

**2SSB 5659 - S AMD 283**

By Senators Keiser, Brown, Kohl-Welles

ADOPTED AS AMENDED 03/14/2007

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** FINDINGS AND DECLARATIONS. The legislature  
4 finds that, although family and medical leave laws have assisted  
5 individuals to balance the demands of the workplace with their family  
6 responsibilities, more needs to be done to achieve the goals of family  
7 care, children and family health, workforce stability, and economic  
8 security. In particular, the legislature finds that many individuals  
9 employed by employers with less than fifty employees do not have access  
10 to family and medical leave laws, and those who do may not be in a  
11 financial position to take family and medical leave that is unpaid, and  
12 that employer-paid benefits, including family and medical leave and  
13 disability benefits, meet only a relatively small part of this need.  
14 The legislature declares it to be in the public interest to establish  
15 a program that: (1) Allows parents to bond with a newborn or newly  
16 placed child, and workers to care for seriously ill family members,  
17 regardless of the size of their employer; (2) provides limited and  
18 additional income support for a reasonable period while an individual  
19 is away from work on family and medical leave; (3) reduces the impact  
20 on state income support programs by increasing an individual's ability  
21 to provide caregiving services for family members while maintaining an  
22 employment relationship; and (4) establishes a wage replacement benefit  
23 to be coordinated with current existing state and federal family and  
24 medical leave laws.

25 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
26 section apply throughout this chapter unless the context clearly  
27 requires otherwise.

28 (1) "Application year" means the twelve-month period beginning on  
29 the first day of the calendar week in which an individual files an

1 application for family and medical leave insurance benefits and,  
2 thereafter, the twelve-month period beginning with the first day of the  
3 calendar week in which the individual next files an application for  
4 family and medical leave insurance benefits after the expiration of the  
5 individual's last preceding application year.

6 (2) "Average weekly wage" means the same as in RCW 50.04.355.

7 (3) "Calendar quarter" means the same as in RCW 50.04.050.

8 (4) "Child," "department," "director," "health care provider,"  
9 "parent," "serious health condition," and "spouse" mean the same as in  
10 RCW 49.78.020.

11 (5) "Employer" means: (a) The same as in RCW 50.04.080; and (b)  
12 the state and its political subdivisions.

13 (6) "Employment" has the meaning provided in RCW 50.04.100.

14 (7) "Family and medical leave" means leave for a family member's  
15 serious health condition and leave for the birth or placement of a  
16 child.

17 (8) "Family and medical leave insurance benefits" means the  
18 benefits payable under sections 6 and 7 of this act.

19 (9) "Family member" means a child, spouse or domestic partner, or  
20 the parent of the individual, or a person involved in a legal  
21 relationship governed by Title 26 RCW.

22 (10) "Federal family and medical leave act" means the federal  
23 family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107  
24 Stat. 6).

25 (11) "Premium" or "premiums" means payments required by this  
26 chapter to be made to the department for the family and medical leave  
27 insurance account under section 20 of this act.

28 (12) "Qualifying year" means the first four of the last five  
29 completed calendar quarters or the last four completed calendar  
30 quarters immediately preceding the first day of the individual's  
31 application year.

32 (13) "Regularly working" means the average number of hours per  
33 workweek that an individual worked in the two quarters of the  
34 individual's qualifying year in which total wages were highest.

35 NEW SECTION. **Sec. 3.** FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.

36 (1) The department shall establish and administer a family and medical

1 leave insurance program and pay family and medical leave insurance  
2 benefits as specified in this chapter.

3 (2) The department shall establish procedures and forms for filing  
4 claims for benefits under this chapter. The department shall notify  
5 the employer within five business days of a claim being filed under  
6 section 4 of this act.

7 (3) The department may require that a claim for benefits under this  
8 chapter be supported by a certification issued by the health care  
9 provider providing health care to the individual or individual's family  
10 member, as applicable.

11 (4) The department shall use information sharing and integration  
12 technology to facilitate the disclosure of relevant information or  
13 records by the employment security department, so long as an individual  
14 consents to the disclosure as required under section 4(4) of this act.

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

28 (6) The department shall develop and implement an outreach program  
29 to ensure that individuals who may be eligible to receive family and  
30 medical leave insurance benefits under this chapter are made aware of  
31 these benefits. Outreach information shall explain, in an easy to  
32 understand format, eligibility requirements, the claims process, weekly  
33 benefit amounts, maximum benefits payable, notice and medical  
34 certification requirements, reinstatement and nondiscrimination rights,  
35 confidentiality, and the relationship between employment protection,  
36 leave from employment, and wage replacement benefits under this chapter  
37 and other laws, collective bargaining agreements, and employer

1 policies. Outreach information shall be available in English and other  
2 primary languages as defined in RCW 74.04.025.

3 NEW SECTION. **Sec. 4.** ELIGIBILITY FOR BENEFITS. Beginning October  
4 1, 2009, family and medical leave insurance benefits are payable to an  
5 individual during a period in which the individual is unable to perform  
6 his or her regular or customary work because he or she is on family and  
7 medical leave if the individual:

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

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

13 (3) Establishes an application year. An application year may not  
14 be established if the qualifying year includes hours worked before  
15 establishment of a previous application year;

16 (4) Consents to the disclosure of information or records deemed  
17 private and confidential under chapter 50.13 RCW. Initial disclosure  
18 of this information and these records by the employment security  
19 department to the department is solely for purposes related to the  
20 administration of this chapter. Further disclosure of this information  
21 or these records is subject to sections 3(4) and 14(2)(b) of this act;

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

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

29 (7) Authorizes the individual's health care provider or provides a  
30 document authorizing the family member's health care provider, as  
31 applicable, to disclose the individual's or family member's health care  
32 information in the form of the certification of a serious health  
33 condition. To be valid, the disclosure authorization must satisfy the  
34 requirements set forth in RCW 70.02.030.

35 NEW SECTION. **Sec. 5.** DISQUALIFICATION FROM BENEFITS. An  
36 individual is disqualified from family and medical leave insurance

1 benefits beginning with the first day of the calendar week, and  
2 continuing for the next fifty-two consecutive weeks, in which the  
3 individual:

4 (1) Willfully made a false statement or misrepresentation regarding  
5 a material fact, or willfully failed to report a material fact, to  
6 obtain benefits under this chapter; or

7 (2) With respect to family and medical leave, is suffering from a  
8 serious health condition resulting from the individual's perpetration  
9 of a gross misdemeanor or felony.

10 NEW SECTION. **Sec. 6.** DURATION OF BENEFITS. (1) The maximum  
11 number of weeks during which family and medical leave insurance  
12 benefits are payable in an application year is five weeks. However,  
13 benefits are not payable during a waiting period consisting of the  
14 first seven calendar days of family and medical leave taken in an  
15 application year with respect to a particular type of family and  
16 medical leave, whether the first seven calendar days of family and  
17 medical leave are employer paid or unpaid.

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

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

34 (c) If an individual dies before he or she receives a payment of  
35 benefits, the payment shall be made to the surviving spouse, the child  
36 or children if there is no surviving spouse, or a person with whom the  
37 individual is involved in a relationship governed by Title 26 RCW. If

1 there is no surviving spouse, child or children, or a person with whom  
2 the individual is involved in a relationship governed by Title 26 RCW,  
3 the payment shall be made by the department and distributed consistent  
4 with the terms of the decedent's will or, if the decedent dies  
5 intestate, consistent with the terms of RCW 11.04.015.

6 NEW SECTION. **Sec. 7.** AMOUNT OF BENEFITS. The amount of family  
7 and medical leave insurance benefits shall be determined as follows:

8 (1) For weeks of family and medical leave beginning before July 1,  
9 2010, the weekly benefit shall be two hundred fifty dollars per week  
10 for an individual who at the time of beginning family and medical leave  
11 was regularly working thirty-five hours or more per week. By June 30,  
12 2010, and by each subsequent June 30th, the department shall calculate  
13 to the nearest dollar an adjusted maximum weekly benefit to account for  
14 inflation using the consumer price index for urban wage earners and  
15 clerical workers, CPI-W, or a successor index, for the twelve completed  
16 calendar months before each June 30th as calculated by the United  
17 States department of labor. The adjusted maximum weekly benefit takes  
18 effect for weeks of family and medical leave beginning after the  
19 relevant June 30th.

20 (2) If an individual who at the time of beginning family and  
21 medical leave was regularly working thirty-five hours or more per week  
22 is on family and medical leave for less than thirty-five hours but at  
23 least eight hours in a week, the individual's weekly benefit shall be  
24 .025 times the maximum weekly benefit times the number of hours of  
25 family and medical leave taken in the week. Benefits are not payable  
26 for less than eight hours of family and medical leave taken in a week.

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

34 (4) If an individual discloses that he or she owes child support  
35 obligations under section 4 of this act and the department determines  
36 that the individual is eligible for benefits, the department shall

1 notify the applicable state or local child support enforcement agency  
2 and deduct and withhold an amount from benefits in a manner consistent  
3 with RCW 50.40.050.

4 (5) If the internal revenue service determines that family and  
5 medical leave insurance benefits under this chapter are subject to  
6 federal income tax and an individual elects to have federal income tax  
7 deducted and withheld from benefits, the department shall deduct and  
8 withhold the amount specified in the federal internal revenue code in  
9 a manner consistent with section 8 of this act.

10 NEW SECTION. **Sec. 8.** FEDERAL INCOME TAX. (1) If the internal  
11 revenue service determines that family and medical leave insurance  
12 benefits under this chapter are subject to federal income tax, the  
13 department must advise an individual filing a new claim for family and  
14 medical leave insurance benefits, at the time of filing such claim,  
15 that:

16 (a) The internal revenue service has determined that benefits are  
17 subject to federal income tax;

18 (b) Requirements exist pertaining to estimated tax payments;

19 (c) The individual may elect to have federal income tax deducted  
20 and withheld from the individual's payment of benefits at the amount  
21 specified in the federal internal revenue code; and

22 (d) The individual is permitted to change a previously elected  
23 withholding status.

24 (2) Amounts deducted and withheld from benefits must remain in the  
25 family and medical leave insurance account until transferred to the  
26 federal taxing authority as a payment of income tax.

27 (3) The director shall follow all procedures specified by the  
28 federal internal revenue service pertaining to the deducting and  
29 withholding of income tax.

30 NEW SECTION. **Sec. 9.** ADJUSTMENT TO BENEFITS. If family and  
31 medical leave insurance benefits are paid erroneously or as a result of  
32 willful misrepresentation, or if a claim for family and medical leave  
33 benefits is rejected after benefits are paid, RCW 51.32.240 shall  
34 apply, except that appeals are governed by section 15 of this act,  
35 penalties are paid into the family and medical leave insurance account,  
36 and the department shall seek repayment of benefits from the recipient.

1        NEW SECTION.    **Sec. 10.**    LEAVE AND EMPLOYMENT PROTECTION.    (1)

2    During a period in which an individual receives family and medical  
3    leave insurance benefits or earns waiting period credits under this  
4    chapter, the individual is entitled to family and medical leave and, at  
5    the established ending date of leave, to be restored to a position of  
6    employment with the employer from whom leave was taken.

7        (2) Regardless of the number of employees employed by the employer,  
8    the individual entitled to leave under this section shall be restored  
9    to a position of employment in the same manner as an employee entitled  
10   to leave under chapter 49.78 RCW is restored to a position of  
11   employment, as specified in RCW 49.78.280.

12       (3) This section applies only to an individual who has been  
13   employed for at least twelve months by the employer from whom family  
14   and medical leave is taken, and for at least one thousand two hundred  
15   fifty hours of service with the employer during the previous twelve-  
16   month period.

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

19       NEW SECTION.    **Sec. 11.**    EMPLOYMENT BY SAME EMPLOYER.    If spouses or

20   people involved in a legal relationship governed by Title 26 RCW  
21   entitled to leave under this chapter are employed by the same employer,  
22   the employer may require that spouses or people involved in a legal  
23   relationship governed by Title 26 RCW not take such leave concurrently,  
24   if such leave is taken:    (1) For the birth or placement of a child; or  
25   (2) for a parent's serious health condition.

26       NEW SECTION.    **Sec. 12.**    ELECTIVE COVERAGE.    (1) An employer of

27   individuals not covered by this chapter or a self-employed person,  
28   including a sole proprietor, partner, or joint venturer, may elect  
29   coverage under this chapter for all individuals in its employ for an  
30   initial period of not less than three years or a subsequent period of  
31   not less than one year immediately following another period of  
32   coverage.    The employer or self-employed person must file a notice of  
33   election in writing with the director, as required by the department.  
34   The election becomes effective on the date of filing the notice.

35       (2) An employer or self-employed person who has elected coverage  
36   may withdraw from coverage within thirty days after the end of the



1 three-year period of coverage, or at such other times as the director  
2 may prescribe by rule, by filing written notice with the director, such  
3 withdrawal to take effect not sooner than thirty days after filing the  
4 notice. Within five days of filing written notice of the withdrawal  
5 with the director, an employer must provide written notice of the  
6 withdrawal to all individuals in the employer's employ.

7 (3) The department may cancel elective coverage if the employer or  
8 self-employed person fails to make required payments or reports. The  
9 department may collect due and unpaid premiums and may levy an  
10 additional premium for the remainder of the period of coverage. The  
11 cancellation shall be effective no later than thirty days from the date  
12 of the notice in writing advising the employer or self-employed person  
13 of the cancellation. Within five days of receiving written notice of  
14 the cancellation from the director, an employer must provide written  
15 notice of the cancellation to all individuals in the employer's employ.

16 NEW SECTION. **Sec. 13.** AMOUNT OF PREMIUMS. (1) Beginning January  
17 1, 2009, for each individual, each employer shall pay a premium of two  
18 cents per hour worked, up to a maximum of forty hours per week, to the  
19 department. Each employer shall deduct from the pay of each individual  
20 the full amount that the employer is required to pay for the  
21 individual.

22 (2) Payments shall be made in the manner and at such intervals as  
23 the department directs for deposit in the family and medical leave  
24 insurance account. In the payment of premiums, a fractional part of a  
25 cent shall be disregarded unless it amounts to one-half cent or more,  
26 in which case it shall be increased to one cent.

27 (3) The director shall adjust the amount of the premium from time  
28 to time to ensure that the amount is the lowest rate necessary to pay  
29 family and medical leave insurance benefits and administrative costs,  
30 and maintain actuarial solvency in accordance with recognized insurance  
31 principles, of the family and medical leave insurance program on a  
32 current basis, and to repay loaned funds from the supplemental pension  
33 fund, if any, as required in section 23 of this act.

34 NEW SECTION. **Sec. 14.** REPORTING AND RECORDKEEPING. (1) In the  
35 form and at the times specified by the director, an employer shall make  
36 reports, furnish information, and remit premiums as required by section

1 13 of this act to the department. If the employer is a temporary help  
2 company that provides employees on a temporary basis to its customers,  
3 the temporary help company is considered the employer for purposes of  
4 this section. However, if the temporary help company fails to remit  
5 the required premiums, the customer to whom the employees were provided  
6 is liable for paying the premiums.

7 (2)(a) An employer must keep at his or her place of business a  
8 record of employment from which the information needed by the  
9 department for purposes of this chapter may be obtained. This record  
10 shall at all times be open to the inspection of the director or  
11 department employees designated by the director.

12 (b) Information obtained from employer records under this chapter  
13 is confidential and not open to public inspection, other than to public  
14 employees in the performance of their official duties. However, an  
15 interested party shall be supplied with information from employer  
16 records to the extent necessary for the proper presentation of the case  
17 in question. An employer may authorize inspection of its records by  
18 written consent.

19 (3) The requirements relating to the assessment and collection of  
20 family and medical leave insurance premiums are the same as the  
21 requirements relating to the assessment and collection of industrial  
22 insurance premiums under Title 51 RCW, including but not limited to  
23 penalties, interest, and department lien rights and collection  
24 remedies. These requirements apply to:

25 (a) An employer that fails under this chapter to make the required  
26 reports, or fails to remit the full amount of the premiums when due;

27 (b) An employer that willfully makes a false statement or  
28 misrepresentation regarding a material fact, or willfully fails to  
29 report a material fact, to avoid making the required reports or  
30 remitting the full amount of the premiums when due under this chapter;

31 (c) A public entity that engages in work or lets a contract for  
32 work, in the manner specified in RCW 51.12.050;

33 (d) A person, firm, or corporation who lets a contract for work, in  
34 the manner specified in RCW 51.12.070;

35 (e) A successor, as defined in RCW 51.08.177, in the manner  
36 specified in RCW 51.16.200; and

37 (f) An officer, member, manager, or other person having control or

1 supervision of payment and/or reporting of family and medical leave  
2 insurance, or who is charged with the responsibility for the filing of  
3 returns, in the manner specified in RCW 51.48.055.

4 (4) Notwithstanding subsection (3) of this section, appeals are  
5 governed by section 15 of this act.

6 NEW SECTION. **Sec. 15.** APPEALS. (1) A person aggrieved by a  
7 decision of the department under this chapter must file a notice of  
8 appeal with the director, by mail or personally, within thirty days  
9 after the date on which a copy of the department's decision was  
10 communicated to the person. Upon receipt of the notice of appeal, the  
11 director shall request the assignment of an administrative law judge in  
12 accordance with chapter 34.05 RCW to conduct a hearing and issue a  
13 proposed decision and order. The hearing shall be conducted in  
14 accordance with chapter 34.05 RCW.

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

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

1        NEW SECTION.    **Sec. 16.**    PROHIBITED ACTS.    An employer, temporary  
2 help company, employment agency, employee organization, or other person  
3 may not discharge, expel, or otherwise discriminate against a person  
4 because he or she has filed or communicated to the employer an intent  
5 to file a claim, a complaint, or an appeal, or has testified or is  
6 about to testify or has assisted in any proceeding, under this chapter,  
7 at any time, including during the waiting period described in section  
8 6 of this act and the period in which the person receives family and  
9 medical leave insurance benefits under this chapter.    This section  
10 shall be enforced as provided in RCW 51.48.025.

11        NEW SECTION.    **Sec. 17.**    COORDINATION WITH OTHER LAWS, AGREEMENTS,  
12 AND POLICIES.    (1) Employment protection under other laws.    If an  
13 individual is entitled to employment protection under this chapter and  
14 under the federal family and medical leave act, chapter 49.78 RCW, or  
15 other applicable federal, state, or local law, the individual is  
16 entitled to employment protection under the other applicable law most  
17 favorable to the individual.

18        (2) Leave from employment under other laws.    Except as provided in  
19 this subsection, if an individual is entitled to family and medical  
20 leave under this chapter and under the federal family and medical leave  
21 act, chapter 49.78 RCW, or other applicable federal, state, or local  
22 law, the employer may require that leave under this chapter be taken  
23 concurrently with leave under other applicable laws.    The employer must  
24 give individuals in its employ written notice of this requirement.    An  
25 individual may not increase the duration of his or her leave from  
26 employment by tacking on leave under this chapter to leave under other  
27 applicable laws.    Leave from employment under this chapter is in  
28 addition to leave from employment during which benefits are paid or are  
29 payable under Title 51 RCW or other applicable federal or state  
30 industrial insurance laws.

31        (3) Wage replacement benefits under other laws.    In any week in  
32 which an individual is earning waiting period credits or receiving  
33 benefits under chapter 7.68 RCW, Title 50 RCW, or Title 51 RCW, or  
34 other applicable federal or state crime victims' compensation,  
35 unemployment compensation, industrial insurance, or disability  
36 insurance laws, the individual is disqualified from receiving family  
37 leave insurance benefits under this chapter.

1 (4) Collective bargaining agreements and employer policies. (a)  
2 This chapter does not diminish an employer's obligation to comply with  
3 a collective bargaining agreement or employer policy, as applicable,  
4 that provides greater employment protection, leave from employment, or  
5 wage replacement benefits than under this chapter.

6 (b) An individual's rights to employment protection, leave from  
7 employment, and wage replacement benefits under this chapter may not be  
8 diminished by a collective bargaining agreement entered into or renewed  
9 or an employer policy adopted or retained after the effective date of  
10 this section. Any agreement by an individual to waive his or her  
11 rights under this chapter is void as against public policy.

12 (c) If an employer provides wage replacement benefits to an  
13 individual while on family and medical leave through disability  
14 insurance or any other means, the individual may elect whether first to  
15 receive such benefits or receive family and medical leave insurance  
16 benefits under this chapter. An individual may not be required to  
17 receive the individual's wage replacement benefits, if any, before  
18 receiving family and medical leave insurance benefits under this  
19 chapter. In no case shall the individual's weekly benefit exceed the  
20 individual's average weekly wage.

21 NEW SECTION. **Sec. 18.** NO CONTINUING ENTITLEMENT OR CONTRACTUAL  
22 RIGHT. This chapter does not create a continuing entitlement or  
23 contractual right. The legislature reserves the right to amend or  
24 repeal all or part of this chapter at any time, and a benefit or other  
25 right granted under this chapter exists subject to the legislature's  
26 power to amend or repeal this chapter. There is no vested private  
27 right of any kind against such amendment or repeal.

28 NEW SECTION. **Sec. 19.** RULES. The director may adopt rules as  
29 necessary to implement this chapter. In adopting rules, the director  
30 shall maintain consistency with the rules adopted to implement the  
31 federal family and medical leave act, and chapter 49.78 RCW, to the  
32 extent such rules are not in conflict with this chapter.

33 NEW SECTION. **Sec. 20.** ACCOUNT. The family and medical leave  
34 insurance account is created in the custody of the state treasurer.  
35 All receipts from the premium imposed under section 13 of this act or

1 the penalties imposed under section 14 of this act must be deposited in  
2 the account. Expenditures from the account may be used only for the  
3 purposes of the family and medical leave insurance program. Only the  
4 director or the director's designee may authorize expenditures from the  
5 account. The account is subject to the allotment procedures under  
6 chapter 43.88 RCW. An appropriation is required for administrative  
7 expenses, but not for benefit payments.

8 NEW SECTION. **Sec. 21.** INVESTMENT OF FAMILY AND MEDICAL LEAVE  
9 INSURANCE ACCOUNT. Whenever, in the judgment of the state investment  
10 board, there shall be in the family and medical leave insurance account  
11 funds in excess of that amount deemed by the state investment board to  
12 be sufficient to meet the current expenditures properly payable  
13 therefrom, the state investment board shall have full power to invest,  
14 reinvest, manage, contract, or sell or exchange investments acquired  
15 with such excess funds in the manner prescribed by RCW 43.84.150, and  
16 not otherwise.

17 **Sec. 22.** RCW 43.79A.040 and 2006 c 311 s 21 and 2006 c 120 s 2 are  
18 each reenacted and amended to read as follows:

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

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

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

34 (4)(a) Monthly, the state treasurer shall distribute the earnings  
35 credited to the investment income account to the state general fund  
36 except under (b) and (c) of this subsection.

1 (b) The following accounts and funds shall receive their  
2 proportionate share of earnings based upon each account's or fund's  
3 average daily balance for the period: The Washington promise  
4 scholarship account, the college savings program account, the  
5 Washington advanced college tuition payment program account, the  
6 agricultural local fund, the American Indian scholarship endowment  
7 fund, the foster care scholarship endowment fund, the foster care  
8 endowed scholarship trust fund, the students with dependents grant  
9 account, the basic health plan self-insurance reserve account, the  
10 contract harvesting revolving account, the Washington state combined  
11 fund drive account, the commemorative works account, the Washington  
12 international exchange scholarship endowment fund, the developmental  
13 disabilities endowment trust fund, the energy account, the fair fund,  
14 the family and medical leave insurance account, the fruit and vegetable  
15 inspection account, the future teachers conditional scholarship  
16 account, the game farm alternative account, the grain inspection  
17 revolving fund, the juvenile accountability incentive account, the law  
18 enforcement officers' and firefighters' plan 2 expense fund, the local  
19 tourism promotion account, the produce railcar pool account, the  
20 regional transportation investment district account, the rural  
21 rehabilitation account, the stadium and exhibition center account, the  
22 youth athletic facility account, the self-insurance revolving fund, the  
23 sulfur dioxide abatement account, the children's trust fund, the  
24 Washington horse racing commission Washington bred owners' bonus fund  
25 account, the Washington horse racing commission class C purse fund  
26 account, the individual development account program account, the  
27 Washington horse racing commission operating account (earnings from the  
28 Washington horse racing commission operating account must be credited  
29 to the Washington horse racing commission class C purse fund account),  
30 the life sciences discovery fund, and the reading achievement account.  
31 However, the earnings to be distributed shall first be reduced by the  
32 allocation to the state treasurer's service fund pursuant to RCW  
33 43.08.190.

34 (c) The following accounts and funds shall receive eighty percent  
35 of their proportionate share of earnings based upon each account's or  
36 fund's average daily balance for the period: The advanced right of way  
37 revolving fund, the advanced environmental mitigation revolving  
38 account, the city and county advance right-of-way revolving fund, the

1 federal narcotics asset forfeitures account, the high occupancy vehicle  
2 account, the local rail service assistance account, and the  
3 miscellaneous transportation programs account.

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

7 NEW SECTION. **Sec. 23.** LOANS. If necessary to ensure that money  
8 is available in the family and medical leave insurance account for the  
9 initial administration of the family and medical leave insurance  
10 program and the payment of benefits under this act, the director of  
11 labor and industries may, from time to time before July 1, 2009, lend  
12 funds from the supplemental pension fund to the family and medical  
13 leave insurance account. These loaned funds may be expended solely for  
14 the purposes of administering the program and paying benefits under  
15 this act. The director of labor and industries shall repay the  
16 supplemental pension fund, plus its proportionate share of earnings  
17 from investment of moneys in the supplemental pension fund during the  
18 loan period, from the family and medical leave insurance account within  
19 two years of the date of the loan. This section expires October 1,  
20 2011.

21 **Sec. 24.** RCW 51.44.033 and 1975 1st ex.s. c 224 s 16 are each  
22 amended to read as follows:

23 There shall be, in the office of the state treasurer, a fund to be  
24 known and designated as the "supplemental pension fund". The director  
25 shall be the administrator thereof. (~~Said~~) The fund shall be used  
26 for the sole purposes of making the additional payments therefrom  
27 prescribed in this title and the loans therefrom authorized in section  
28 23 of this act.

29 NEW SECTION. **Sec. 25.** REPORTS TO THE LEGISLATURE. Beginning  
30 September 1, 2010, the department shall report to the legislature by  
31 September 1st of each year on projected and actual program  
32 participation, premium rates, fund balances, and outreach efforts.

33 NEW SECTION. **Sec. 26.** SEVERABILITY. If any provision of this act



1 or its application to any person or circumstance is held invalid, the  
2 remainder of the act or the application of the provision to other  
3 persons or circumstances is not affected.

4 NEW SECTION. **Sec. 27.** CAPTIONS. Captions used in this act are  
5 not any part of the law.

6 NEW SECTION. **Sec. 28.** CODIFICATION. Sections 1 through 21 and 25  
7 through 27 of this act constitute a new chapter in Title 49 RCW."

**2SSB 5659** - S AMD

By Senators Keiser, Brown, Kohl-Welles

**ADOPTED AS AMENDED 03/14/2007**

8 On page 1, line 1 of the title, after "insurance;" strike the  
9 remainder of the title and insert "amending RCW 51.44.033; reenacting  
10 and amending RCW 43.79A.040; adding a new chapter to Title 49 RCW;  
11 creating a new section; and providing an expiration date."

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