

E2SSB 5659 - H COMM AMD
By Committee on Commerce & Labor

NOT CONSIDERED 04/13/2007

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 do not have access to family and medical leave laws, and those who do
10 may not be in a financial position to take family and medical leave
11 that is unpaid, and that employer-paid benefits meet only a relatively
12 small part of this need. The legislature declares it to be in the
13 public interest to establish a program that: (1) Allows parents to
14 bond with a newborn or newly placed child, and workers to care for
15 seriously ill family members; (2) provides limited and additional
16 income support for a reasonable period while an individual is away from
17 work on family and medical leave; (3) reduces the impact on state
18 income support programs by increasing an individual's ability to
19 provide caregiving services for family members while maintaining an
20 employment relationship; and (4) establishes a wage replacement benefit
21 to be coordinated with current existing state and federal family and
22 medical leave laws.

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

26 (1) "Application year" means the twelve-month period beginning on
27 the first day of the calendar week in which an individual files an
28 application for family and medical leave insurance benefits and,
29 thereafter, the twelve-month period beginning with the first day of the

1 calendar week in which the individual next files an application for
2 family and medical leave insurance benefits after the expiration of the
3 individual's last preceding application year.

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

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

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

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

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

12 (7) "Family and medical leave" means leave for a family member's
13 serious health condition and leave for the birth or placement of a
14 child as these types of leave are defined in RCW 49.78.020 and
15 described in RCW 49.78.220.

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

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

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

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

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

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

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

35 (1) The department shall establish and administer a family and medical
36 leave insurance program and pay family and medical leave insurance
37 benefits as specified in this chapter.

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

5 (3) The department may require that a claim for benefits under this
6 chapter be supported by a certification issued by the health care
7 provider providing health care to the individual's family member.

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

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

25 (6) The department shall develop and implement an outreach program
26 to ensure that individuals who may be eligible to receive family and
27 medical leave insurance benefits under this chapter are made aware of
28 these benefits. Outreach information shall explain, in an easy to
29 understand format, eligibility requirements, the claims process, weekly
30 benefit amounts, maximum benefits payable, notice and medical
31 certification requirements, reinstatement and nondiscrimination rights,
32 confidentiality, and the relationship between employment protection,
33 leave from employment, and wage replacement benefits under this chapter
34 and other laws, collective bargaining agreements, and employer
35 policies. Outreach information shall be available in English and other
36 primary languages as defined in RCW 74.04.025.

1 NEW SECTION. **Sec. 4.** ELIGIBILITY FOR BENEFITS. Beginning October
2 1, 2009, family and medical leave insurance benefits are payable to an
3 individual during a period in which the individual is unable to perform
4 his or her regular or customary work because he or she is on family and
5 medical leave if the individual:

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

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

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

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

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

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

27 (7) Provides a document authorizing the family member's health care
28 provider to disclose the family member's health care information in the
29 form of the certification of a serious health condition. To be valid,
30 the disclosure authorization must satisfy the requirements set forth in
31 RCW 70.02.030.

32 NEW SECTION. **Sec. 5.** DISQUALIFICATION FROM BENEFITS. An
33 individual is disqualified from family and medical leave insurance
34 benefits beginning with the first day of the calendar week, and
35 continuing for the next fifty-two consecutive weeks, in which the
36 individual willfully made a false statement or misrepresentation

1 regarding a material fact, or willfully failed to report a material
2 fact, to obtain benefits under this chapter.

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

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

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

27 (c) If an individual dies before he or she receives a payment of
28 benefits, the payment shall be made to the surviving spouse or the
29 person with whom the individual is involved in a legal relationship
30 governed by Title 26 RCW, or to the child or children if there is no
31 surviving spouse or person with whom the individual is involved in a
32 legal relationship governed by Title 26 RCW. If there is no surviving
33 spouse or person with whom the individual is involved in a legal
34 relationship governed by Title 26 RCW, and no child or children, the
35 payment shall be made by the department and distributed consistent with
36 the terms of the decedent's will or, if the decedent dies intestate,
37 consistent with the terms of RCW 11.04.015.

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

3 (1) For weeks of family and medical leave beginning before July 1,
4 2010, the weekly benefit shall be two hundred fifty dollars per week
5 for an individual who at the time of beginning family and medical leave
6 was regularly working thirty-five hours or more per week. By June 30,
7 2010, and by each subsequent June 30th, the department shall calculate
8 to the nearest dollar an adjusted maximum weekly benefit to account for
9 inflation using the consumer price index for urban wage earners and
10 clerical workers, CPI-W, or a successor index, for the twelve completed
11 calendar months before each June 30th as calculated by the United
12 States department of labor. The adjusted maximum weekly benefit takes
13 effect for weeks of family and medical leave beginning after the
14 relevant June 30th.

15 (2) If an individual who at the time of beginning family and
16 medical leave was regularly working thirty-five hours or more per week
17 is on family and medical leave for less than thirty-five hours but at
18 least eight hours in a week, the individual's weekly benefit shall be
19 .025 times the maximum weekly benefit times the number of hours of
20 family and medical leave taken in the week. Benefits are not payable
21 for less than eight hours of family and medical leave taken in a week.

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

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

35 (5) If the internal revenue service determines that family and
36 medical leave insurance benefits under this chapter are subject to
37 federal income tax and an individual elects to have federal income tax

1 deducted and withheld from benefits, the department shall deduct and
2 withhold the amount specified in the federal internal revenue code in
3 a manner consistent with section 8 of this act.

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

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

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

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

16 (d) The individual is permitted to change a previously elected
17 withholding status.

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

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

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

31 NEW SECTION. **Sec. 10.** LEAVE AND EMPLOYMENT PROTECTION. (1)
32 During a period in which an individual receives family and medical
33 leave insurance benefits or earns waiting period credits under this
34 chapter, the individual is entitled to family and medical leave and, at

1 the established ending date of leave, to be restored to a position of
2 employment with the employer from whom leave was taken.

3 (2) The individual entitled to leave under this section shall be
4 restored to a position of employment in the same manner as an employee
5 entitled to leave under chapter 49.78 RCW is restored to a position of
6 employment, as specified in RCW 49.78.280.

7 (3) This section applies only to an individual if:

8 (a) The employer from whom the individual takes family and medical
9 leave employs more than twenty-five employees; and

10 (b) The individual has been employed for at least twelve months by
11 that employer, and for at least one thousand two hundred fifty hours of
12 service with that employer during the previous twelve-month period.

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

15 NEW SECTION. **Sec. 11.** EMPLOYMENT BY SAME EMPLOYER. If spouses or
16 people involved in a legal relationship governed by Title 26 RCW
17 entitled to leave under this chapter are employed by the same employer,
18 the employer may require that spouses or people involved in a legal
19 relationship governed by Title 26 RCW not take such leave concurrently,
20 if such leave is taken: (1) For the birth or placement of a child; or
21 (2) for a parent's serious health condition.

22 NEW SECTION. **Sec. 12.** ELECTIVE COVERAGE. (1) An employer of
23 individuals not covered by this chapter or a self-employed person,
24 including a sole proprietor, partner, or joint venturer, may elect
25 coverage under this chapter for all individuals in its employ for an
26 initial period of not less than three years or a subsequent period of
27 not less than one year immediately following another period of
28 coverage. The employer or self-employed person must file a notice of
29 election in writing with the director, as required by the department.
30 The election becomes effective on the date of filing the notice.

31 (2) An employer or self-employed person who has elected coverage
32 may withdraw from coverage within thirty days after the end of the
33 three-year period of coverage, or at such other times as the director
34 may prescribe by rule, by filing written notice with the director, such
35 withdrawal to take effect not sooner than thirty days after filing the

1 notice. Within five days of filing written notice of the withdrawal
2 with the director, an employer must provide written notice of the
3 withdrawal to all individuals in the employer's employ.

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

13 NEW SECTION. **Sec. 13.** AMOUNT OF PREMIUMS. (1) Beginning January
14 1, 2009, for each individual, each employer shall pay a premium of two
15 cents per hour worked, up to a maximum of forty hours per week, to the
16 department. Each employer shall deduct from the pay of each individual
17 the full amount that the employer is required to pay for the
18 individual.

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

24 (3) By December 1, 2009, and by each subsequent December 1st, the
25 director shall adjust the amount of the premium to ensure that the
26 amount is the lowest rate necessary to pay family and medical leave
27 insurance benefits and administrative costs, and maintain actuarial
28 solvency in accordance with recognized insurance principles, of the
29 family and medical leave insurance program on a current basis, and to
30 repay loaned funds from the supplemental pension fund, if any, as
31 required in section 23 of this act. The adjusted amount of the premium
32 takes effect for the calendar year beginning after the relevant
33 December 1st.

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 Except as provided in this section, this chapter does not prohibit an
3 employer from negotiating a collective bargaining agreement or adopting
4 employer policies, as applicable, to coordinate existing benefits with
5 leave from employment and wage replacement benefits required under this
6 chapter.

7 (b) This chapter does not diminish an employer's obligation to
8 comply with a collective bargaining agreement or employer policy, as
9 applicable, that provides greater employment protection, leave from
10 employment, or wage replacement benefits than under this chapter.

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

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

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

33 NEW SECTION. **Sec. 19.** RULES. The director may adopt rules as
34 necessary to implement this chapter. In adopting rules, the director
35 shall maintain consistency with the rules adopted to implement the

1 federal family and medical leave act, and chapter 49.78 RCW, to the
2 extent such rules are not in conflict with this chapter.

3 NEW SECTION. **Sec. 20.** ACCOUNT. The family and medical leave
4 insurance account is created in the custody of the state treasurer.
5 All receipts from the premium imposed under section 13 of this act or
6 the penalties imposed under section 14 of this act must be deposited in
7 the account. Expenditures from the account may be used only for the
8 purposes of the family and medical leave insurance program. Only the
9 director or the director's designee may authorize expenditures from the
10 account. The account is subject to the allotment procedures under
11 chapter 43.88 RCW. An appropriation is required for administrative
12 expenses, but not for benefit payments.

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

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

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

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

31 (3) The investment income account may be utilized for the payment
32 of purchased banking services on behalf of treasurer's trust funds
33 including, but not limited to, depository, safekeeping, and
34 disbursement functions for the state treasurer or affected state
35 agencies. The investment income account is subject in all respects to

1 chapter 43.88 RCW, but no appropriation is required for payments to
2 financial institutions. Payments shall occur prior to distribution of
3 earnings set forth in subsection (4) of this section.

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

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

1 allocation to the state treasurer's service fund pursuant to RCW
2 43.08.190.

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

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

14 NEW SECTION. **Sec. 23.** LOANS. If necessary to ensure that money
15 is available in the family and medical leave insurance account for the
16 initial administration of the family and medical leave insurance
17 program and the payment of benefits under this chapter, the director of
18 labor and industries may, from time to time before July 1, 2009, lend
19 funds from the supplemental pension fund to the family and medical
20 leave insurance account. These loaned funds may be expended solely for
21 the purposes of administering the program and paying benefits under
22 this chapter. The director of labor and industries shall repay the
23 supplemental pension fund, plus its proportionate share of earnings
24 from investment of moneys in the supplemental pension fund during the
25 loan period, from the family and medical leave insurance account within
26 two years of the date of the loan. This section expires October 1,
27 2011.

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

30 There shall be, in the office of the state treasurer, a fund to be
31 known and designated as the "supplemental pension fund". The director
32 shall be the administrator thereof. (~~Said~~) The fund shall be used
33 for the sole purposes of making the additional payments therefrom
34 prescribed in this title and the loans therefrom authorized in section
35 23 of this act.

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

5 NEW SECTION. **Sec. 26.** A new section is added to chapter 82.04 RCW
6 to read as follows:

7 TAX CREDIT. In computing the tax imposed under this chapter, a
8 credit is allowed for an employer that hires a replacement worker to
9 replace an employee who has taken family or medical leave under chapter
10 49.-- RCW (sections 1 through 21, 25, 27, and 28 of this act). The
11 credit is equal to one thousand two hundred dollars for each
12 replacement worker hired on or after October 1, 2009. To qualify for
13 the credit, fewer than fifty employees shall be employed by the
14 employer at the time the replacement worker is hired. The credit shall
15 not exceed the tax otherwise due under this chapter for the tax
16 reporting period. Unused credit may not be carried over to be credited
17 against taxes incurred in subsequent tax reporting periods. No refunds
18 shall be granted for credits under this section.

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

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

25 NEW SECTION. **Sec. 29.** CODIFICATION. Sections 1 through 21, 25,
26 27, and 28 of this act constitute a new chapter in Title 49 RCW."

27 Correct the title.

EFFECT: Specifies that leave for a family member's serious health
condition and leave for the birth of a child are the same as in the
state Family Leave Law.

Requires the Department of Labor and Industries to adjust the amount of premiums by December 1 of each year, and specifies that the adjusted amount applies during the following calendar year.

Allows a \$1200 per replacement worker business and occupation tax credit for employers employing fifty or fewer persons.

Provides that employers may negotiate agreements or adopt policies to coordinate benefits.

Makes revisions consistent with specified purposes of leave and conditions of reinstatement.

Makes other technical corrections.

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