

# SENATE BILL REPORT

## SB 5069

---

---

As Reported By Senate Committee On:  
Labor, Commerce, Research & Development, March 1, 2005  
Ways & Means, March 7, 2005

**Title:** An act relating to family leave insurance.

**Brief Description:** Establishing family leave insurance.

**Sponsors:** Senators Keiser, Kohl-Welles, Franklin, Thibaudeau, Brown, Kline and Regala.

**Brief History:**

**Committee Activity:** Labor, Commerce, Research & Development: 1/31/05, 3/1/05 [DPS-WM, DNP].

Ways & Means: 3/7/05 [DP2S, DNP].

---

### SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

**Majority Report:** That Substitute Senate Bill No. 5069 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Franklin, Vice Chair; Brown, Keiser and Prentice.

**Minority Report:** Do not pass.

Signed by Senators Parlette, Ranking Minority Member; Hewitt and Honeyford.

**Staff:** Jennifer Strus (786-7316)

---

### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5069 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Doumit, Vice Chair; Fraser, Vice Chair; Fairley, Kohl-Welles, Pridemore, Rasmussen, Regala and Thibaudeau.

**Minority Report:** Do not pass.

Signed by Senator Pflug.

**Staff:** Paula Faas (786-7449)

**Background:** Federal and state laws provide that certain employees are entitled to unpaid family and medical leave.

Under the federal Family and Medical Leave Act, eligible employees are entitled to take up to 12 weeks of unpaid leave in a 12-month period for specified family and medical reasons, and to be reinstated to their original jobs or equivalent jobs upon their return.

An eligible employee is one who: (1) works for a covered employer; and (2) has worked for the same employer for at least 12 months, and for at least 1,250 hours over the previous 12 months. An eligible employee is not one who works at a location at which the employer employs less than 50 employees if the total number employed within 75 miles of that worksite is less than 50. A covered employer is a private employer that had 50 or more employees in at least 20 weeks of the current or preceding year.

Leave may be taken for: (1) the birth and care of a child of the employee; (2) the placement of a child with the employee for adoption or foster care; (3) the care of an immediate family member who has a serious health condition; or (4) the serious health condition of the employee that makes the employee unable to work.

Under the state Family Leave Law, eligible employees are entitled to reinstatement to workplaces within 20 miles of their original workplaces. Employees are also entitled to leave for sickness or temporary disability related to pregnancy or childbirth in addition to leave under federal law. Enforcement of other provisions of the state Family Leave Law is currently suspended.

**Summary of Second Substitute Bill:** A new partial wage replacement program, the family leave insurance program, is established. Starting September 3, 2006, family leave insurance benefits will be available. These benefits are payable to employees during the time they are on family leave if they: file a claim for benefits in each week the employee is on family leave; have been employed for at least 680 hours during the employee's qualifying year; establish an application year; disclose whether they owe child support; gave written notice to their employer that they intended to take family leave and do not receive unemployment insurance, worker's compensation, crime victims or other disability benefits.

The maximum number of weeks that benefits are payable in an application year is five; however, benefits are not available during the waiting period, which is the first five work days of family leave taken during an application year.

The first benefit payment must be made two weeks after the claim is filed or family leave began, whichever is later. Subsequent payments must be made semi-monthly. Benefits are not payable and waiting period credits are not earned for any week during which the employee received unemployment insurance or workers' compensation benefits.

Before July 1, 2007, the weekly benefit for a person working 40 hours per week or more is \$250. Starting June 30, 2007, and each subsequent June 30th, L&I must calculate an adjusted maximum weekly benefit to account for inflation using the CPI-U or CPI-W for the 12 completed calendar months before June 30th. The adjusted weekly benefit amount takes effect for the weeks after the June 30th on which the new rates were calculated.

For an employee who regularly worked 40 hours before taking family leave, and while on leave is working less than 40 but more than eight hours a week, the employee's weekly benefit is .025 times the maximum weekly benefit (\$250) times the number of hours of family leave taken in the week. Family leave benefits are not payable for less than eight hours of family leave taken in a week.

At the established end of the family leave period, an employee is entitled to be reinstated in his or her position with the employer. However, an employer may require that the employee

take his or her family leave benefits concurrently with leave under the federal Family and Medical Leave Act. If the employee is entitled to reinstatement under the federal law, or other applicable state, local or federal laws, other than the benefits provided in this bill, the required reinstatement is provided under the law most favorable to the employee.

If the employee is not entitled to reinstatement upon return from family leave under federal or other state or local laws, then the employee is entitled to be reinstated as follows: (1) in the same position held by the employee when he or she started family leave; (2) in a position with the same benefits and pay at a workplace that is within 20 miles of the employee's former workplace; or (3) if the employer's circumstances have changed so much that reinstatement in the same position is not possible, the employee shall be reinstated in any other vacant position for which the employee is qualified.

Starting January 1, 2006, every employer must pay a premium to L&I of two cents per hour worked by each employee up to a maximum of 40 hours per week. The employer has the option of withholding the entire premium from the employee's paycheck. The Family Leave Insurance Account is created in the state treasury. All premiums and penalties imposed under the act must be deposited into this account. The account is allotted but not appropriated and only the L&I director may authorize expenditures from the account and only for the purposes of the family leave insurance program.

If necessary to ensure there are sufficient funds in the Family Leave Insurance Account, the L&I Director may borrow funds from the Supplemental Pension Fund. This loan must be paid back with interest within three months of the date of the loan.

Starting July 1, 2007, and every subsequent July, L&I must report to the legislature on projected and actual program participation, premium rates, fund balances, and outreach efforts.

**Second Substitute Bill Compared to Substitute Bill:** Adds that, when family leave is not foreseeable, the employee is expected to give notice to the employer within one or two working days of learning of the need for leave, except in extraordinary circumstances. Requires the initial loan from the Supplemental Pension Fund to be repaid within one year, rather than three months. Makes other technical and clarifying changes to make the language of the bill consistent.

**Substitute Bill Compared to Original Bill:** The dates upon which employers must begin collecting premiums and the benefits are payable have been changed. Domestic partner has been removed from the definition of family member. The ability of the employee to take family leave for his or her own medical issues is removed. The definition of "serious health condition" is amended to include a period of incapacity or treatment that lasts more than five days over the course of the application period.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The bill will assist workers with some temporary wage replacement so they are not forced to return to work earlier than is medically advised. This bill would save businesses a lot of money by assisting them in retaining skilled workers. Rather than having a worker who has been trained at the businesses expense and quit because of an illness in the family, the family leave act will allow them the time they need, pay them a partial wage and allow them to return to the job for which they have been trained. This bill would also improve morale and worker productivity. Forty percent of all workers are not covered by the federal Family Medical and Leave Act because they work for businesses with fewer than 50 employees. This bill would provide workers with a benefit that can use during the times of serious health issues for themselves or their families, or for the birth of a new child.

**Testimony Against:** This bill would place both direct and indirect costs on businesses. Washington is the sixth costliest state in which to do business; this is not the time to impose an additional burden on Washington businesses. If this bill were enacted, it would result in additional indirect cost to business as a result of overtime paid to workers to replace those workers out on family leave and/or replacement worker costs. There would also be additional administrative burdens that would result in extra cost to business. Kroger/QFC operates in 34 states and Washington is the most expensive state in which to operate. Adding family leave as a benefit would result in higher prices for consumers in these stores. This bill would be more likely used for individual health reasons than for family reasons based upon the federal FMLA usage statistics. This bill is inconsistent with the family care legislation, the current state family leave legislation and the federal FMLA. The legislature should come up with a comprehensive approach to this issue rather than dealing with it in a piecemeal fashion. Family leave is more appropriate for a worker who has been employed by the same employer for three or four years; it is not appropriate for seasonal workers because they do not work an entire year and are needed during the harvest.

Concerns: Based on Department of Labor and Industries estimates, the computer systems required to implement the legislation will take approximately two years to put in place. This conflicts with the implementation date of the bill.

**Who Testified:** PRO: Senator Karen Keiser, prime sponsor; Cathleen Porch Teschner, Selena Allen, Jerri Woods, citizen; Richard Clark, Amtech Corporation; Dolores Gohndrone, Hallmark Services; Marilyn Watkins, Economic Opportunity Institute and Chair, Family Leave Coalition. CONCERNS: Vicki Kennedy, Department of Labor and Industries.

CON: Kris Tefft, AWB; Mark Johnson, Washington Retail Association; Clif Finch, Washington Food Industry; Dan Fazio, Washington Farm Bureau; Lesa Boxx, Boxx Berry Farmers; Carolyn Logue, NFIB; Gary Smith, Independent Business Association.

Signed in, Unable to Testify & Submitted Written Testimony: Sharon Whitehead, Department of Personnel.