as the "supplemental pension fund". The director
shall be the administrator thereof. ((Said)) The fund shall be used
for the sole purposes of making the additional payments therefrom
prescribed in this title and the loans therefrom authorized in section
22 of this act.

NEW SECTION. Sec. 24. AUTHORITY TO CONTRACT. (1) The department
of labor and industries may contract or enter into interagency
agreements with other state agencies for the initial administration of
the family leave insurance program.

(2) This section expires October 1, 2011.

NEW SECTION. Sec. 25. APPROPRIATION. The sum of eighteen million
dollars, or as much thereof as may be necessary, is appropriated for
the biennium ending June 30, 2009, from the family leave insurance account to the department of labor and industries for the initial administration of the family leave insurance program.

NEW SECTION. Sec. 26. REPORTS TO THE LEGISLATURE. Beginning September 1, 2010, the department shall report to the legislature by September 1st of each year on projected and actual program participation, premium rates, fund balances, and outreach efforts.

NEW SECTION. Sec. 27. SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 28. CAPTIONS. Captions used in this act are not any part of the law.

NEW SECTION. Sec. 29. CODIFICATION. Sections 1, 3 through 20, and 26 through 28 of this act constitute a new chapter in Title 49 RCW.

NEW SECTION. Sec. 30. EFFECTIVE DATES. (1) Sections 3 through 18 and 26 of this act take effect July 1, 2008.
(2) Sections 2 and 19 through 25 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

Passed by the Senate April 22, 2007.
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