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**SUBSTITUTE SENATE BILL 5975**

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**State of Washington                      65th Legislature                      2017 3rd Special Session****By Senate Ways & Means (originally sponsored by Senators Fain, Lias, Keiser, Saldaña, Miloscia, Cleveland, McCoy, Nelson, Ranker, Conway, Mullet, Hobbs, Takko, Palumbo, Pedersen, and Chase)**

READ FIRST TIME 06/30/17.

1            AN ACT Relating to paid family and medical leave; amending RCW  
2 49.76.020, 49.76.130, 49.77.020, and 49.77.030; reenacting and  
3 amending RCW 50.29.021 and 43.79A.040; adding new sections to chapter  
4 49.77 RCW; adding a new Title to the Revised Code of Washington to be  
5 codified as Title 50A RCW; repealing RCW 49.78.010, 49.78.020,  
6 49.78.090, 49.78.220, 49.78.230, 49.78.240, 49.78.250, 49.78.260,  
7 49.78.270, 49.78.280, 49.78.290, 49.78.300, 49.78.310, 49.78.320,  
8 49.78.330, 49.78.340, 49.78.350, 49.78.360, 49.78.370, 49.78.380,  
9 49.78.390, 49.78.400, 49.78.410, 49.78.901, 49.78.904, 49.86.005,  
10 49.86.010, 49.86.020, 49.86.030, 49.86.040, 49.86.050, 49.86.060,  
11 49.86.070, 49.86.080, 49.86.090, 49.86.100, 49.86.110, 49.86.120,  
12 49.86.130, 49.86.140, 49.86.150, 49.86.160, 49.86.170, 49.86.180,  
13 49.86.210, 49.86.902, and 49.86.903; prescribing penalties; and  
14 providing an effective date.

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

16            NEW SECTION.    **Sec. 1.**    INTENT. The legislature finds that the  
17 demands of the workplace and of families need to be balanced to  
18 promote family stability and economic security. The legislature also  
19 finds that families across the state own and operate businesses.  
20 Workplace leave policies are desirable to accommodate changes in the  
21 workforce such as rising numbers of dual-career couples, working

1 single parents, and an aging population. In addition the impact of  
2 significant new requirements should be reasonably balanced to help  
3 small businesses thrive.

4 The legislature also finds that access to paid leave is  
5 associated with many important health benefits. Research confirms  
6 that paid leave results in decreased infant mortality and more well-  
7 baby visits and reductions in maternal postpartum depression and  
8 stress. The legislature further finds that paid leave increases the  
9 duration of breastfeeding, which supports bonding, stimulates  
10 positive neurological and psychological development, strengthens a  
11 child's immune system, and reduces the risks of serious or costly  
12 health problems such as asthma, acute ear infections, obesity, Type 2  
13 diabetes, leukemia, and sudden infant death syndrome. The legislature  
14 also finds that when fathers have access to paid leave they are more  
15 directly engaged during the child's first few months, thereby  
16 increasing father infant bonding and reducing overall stress on the  
17 family.

18 The legislature declares it to be in the public interest to  
19 create a family and medical leave insurance program to provide  
20 reasonable paid family leave for the birth or placement of a child  
21 with the employee, for the care of a family member who has a serious  
22 health condition, and for a qualifying exigency under the federal  
23 family and medical leave act, and reasonable paid medical leave for  
24 an employee's own serious health condition and to reasonably assist  
25 businesses in implementing and maintaining a program to support their  
26 employees and family.

27 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly  
28 requires otherwise, the definitions in this section apply throughout  
29 this chapter.

30 (1) "Child" includes a biological, adopted, or foster child, a  
31 stepchild, or a child to whom the employee stands in loco parentis,  
32 is a legal guardian, or is a de facto parent, regardless of age or  
33 dependency status.

34 (2) "Commissioner" means the commissioner of the department or  
35 the commissioner's designee.

36 (3) "Department" means the employment security department.

37 (4)(a) "Employee" means an individual who is in the employment of  
38 an employer.

1 (b) "Employee" does not include employees of the United States of  
2 America.

3 (5) "Employee's average weekly wage" means the quotient derived  
4 by dividing the employee's total wages during the two quarters of the  
5 employee's qualifying period in which total wages were highest by  
6 twenty-six. If the result is not a multiple of one dollar, the  
7 department must round the result to the next lower multiple of one  
8 dollar.

9 (6)(a) "Employer" means: (i) Any individual or type of  
10 organization, including any partnership, association, trust, estate,  
11 joint stock company, insurance company, limited liability company, or  
12 corporation, whether domestic or foreign, or the receiver, trustee in  
13 bankruptcy, trustee, or the legal representative of a deceased  
14 person, having any person in employment or, having become an  
15 employer, has not ceased to be an employer as provided in this  
16 chapter; (ii) the state, state institutions, and state agencies; and  
17 (iii) any unit of local government including, but not limited to, a  
18 county, city, town, municipal corporation, quasi-municipal  
19 corporation, or political subdivision.

20 (b) "Employer" does not include the United States of America.

21 (7)(a) "Employment" means personal service, of whatever nature,  
22 unlimited by the relationship of master and servant as known to the  
23 common law or any other legal relationship performed for wages or  
24 under any contract calling for the performance of personal services,  
25 written or oral, express or implied. The term "employment" includes  
26 an individual's entire service performed within or without or both  
27 within and without this state, if:

28 (i) The service is localized in this state; or

29 (ii) The service is not localized in any state, but some of the  
30 service is performed in this state; and

31 (A) The base of operations of the employee is in the state, or if  
32 there is no base of operations, then the place from which such  
33 service is directed or controlled is in this state; or

34 (B) The base of operations or place from which such service is  
35 directed or controlled is not in any state in which some part of the  
36 service is performed, but the individual's residence is in this  
37 state.

38 (b) "Employment" does not include:

39 (i) Self-employed individuals;

1 (ii) Services for remuneration when it is shown to the  
2 satisfaction of the commissioner that:

3 (A)(I) Such individual has been and will continue to be free from  
4 control or direction over the performance of such service, both under  
5 his or her contract of service and in fact; and

6 (II) Such service is either outside the usual course of business  
7 for which such service is performed, or that such service is  
8 performed outside of all the places of business of the enterprises  
9 for which such service is performed; and

10 (III) Such individual is customarily engaged in an independently  
11 established trade, occupation, profession, or business, of the same  
12 nature as that involved in the contract of service; or

13 (B) As a separate alternative:

14 (I) Such individual has been and will continue to be free from  
15 control or direction over the performance of such service, both under  
16 his or her contract of service and in fact; and

17 (II) Such service is either outside the usual course of business  
18 for which such service is performed, or that such service is  
19 performed outside of all the places of business of the enterprises  
20 for which such service is performed, or the individual is  
21 responsible, both under the contract and in fact, for the costs of  
22 the principal place of business from which the service is performed;  
23 and

24 (III) Such individual is customarily engaged in an independently  
25 established trade, occupation, profession, or business, of the same  
26 nature as that involved in the contract of service, or such  
27 individual has a principal place of business for the work the  
28 individual is conducting that is eligible for a business deduction  
29 for federal income tax purposes; and

30 (IV) On the effective date of the contract of service, such  
31 individual is responsible for filing at the next applicable filing  
32 period, both under the contract of service and in fact, a schedule of  
33 expenses with the internal revenue service for the type of business  
34 the individual is conducting; and

35 (V) On the effective date of the contract of service, or within a  
36 reasonable period after the effective date of the contract, such  
37 individual has established an account with the department of revenue,  
38 and other state agencies as required by the particular case, for the  
39 business the individual is conducting for the payment of all state  
40 taxes normally paid by employers and businesses and has registered

1 for and received a unified business identifier number from the state  
2 of Washington; and

3 (VI) On the effective date of the contract of service, such  
4 individual is maintaining a separate set of books or records that  
5 reflect all items of income and expenses of the business which the  
6 individual is conducting; or

7 (iii) Services that require registration under chapter 18.27 RCW  
8 or licensing under chapter 19.28 RCW rendered by an individual when:

9 (A) The individual has been and will continue to be free from  
10 control or direction over the performance of the service, both under  
11 the contract of service and in fact;

12 (B) The service is either outside the usual course of business  
13 for which the service is performed, or the service is performed  
14 outside of all the places of business of the enterprise for which the  
15 service is performed, or the individual is responsible, both under  
16 the contract and in fact, for the costs of the principal place of  
17 business from which the service is performed;

18 (C) The individual is customarily engaged in an independently  
19 established trade, occupation, profession, or business, of the same  
20 nature as that involved in the contract of service, or the individual  
21 has a principal place of business for the business the individual is  
22 conducting that is eligible for a business deduction for federal  
23 income tax purposes, other than that furnished by the employer for  
24 which the business has contracted to furnish services;

25 (D) On the effective date of the contract of service, the  
26 individual is responsible for filing at the next applicable filing  
27 period, both under the contract of service and in fact, a schedule of  
28 expenses with the internal revenue service for the type of business  
29 the individual is conducting;

30 (E) On the effective date of the contract of service, or within a  
31 reasonable period after the effective date of the contract, the  
32 individual has an active and valid certificate of registration with  
33 the department of revenue, and an active and valid account with any  
34 other state agencies as required by the particular case, for the  
35 business the individual is conducting for the payment of all state  
36 taxes normally paid by employers and businesses and has registered  
37 for and received a unified business identifier number from the state  
38 of Washington;

39 (F) On the effective date of the contract of service, the  
40 individual is maintaining a separate set of books or records that

1 reflect all items of income and expenses of the business that the  
2 individual is conducting; and

3 (G) On the effective date of the contract of service, the  
4 individual has a valid contractor registration pursuant to chapter  
5 18.27 RCW or an electrical contractor license pursuant to chapter  
6 19.28 RCW.

7 (8) "Employment benefits" means all benefits provided or made  
8 available to employees by an employer, including group life  
9 insurance, health insurance, disability insurance, sick leave, annual  
10 leave, educational benefits, and pensions except benefits that are  
11 provided by a practice or written policy of an employer or through an  
12 employee benefit plan as defined in 29 U.S.C. Sec. 1002(3).

13 (9) "Family leave" means any leave taken by an employee from  
14 work:

15 (a) To participate in providing care, including physical or  
16 psychological care, for a family member of the employee made  
17 necessary by a serious health condition of the family member;

18 (b) To bond with the employee's child during the first twelve  
19 months after the child's birth, or the first twelve months after the  
20 placement of a child under the age of eighteen with the employee; or

21 (c) Because of any qualifying exigency as permitted under the  
22 federal family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(e)  
23 and 29 C.F.R. Sec. 825.126(a)(1) through (8), as they existed on the  
24 effective date of this section for family members as defined in  
25 subsection (10) of this section.

26 (10) "Family member" means a child, grandchild, grandparent,  
27 parent, sibling, or spouse of an employee.

28 (11) "Grandchild" means a child of the employee's child.

29 (12) "Grandparent" means a parent of the employee's parent.

30 (13) "Health care provider" means: (a) A person licensed as a  
31 physician under chapter 18.71 RCW or an osteopathic physician and  
32 surgeon under chapter 18.57 RCW; (b) a person licensed as an advanced  
33 registered nurse practitioner under chapter 18.79 RCW; or (c) any  
34 other person determined by the commissioner to be capable of  
35 providing health care services.

36 (14) "Medical leave" means any leave taken by an employee from  
37 work made necessary by the employee's own serious health condition.

38 (15) "Parent" means the biological, adoptive, de facto, or foster  
39 parent, stepparent, or legal guardian of an employee or the

1 employee's spouse, or an individual who stood in loco parentis to an  
2 employee when the employee was a child.

3 (16) "Period of incapacity" means an inability to work, attend  
4 school, or perform other regular daily activities because of a  
5 serious health condition, treatment of that condition or recovery  
6 from it, or subsequent treatment in connection with such inpatient  
7 care.

8 (17) "Premium" or "premiums" means the payments required by  
9 section 8 of this act and paid to the department for deposit in the  
10 family and medical leave insurance account under section 82 of this  
11 act.

12 (18) "Qualifying period" means the first four of the last five  
13 completed calendar quarters or, if eligibility is not established,  
14 the last four completed calendar quarters immediately preceding the  
15 application for leave.

16 (19)(a) "Serious health condition" means an illness, injury,  
17 impairment, or physical or mental condition that involves:

18 (i) Inpatient care in a hospital, hospice, or residential medical  
19 care facility, including any period of incapacity; or

20 (ii) Continuing treatment by a health care provider. A serious  
21 health condition involving continuing treatment by a health care  
22 provider includes any one or more of the following:

23 (A) A period of incapacity of more than three consecutive, full  
24 calendar days, and any subsequent treatment or period of incapacity  
25 relating to the same condition, that also involves:

26 (I) Treatment two or more times, within thirty days of the first  
27 day of incapacity, unless extenuating circumstances exist, by a  
28 health care provider, by a nurse or physician's assistant under  
29 direct supervision of a health care provider, or by a provider of  
30 health care services, such as a physical therapist, under orders of,  
31 or on referral by, a health care provider; or

32 (II) Treatment by a health care provider on at least one occasion  
33 which results in a regimen of continuing treatment under the  
34 supervision of the health care provider;

35 (B) Any period of incapacity due to pregnancy, or for prenatal  
36 care;

37 (C) Any period of incapacity or treatment for such incapacity due  
38 to a chronic serious health condition. A chronic serious health  
39 condition is one which:

1 (I) Requires periodic visits, defined as at least twice a year,  
2 for treatment by a health care provider, or by a nurse under direct  
3 supervision of a health care provider;

4 (II) Continues over an extended period of time, including  
5 recurring episodes of a single underlying condition; and

6 (III) May cause episodic rather than a continuing period of  
7 incapacity, including asthma, diabetes, and epilepsy;

8 (D) A period of incapacity which is permanent or long term due to  
9 a condition for which treatment may not be effective. The employee or  
10 family member must be under the continuing supervision of, but need  
11 not be receiving active treatment by, a health care provider,  
12 including Alzheimer's, a severe stroke, or the terminal stages of a  
13 disease; or

14 (E) Any period of absence to receive multiple treatments,  
15 including any period of recovery from the treatments, by a health  
16 care provider or by a provider of health care services under orders  
17 of, or on referral by, a health care provider, either for: (I)  
18 Restorative surgery after an accident or other injury; or (II) a  
19 condition that would likely result in a period of incapacity of more  
20 than three consecutive, full calendar days in the absence of medical  
21 intervention or treatment, such as cancer, severe arthritis, or  
22 kidney disease.

23 (b) The requirement in (a)(i) and (ii) of this subsection for  
24 treatment by a health care provider means an in-person visit to a  
25 health care provider. The first, or only, in-person treatment visit  
26 must take place within seven days of the first day of incapacity.

27 (c) Whether additional treatment visits or a regimen of  
28 continuing treatment is necessary within the thirty-day period shall  
29 be determined by the health care provider.

30 (d) The term extenuating circumstances in (a)(ii)(A)(I) of this  
31 subsection means circumstances beyond the employee's control that  
32 prevent the follow-up visit from occurring as planned by the health  
33 care provider. Whether a given set of circumstances are extenuating  
34 depends on the facts. For example, extenuating circumstances exist if  
35 a health care provider determines that a second in-person visit is  
36 needed within the thirty-day period, but the health care provider  
37 does not have any available appointments during that time period.

38 (e) Treatment for purposes of (a) of this subsection includes,  
39 but is not limited to, examinations to determine if a serious health  
40 condition exists and evaluations of the condition. Treatment does not



1 include routine physical examinations, eye examinations, or dental  
2 examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of  
3 continuing treatment includes, but is not limited to, a course of  
4 prescription medication, such as an antibiotic, or therapy requiring  
5 special equipment to resolve or alleviate the health condition, such  
6 as oxygen. A regimen of continuing treatment that includes taking  
7 over-the-counter medications, such as aspirin, antihistamines, or  
8 salves, or bed rest, drinking fluids, exercise, and other similar  
9 activities that can be initiated without a visit to a health care  
10 provider, is not, by itself, sufficient to constitute a regimen of  
11 continuing treatment for purposes of this chapter.

12 (f) Conditions for which cosmetic treatments are administered,  
13 such as most treatments for acne or plastic surgery, are not serious  
14 health conditions unless inpatient hospital care is required or  
15 unless complications develop. Ordinarily, unless complications arise,  
16 the common cold, the flu, ear aches, upset stomach, minor ulcers,  
17 headaches other than migraines, routine dental or orthodontia  
18 problems, and periodontal disease are examples of conditions that are  
19 not serious health conditions and do not qualify for leave under this  
20 chapter. Restorative dental or plastic surgery after an injury or  
21 removal of cancerous growths are serious health conditions provided  
22 all the other conditions of this section are met. Mental illness  
23 resulting from stress or allergies may be serious health conditions,  
24 but only if all the conditions of this section are met.

25 (g)(i) Substance abuse may be a serious health condition if the  
26 conditions of this section are met. However, leave may only be taken  
27 for treatment for substance abuse by a health care provider or by a  
28 licensed substance abuse treatment provider. Absence because of the  
29 employee's use of the substance, rather than for treatment, does not  
30 qualify for leave under this chapter.

31 (ii) Treatment for substance abuse does not prevent an employer  
32 from taking employment action against an employee. The employer may  
33 not take action against the employee because the employee has  
34 exercised his or her right to take medical leave for treatment.  
35 However, if the employer has an established policy, applied in a  
36 nondiscriminatory manner that has been communicated to all employees,  
37 that provides under certain circumstances an employee may be  
38 terminated for substance abuse, pursuant to that policy the employee  
39 may be terminated whether or not the employee is presently taking  
40 medical leave. An employee may also take family leave to care for a

1 covered family member who is receiving treatment for substance abuse.  
2 The employer may not take action against an employee who is providing  
3 care for a covered family member receiving treatment for substance  
4 abuse.

5 (h) Absences attributable to incapacity under (a)(ii)(B) or (C)  
6 of this subsection qualify for leave under this chapter even though  
7 the employee or the family member does not receive treatment from a  
8 health care provider during the absence, and even if the absence does  
9 not last more than three consecutive, full calendar days. For  
10 example, an employee with asthma may be unable to report for work due  
11 to the onset of an asthma attack or because the employee's health  
12 care provider has advised the employee to stay home when the pollen  
13 count exceeds a certain level. An employee who is pregnant may be  
14 unable to report to work because of severe morning sickness.

15 (20) "Service is localized in this state" has the same meaning as  
16 described in RCW 50.04.120.

17 (21) "Spouse" means a husband or wife, as the case may be, or  
18 state registered domestic partner.

19 (22) "State average weekly wage" means the most recent average  
20 weekly wage calculated under RCW 50.04.355 and available on January  
21 1st of each year.

22 (23) "Typical workweek hours" means:

23 (a) For an hourly employee, the average number of hours worked  
24 per week by an employee since the beginning of the qualifying period;  
25 and

26 (b) Forty hours for a salaried employee, regardless of the number  
27 of hours the salaried employee typically works.

28 (24) "Wage" means the same as "wages" under RCW 50.04.320(2),  
29 except that: (a) The term employment as used in RCW 50.04.320(2) is  
30 defined in this chapter; and (b) the maximum wages subject to a  
31 premium assessment are those wages as set by the commissioner under  
32 section 8(4) of this act. "Wages" for purposes of elective coverage  
33 under section 9 of this act has the meaning as defined by rule.

34 NEW SECTION. **Sec. 3.** BENEFIT ELIGIBILITY. Employees are  
35 eligible for family and medical leave benefits as provided in this  
36 chapter after working for at least eight hundred twenty hours in  
37 employment during the qualifying period.

1        NEW SECTION.        **Sec. 4.**        LEAVE ENTITLEMENT EXPIRATION. (1) The  
2 entitlement to family leave benefits for the birth or placement of a  
3 child expires at the end of the twelve-month period beginning on the  
4 date of such birth or placement.

5        (2) The entitlement to family leave benefits for a family  
6 member's serious health condition, or leave for qualifying exigency,  
7 expires at the end of the twelve-month period beginning on the date  
8 of which the employee filed an application for the benefits.

9        (3) The entitlement to medical leave benefits for the employee's  
10 own serious health condition expires at the end of the twelve-month  
11 period beginning on the date on which the employee filed an  
12 application for medical leave benefits.

13        NEW SECTION.        **Sec. 5.**        LIMITATIONS, DISQUALIFICATIONS, AND  
14 EMPLOYEE PENALTIES. (1) An employee is not entitled to paid family or  
15 medical leave benefits under this chapter:

16        (a) For any absence occasioned by the willful intention of the  
17 employee to bring about injury to or the sickness of the employee or  
18 another, or resulting from any injury or sickness sustained in the  
19 perpetration by the employee of an illegal act;

20        (b) For any family or medical leave commencing before the  
21 employee becomes qualified for benefits under this chapter;

22        (c) For an employee who is on suspension from his or her  
23 employment; or

24        (d) For any day in which a family or medical leave care recipient  
25 works at least part of that day for remuneration or profit during the  
26 same or substantially similar working hours as those of the employer  
27 from which family or medical leave benefits are claimed, except that  
28 occasional scheduling adjustments with respect to secondary  
29 employments shall not prevent receipt of family or medical leave  
30 benefits.

31        (2) An employer may allow an employee who has accrued vacation,  
32 sick, or other paid time off to choose whether: (a) To take such  
33 leave; or (b) not to take such leave and receive paid family or  
34 medical leave benefits, as provided in section 6 of this act.

35        (3) An individual is disqualified for benefits for any week he or  
36 she has knowingly and willfully made a false statement or  
37 representation involving a material fact or knowingly and willfully  
38 failed to report a material fact and, as a result, has obtained or  
39 attempted to obtain any benefits under the provisions of this

1 chapter. An individual disqualified for benefits under this  
2 subsection (3) for the:

3 (a) First time is disqualified for an additional twenty-six weeks  
4 beginning with the Sunday of the week in which the determination is  
5 mailed or delivered, and is subject to an additional penalty of  
6 fifteen percent of the amount of benefits overpaid or deemed  
7 overpaid;

8 (b) Second time is also disqualified for an additional fifty-two  
9 weeks beginning with the Sunday of the week in which the  
10 determination is mailed or delivered, and is subject to an additional  
11 penalty of twenty-five percent of the amount of benefits overpaid or  
12 deemed overpaid;

13 (c) Third time and any time thereafter is also disqualified for  
14 an additional one hundred four weeks beginning with the Sunday of the  
15 week in which the determination is mailed or delivered, and is  
16 subject to an additional penalty of fifty percent of the amount of  
17 benefits overpaid or deemed overpaid.

18 (4) All penalties collected under this section must be deposited  
19 in the family and medical leave enforcement account created under  
20 section 76 of this act.

21 NEW SECTION. **Sec. 6.** BENEFIT AMOUNTS AND DURATION. (1)  
22 Beginning January 1, 2020, family and medical leave are available and  
23 benefits are payable to a qualified employee under this section.  
24 Following a waiting period consisting of the first seven calendar  
25 days of leave, benefits are payable when family or medical leave is  
26 required. However, no waiting period is required for leave for the  
27 birth or placement of a child. Benefits may continue during the  
28 continuance of the need for family and medical leave, subject to the  
29 maximum and minimum weekly benefits, duration, and other conditions  
30 and limitations established in this chapter. Successive periods of  
31 family and medical leave caused by the same or related injury or  
32 sickness are deemed a single period of family and medical leave only  
33 if separated by less than four months.

34 (2) The weekly benefit shall be prorated by the percentage of  
35 hours on leave compared to the number of hours provided as the  
36 typical workweek hours as defined in section 2 of this act.

37 (a) The benefits in this section, if not a multiple of one  
38 dollar, shall be reduced to the next lower multiple of one dollar.

1 (b) Hours on leave claimed for benefits under this chapter, if  
2 not a multiple of one hour, shall be reduced to the next lower  
3 multiple of one hour.

4 (c) The minimum claim duration payment is for eight consecutive  
5 hours of leave.

6 (3)(a) The maximum duration of paid family leave may not exceed  
7 twelve times the typical workweek hours during a period of fifty-two  
8 consecutive calendar weeks.

9 (b) The maximum duration of paid medical leave may not exceed  
10 twelve times the typical workweek hours during a period of fifty-two  
11 consecutive calendar weeks. This leave may be extended an additional  
12 two times the typical workweek hours if the employee experiences a  
13 serious health condition with a pregnancy that results in incapacity.

14 (c) An employee is not entitled to paid family and medical leave  
15 benefits under this chapter that exceeds a combined total of sixteen  
16 times the typical workweek hours. The combined total of family and  
17 medical leave may be extended to eighteen times the typical workweek  
18 hours if the employee experiences a serious health condition with a  
19 pregnancy that results in incapacity.

20 (4) The weekly benefit for family and medical leave shall be  
21 determined as follows: If the employee's average weekly wage is: (a)  
22 Fifty percent or less of the state average weekly wage, the  
23 employee's weekly benefit is ninety percent of the employee's average  
24 weekly wage; or (b) greater than fifty percent of the state average  
25 weekly wage, the employee's weekly benefit is the sum of: (i) Ninety  
26 percent of the employee's average weekly wage up to fifty percent of  
27 the state average weekly wage; and (ii) fifty percent of the  
28 employee's average weekly wage that is greater than fifty percent of  
29 the state average weekly wage.

30 (5)(a) The maximum weekly benefit for family and medical leave  
31 that occurs on or after January 1, 2020, shall be one thousand  
32 dollars. By September 30, 2020, and by each subsequent September  
33 30th, the commissioner shall adjust the maximum weekly benefit amount  
34 to ninety percent of the state average weekly wage. The adjusted  
35 maximum weekly benefit amount takes effect on the following January  
36 1st.

37 (b) The minimum weekly benefit shall not be less than one hundred  
38 dollars per week except that if the employee's average weekly wage at  
39 the time of family and medical leave is less than one hundred dollars  
40 per week, the weekly benefit shall be the employee's full wage.

1        NEW SECTION.    **Sec. 7.**    TIME OF PAYMENT—CONTESTING APPLICATION.

2    (1) Benefits provided under this chapter shall be paid periodically  
3    and promptly, except when an employer contests a period of family or  
4    medical leave. The department must send the first benefit payment to  
5    the employee within fourteen calendar days after the first properly  
6    completed weekly application is received by the department.  
7    Subsequent payments must be sent at least biweekly thereafter. If the  
8    employer contests an initial application for family or medical leave  
9    benefits, the employer must notify the employee and the department in  
10   a manner prescribed by the commissioner within eighteen days of  
11   receipt of notice from the department of the employee's filing of an  
12   application for benefits, as provided under section 29 of this act.  
13   Failure to timely contest an initial application shall constitute a  
14   waiver of objection to the family or medical leave application. Any  
15   inquiry which requires the employee's response in order to continue  
16   benefits uninterrupted or unmodified shall provide a reasonable time  
17   period in which to respond and include a clear and prominent  
18   statement of the deadline for responding and consequences of failing  
19   to respond.

20        (2) If an employee has received one or more benefit payments  
21   under this chapter, is in continued claim status, and his or her  
22   eligibility for benefits is questioned by the department or contested  
23   by the employer, the employee will be conditionally paid benefits  
24   without delay for any periods for which the employee files a claim  
25   for benefits, until and unless the employee has been provided  
26   adequate notice and an opportunity to be heard. The employee's right  
27   to retain such payments is conditioned upon the department's finding  
28   the employee to be eligible for such payments.

29        (a) At the employee's request, the department may hold  
30   conditional payments until the question of eligibility has been  
31   resolved.

32        (b) Payments will be issued for any benefits withheld under (a)  
33   of this subsection if the department determines the employee is  
34   eligible for benefits.

35        (c) If it is determined that the employee is ineligible for the  
36   weeks paid conditionally, the overpayment cannot be waived and must  
37   be repaid.

38        (3) The department must develop, in rule, a process by which an  
39   employer may contest an initial application for family or medical  
40   leave benefits.

1        NEW SECTION.        **Sec. 8.**        PREMIUMS. (1)(a) Beginning January 1,  
2 2019, the department shall assess for each individual in employment  
3 with an employer and for each individual electing coverage a premium  
4 based on the amount of the individual's wages subject to subsection  
5 (4) of this section.

6        (b) The premium rate for family leave benefits shall be equal to  
7 one-third of the total premium rate.

8        (c) The premium rate for medical leave benefits shall be equal to  
9 two-thirds of the total premium rate.

10       (2) For calendar year 2022 and thereafter, the commissioner shall  
11 determine the percentage of paid claims related to family leave  
12 benefits and the percentage of paid claims related to medical leave  
13 benefits and adjust the premium rates set in subsection (1)(b) and  
14 (c) of this section by the proportional share of paid claims.

15       (3)(a) Beginning January 1, 2019, and ending December 31, 2020,  
16 the total premium rate shall be four-tenths of one percent of the  
17 individual's wages subject to subsection (4) of this section.

18       (b) For family leave premiums, an employer may deduct from the  
19 wages of each employee up to the full amount of the premium required.

20       (c) For medical leave premiums, an employer may deduct from the  
21 wages of each employee up to forty-five percent of the full amount of  
22 the premium required.

23       (d) An employer may elect to pay all or any portion of the  
24 employee's share of the premium for family leave or medical leave  
25 benefits, or both.

26       (4) The commissioner must annually set a maximum limit on the  
27 amount of wages that is subject to a premium assessment under this  
28 section that is equal to the maximum wages subject to taxation for  
29 social security as determined by the social security administration.

30       (5)(a) Employers with fewer than fifty employees employed in the  
31 state are not required to pay the employer portion of premiums for  
32 family and medical leave.

33       (b) If an employer with fewer than fifty employees elects to pay  
34 the premiums, the employer is then eligible for assistance under  
35 section 84 of this act.

36       (6) For calendar year 2021 and thereafter, the total premium rate  
37 shall be based on the family and medical leave insurance account  
38 balance ratio as of September 30th of the previous year. The  
39 commissioner shall calculate the account balance ratio by dividing  
40 the balance of the family and medical leave insurance account by

1 total covered wages paid by employers and those electing coverage.  
2 The division shall be carried to the fourth decimal place with the  
3 remaining fraction disregarded unless it amounts to five hundred-  
4 thousandths or more, in which case the fourth decimal place shall be  
5 rounded to the next higher digit. If the account balance ratio is:

6 (a) Zero to nine hundredths of one percent, the premium is six  
7 tenths of one percent of the individual's wages;

8 (b) One tenth of one percent to nineteen hundredths of one  
9 percent, the premium is five tenths of one percent of the  
10 individual's wages;

11 (c) Two tenths of one percent to twenty-nine hundredths of one  
12 percent, the premium is four tenths of one percent of the  
13 individual's wages;

14 (d) Three tenths of one percent to thirty-nine hundredths of one  
15 percent, the premium is three tenths of one percent of the  
16 individual's wages;

17 (e) Four tenths of one percent to forty-nine hundredths of one  
18 percent, the premium is two tenths of one percent of the individual's  
19 wages; or

20 (f) Five tenths of one percent or greater, the premium is one  
21 tenth of one percent of the individual's wages.

22 (7) Beginning January 1, 2021, if the account balance ratio  
23 calculated in subsection (6) of this section is below five hundredths  
24 of one percent, the commissioner must assess a solvency surcharge at  
25 the lowest rate necessary to provide revenue to pay for the  
26 administrative and benefit costs of family and medical leave, for the  
27 calendar year, as determined by the commissioner. The solvency  
28 surcharge shall be at least one-tenth of one percent and no more than  
29 six-tenths of one percent and be added to the total premium rate for  
30 family and medical leave benefits.

31 (8)(a) The employer must collect from the employees the premiums  
32 and any surcharges provided under this section through payroll  
33 deductions and remit the amounts collected to the department.

34 (b) In collecting employee premiums through payroll deductions,  
35 the employer shall act as the agent of the employees and shall remit  
36 the amounts to the department as required by this chapter.

37 (c) On September 30th of each year, the department shall average  
38 the number of employees reported by an employer over the last four  
39 completed calendar quarters to determine the size of the employer for



1 the next calendar year for the purposes of sections 8 and 84 of this  
2 act.

3 (9) Premiums shall be collected in the manner and at such  
4 intervals as provided in this chapter and directed by the department.

5 (10) Premiums collected under this section are placed in trust  
6 for the employees and employers that the program is intended to  
7 assist.

8 (11) A city, code city, town, county, or political subdivision  
9 may not enact a charter, ordinance, regulation, rule, or resolution:

10 (a) Creating a paid family or medical leave insurance program  
11 that alters or amends the requirements of this chapter for any  
12 private employer;

13 (b) Providing for local enforcement of the provisions of this  
14 chapter; or

15 (c) Requiring private employers to supplement duration of leave  
16 or amount of wage replacement benefits provided under this chapter.

17 NEW SECTION. **Sec. 9.** PREMIUMS—OUT-OF-STATE WAIVER. (1) An  
18 employer may file an application with the department for a  
19 conditional waiver for the payment of family and medical leave  
20 premiums, assessed under section 8 of this act, for any employee who  
21 is:

22 (a) Physically based outside of the state;

23 (b) Employed in the state on a limited or temporary work  
24 schedule; and

25 (c) Not expected to be employed in the state for eight hundred  
26 twenty hours or more in a qualifying period.

27 (2) The department must approve an application that has been  
28 signed by both the employee and employer verifying their belief that  
29 the conditions in this subsection will be met during the qualifying  
30 period.

31 (3) If the employee exceeds the eight hundred twenty hours or  
32 more in a qualifying period, the conditional waiver expires and the  
33 employer and employee will be responsible for their shares of all  
34 premiums that would have been paid during the qualifying period in  
35 which the employee exceeded the eight hundred twenty hours had the  
36 waiver not been granted. Upon payment of the missed premiums, the  
37 employee will be credited for the hours worked and will be eligible  
38 for benefits under this chapter as if the premiums were originally  
39 paid.

1        NEW SECTION.        **Sec. 10.**        ELECTIVE COVERAGE. (1) For benefits  
2 payable beginning January 1, 2020, any self-employed person,  
3 including a sole proprietor, independent contractor, partner, or  
4 joint venturer, may elect coverage under this chapter for an initial  
5 period of not less than three years and subsequent periods of not  
6 less than one year immediately following a period of coverage. Those  
7 electing coverage under this section must elect coverage for both  
8 family leave and medical leave and are responsible for payment of one  
9 hundred percent of all premiums assessed to an employee under section  
10 8 of this act. The self-employed person must file a notice of  
11 election in writing with the department, in a manner as required by  
12 the department in rule. The self-employed person is eligible for  
13 family and medical leave benefits after working eight hundred twenty  
14 hours in the state during the qualifying period following the date of  
15 filing the notice.

16        (2) A self-employed person who has elected coverage may withdraw  
17 from coverage within thirty days after the end of each period of  
18 coverage, or at such other times as the commissioner may adopt by  
19 rule, by filing a notice of withdrawal in writing with the  
20 commissioner, such withdrawal to take effect not sooner than thirty  
21 days after filing the notice with the commissioner.

22        (3) The department may cancel elective coverage if the self-  
23 employed person fails to make required payments or file reports. The  
24 department may collect due and unpaid premiums and may levy an  
25 additional premium for the remainder of the period of coverage. The  
26 cancellation shall be effective no later than thirty days from the  
27 date of the notice in writing advising the self-employed person of  
28 the cancellation.

29        (4) Those electing coverage are considered employers or employees  
30 where the context so dictates.

31        (5) For the purposes of this section, "independent contractor"  
32 means an individual excluded from employment under section 2(7)(b)  
33 (ii) and (iii) of this act.

34        (6) In developing and implementing the requirements of this  
35 section, the department shall adopt government efficiencies to  
36 improve administration and reduce costs. These efficiencies may  
37 include, but are not limited to, requiring that payments be made in a  
38 manner and at intervals unique to the elective coverage program.

1 (7) The department shall adopt rules for determining the hours  
2 worked and the wages of individuals who elect coverage under this  
3 section and rules for enforcement of this section.

4 NEW SECTION. **Sec. 11.** TRIBES. A federally recognized tribe may  
5 elect coverage under section 9 of this act. The department shall  
6 adopt rules to implement this section.

7 NEW SECTION. **Sec. 12.** NOTICE TO EMPLOYERS. (1) If the necessity  
8 for leave for the birth or placement of a child with the employee is  
9 foreseeable based on an expected birth or placement, the employee  
10 shall provide the employer with not less than thirty days' notice,  
11 before the date the leave is to begin, of the employee's intention to  
12 take leave for the birth or placement of a child, except that if the  
13 date of the birth or placement requires leave to begin in less than  
14 thirty days, the employee shall provide such notice as is  
15 practicable.

16 (2) If the necessity for leave for a family member's serious  
17 health condition or the employee's serious health condition is  
18 foreseeable based on planned medical treatment, the employee:

19 (a) Must make a reasonable effort to schedule the treatment so as  
20 not to disrupt unduly the operations of the employer, subject to the  
21 approval of the health care provider of the employee or the health  
22 care provider of the family member, as appropriate; and

23 (b) Must provide the employer with not less than thirty days'  
24 notice, before the date the leave is to begin, of the employee's  
25 intention to take leave for a family member's serious health  
26 condition or the employee's serious health condition, except that if  
27 the date of the treatment requires leave to begin in less than thirty  
28 days, the employee must provide such notice as is practicable.

29 NEW SECTION. **Sec. 13.** APPLICATION, CERTIFICATION, AND  
30 VERIFICATION. (1) Family and medical leave insurance benefits are  
31 payable to an employee during a period in which the employee is  
32 unable to perform his or her regular or customary work because he or  
33 she is on family and medical leave if the employee:

34 (a) Files an application for benefits as required by rules  
35 adopted by the commissioner;

36 (b) Has met the eligibility requirements of section 3 of this act  
37 or the elective coverage requirements under section 10 of this act;

1 (c) Consents to the disclosure of information or records deemed  
2 private and confidential under state law. Initial disclosure of this  
3 information and these records by another state agency to the  
4 department is solely for purposes related to the administration of  
5 this chapter. Further disclosure of this information or these records  
6 is subject to chapter 50.13 RCW and sections 29(3) and 33 of this  
7 act;

8 (d) Discloses whether or not he or she owes child support  
9 obligations as defined in RCW 50.40.050;

10 (e) Provides his or her social security number;

11 (f) Provides a document authorizing the family member's or  
12 employee's health care provider, as applicable, to disclose the  
13 family member's or employee's health care information in the form of  
14 the certification of a serious health condition;

15 (g) Provides the employer from whom family and medical leave is  
16 to be taken with written notice of the employee's intention to take  
17 family leave in the same manner as an employee is required to provide  
18 notice in section 12 of this act and, in the employee's initial  
19 application for benefits, attests that written notice has been  
20 provided; and

21 (h) If requested by the employer, provides documentation of a  
22 military exigency.

23 (2) An employee who is not in employment for an employer at the  
24 time of filing an application for benefits is exempt from subsection  
25 (1)(g) and (h) of this section.

26 NEW SECTION. **Sec. 14.** VOLUNTARY PLAN—GENERAL. (1) An employer  
27 may apply to the commissioner for approval of a voluntary plan for  
28 the payment of either family leave benefits or medical leave  
29 benefits, or both. The application must be submitted on a form and in  
30 the manner as prescribed by the commissioner in rule. The fee for the  
31 department's review of each application for approval of a voluntary  
32 plan is two hundred fifty dollars.

33 (2) The benefits payable as indemnification for loss of wages  
34 under any voluntary plan must be separately stated and designated  
35 separately and distinctly in the plan from other benefits, if any.

36 (3) Neither an employee nor his or her employer are liable for  
37 any premiums for benefits covered by an approved voluntary plan.

38 (4) Except as provided in this section, an employee covered by an  
39 approved voluntary plan at the commencement of a period of family

1 leave or a medical leave benefit period is not entitled to benefits  
2 from the state program. Benefits payable to that employee is the  
3 liability of the approved voluntary plan under which the employee was  
4 covered at the commencement of the family leave or medical leave  
5 benefit period, regardless of any subsequent serious health condition  
6 or family leave which may occur during the benefit period. The  
7 commissioner must adopt rules to allow benefits or prevent  
8 duplication of benefits to employees simultaneously covered by one or  
9 more approved voluntary plans and the state program.

10 (5) The commissioner must approve any voluntary plan as to which  
11 the commissioner finds that there is at least one employee in  
12 employment and all of the following exist:

13 (a) The benefits afforded to the employees must be at least  
14 equivalent to the benefits the employees are entitled to as part of  
15 the state's family and medical leave program, including but not  
16 limited to the duration of leave. The employer must offer at least  
17 one-half of the length of leave as provided in section 6(2) of this  
18 act with pay and provide a monetary payment in an amount equal to or  
19 higher than the total amount of monetary benefits the employee would  
20 be entitled to receive as part of the state-run program. The employer  
21 may offer the same duration of leave and monetary benefits as offered  
22 under the state program.

23 (b) The sick leave an employee is entitled to under RCW 49.46.210  
24 is in addition to the employer's provided benefits and is in addition  
25 to any family and medical leave benefits.

26 (c) The plan is available to all of the eligible employees of the  
27 employer employed in this state, including future employees.

28 (d) The employer has agreed to make the payroll deductions  
29 required, if any, and transmit the proceeds to the department for any  
30 portions not collected for the voluntary plan.

31 (e) The plan will be in effect for a period of not less than one  
32 year and, thereafter, continuously unless the commissioner finds that  
33 the employer has given notice of withdrawal from the plan in a manner  
34 specified by the commissioner in rule. The plan may be withdrawn by  
35 the employer on the date of any law increasing the benefit amounts or  
36 the date of any change in the rate of employee premiums, if notice of  
37 the withdrawal from the plan is transmitted to the commissioner not  
38 less than thirty days prior to the date of that law or change. If the  
39 plan is not withdrawn, it must be amended to conform to provide the

1 increased benefit amount or change in the rate of the employee's  
2 premium on the date of the increase or change.

3 (f) The amount of payroll deductions from the wages of an  
4 employee in effect for any voluntary plan may not exceed the maximum  
5 payroll deduction for that employee as authorized under section 8 of  
6 this act. The deductions may not be increased on other than an  
7 anniversary of the effective date of the plan, except to the extent  
8 that any increase in the deductions from the wages of an employee do  
9 not exceed the maximum rate authorized under the state program.

10 (g) The voluntary plan provides that an employee of an employer  
11 with a voluntary plan for either family leave or medical leave, or  
12 both, is eligible for the plan benefits if the employee meets the  
13 requirements of section 3 of this act and has worked at least three  
14 hundred forty hours for the employer during the twelve months  
15 immediately preceding the date leave will commence.

16 (h) The voluntary plan provides that an employee of an employer  
17 with a voluntary plan for either family leave or medical leave, or  
18 both, who takes leave under the voluntary plan is entitled to the  
19 employment protection provisions contained in section 31 of this act  
20 if the employee has worked for the employer for at least nine months  
21 and nine hundred sixty-five hours during the twelve months  
22 immediately preceding the date leave will commence.

23 (i) The voluntary plan provides that the employer maintains the  
24 employee's existing health benefits as provided under section 70 of  
25 this act.

26 (6)(a) The department must conduct a review of the expenses  
27 incurred in association with the administration of the voluntary  
28 plans during the first three years after implementation and report  
29 its findings to the legislature.

30 (b) The review must include an analysis of the adequacy of the  
31 fee in subsection (1) of this section to cover the department's  
32 administrative expenses related to reviewing and approving or denying  
33 the applications and administering appeals related to voluntary  
34 plans. The review must include an estimate of the next year's  
35 projected administrative costs related to the voluntary plans. The  
36 legislature shall adjust the fee in subsection (1) of this section as  
37 needed to ensure the department's administrative expenses related to  
38 the voluntary plans are covered by the fee.

39 (c) If the current receipts from the fee in subsection (1) of  
40 this section are inadequate to cover the department's administrative

1 expenses related to the voluntary plans, the department may use funds  
2 from the family and medical leave insurance account under section 82  
3 of this act to pay for these expenses.

4 NEW SECTION. **Sec. 15.** VOLUNTARY PLAN—SUCCESSOR EMPLOYER. A  
5 voluntary plan in force and effect at the time a successor acquires  
6 the organization, trade, or business, or substantially all the assets  
7 thereof, or a distinct and severable portion of the organization,  
8 trade, or business, and continues its operation without substantial  
9 reduction of personnel resulting from the acquisition, must continue  
10 the voluntary plan and may not withdraw the plan without a specific  
11 request for withdrawal in a manner and at a time specified by the  
12 commissioner. A successor may terminate a voluntary plan with notice  
13 to the commissioner and without a request to withdraw the plan within  
14 ninety days from the date of the acquisition.

15 NEW SECTION. **Sec. 16.** VOLUNTARY PLAN—REAPPROVAL. The employer  
16 must have the voluntary plan approved by the commissioner annually  
17 for the first three years. After the first three years, the employer  
18 is only required to have the approval if the employer makes changes  
19 to the plan that were not mandated by changes to state law.

20 NEW SECTION. **Sec. 17.** VOLUNTARY PLAN—EMPLOYEE COSTS. An  
21 employer may assume all or a greater part of the cost of the  
22 voluntary plan than required under the state program. An employer may  
23 deduct from the wages of an employee covered by the voluntary plan,  
24 for the purpose of providing the benefits specified in this chapter,  
25 an amount not in excess of that which would be required if the  
26 employee was not covered by the plan.

27 NEW SECTION. **Sec. 18.** VOLUNTARY PLAN—WAGE DEDUCTIONS UPON  
28 WITHDRAWAL. All deductions from the wages of an employee remaining in  
29 the possession of the employer upon the employer's withdrawal of the  
30 voluntary plan as a result of plan contributions being in excess of  
31 plan costs, that are not disposed of in conformity with the  
32 department's rules, must be remitted to the department and deposited  
33 in the family and medical leave insurance account.

1        NEW SECTION.    **Sec. 19.**    VOLUNTARY PLAN—TRUST FUNDS. Any employee  
2 contributions to and income arising from an approved voluntary plan  
3 received or retained by an employer under an approved voluntary plan  
4 are trust funds that are not considered to be part of an employer's  
5 assets. An employer must maintain a separate, specifically  
6 identifiable account for voluntary plan trust funds in a financial  
7 institution.

8        NEW SECTION.    **Sec. 20.**    VOLUNTARY PLANS—PENALTIES. (1) An  
9 employer of a voluntary plan found to have violated this act shall be  
10 assessed the following monetary penalties:

11        (a) One thousand dollars for the first violation; and

12        (b) Two thousand dollars for the second and subsequent  
13 violations.

14        (2) The commissioner shall waive collection of the penalty if the  
15 employer corrects the violation within thirty days of receiving a  
16 notice of the violation and the notice is for a first violation.

17        (3) The commissioner may waive collection of any penalties if the  
18 commissioner determines the violation to be an inadvertent error by  
19 the employer.

20        (4) Monetary penalties collected under this section shall be  
21 deposited in the family and medical leave enforcement account.

22        (5) The department shall enforce the collection of penalties  
23 through conference and conciliation.

24        (6) These penalties may be appealed as provided in sections 34  
25 through 53 of this act.

26        NEW SECTION.    **Sec. 21.**    VOLUNTARY PLAN—TERMINATION. (1) The  
27 commissioner may terminate any voluntary plan if the commissioner  
28 finds that there is risk that the benefits accrued or that will  
29 accrue will not be paid or for other good cause shown.

30        (2) The commissioner must give notice of the commissioner's  
31 intention to terminate a plan to the employer at least ten days  
32 before taking any final action. The notice must state the effective  
33 date and the reason for the termination.

34        (3) On the effective date of the termination of a plan by the  
35 commissioner, all moneys in the plan, including moneys paid by the  
36 employer, moneys paid by the employees, moneys owed to the voluntary  
37 plan by the employer but not yet paid to the plan, and any interest



1 accrued on all these moneys, must be remitted to the department and  
2 deposited into the family and medical leave insurance account.

3 (4) The employer may, within ten days from mailing or personal  
4 service of the notice, file an appeal in the time, manner, method,  
5 and procedure provided in section 34 of this act.

6 (5) The payment of benefits and the transfer of moneys in the  
7 voluntary plan may not be delayed during an employer's appeal of the  
8 termination of a voluntary plan.

9 (6) If an employer's voluntary plan has been terminated by the  
10 commissioner the employer is not eligible to apply for approval of  
11 another voluntary plan for a period of three years.

12 NEW SECTION. **Sec. 22.** VOLUNTARY PLAN—EMPLOYEES COVERED. (1) To  
13 be eligible for any family and medical leave, an employee must be in  
14 employment for eight hundred twenty hours during the qualifying  
15 period, by an employer with a voluntary plan or an employer utilizing  
16 the state family and medical leave plan. An employee qualifies for  
17 benefits under an employer's voluntary plan only after the employee  
18 works at least three hundred forty hours for the current employer.

19 (2) An employee who had coverage under the state plan retains  
20 coverage under the state plan until such time as the employee is  
21 qualified for coverage under the new employer's voluntary plan.

22 (3) An employee who was eligible for benefits under a voluntary  
23 plan is immediately eligible for benefits under a new employer's  
24 voluntary plan.

25 NEW SECTION. **Sec. 23.** VOLUNTARY PLAN—EMPLOYEES NO LONGER  
26 COVERED. (1) An employee is no longer covered by an approved  
27 voluntary plan if family leave or the employee's medical leave  
28 occurred after the employment relationship with the voluntary plan  
29 employer ends, or if the commissioner terminates a voluntary plan.

30 (2) An employee who has ceased to be covered by an approved  
31 voluntary plan is, if otherwise eligible, immediately entitled to  
32 benefits from the state program to the same extent as though there  
33 had been no exemption as provided in this chapter.

34 NEW SECTION. **Sec. 24.** VOLUNTARY PLAN—APPEAL. An employer may  
35 appeal any adverse decision by the department regarding the voluntary  
36 plan and an employee may appeal an employer's denial of liability

1 upon the claim of an employee for family or medical leave benefits  
2 under an approved plan, in the manner specified under section 34 of  
3 this act.

4 NEW SECTION. **Sec. 25.** VOLUNTARY PLAN—INFORMATION. An employer  
5 with a voluntary plan must provide a notice prepared by or approved  
6 by the commissioner regarding the voluntary plan consistent with the  
7 provisions of section 75 of this act.

8 NEW SECTION. **Sec. 26.** VOLUNTARY PLAN—REPORTS AND RECORDS.  
9 Employers whose employees are participating in an approved voluntary  
10 plan must maintain all reports, information, and records as relating  
11 to the voluntary plan and claims for six years and furnish for the  
12 commissioner upon request.

13 NEW SECTION. **Sec. 27.** VOLUNTARY PLAN—AMENDMENTS. (1) The  
14 commissioner must approve any amendment to a voluntary plan adjusting  
15 the provisions thereof, as to periods after the effective date of the  
16 amendment, when the commissioner finds: (a) That the plan, as  
17 amended, will conform to the standards set forth in this chapter; and  
18 (b) that notice of the amendment has been delivered to the employees  
19 at least ten days prior to the approval.

20 (2) Nothing contained in this section is intended to deny or  
21 limit the right of the commissioner to adopt supplementary rules  
22 regarding voluntary plans.

23 NEW SECTION. **Sec. 28.** ADVISORY COMMITTEE. (1) The commissioner  
24 shall appoint an advisory committee to review issues and topics of  
25 interest related to this chapter.

26 (2) The committee is composed of ten members: (a) Four members  
27 representing employees' interests in paid family and medical leave,  
28 each of whom shall be appointed from a list of at least four names  
29 submitted by a recognized statewide organization of employees; (b)  
30 four members representing employers, each of whom shall be appointed  
31 from a list of at least four names submitted by a recognized  
32 statewide organization of employers; and (c) two ex officio members,  
33 without a vote, one of whom shall represent the department and the  
34 other shall be the ombuds for the family and medical leave program.  
35 The member representing the department shall be the chair.

1 (3) The committee shall provide comment on department rule  
2 making, policies, implementation of this chapter, utilization of  
3 benefits, and other initiatives, and study issues the committee  
4 determines to require its consideration.

5 (4) The members shall serve without compensation, but are  
6 entitled to reimbursement for travel expenses as provided in RCW  
7 43.03.050 and 43.03.060. The committee may utilize such personnel and  
8 facilities of the department as it needs, without charge. All  
9 expenses of the committee must be paid by the family and medical  
10 leave insurance account.

11 NEW SECTION. **Sec. 29.** DEPARTMENT TO ADMINISTER—INFORMATION AND  
12 OUTREACH. (1) The department shall establish and administer the  
13 family and medical leave program and pay family and medical leave  
14 benefits as specified in this chapter. The department shall adopt  
15 government efficiencies to improve administration and reduce costs.  
16 These efficiencies shall include, to the extent feasible, combined  
17 reporting and payment, with a single return, of premiums under this  
18 chapter and contributions under chapter 50.24 RCW.

19 (2) The department shall establish procedures and forms for  
20 filing applications for benefits under this chapter. The department  
21 shall notify the employer within five business days of an application  
22 being filed.

23 (3) The department shall use information sharing and integration  
24 technology to facilitate the disclosure of relevant information or  
25 records by the department, so long as an employee consents to the  
26 disclosure as required under section 13 of this act.

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

1 (5) The department shall develop and implement an outreach  
2 program to ensure that employees who may be qualified to receive  
3 family and medical leave benefits under this chapter are made aware  
4 of these benefits. Outreach information shall explain, in an easy to  
5 understand format, eligibility requirements, the application process,  
6 weekly benefit amounts, maximum benefits payable, notice and  
7 certification requirements, reinstatement and nondiscrimination  
8 rights, confidentiality, voluntary plans, and the relationship  
9 between employment protection, leave from employment, and wage  
10 replacement benefits under this chapter and other laws, collective  
11 bargaining agreements, and employer policies. Outreach information  
12 shall be available in English and other primary languages as defined  
13 in RCW 74.04.025.

14 (6) The department is authorized to inspect and audit employer  
15 files and records relating to the family and medical leave program,  
16 including employer voluntary plans.

17 NEW SECTION. **Sec. 30.** CHILD SUPPORT. If an employee discloses  
18 that he or she owes child support obligations under section 13 of  
19 this act and the department determines that the employee is qualified  
20 for benefits, the department shall notify the applicable state or  
21 local child support enforcement agency and deduct and withhold an  
22 amount from benefits in a manner consistent with RCW 50.40.050.  
23 Consistent with section 13(1)(c) of this act, the department may  
24 verify delinquent child support obligations with the department of  
25 social and health services.

26 NEW SECTION. **Sec. 31.** EMPLOYMENT PROTECTION. (1) Except as  
27 provided in section 14(5) of this act and subsection (6) of this  
28 section, any employee who takes family or medical leave under this  
29 chapter is entitled, on return from the leave:

30 (a) To be restored by the employer to the position of employment  
31 held by the employee when the leave commenced; or

32 (b) To be restored by the employer to an equivalent position with  
33 equivalent employment benefits, pay, and other terms and conditions  
34 of employment.

35 (2) The taking of leave under this chapter may not result in the  
36 loss of any employment benefits accrued before the date on which the  
37 leave commenced.

1 (3) Nothing in this section shall be construed to entitle any  
2 restored employee to:

3 (a) The accrual of any seniority or employment benefits during  
4 any period of leave; or

5 (b) Any right, benefit, or position of employment other than any  
6 right, benefit, or position to which the employee would have been  
7 entitled had the employee not taken the leave.

8 (4) As a condition of restoration under subsection (1) of this  
9 section for an employee who has taken medical leave, the employer may  
10 have a uniformly applied practice or policy that requires each such  
11 employee to receive certification from the employee's health care  
12 provider that the employee is able to resume work.

13 (5) Nothing in this section shall be construed to prohibit an  
14 employer from requiring an employee on leave to report periodically  
15 to the employer on the status and intention of the employee to return  
16 to work.

17 (6)(a) This section does not apply unless the employee: (i) Works  
18 for an employer with fifty or more employees; (ii) has been employed  
19 by the current employer for twelve months or more; and (iii) has  
20 worked for the current employer for at least one thousand two hundred  
21 fifty hours during the twelve months immediately preceding the date  
22 on which leave will commence. For the purposes of this subsection, an  
23 employer shall be considered to employ fifty or more employees if the  
24 employer employs fifty or more employees for each working day during  
25 each of twenty or more calendar workweeks in the current or preceding  
26 calendar year.

27 (b) An employer may deny restoration under this section to any  
28 salaried employee who is among the highest paid ten percent of the  
29 employees employed by the employer within seventy-five miles of the  
30 facility at which the employee is employed if:

31 (i) Denial is necessary to prevent substantial and grievous  
32 economic injury to the operations of the employer;

33 (ii) The employer notifies the employee of the intent of the  
34 employer to deny restoration on such basis at the time the employer  
35 determines that the injury would occur; and

36 (iii) The leave has commenced and the employee elects not to  
37 return to employment after receiving the notice.

38 NEW SECTION. **Sec. 32.** RECOVERY OF BENEFIT PAYMENTS. (1) An  
39 individual who is paid any amount as benefits under this act to which

1 he or she is not entitled shall, unless otherwise relieved pursuant  
2 to this section, be liable for repayment of the amount overpaid. The  
3 department shall issue an overpayment assessment setting forth the  
4 reasons for and the amount of the overpayment. The amount assessed,  
5 to the extent not collected, may be deducted from any future benefits  
6 payable to the individual: PROVIDED, That in the absence of a back  
7 pay award, a settlement affecting the allowance of benefits, fraud,  
8 misrepresentation, or willful nondisclosure, every determination of  
9 liability shall be mailed or personally served not later than two  
10 years after the close of or final payment made on the individual's  
11 applicable eligibility period for which the purported overpayment was  
12 made, whichever is later, unless the merits of the claim are  
13 subjected to administrative or judicial review in which event the  
14 period for serving the determination of liability shall be extended  
15 to allow service of the determination of liability during the six-  
16 month period following the final decision affecting the claim.

17 (2) The commissioner may waive an overpayment if the commissioner  
18 finds that the overpayment was not the result of fraud,  
19 misrepresentation, willful nondisclosure, conditional payment, or  
20 fault attributable to the individual and that the recovery thereof  
21 would be against equity and good conscience. An overpayment waived  
22 under this subsection shall be charged against the individual's  
23 applicable entitlement for the eligibility period containing the  
24 weeks to which the overpayment was attributed as though such benefits  
25 had been properly paid.

26 (3) Any assessment herein provided shall constitute a  
27 determination of liability from which an appeal may be had in the  
28 same manner and to the same extent as provided for appeals relating  
29 to determinations in respect to claims for benefits: PROVIDED, That  
30 an appeal from any determination covering overpayment only shall be  
31 deemed to be an appeal from the determination which was the basis for  
32 establishing the overpayment unless the merits involved in the issue  
33 set forth in such determination have already been heard and passed  
34 upon by the appeal tribunal. If no such appeal is taken to the appeal  
35 tribunal by the individual within thirty days of the delivery of the  
36 notice of determination of liability, or within thirty days of the  
37 mailing of the notice of determination, whichever is the earlier, the  
38 determination of liability shall be deemed conclusive and final.  
39 Whenever any such notice of determination of liability becomes  
40 conclusive and final, the commissioner, upon giving at least twenty

1 days' notice, using a method by which the mailing can be tracked or  
2 the delivery can be confirmed, may file with the superior court clerk  
3 of any county within the state a warrant in the amount of the notice  
4 of determination of liability plus a filing fee under RCW  
5 36.18.012(10). The clerk of the county where the warrant is filed  
6 shall immediately designate a superior court cause number for the  
7 warrant, and the clerk shall cause to be entered in the judgment  
8 docket under the superior court cause number assigned to the warrant,  
9 the name of the person(s) mentioned in the warrant, the amount of the  
10 notice of determination of liability, and the date when the warrant  
11 was filed. The amount of the warrant as docketed shall become a lien  
12 upon the title to, and any interest in, all real and personal  
13 property of the person(s) against whom the warrant is issued, the  
14 same as a judgment in a civil case duly docketed in the office of  
15 such clerk. A warrant so docketed shall be sufficient to support the  
16 issuance of writs of execution and writs of garnishment in favor of  
17 the state in the manner provided by law for a civil judgment. A copy  
18 of the warrant shall be mailed within five days of its filing with  
19 the clerk to the person(s) mentioned in the warrant using a method by  
20 which the mailing can be tracked or the delivery can be confirmed.

21 (4) Any employer who is a party to a back pay award or settlement  
22 due to loss of wages shall, within thirty days of the award or  
23 settlement, report to the department the amount of the award or  
24 settlement, the name and social security number of the recipient of  
25 the award or settlement, and the period for which it is awarded. When  
26 an individual has been awarded or receives back pay, for benefit  
27 purposes the amount of the back pay shall constitute wages paid in  
28 the period for which it was awarded. For premium purposes, the back  
29 pay award or settlement shall constitute wages paid in the period in  
30 which it was actually paid. The following requirements shall also  
31 apply:

32 (a) The employer shall reduce the amount of the back pay award or  
33 settlement by an amount determined by the department based upon the  
34 amount of paid family or medical leave benefits received by the  
35 recipient of the award or settlement during the period for which the  
36 back pay award or settlement was awarded;

37 (b) The employer shall pay to the paid family and medical leave  
38 fund, in a manner specified by the commissioner, an amount equal to  
39 the amount of such reduction;

1 (c) The employer shall also pay to the department any premiums  
2 due for paid family and medical leave insurance purposes on the  
3 entire amount of the back pay award or settlement notwithstanding any  
4 reduction made pursuant to (a) of this subsection;

5 (d) If the employer fails to reduce the amount of the back pay  
6 award or settlement as required in (a) of this subsection, the  
7 department shall issue an overpayment assessment against the  
8 recipient of the award or settlement in the amount that the back pay  
9 award or settlement should have been reduced; and

10 (e) If the employer fails to pay to the department an amount  
11 equal to the reduction as required in (b) of this subsection, the  
12 department shall issue an assessment of liability against the  
13 employer that shall be collected pursuant to the procedures for  
14 collection of assessments provided herein and in section 62 of this  
15 act.

16 (5) When an individual fails to repay an overpayment assessment  
17 that is due and fails to arrange for satisfactory repayment terms,  
18 the commissioner shall impose an interest penalty of one percent per  
19 month of the outstanding balance. Interest shall accrue immediately  
20 on overpayments assessed pursuant to section 5 of this act and shall  
21 be imposed when the assessment becomes final. For any other  
22 overpayment, interest shall accrue when the individual has missed two  
23 or more of the individual's monthly payments either partially or in  
24 full.

25 (6) Any penalties and interest collected pursuant to this section  
26 must be deposited into the family and medical leave enforcement  
27 account.

28 (7) The department shall: (a) Conduct social security number  
29 cross-match audits or engage in other more effective activities that  
30 ensure that individuals are entitled to all amounts of benefits that  
31 they are paid; and (b) engage in other detection and recovery of  
32 overpayment and collection activities.

33 NEW SECTION. **Sec. 33.** EMPLOYER REQUIREMENTS—COMPANIES. (1) In  
34 the form and at the times specified in this chapter and by the  
35 commissioner, an employer shall make reports, furnish information,  
36 and collect and remit premiums as required by this chapter to the  
37 department. If the employer is a temporary help company that provides  
38 employees on a temporary basis to its customers, the temporary help  
39 company is considered the employer for purposes of this section.



1 (2)(a) An employer must keep at the employer's place of business  
2 a record of employment, for a period of six years, from which the  
3 information needed by the department for purposes of this chapter may  
4 be obtained. This record shall at all times be open to the inspection  
5 of the commissioner.

6 (b) Information obtained under this chapter from employer records  
7 is confidential and not open to public inspection, other than to  
8 public employees in the performance of their official duties.  
9 However, an interested party shall be supplied with information from  
10 employer records to the extent necessary for the proper presentation  
11 of the case in question. An employer may authorize inspection of the  
12 employer's records by written consent.

13 (3) The requirements relating to the collection of family and  
14 medical leave premiums are as provided in this chapter. Before  
15 issuing a warning letter, the department shall enforce the collection  
16 of premiums through conference and conciliation. These requirements  
17 apply to:

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

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

26 (c) A successor in the manner specified in section 67 of this  
27 act; and

28 (d) An officer, member, or owner having control or supervision of  
29 payment and/or reporting of family and medical leave premiums, or who  
30 is charged with the responsibility for the filing of returns, in the  
31 manner specified in section 68 of this act.

32 (4) Notwithstanding subsection (3) of this section, appeals are  
33 governed by section 34 of this act.

34 NEW SECTION. **Sec. 34.** APPEALS—GENERAL. (1) Any aggrieved person  
35 may file an appeal from any determination or redetermination with the  
36 commissioner within thirty days after the date of notification or  
37 mailing, whichever is earlier, of such determination or  
38 redetermination to the person's last known address. If an appeal with  
39 respect to any determination is pending as of the date when a

1 redetermination is issued, such appeal, unless withdrawn, shall be  
2 treated as an appeal from such redetermination.

3 (2) Any appeal from a determination of denial of benefits shall  
4 be deemed to be an appeal as to all weeks subsequent to the effective  
5 date of the denial for which benefits have already been denied. If no  
6 appeal is taken from any determination, or redetermination, within  
7 the time allowed by the provisions of this section for appeal, the  
8 determination or redetermination, as the case may be, shall be  
9 conclusively deemed to be correct except as provided in respect to  
10 reconsideration by the commissioner of any determination.

11 (3) Upon receipt of a notice of appeal, the commissioner shall  
12 request the assignment of an administrative law judge in accordance  
13 with chapter 34.12 RCW to conduct a hearing and issue a proposed  
14 order.

15 NEW SECTION. **Sec. 35.** APPEALS—FILING PROCESS. The appeal or  
16 petition from a determination, redetermination, order and notice of  
17 assessment, appeals decision, or commissioner's decision is deemed  
18 filed and received if properly addressed and with sufficient postage:

19 (1) If transmitted through the United States mail, on the date  
20 shown by the United States postal service cancellation mark;

21 (2) If mailed but not received by the addressee, or where  
22 received and the United States postal service cancellation mark is  
23 illegible, erroneous, or omitted, on the date it was mailed, if the  
24 sender establishes by competent evidence that the appeal or petition  
25 was deposited in the United States mail on or before the date due for  
26 filing; or

27 (3) In the case of a metered cancellation mark by the sender and  
28 a United States postal service cancellation mark on the same envelope  
29 or other wrapper, the latter shall control.

30 NEW SECTION. **Sec. 36.** APPEALS—ASSESSMENT. (1) When an order and  
31 notice of assessment has been served upon or mailed to a delinquent  
32 employer, the employer may within thirty days file an appeal with the  
33 department, stating that the assessment is unjust or incorrect and  
34 requesting a hearing. The appeal must set forth the reasons why the  
35 assessment is objected to and the amount of premiums, if any, which  
36 the employer admits to be due. If no appeal is filed, the assessment  
37 shall be conclusively deemed to be just and correct except that in  
38 such case, and in cases where payment of premiums, interest, or

1 penalties has been made pursuant to a jeopardy assessment, the  
2 commissioner may properly entertain a subsequent application for  
3 refund. The filing of an appeal on a disputed assessment with the  
4 administrative law judge stays the distraint and sale proceeding  
5 provided for in this chapter until a final decision has been made,  
6 but the filing of an appeal shall not affect the right of the  
7 commissioner to perfect a lien, as provided by this chapter, upon the  
8 property of the employer. The filing of a petition on a disputed  
9 assessment stays the accrual of interest and penalties on the  
10 disputed premiums until a final decision is made.

11 (2) Within thirty days after notice of denial of refund or  
12 adjustment has been mailed or delivered, whichever is the earlier, to  
13 an employer, the employer may file an appeal with the department for  
14 a hearing unless assessments have been appealed from and have become  
15 final. The employer shall set forth the reasons why such hearing  
16 should be granted and the amount which the employer believes should  
17 be adjusted or refunded. If no appeal is filed within said thirty  
18 days, the determination of the commissioner as stated in the notice  
19 shall be final.

20 NEW SECTION. **Sec. 37.** APPEALS—BENEFIT APPEAL PROCEDURE. (1) In  
21 any proceeding before an administrative law judge involving a dispute  
22 of an employee's initial determination, claim for waiting period  
23 credit or claim for benefits, all matters and provisions of this  
24 chapter relating to the employee's initial determination, or right to  
25 receive such credit or benefits for the period in question, shall be  
26 deemed to be in issue irrespective of the particular ground or  
27 grounds set forth in the notice of appeal in single employee cases.

28 (2) In any proceeding before an administrative law judge  
29 involving an employee's right to benefits, all parties shall be  
30 afforded an opportunity for hearing after not less than seven days'  
31 notice in accordance with RCW 34.05.434.

32 (3) In any proceeding involving an appeal relating to benefit  
33 determinations or benefit claims, the administrative law judge, after  
34 affording the parties reasonable opportunity for fair hearing, shall  
35 render its decision affirming, modifying, or setting aside the  
36 determination or decisions of the department. The parties shall be  
37 duly notified of such decision together with the reasons, which shall  
38 be deemed to be the final decision unless, within thirty days after  
39 the date of notification or mailing, whichever is the earlier, of

1 such decision, further appeal is perfected pursuant to section 39 of  
2 this act.

3 NEW SECTION. **Sec. 38.** APPEALS—ASSESSMENT APPEAL PROCEDURE. In  
4 any proceeding before an administrative law judge involving an appeal  
5 from a disputed order and notice of assessment or a disputed denial  
6 of refund or adjustment, the administrative law judge, after  
7 affording the parties a reasonable opportunity for hearing, shall  
8 affirm, modify, or set aside the notice of assessment or denial of  
9 refund. The parties shall be duly notified of such decision together  
10 with the reasons, which shall be deemed to be the final decision  
11 unless within thirty days after the date of notification or mailing,  
12 whichever is the earlier, of such decision, further appeal is  
13 perfected pursuant to the provisions of this chapter relating to  
14 review by the commissioner.

15 NEW SECTION. **Sec. 39.** APPEALS—HEARINGS. The manner in which any  
16 dispute is presented to the administrative law judge, and the conduct  
17 of hearings and appeals, shall be in accordance with rules adopted by  
18 the commissioner. A full and complete record shall be kept of all  
19 administrative law judge proceedings. All testimony at any appeal  
20 hearing shall be recorded, but need not be transcribed unless further  
21 appeal is taken.

22 NEW SECTION. **Sec. 40.** APPEALS—PETITION FOR REVIEW BY  
23 COMMISSIONER. Within thirty days from the date of notification or  
24 mailing, whichever is the earlier, of any decision of an  
25 administrative law judge, the commissioner on the commissioner's own  
26 order may, or upon petition of any interested party shall, take  
27 jurisdiction of the proceedings for the purpose of review. Appeal  
28 from any decision of an administrative law judge may be perfected so  
29 as to prevent finality of such decision if, within thirty days from  
30 the date of notification or mailing of the decision, whichever is the  
31 earlier, a petition in writing for review by the commissioner is  
32 received by the commissioner or by such representative of the  
33 commissioner as the commissioner by rule shall prescribe. The  
34 commissioner may also prevent finality of any decision of an  
35 administrative law judge and take jurisdiction of the proceedings for  
36 his or her review by entering an order so providing on his or her own

1 motion and mailing a copy thereof to the interested parties within  
2 the same period allowed for receipt of a petition for review. The  
3 time limit provided for the commissioner's assumption of jurisdiction  
4 on his or her own motion for review shall be deemed to be  
5 jurisdictional.

6 NEW SECTION. **Sec. 41.** APPEALS—WAIVER OF TIME. For good cause  
7 shown the administrative law judge or the commissioner may waive the  
8 time limitations for administrative appeals or petitions set forth in  
9 this chapter.

10 NEW SECTION. **Sec. 42.** APPEALS—COMMISSIONER REVIEW PROCEDURE.  
11 After having acquired jurisdiction for review, the commissioner shall  
12 review the proceedings in question. Prior to rendering a decision,  
13 the commissioner may order the taking of additional evidence by an  
14 administrative law judge to be made a part of the record in the case.  
15 Upon the basis of evidence submitted to the administrative law judge  
16 and such additional evidence as the commissioner may order to be  
17 taken, the commissioner shall render a decision in writing affirming,  
18 modifying, or setting aside the decision of the administrative law  
19 judge. Alternatively, the commissioner may order further proceedings  
20 to be held before the administrative law judge, upon completion of  
21 which the administrative law judge shall issue a decision in writing  
22 affirming, modifying, or setting aside its previous decision. The new  
23 decision may be appealed as provided under section 39 of this act.  
24 The commissioner shall mail the decision to the interested parties at  
25 their last known addresses.

26 NEW SECTION. **Sec. 43.** APPEALS—COMMISSIONER DECISIONS. Any  
27 decision of the commissioner involving a review of an administrative  
28 law judge decision, in the absence of a petition as provided in  
29 chapter 34.05 RCW, becomes final thirty days after notification or  
30 mailing, whichever is earlier. The commissioner shall be deemed to be  
31 a party to any judicial action involving any such decision and shall  
32 be represented in any such judicial action by the attorney general.

33 NEW SECTION. **Sec. 44.** APPEALS—JUDICIAL REVIEW PROCEDURE.  
34 Judicial review of a decision of the commissioner involving the  
35 review of a decision of an administrative law judge under this

1 chapter may be had only in accordance with the procedural  
2 requirements of RCW 34.05.570.

3 NEW SECTION. **Sec. 45.** APPEALS—SEEKING JUDICIAL REVIEW. (1) A  
4 bond of any kind shall not be required of any employee seeking  
5 judicial review from a commissioner's decision affecting such  
6 employee's application for initial determination or claim for waiting  
7 period credit or for benefits.

8 (2) A commissioner's decision shall not be stayed by a petition  
9 for judicial review unless the petitioning employer shall first  
10 deposit an undertaking in an amount deemed by the commissioner to be  
11 due, if any, from the petitioning employer, together with interest  
12 thereon, if any, with the commissioner or in the registry of the  
13 court.

14 (3) This section does not authorize a stay in the payment of  
15 benefits to an employee when such employee has been held entitled  
16 thereto by a decision of the commissioner which decision either  
17 affirms, reverses, or modifies a decision of an appeals tribunal.

18 NEW SECTION. **Sec. 46.** APPEALS—INTERSTATE PETITIONS TO THURSTON  
19 COUNTY. RCW 34.05.514 to the contrary notwithstanding, petitions to  
20 the superior court from decisions of the commissioner dealing with  
21 the applications or claims relating to benefit payments that were  
22 filed outside of this state with an authorized representative of the  
23 commissioner shall be filed with the superior court of Thurston  
24 county that shall have the original venue of such appeals.

25 NEW SECTION. **Sec. 47.** APPEALS—JUDICIAL REVIEW. (1) In all court  
26 proceedings under or pursuant to this chapter the decision of the  
27 commissioner shall be prima facie correct, and the burden of proof  
28 shall be upon the party attacking the decision.

29 (2) If the court determines that the commissioner has acted  
30 within the commissioner's power and has correctly construed the law,  
31 the decision of the commissioner shall be confirmed; otherwise, the  
32 decision shall be reversed or modified. In case of a modification or  
33 reversal the superior court shall refer the decision to the  
34 commissioner with an order directing the commissioner to proceed in  
35 accordance with the findings of the court.

1 (3) Whenever any order and notice of assessment shall have become  
2 final in accordance with the provisions of this chapter, the court  
3 shall upon application of the commissioner enter a judgment in the  
4 amount provided for in the order and notice of assessment, and the  
5 judgment shall have and be given the same effect as if entered  
6 pursuant to a civil action instituted in the court.

7 NEW SECTION. **Sec. 48.** APPEALS—APPLICABILITY OF FINDING,  
8 DETERMINATION, ETC., TO OTHER ACTION. Any finding, determination,  
9 conclusion, declaration, or final order made by the commissioner, or  
10 his or her representative or delegate, or by an appeal tribunal,  
11 administrative law judge, reviewing officer, or other agent of the  
12 department for the purposes of this chapter, shall not be conclusive,  
13 nor binding, nor admissible as evidence in any separate action  
14 outside the scope of this chapter between an employee and the  
15 employee's present or prior employer before an arbitrator, court, or  
16 judge of this state or the United States, regardless of whether the  
17 prior action was between the same or related parties or involved the  
18 same facts or was reviewed pursuant to section 44 of this act.

19 NEW SECTION. **Sec. 49.** APPEALS—FEES FOR ADMINISTRATIVE HEARINGS.  
20 An individual shall not be charged fees of any kind in any proceeding  
21 involving the employee's application for initial determination, or  
22 claim for waiting period credit, or claim for benefits, under this  
23 chapter by the commissioner or his or her representatives, or by an  
24 appeal tribunal, or any court, or any officer thereof. Any employee  
25 in any such proceeding before the commissioner or any appeal tribunal  
26 may be represented by counsel or other duly authorized agent who  
27 shall neither charge nor receive a fee for such services in excess of  
28 an amount found reasonable by the officer conducting such proceeding.

29 NEW SECTION. **Sec. 50.** APPEALS—ATTORNEYS' FEES. It shall be  
30 unlawful for any attorney engaged in any appeal to the courts on  
31 behalf of an employee involving the employee's application for  
32 initial determination or claim for benefits to charge or receive any  
33 fee in excess of a reasonable fee to be fixed by the superior court  
34 in respect to the services performed in connection with the appeal  
35 taken and to be fixed by the supreme court or the court of appeals in  
36 the event of appellate review, and if the decision of the

1 commissioner shall be reversed or modified, such fee and the costs  
2 shall be payable out of the family and medical leave enforcement  
3 account.

4 NEW SECTION. **Sec. 51.** APPEALS—REMEDIES EXCLUSIVE. The remedies  
5 provided in this chapter for determining the justness or correctness  
6 of assessments, refunds, adjustments, or claims shall be exclusive  
7 and no court shall entertain any action to enjoin an assessment or  
8 require a refund or adjustment except in accordance with the  
9 provisions of this chapter. Matters which may be determined by the  
10 procedures set out in this chapter shall not be the subject of any  
11 declaratory judgment.

12 NEW SECTION. **Sec. 52.** APPEALS—EXPENSES. (1) Whenever any appeal  
13 is taken from any decision of the commissioner to any court, all  
14 expenses and costs incurred by the commissioner, including court  
15 reporter costs and attorneys' fees and all costs taxed against such  
16 commissioner, shall be paid out of the family and medical leave  
17 enforcement account.

18 (2) Neither the commissioner nor the state shall be charged any  
19 fee for any service rendered in connection with litigation under this  
20 chapter by the clerk of any court.

21 NEW SECTION. **Sec. 53.** APPEALS—REDETERMINATIONS. (1) A  
22 determination of amount of benefits potentially payable under this  
23 chapter is not a basis for appeal. However, the determination is  
24 subject to request by the employee on family and medical leave for  
25 redetermination by the commissioner at any time within one year from  
26 the date of delivery or mailing of such determination, or any  
27 redetermination thereof. A redetermination shall be furnished to the  
28 employee in writing and provide the basis for appeal.

29 (2) A determination of denial of benefits becomes final, in the  
30 absence of timely appeal therefrom. The commissioner may redetermine  
31 such determinations at any time within one year from delivery or  
32 mailing to correct an error in identity, omission of fact, or  
33 misapplication of law with respect to the facts.

34 (3) A determination of allowance of benefits becomes final, in  
35 the absence of a timely appeal therefrom. The commissioner may  
36 redetermine such allowance at any time within two years following the



1 eligibility period in which such allowance was made in order to  
2 recover any benefits for which recovery is provided under this  
3 chapter.

4 (4) A redetermination may be made at any time: (a) To conform to  
5 a final court decision applicable to either an initial determination  
6 or a determination of denial or allowance of benefits; (b) in the  
7 event of a back pay award or settlement affecting the allowance of  
8 benefits; or (c) in the case of misrepresentation or willful failure  
9 to report a material fact. Written notice of any such redetermination  
10 shall be promptly given by mail or delivered to such interested  
11 parties as were notified of the initial determination or  
12 determination of denial or allowance of benefits and any new  
13 interested party or parties who, pursuant to such rule as the  
14 commissioner may adopt, would be an interested party.

15 NEW SECTION. **Sec. 54.** AUTHORITY TO COMPROMISE. The commissioner  
16 may compromise any claim for premiums, interest, or penalties due and  
17 owing from an employer, and any amount owed by an individual because  
18 of benefit overpayments existing or arising under this chapter in any  
19 case where collection of the full amount due and owing, whether  
20 reduced to judgment or otherwise, would be against equity and good  
21 conscience. Whenever a compromise is made by the commissioner in the  
22 case of a claim for premiums, interest, or penalties, whether reduced  
23 to judgment or otherwise, there shall be placed on file in the  
24 department a statement of the amount of premiums, interest, and  
25 penalties imposed by law and claimed due, attorneys' fees and costs,  
26 if any, a complete record of the compromise agreement, and the amount  
27 actually paid in accordance with the terms of the compromise  
28 agreement. Whenever a compromise is made by the commissioner in the  
29 case of a claim of a benefit overpayment, whether reduced to judgment  
30 or otherwise, there shall be placed on file in the department a  
31 statement of the amount of the benefit overpayment, attorneys' fees  
32 and costs, if any, a complete record of the compromise agreement, and  
33 the amount actually paid in accordance with the terms of the  
34 compromise agreement. If any such compromise is accepted by the  
35 commissioner, within such time as may be stated in the compromise or  
36 agreed to, such compromise shall be final and conclusive and except  
37 upon showing of fraud or malfeasance or misrepresentation of a  
38 material fact the case shall not be reopened as to the matters agreed  
39 upon. In any suit, action, or proceeding, such agreement or any

1 determination, collection, payment, adjustment, refund, or credit  
2 made in accordance therewith shall not be annulled, modified, set  
3 aside, or disregarded.

4 NEW SECTION. **Sec. 55.** INTEREST ON DELINQUENT PREMIUMS. If  
5 premiums are not paid on the date on which they are due and payable  
6 as prescribed by the commissioner, the whole or part thereof  
7 remaining unpaid shall bear interest at the rate of one percent per  
8 month or fraction thereof from and after such date until payment plus  
9 accrued interest is received by him or her. The date as of which  
10 payment of premiums, if mailed, is deemed to have been received may  
11 be determined by such regulations as the commissioner may prescribe.  
12 Interest collected pursuant to this section shall be paid into the  
13 family and medical leave enforcement account. Interest shall not  
14 accrue on premiums from any estate in the hands of a receiver,  
15 executor, administrator, trustee in bankruptcy, common law assignee,  
16 or other liquidating officer subsequent to the date when such  
17 receiver, executor, administrator, trustee in bankruptcy, common law  
18 assignee, or other liquidating officer qualifies as such, but  
19 premiums accruing with respect to employment of persons by any  
20 receiver, executor, administrator, trustee in bankruptcy, common law  
21 assignee, or other liquidating officer shall become due and shall  
22 draw interest in the same manner as premiums due from other  
23 employers. Where adequate information has been furnished to the  
24 department and the department has failed to act or has advised the  
25 employer of no liability or inability to decide the issue, interest  
26 may be waived.

27 NEW SECTION. **Sec. 56.** LIEN FOR PREMIUMS GENERALLY. The claim of  
28 the employment security department for any premiums, interest, or  
29 penalties not paid when due, shall be a lien prior to all other liens  
30 or claims and on a parity with prior tax liens against all property  
31 and rights to property, whether real or personal, belonging to the  
32 employer. In order to avail itself of the lien hereby created, the  
33 department shall file with any county auditor where property of the  
34 employer is located a statement and claim of lien specifying the  
35 amount of delinquent premiums, interest, and penalties claimed by the  
36 department. From the time of filing for record, the amount required  
37 to be paid shall constitute a lien upon all property and rights to  
38 property, whether real or personal, in the county, owned by the

1 employer or acquired by him or her. The lien shall not be valid  
2 against any purchaser, holder of a security interest, mechanic's  
3 lien, or judgment lien creditor until notice thereof has been filed  
4 with the county auditor. This lien shall be separate and apart from,  
5 and in addition to, any other lien or claim created by, or provided  
6 for in, this chapter. When any such notice of lien has been so filed,  
7 the commissioner may release the same by filing a certificate of  
8 release when it shall appear that the amount of delinquent premiums,  
9 interest, and penalties have been paid, or when such assurance of  
10 payment shall be made as the commissioner may deem to be adequate.  
11 Fees for filing and releasing the lien provided herein may be charged  
12 to the employer and may be collected from the employer utilizing the  
13 remedies provided in this chapter for the collection of premiums.

14 NEW SECTION. **Sec. 57.** LIEN IN EVENT OF INSOLVENCY OR  
15 DISSOLUTION. In the event of any distribution of an employer's assets  
16 pursuant to an order of any court, including any receivership,  
17 probate, legal dissolution, or similar proceeding, or in case of any  
18 assignment for the benefit of creditors, composition, or similar  
19 proceeding, premiums, interest, or penalties then or thereafter due  
20 shall be a lien upon all the assets of such employer. Said lien is  
21 prior to all other liens or claims except prior tax liens, other  
22 liens provided by this chapter, and claims for remuneration for  
23 services of not more than two hundred fifty dollars to each claimant  
24 earned within six months of the commencement of the proceeding. The  
25 mere existence of a condition of insolvency or the institution of any  
26 judicial proceeding for legal dissolution or of any proceeding for  
27 distribution of assets shall cause such a lien to attach without  
28 action on behalf of the commissioner or the state. In the event of an  
29 employer's adjudication in bankruptcy, judicially confirmed extension  
30 proposal, or composition, under the federal bankruptcy act of 1898,  
31 as amended, premiums, interest, or penalties then or thereafter due  
32 shall be entitled to such priority as provided in that act, as  
33 amended.

34 NEW SECTION. **Sec. 58.** ORDER AND NOTICE OF ASSESSMENT. At any  
35 time after the commissioner shall find that any premiums, interest,  
36 or penalties have become delinquent, the commissioner may issue an  
37 order and notice of assessment specifying the amount due, which order  
38 and notice of assessment shall be served upon the delinquent employer

1 in the manner prescribed for the service of a summons in a civil  
2 action, or using a method by which the mailing can be tracked or the  
3 delivery can be confirmed. Failure of the employer to receive such  
4 notice or order whether served or mailed shall not release the  
5 employer from any tax, or any interest or penalties thereon.

6 NEW SECTION. **Sec. 59.** JEOPARDY ASSESSMENT. If the commissioner  
7 has reason to believe that an employer is insolvent or if any reason  
8 exists why the collection of any premiums accrued will be jeopardized  
9 by delaying collection, he or she may make an immediate assessment  
10 thereof and may proceed to enforce collection immediately, but  
11 interest and penalties shall not begin to accrue upon any premiums  
12 until the date when such premiums would normally have become  
13 delinquent.

14 NEW SECTION. **Sec. 60.** DISTRAINT, SEIZURE, AND SALE. If the  
15 amount of premiums, interest, or penalties assessed by the  
16 commissioner by order and notice of assessment provided in this  
17 chapter is not paid within ten days after the service or mailing of  
18 the order and notice of assessment, the commissioner or his or her  
19 duly authorized representative may collect the amount stated in said  
20 assessment by the distraint, seizure, and sale of the property,  
21 goods, chattels, and effects of said delinquent employer. There shall  
22 be exempt from distraint and sale under this section such goods and  
23 property as are exempt from execution under the laws of this state.

24 NEW SECTION. **Sec. 61.** DISTRAINT PROCEDURE. The commissioner,  
25 upon making a distraint, shall seize the property and shall make an  
26 inventory of the property distrained, a copy of which shall be mailed  
27 to the owner of such property or personally delivered to him or her,  
28 and shall specify the time and place when said property shall be  
29 sold. A notice specifying the property to be sold and the time and  
30 place of sale shall be posted in at least two public places in the  
31 county wherein the seizure has been made. The time of sale shall be  
32 not less than ten nor more than twenty days from the date of posting  
33 of such notices. Said sale may be adjourned from time to time at the  
34 discretion of the commissioner, but not for a time to exceed in all  
35 sixty days. Said sale shall be conducted by the commissioner or his  
36 or her authorized representative who shall proceed to sell such  
37 property by parcel or by lot at a public auction, and who may set a

1 minimum price to include the expenses of making a levy and of  
2 advertising the sale, and if the amount bid for such property at the  
3 sale is not equal to the minimum price so fixed, the commissioner or  
4 his or her representative may declare such property to be purchased  
5 by the employment security department for such minimum price. In such  
6 event the delinquent account shall be credited with the amount for  
7 which the property has been sold. Property acquired by the employment  
8 security department as herein prescribed may be sold by the  
9 commissioner or his or her representative at public or private sale,  
10 and the amount realized shall be placed in the family and medical  
11 leave account. In all cases of sale, as aforesaid, the commissioner  
12 shall issue a bill of sale or a deed to the purchaser and said bill  
13 of sale or deed shall be prima facie evidence of the right of the  
14 commissioner to make such sale and conclusive evidence of the  
15 regularity of his or her proceeding in making the sale, and shall  
16 transfer to the purchaser all right, title, and interest of the  
17 delinquent employer in said property. The proceeds of any such sale,  
18 except in those cases wherein the property has been acquired by the  
19 employment security department, shall be first applied by the  
20 commissioner in satisfaction of the delinquent account, and out of  
21 any sum received in excess of the amount of delinquent premiums,  
22 interest, and penalties the administration fund shall be reimbursed  
23 for the costs of distraint and sale. Any excess which shall  
24 thereafter remain in the hands of the commissioner shall be refunded  
25 to the delinquent employer. Sums so refundable to a delinquent  
26 employer may be subject to seizure or distraint in the hands of the  
27 commissioner by any other taxing authority of the state or its  
28 political subdivisions.

29 NEW SECTION. **Sec. 62.** NOTICE AND ORDER TO WITHHOLD AND DELIVER.  
30 The commissioner is hereby authorized to issue to any person, firm,  
31 corporation, political subdivision, or department of the state, a  
32 notice and order to withhold and deliver property of any kind  
33 whatsoever when the commissioner has reason to believe that there is  
34 in the possession of such person, firm, corporation, political  
35 subdivision, or department, property which is due, owing, or  
36 belonging to any person, firm, or corporation upon whom the  
37 department has served a benefit overpayment assessment or a notice  
38 and order of assessment for premiums, interest, or penalties. The  
39 effect of a notice to withhold and deliver shall be continuous from

1 the date such notice and order to withhold and deliver is first made  
2 until the liability is satisfied or becomes unenforceable because of  
3 a lapse of time. The notice and order to withhold and deliver shall  
4 be served by the sheriff or the sheriff's deputy of the county  
5 wherein the service is made, using a method by which the mailing can  
6 be tracked or the delivery can be confirmed, or by any duly  
7 authorized representative of the commissioner. Any person, firm,  
8 corporation, political subdivision, or department upon whom service  
9 has been made is hereby required to answer the notice within twenty  
10 days exclusive of the day of service, under oath and in writing, and  
11 shall make true answers to the matters inquired of in the notice. In  
12 the event there is in the possession of any such person, firm,  
13 corporation, political subdivision, or department, any property which  
14 may be subject to the claim of the employment security department of  
15 the state, such property shall be delivered forthwith to the  
16 commissioner or the commissioner's duly authorized representative  
17 upon demand to be held in trust by the commissioner for application  
18 on the indebtedness involved or for return, without interest, in  
19 accordance with final determination of liability or nonliability, or  
20 in the alternative, there shall be furnished a good and sufficient  
21 bond satisfactory to the commissioner conditioned upon final  
22 determination of liability. Should any person, firm, or corporation  
23 fail to make answer to an order to withhold and deliver within the  
24 time prescribed herein, it shall be lawful for the court, after the  
25 time to answer such order has expired, to render judgment by default  
26 against such person, firm, or corporation for the full amount claimed  
27 by the commissioner in the notice to withhold and deliver, together  
28 with costs.

29 NEW SECTION. **Sec. 63.** ~~WARRANT—AUTHORIZED—FILING—LIEN—~~  
30 ~~ENFORCEMENT.~~ Whenever any order and notice of assessment or jeopardy  
31 assessment has become final in accordance with the provisions of this  
32 chapter the commissioner may file with the clerk of any county within  
33 the state a warrant in the amount of the notice of assessment plus  
34 interest, penalties, and a filing fee under RCW 36.18.012(10). The  
35 clerk of the county wherein the warrant is filed shall immediately  
36 designate a superior court cause number for such warrant, and the  
37 clerk shall cause to be entered in the judgment docket under the  
38 superior court cause number assigned to the warrant, the name of the  
39 employer mentioned in the warrant, the amount of the tax, interest,

1 penalties, and filing fee and the date when such warrant was filed.  
2 The aggregate amount of such warrant as docketed shall become a lien  
3 upon the title to, and interest in all real and personal property of  
4 the employer against whom the warrant is issued, the same as a  
5 judgment in a civil case duly docketed in the office of such clerk.  
6 Such warrant so docketed shall be sufficient to support the issuance  
7 of writs of execution and writs of garnishment in favor of the state  
8 in the manner provided by law in the case of civil judgment, wholly  
9 or partially unsatisfied. The clerk of the court shall be entitled to  
10 a filing fee under RCW 36.18.012(10), which shall be added to the  
11 amount of the warrant, and charged by the commissioner to the  
12 employer or employing unit. A copy of the warrant shall be mailed to  
13 the employer or employing unit using a method by which the mailing  
14 can be tracked or the delivery can be confirmed within five days of  
15 filing with the clerk.

16 NEW SECTION. **Sec. 64.** COLLECTION BY CIVIL ACTION. (1) If after  
17 due notice, any employer defaults in any payment of premiums,  
18 interest, or penalties, the amount due may be collected by civil  
19 action in the name of the state, and the employer adjudged in default  
20 shall pay the cost of such action. Any lien created by this chapter  
21 may be foreclosed by decree of the court in any such action. Civil  
22 actions brought under this chapter to collect premiums, interest, or  
23 penalties from an employer shall be heard by the court at the  
24 earliest possible date and shall be entitled to preference upon the  
25 calendar of the court over all other civil actions except petitions  
26 for judicial review under this chapter, cases arising under the  
27 unemployment compensation laws of this state, and cases arising under  
28 the industrial insurance laws of this state.

29 (2) Any employing unit that is not a resident of this state and  
30 that exercises the privilege of having one or more individuals  
31 perform service for it within this state, and any resident employing  
32 unit that exercises that privilege and thereafter removes from this  
33 state, shall be deemed thereby to appoint the secretary of state as  
34 its agent and attorney for the acceptance of process in any action  
35 under this chapter. In instituting such an action against any such  
36 employing unit the commissioner shall cause such process or notice to  
37 be filed with the secretary of state and such service shall be  
38 sufficient service upon such employing unit, and shall be of the same  
39 force and validity as if served upon it personally within this state:

1 PROVIDED, That the commissioner shall forthwith send notice of the  
2 service of such process or notice, together with a copy thereof, by  
3 registered mail, return receipt requested, to such employing unit at  
4 its last known address and such return receipt, the commissioner's  
5 affidavit of compliance with the provisions of this section, and a  
6 copy of the notice of service shall be appended to the original of  
7 the process filed in the court in which such action is pending.

8 NEW SECTION. **Sec. 65.** INJUNCTION PROCEEDINGS. Any employer who  
9 is delinquent in the payment of premiums, interest, or penalties may  
10 be enjoined upon the suit of the state of Washington from continuing  
11 in business in this state or employing persons herein until the  
12 delinquent premiums, interest, and penalties have been paid, or until  
13 the employer has furnished a good and sufficient bond in a sum equal  
14 to double the amount of premiums, interest, and penalties already  
15 delinquent, plus such further sum as the court deems adequate to  
16 protect the department in the collection of premiums, interest, and  
17 penalties which will become due from such employer during the next  
18 ensuing calendar year, said bond to be conditioned upon payment of  
19 all premiums, interest, and penalties due and owing within thirty  
20 days after the expiration of the next ensuing calendar year or at  
21 such earlier date as the court may fix. Action under this section may  
22 be instituted in the superior court of any county of the state  
23 wherein the employer resides, has its principal place of business, or  
24 where it has anyone performing services for it, whether or not such  
25 services constitute employment.

26 NEW SECTION. **Sec. 66.** CHARGE OFF OF UNCOLLECTIBLE ACCOUNTS. The  
27 commissioner may charge off as uncollectible and no longer an asset  
28 of the family and medical leave account, any delinquent premiums,  
29 interest, penalties, credits, or benefit overpayments if the  
30 commissioner is satisfied that there are no cost-effective means of  
31 collecting the premiums, interest, penalties, credits, or benefit  
32 overpayments.

33 NEW SECTION. **Sec. 67.** PREMIUMS DUE AND PAYABLE UPON TERMINATION  
34 OR DISPOSAL OF BUSINESS—SUCCESSOR LIABILITY. Whenever any employer  
35 quits business, or sells out, exchanges, or otherwise disposes of the  
36 employer's business or stock of goods, any premiums payable under  
37 this chapter shall become immediately due and payable, and the



1 employer shall, within ten days, make a return and pay the premiums  
2 due; and any person who becomes a successor to such business shall  
3 become liable for the full amount of the premiums and withhold from  
4 the purchase price a sum sufficient to pay any premiums due from the  
5 employer until such time as the employer produces a receipt from the  
6 employment security department showing payment in full of any  
7 premiums due or a certificate that no premium is due and, if such  
8 premium is not paid by the employer within ten days from the date of  
9 such sale, exchange, or disposal, the successor shall become liable  
10 for the payment of the full amount of premiums, and the payment  
11 thereof by such successor shall, to the extent thereof, be deemed a  
12 payment upon the purchase price, and if such payment is greater in  
13 amount than the purchase price the amount of the difference shall  
14 become a debt due such successor from the employer. A successor may  
15 not be liable for any premiums due from the person from whom that  
16 person has acquired a business or stock of goods if that person gives  
17 written notice to the employment security department of such  
18 acquisition and no assessment is issued by the department within one  
19 hundred eighty days of receipt of such notice against the former  
20 operator of the business and a copy thereof mailed to such successor.

21 NEW SECTION. **Sec. 68.** EMPLOYER PENALTIES. (1) An employer who  
22 willfully fails to make the required reports is subject to penalties  
23 as follows: (a) For the second occurrence, the penalty is seventy-  
24 five dollars; (b) for the third occurrence, the penalty is one  
25 hundred fifty dollars; and (c) for the fourth occurrence and for each  
26 occurrence thereafter, the penalty is two hundred fifty dollars.

27 (2) An employer who willfully fails to remit the full amount of  
28 the premiums when due is liable, in addition to the full amount of  
29 premiums due and amounts assessed as interest under section 55 of  
30 this act, to a penalty equal to the premiums and interest.

31 (3) Any penalties under this section shall be deposited into the  
32 family and medical leave enforcement account.

33 (4) For the purposes of this section, "willful" means a knowing  
34 and intentional action that is neither accidental nor the result of a  
35 bona fide dispute.

36 (5) The department shall enforce the collection of penalties  
37 through conference and conciliation.

38 (6) These penalties may be appealed as provided in sections 34  
39 through 53 of this act.

1        NEW SECTION.    **Sec. 69.**    OTHER BENEFITS. (1) Leave from employment  
2 under this chapter is in addition to leave from employment during  
3 which benefits are paid or are payable under Title 51 RCW or other  
4 applicable federal or state industrial insurance laws.

5        (2) In any week in which an employee is eligible to receive  
6 benefits under Title 50 or 51 RCW, or other applicable federal or  
7 state unemployment compensation, industrial insurance, or disability  
8 insurance laws, the employee is disqualified from receiving family or  
9 medical leave benefits under this chapter.

10       NEW SECTION.    **Sec. 70.**    HEALTH BENEFITS. If required by the  
11 federal family and medical leave act, as it existed on the effective  
12 date of this section during any period of family or medical leave  
13 taken under this chapter, the employer shall maintain any existing  
14 health benefits of the employee in force for the duration of such  
15 leave as if the employee had continued to work from the date the  
16 employee commenced family or medical leave until the date the  
17 employee returns to employment. If the employer and employee share  
18 the cost of the existing health benefits, the employee remains  
19 responsible for the employee's share of the cost. This section does  
20 not apply to an employee who is not in employment for an employer at  
21 the time of filing an application for benefits.

22       NEW SECTION.    **Sec. 71.**    EMPLOYEE NOTICE OF RIGHTS. Whenever an  
23 employee of an employer who is qualified for benefits under this  
24 chapter is absent from work to provide family leave, or take medical  
25 leave for more than seven consecutive days, the employer shall  
26 provide the employee with a written statement of the employee's  
27 rights under this chapter in a form prescribed by the commissioner.  
28 The statement must be provided to the employee within five business  
29 days after the employee's seventh consecutive day of absence due to  
30 family or medical leave, or within five business days after the  
31 employer has received notice that the employee's absence is due to  
32 family or medical leave, whichever is later.

33       NEW SECTION.    **Sec. 72.**    EMPLOYER PROHIBITIONS. (1) It is unlawful  
34 for any employer to:

35        (a) Interfere with, restrain, or deny the exercise of, or the  
36 attempt to exercise, any valid right provided under this chapter; or

1 (b) Discharge or in any other manner discriminate against any  
2 employee for opposing any practice made unlawful by this chapter.

3 (2) It is unlawful for any person to discharge or in any other  
4 manner discriminate against any employee because the employee has:

5 (a) Filed any complaint, or has instituted or caused to be  
6 instituted any proceeding, under or related to this chapter;

7 (b) Given, or is about to give, any information in connection  
8 with any inquiry or proceeding relating to any right provided under  
9 this chapter; or

10 (c) Testified, or is about to testify, in any inquiry or  
11 proceeding relating to any right provided under this chapter.

12 NEW SECTION. **Sec. 73.** INVESTIGATIONS AND APPEALS. Upon  
13 complaint by an employee, the commissioner shall investigate to  
14 determine if there has been compliance with this chapter and the  
15 rules adopted under this chapter. If the investigation indicates that  
16 a violation may have occurred, a hearing must be held in accordance  
17 with chapter 34.05 RCW. The commissioner must issue a written  
18 determination including the commissioner's findings after the  
19 hearing. A judicial appeal from the commissioner's determination may  
20 be taken in accordance with chapter 34.05 RCW.

21 NEW SECTION. **Sec. 74.** REMEDIES. Any employer who violates  
22 section 72 of this act is liable for damages equal to:

23 (1) The amount of:

24 (a) Any wages, salary, employment benefits, or other compensation  
25 denied or lost to such employee by reason of the violation; or

26 (b) In a case in which wages, salary, employment benefits, or  
27 other compensation have not been denied or lost to the employee, any  
28 actual monetary losses sustained by the employee as a direct result  
29 of the violation, such as the cost of providing care, up to a sum  
30 equal to wages or salary for the employee for up to sixteen weeks, or  
31 eighteen weeks if the employee experiences a serious health condition  
32 with a pregnancy that results in incapacity.

33 (2)(a) The interest on the amount described in subsection (1) of  
34 this section calculated at the prevailing rate; and

35 (b) For a willful violation, an additional amount as liquidated  
36 damages equal to the sum of the amount described in subsection (1) of  
37 this section and the interest described in this subsection (2). For  
38 purposes of this section, "willful" means a knowing and intentional

1 action that is neither accidental nor the result of a bona fide  
2 dispute.

3 NEW SECTION. **Sec. 75.** POSTING OF NOTICE. Each employer shall  
4 post and keep posted, in conspicuous places on the premises of the  
5 employer where notices to employees and applicants for employment are  
6 customarily posted, a notice, to be prepared or approved by the  
7 commissioner, setting forth excerpts from, or summaries of, the  
8 pertinent provisions of this chapter and information pertaining to  
9 the filing of a complaint. Any employer that willfully violates this  
10 section may be subject to a civil penalty of not more than one  
11 hundred dollars for each separate offense. Any penalties collected by  
12 the department under this section shall be deposited into the family  
13 and medical leave enforcement account.

14 NEW SECTION. **Sec. 76.** FAMILY AND MEDICAL LEAVE ENFORCEMENT  
15 ACCOUNT. The family and medical leave enforcement account is created  
16 in the custody of the state treasurer. Any money in the family leave  
17 insurance account created in section 19, chapter 357, Laws of 2007 is  
18 transferred to the account created in this section. Any penalties and  
19 interest collected under sections 5, 20, 32, 33, 55, 68, and 75 of  
20 this act shall be deposited into the account and shall be used only  
21 for the purposes of administering and enforcing this chapter. Only  
22 the commissioner may authorize expenditures from the account. The  
23 account is subject to allotment procedures under chapter 43.88 RCW,  
24 but an appropriation is not required for expenditures.

25 NEW SECTION. **Sec. 77.** OTHER LAWS—DISCRIMINATION. Nothing in  
26 this chapter shall be construed to modify or affect any state or  
27 local law prohibiting discrimination on the basis of race, creed,  
28 religion, color, national origin, families with children, sex,  
29 marital status, sexual orientation including gender expression or  
30 identity, age, honorably discharged veteran or military status, or  
31 the presence of any sensory, mental, or physical disability or the  
32 use of a trained dog guide or service animal by a person with a  
33 disability.

34 NEW SECTION. **Sec. 78.** MISCELLANEOUS RIGHTS. (1) Nothing in this  
35 chapter shall be construed to discourage employers from:

1 (a) Adopting or retaining leave policies more generous than any  
2 policies that comply with the requirements under this chapter; or

3 (b) Making payments to supplement the benefit payments provided  
4 under section 6 of this act to an employee on family or medical  
5 leave.

6 (2) Any agreement by an individual to waive his or her rights  
7 under this chapter is void as against public policy.

8 (3) After January 1, 2020, subject to section 87 of this act, an  
9 employee's rights under this chapter may not be diminished by a  
10 collective bargaining agreement or employer policy.

11 NEW SECTION. **Sec. 79.** COORDINATION OF LEAVE UNDER OTHER LAWS.

12 (1) Leave under this chapter and leave under the federal family and  
13 medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6,  
14 as it existed on the effective date of this section) is in addition  
15 to any leave for sickness or temporary disability because of  
16 pregnancy or childbirth.

17 (2) Unless otherwise expressly permitted by the employer, leave  
18 taken under this chapter must be taken concurrently with any leave  
19 taken under the federal family and medical leave act of 1993 (Act  
20 Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on the effective  
21 date of this section).

22 NEW SECTION. **Sec. 80.** FEDERAL INCOME TAXES. (1) If the internal

23 revenue service determines that family or medical leave benefits  
24 under this chapter are subject to federal income tax, the department  
25 must advise an employee filing a new application for benefits, at the  
26 time of filing such application, that:

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

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

30 (c) The employee may elect to have federal income tax deducted  
31 and withheld from the employee's payment of benefits at the amount  
32 specified in the federal internal revenue code; and

33 (d) The employee is permitted to change a previously elected  
34 withholding status.

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

1 (3) The commissioner shall follow all procedures specified by the  
2 federal internal revenue service pertaining to the deducting and  
3 withholding of income tax.

4 NEW SECTION. **Sec. 81.** NO CONTINUING RIGHT. This chapter does  
5 not create a continuing entitlement or contractual right. The  
6 legislature reserves the right to amend or repeal all or part of this  
7 chapter at any time, and a benefit or other right granted under this  
8 chapter exists subject to the legislature's power to amend or repeal  
9 this chapter. There is no vested private right of any kind against  
10 such amendment or repeal.

11 NEW SECTION. **Sec. 82.** FAMILY AND MEDICAL LEAVE INSURANCE  
12 ACCOUNT. (1) The family and medical leave insurance account is  
13 created in the custody of the state treasurer. All receipts from  
14 premiums imposed under this chapter must be deposited in the account.  
15 Expenditures from the account may be used only for the purposes of  
16 the family and medical leave program. Only the commissioner or the  
17 commissioner's designee may authorize expenditures from the account.  
18 The account is subject to the allotment procedures under chapter  
19 43.88 RCW. An appropriation is required for administrative expenses,  
20 but not for benefit payments.

21 (2) Money deposited in the account shall remain a part of the  
22 account until expended pursuant to the requirements of this chapter  
23 or transferred in accordance with subsection (3) of this section. The  
24 commissioner shall maintain a separate record of the deposit,  
25 obligation, expenditure, and return of funds so deposited. Any money  
26 so deposited which either will not be obligated within the period  
27 specified by the appropriations act or remains unobligated at the end  
28 of the period, and any money which has been obligated within the  
29 period but will not be expended, shall be returned promptly to the  
30 family and medical leave insurance account.

31 (3) Money shall be transferred from the family and medical leave  
32 insurance account and deposited in the unemployment trust fund solely  
33 for the repayment of benefits not charged to employers as defined in  
34 RCW 50.29.021(4)(a)(vii). The commissioner shall direct the transfer,  
35 which must occur on or before the cut-off date as defined in RCW  
36 50.29.010.

37 (4) Money transferred as provided in subsection (3) of this  
38 section for the repayment of benefits not charged to employers shall

1 be deposited in the unemployment compensation fund and shall remain a  
2 part of the unemployment compensation fund until expended pursuant to  
3 RCW 50.16.030. The commissioner shall maintain a separate record of  
4 the deposit, obligation, expenditure, and return of funds so  
5 deposited. Any money so deposited which either will not be obligated  
6 within the period specified by the appropriation law or remains  
7 unobligated at the end of the period, and any money which has been  
8 obligated within the period but will not be expended, shall be  
9 returned promptly to the account of this state in the unemployment  
10 trust fund.

11 **Sec. 83.** RCW 50.29.021 and 2013 c 244 s 1 and 2013 c 189 s 3 are  
12 each reenacted and amended to read as follows:

13 UNEMPLOYMENT NONCHARGING OF BENEFITS. (1) This section applies to  
14 benefits charged to the experience rating accounts of employers for  
15 claims that have an effective date on or after January 4, 2004.

16 (2)(a) An experience rating account shall be established and  
17 maintained for each employer, except employers as described in RCW  
18 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make  
19 payments in lieu of contributions, taxable local government employers  
20 as described in RCW 50.44.035, and those employers who are required  
21 to make payments in lieu of contributions, based on existing records  
22 of the employment security department.

23 (b) Benefits paid to an eligible individual shall be charged to  
24 the experience rating accounts of each of such individual's employers  
25 during the individual's base year in the same ratio that the wages  
26 paid by each employer to the individual during the base year bear to  
27 the wages paid by all employers to that individual during that base  
28 year, except as otherwise provided in this section.

29 (c) When the eligible individual's separating employer is a  
30 covered contribution paying base year employer, benefits paid to the  
31 eligible individual shall be charged to the experience rating account  
32 of only the individual's separating employer if the individual  
33 qualifies for benefits under:

34 (i) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and  
35 became unemployed after having worked and earned wages in the bona  
36 fide work; or

37 (ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through  
38 (x).

1 (3) The legislature finds that certain benefit payments, in whole  
2 or in part, should not be charged to the experience rating accounts  
3 of employers except those employers described in RCW 50.44.010,  
4 50.44.030, and 50.50.030 who have properly elected to make payments  
5 in lieu of contributions, taxable local government employers  
6 described in RCW 50.44.035, and those employers who are required to  
7 make payments in lieu of contributions, as follows:

8 (a) Benefits paid to any individual later determined to be  
9 ineligible shall not be charged to the experience rating account of  
10 any contribution paying employer, except as provided in subsection  
11 (5) of this section.

12 (b) Benefits paid to an individual filing under the provisions of  
13 chapter 50.06 RCW shall not be charged to the experience rating  
14 account of any contribution paying employer only if:

15 (i) The individual files under RCW 50.06.020(1) after receiving  
16 crime victims' compensation for a disability resulting from a  
17 nonwork-related occurrence; or

18 (ii) The individual files under RCW 50.06.020(2).

19 (c) Benefits paid which represent the state's share of benefits  
20 payable as extended benefits defined under RCW 50.22.010(6) shall not  
21 be charged to the experience rating account of any contribution  
22 paying employer.

23 (d) In the case of individuals who requalify for benefits under  
24 RCW 50.20.050 or 50.20.060, benefits based on wage credits earned  
25 prior to the disqualifying separation shall not be charged to the  
26 experience rating account of the contribution paying employer from  
27 whom that separation took place.

28 (e) Benefits paid to an individual who qualifies for benefits  
29 under RCW 50.20.050 (1)(b) (iv) or (xi) or (2)(b) (iv) or (xi), as  
30 applicable, shall not be charged to the experience rating account of  
31 any contribution paying employer.

32 (f) With respect to claims with an effective date on or after the  
33 first Sunday following April 22, 2005, benefits paid that exceed the  
34 benefits that would have been paid if the weekly benefit amount for  
35 the claim had been determined as one percent of the total wages paid  
36 in the individual's base year shall not be charged to the experience  
37 rating account of any contribution paying employer. This subsection  
38 (3)(f) does not apply to the calculation of contribution rates under  
39 RCW 50.29.025 for rate year 2010 and thereafter.



1 (g) The forty-five dollar increase paid as part of an  
2 individual's weekly benefit amount as provided in RCW 50.20.1201 and  
3 the twenty-five dollar increase paid as part of an individual's  
4 weekly benefit amount as provided in RCW 50.20.1202 shall not be  
5 charged to the experience rating account of any contribution paying  
6 employer.

7 (h) With respect to claims where the minimum amount payable  
8 weekly is increased to one hundred fifty-five dollars pursuant to RCW  
9 50.20.1201(3), benefits paid that exceed the benefits that would have  
10 been paid if the minimum amount payable weekly had been calculated  
11 pursuant to RCW 50.20.120 shall not be charged to the experience  
12 rating account of any contribution paying employer.

13 (i) Upon approval of an individual's training benefits plan  
14 submitted in accordance with RCW 50.22.155(2), an individual is  
15 considered enrolled in training, and regular benefits beginning with  
16 the week of approval shall not be charged to the experience rating  
17 account of any contribution paying employer.

18 (j) Training benefits paid to an individual under RCW 50.22.155  
19 shall not be charged to the experience rating account of any  
20 contribution paying employer.

21 (4)(a) A contribution paying base year employer, except employers  
22 as provided in subsection (6) of this section, not otherwise eligible  
23 for relief of charges for benefits under this section, may receive  
24 such relief if the benefit charges result from payment to an  
25 individual who:

26 (i) Last left the employ of such employer voluntarily for reasons  
27 not attributable to the employer;

28 (ii) Was discharged for misconduct or gross misconduct connected  
29 with his or her work not a result of inability to meet the minimum  
30 job requirements;

31 (iii) Is unemployed as a result of closure or severe curtailment  
32 of operation at the employer's plant, building, worksite, or other  
33 facility. This closure must be for reasons directly attributable to a  
34 catastrophic occurrence such as fire, flood, or other natural  
35 disaster;

36 (iv) Continues to be employed on a regularly scheduled permanent  
37 part-time basis by a base year employer and who at some time during  
38 the base year was concurrently employed and subsequently separated  
39 from at least one other base year employer. Benefit charge relief  
40 ceases when the employment relationship between the employer

1 requesting relief and the claimant is terminated. This subsection  
2 does not apply to shared work employers under chapter 50.60 RCW;

3 (v) Continues to be employed on a regularly scheduled permanent  
4 part-time basis by a base year employer and who qualified for two  
5 consecutive unemployment claims where wages were attributable to at  
6 least one employer who employed the individual in both base years.  
7 Benefit charge relief ceases when the employment relationship between  
8 the employer requesting relief and the claimant is terminated. This  
9 subsection does not apply to shared work employers under chapter  
10 50.60 RCW; (~~or~~)

11 (vi) Was hired to replace an employee who is a member of the  
12 military reserves or National Guard and was called to federal active  
13 military service by the president of the United States and is  
14 subsequently laid off when that employee is reemployed by their  
15 employer upon release from active duty within the time provided for  
16 reemployment in RCW 73.16.035; or

17 (vii) Worked for an employer for twenty weeks or less, and was  
18 laid off at the end of temporary employment when that employee  
19 temporarily replaced a permanent employee receiving family or medical  
20 leave benefits under this chapter, and the layoff is due to the  
21 return of that permanent employee. This subsection (4)(a)(vii)  
22 applies to claims with an effective date on or after January 1, 2020.

23 (b) The employer requesting relief of charges under this  
24 subsection must request relief in writing within thirty days  
25 following mailing to the last known address of the notification of  
26 the valid initial determination of such claim, stating the date and  
27 reason for the separation or the circumstances of continued  
28 employment. The commissioner, upon investigation of the request,  
29 shall determine whether relief should be granted.

30 (5) When a benefit claim becomes invalid due to an amendment or  
31 adjustment of a report where the employer failed to report or  
32 inaccurately reported hours worked or remuneration paid, or both, all  
33 benefits paid will be charged to the experience rating account of the  
34 contribution paying employer or employers that originally filed the  
35 incomplete or inaccurate report or reports. An employer who  
36 reimburses the trust fund for benefits paid to workers and who fails  
37 to report or inaccurately reported hours worked or remuneration paid,  
38 or both, shall reimburse the trust fund for all benefits paid that  
39 are based on the originally filed incomplete or inaccurate report or  
40 reports.

1 (6) An employer's experience rating account may not be relieved  
2 of charges for a benefit payment and an employer who reimburses the  
3 trust fund for benefit payments may not be credited for a benefit  
4 payment if a benefit payment was made because the employer or  
5 employer's agent failed to respond timely or adequately to a written  
6 request of the department for information relating to the claim or  
7 claims without establishing good cause for the failure and the  
8 employer or employer's agent has a pattern of such failures. The  
9 commissioner has the authority to determine whether the employer has  
10 good cause under this subsection.

11 (a) For the purposes of this subsection, "adequately" means  
12 providing accurate information of sufficient quantity and quality  
13 that would allow a reasonable person to determine eligibility for  
14 benefits.

15 (b)(i) For the purposes of this subsection, "pattern" means a  
16 benefit payment was made because the employer or employer's agent  
17 failed to respond timely or adequately to a written request of the  
18 department for information relating to a claim or claims without  
19 establishing good cause for the failure, if the greater of the  
20 following calculations for an employer is met:

21 (A) At least three times in the previous two years; or

22 (B) Twenty percent of the total current claims against the  
23 employer.

24 (ii) If an employer's agent is utilized, a pattern is established  
25 based on each individual client employer that the employer's agent  
26 represents.

27 NEW SECTION. **Sec. 84.** SMALL BUSINESS ASSISTANCE. (1) The  
28 legislature recognizes that while family leave and medical leave  
29 benefit both employees and employers, there may be costs that  
30 disproportionately impact small businesses. To equitably balance the  
31 risks among employers, the legislature intends to assist small  
32 businesses with the costs of an employee's use of family or medical  
33 leave.

34 (2) Employers with one hundred fifty or fewer employees and  
35 employers with fifty or fewer employees who are assessed all premiums  
36 under section 8(5)(b) of this act may apply to the department for a  
37 grant under this section.

1 (3)(a) An employer may receive a grant of three thousand dollars  
2 if the employer hires a temporary worker to replace an employee on  
3 family or medical leave for a period of seven days or more.

4 (b) For an employee's family or medical leave, an employer may  
5 receive a grant of up to one thousand dollars as reimbursement for  
6 significant additional wage-related costs due to the employee's  
7 leave.

8 (c) An employer may receive a grant under (a) or (b) of this  
9 subsection, but not both, except that an employer who received a  
10 grant under (b) of this subsection may receive a grant of the  
11 difference between the grant awarded under (b) of this subsection and  
12 three thousand dollars if the employee on leave extended the leave  
13 beyond the leave initially planned and the employer hired a temporary  
14 worker for the employee on leave.

15 (4) An employer may apply for a grant no more than ten times per  
16 calendar year and no more than once for each employee on leave.

17 (5) To be eligible for a grant, the employer must provide the  
18 department written documentation showing the temporary worker hired  
19 or significant wage-related costs incurred are due to an employee's  
20 use of family or medical leave.

21 (6) The department must assess an employer with fewer than fifty  
22 employees who receives a grant under this section for all premiums  
23 for three years from the date of receipt of a grant.

24 (7) The grants under this section shall be funded from the family  
25 and medical leave insurance account.

26 (8) The commissioner shall adopt rules as necessary to implement  
27 this section.

28 (9) For the purposes of this section, the number of employees  
29 must be calculated as provided in section 8 of this act.

30 (10) An employer who has an approved voluntary plan is not  
31 eligible to receive a grant under this section.

32 NEW SECTION. **Sec. 85.** RULES. The commissioner shall adopt rules  
33 as necessary to implement this chapter.

34 NEW SECTION. **Sec. 86.** REPORTS. Beginning December 1, 2020, and  
35 annually thereafter, the department shall report to the legislature  
36 on the entire program, including:

- 37 (1) Projected and actual program participation;  
38 (2) Premium rates;

- 1 (3) Fund balances;
- 2 (4) Benefits paid;
- 3 (5) Demographic information on program participants, including
- 4 income, gender, race, ethnicity, geographic distribution by county
- 5 and legislative district, and employment sector;
- 6 (6) Costs of providing benefits;
- 7 (7) Elective coverage participation;
- 8 (8) Voluntary plan participation;
- 9 (9) Outreach efforts; and
- 10 (10) Small business assistance.

11 NEW SECTION. **Sec. 87.** COLLECTIVE BARGAINING. Nothing in this  
12 act requires any party to a collective bargaining agreement in  
13 existence on the effective date of this section to reopen  
14 negotiations of the agreement or to apply any of the rights and  
15 responsibilities under this act unless and until the existing  
16 agreement is reopened or renegotiated by the parties or expires.

17 NEW SECTION. **Sec. 88.** OMBUDS. (1) The commissioner shall  
18 establish an ombuds office for family and medical leave within the  
19 department. The ombuds shall be appointed by the governor and report  
20 directly to the commissioner of the department. The ombuds is  
21 available to all employers and employees in the state.

22 (2) The person appointed ombuds shall hold office for a term of  
23 six years and shall continue to hold office until reappointed or  
24 until his or her successor is appointed. The governor may remove the  
25 ombuds only for neglect of duty, misconduct, or inability to perform  
26 duties. Any vacancy shall be filled by similar appointment for the  
27 remainder of the unexpired term.

28 (3) The ombuds shall:

29 (a) Offer and provide information on family and medical leave to  
30 employers and employees;

31 (b) Act as an advocate for employers and employees in their  
32 dealings with the department;

33 (c) Identify, investigate, and facilitate resolution of disputes  
34 and complaints under this chapter; and

35 (d) Refer complaints to the department when appropriate.

36 (4) The ombuds may conduct surveys of employees. Survey questions  
37 and results are confidential and not subject to public disclosure.

1 (5) The ombuds is not liable for the good faith performance of  
2 responsibilities under this chapter.

3 **Sec. 89.** RCW 43.79A.040 and 2017 c 322 s 5, 2017 c 285 s 5, and  
4 2017 c 257 s 5 are each reenacted and amended to read as follows:

5 TREASURY INTEREST. (1) Money in the treasurer's trust fund may be  
6 deposited, invested, and reinvested by the state treasurer in  
7 accordance with RCW 43.84.080 in the same manner and to the same  
8 extent as if the money were in the state treasury, and may be  
9 commingled with moneys in the state treasury for cash management and  
10 cash balance purposes.

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

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

22 (4)(a) Monthly, the state treasurer must distribute the earnings  
23 credited to the investment income account to the state general fund  
24 except under (b), (c), and (d) of this subsection.

25 (b) The following accounts and funds must receive their  
26 proportionate share of earnings based upon each account's or fund's  
27 average daily balance for the period: The 24/7 sobriety account, the  
28 Washington promise scholarship account, the Gina Grant Bull memorial  
29 legislative page scholarship account, the Washington advanced college  
30 tuition payment program account, the Washington college savings  
31 program account, the accessible communities account, the Washington  
32 achieving a better life experience program account, the community and  
33 technical college innovation account, the agricultural local fund,  
34 the American Indian scholarship endowment fund, the foster care  
35 scholarship endowment fund, the foster care endowed scholarship trust  
36 fund, the contract harvesting revolving account, the Washington state  
37 combined fund drive account, the commemorative works account, the  
38 county enhanced 911 excise tax account, the toll collection account,  
39 the developmental disabilities endowment trust fund, the energy

1 account, the fair fund, the family and medical leave insurance  
2 account, the food animal veterinarian conditional scholarship  
3 account, the fruit and vegetable inspection account, the future  
4 teachers conditional scholarship account, the game farm alternative  
5 account, the GET ready for math and science scholarship account, the  
6 Washington global health technologies and product development  
7 account, the grain inspection revolving fund, the industrial  
8 insurance rainy day fund, the juvenile accountability incentive  
9 account, the law enforcement officers' and firefighters' plan 2  
10 expense fund, the local tourism promotion account, the low-income  
11 home rehabilitation revolving loan program account, the multiagency  
12 permitting team account, the northeast Washington wolf-livestock  
13 management account, the pilotage account, the produce railcar pool  
14 account, the regional transportation investment district account, the  
15 rural rehabilitation account, the Washington sexual assault kit  
16 account, the stadium and exhibition center account, the youth  
17 athletic facility account, the self-insurance revolving fund, the  
18 children's trust fund, the Washington horse racing commission  
19 Washington bred owners' bonus fund and breeder awards account, the  
20 Washington horse racing commission class C purse fund account, the  
21 individual development account program account, the Washington horse  
22 racing commission operating account, the life sciences discovery  
23 fund, the Washington state heritage center account, the reduced  
24 cigarette ignition propensity account, the center for childhood  
25 deafness and hearing loss account, the school for the blind account,  
26 the Millersylvania park trust fund, the public employees' and  
27 retirees' insurance reserve fund, and the radiation perpetual  
28 maintenance fund.

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

36 (d) Any state agency that has independent authority over accounts  
37 or funds not statutorily required to be held in the custody of the  
38 state treasurer that deposits funds into a fund or account in the  
39 custody of the state treasurer pursuant to an agreement with the  
40 office of the state treasurer shall receive its proportionate share

1 of earnings based upon each account's or fund's average daily balance  
2 for the period.

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

6 **Sec. 90.** RCW 49.76.020 and 2008 c 286 s 2 are each amended to  
7 read as follows:

8 TECHNICAL AMENDMENT TO ADDRESS CROSS-REFERENCE TO REPEALED  
9 SECTION. The definitions in this section apply throughout this  
10 chapter unless the context clearly requires otherwise.

11 (1) "Child," "spouse," "parent," "parent-in-law," "grandparent,"  
12 and "sick leave and other paid time off" have the same meanings as in  
13 RCW 49.12.265.

14 (2) "Dating relationship" has the same meaning as in RCW  
15 26.50.010.

16 (3) "Department," "director," "employer," and "employee" have the  
17 same meanings as in RCW 49.12.005.

18 (4) "Domestic violence" has the same meaning as in RCW 26.50.010.

19 (5) "Family member" means any individual whose relationship to  
20 the employee can be classified as a child, spouse, parent, parent-in-  
21 law, grandparent, or person with whom the employee has a dating  
22 relationship.

23 (6) "Intermittent leave" (~~(and "reduced leave schedule" have the~~  
24 ~~same meanings as in RCW 49.78.020))~~ is leave taken in separate blocks  
25 of time due to a single qualifying reason.

26 (7) "Reduced leave schedule" means a leave schedule that reduces  
27 the usual number of hours per workweek, or hours per workday, of an  
28 employee.

29 ~~((+7))~~ (8) "Sexual assault" has the same meaning as in RCW  
30 70.125.030.

31 ~~((+8))~~ (9) "Stalking" has the same meaning as in RCW 9A.46.110.

32 **Sec. 91.** RCW 49.76.130 and 2008 c 286 s 13 are each amended to  
33 read as follows:

34 TECHNICAL AMENDMENT TO ADDRESS CROSS-REFERENCE TO REPEALED  
35 SECTION. The department shall include notice of the provisions of  
36 this chapter in the next reprinting of employment posters (~~(printed~~  
37 ~~under RCW 49.78.340. Employers shall post this notice as required in~~  
38 ~~RCW 49.78.340)).~~ Each employer shall post and keep posted, in



1 conspicuous places on the premises of the employer where notices to  
2 employees and applicants for employment are customarily posted, a  
3 notice, to be prepared or approved by the director, setting forth  
4 excerpts from, or summaries of, the pertinent provisions of this  
5 chapter and information pertaining to the filing of a charge. Any  
6 employer that willfully violates this section may be subject to a  
7 civil penalty of not more than one hundred dollars for each separate  
8 offense. Any penalties collected by the department under this section  
9 shall be deposited into the family and medical leave enforcement  
10 account.

11 **Sec. 92.** RCW 49.77.020 and 2008 c 71 s 2 are each amended to  
12 read as follows:

13 TECHNICAL AMENDMENT TO ADDRESS CROSS-REFERENCE TO REPEALED  
14 SECTION. The definitions in this section apply throughout this  
15 chapter unless the context clearly requires otherwise.

16 (1) "Department" (~~(and "spouse" have the same meanings as in RCW~~  
17 ~~49.78.020)) means the department of labor and industries.~~

18 (2) "Employee" means a person who performs service for hire for  
19 an employer, for an average of twenty or more hours per week, and  
20 includes all individuals employed at any site owned or operated by an  
21 employer, but does not include an independent contractor.

22 (3) "Employer" means: (a) Any person, firm, corporation,  
23 partnership, business trust, legal representative, or other business  
24 entity which engages in any business, industry, profession, or  
25 activity in this state; (b) the state, state institutions, and state  
26 agencies; and (c) any unit of local government including, but not  
27 limited to, a county, city, town, municipal corporation,  
28 quasi-municipal corporation, or political subdivision.

29 (4) "Period of military conflict" means a period of war declared  
30 by the United States Congress, declared by executive order of the  
31 president, or in which a member of a reserve component of the armed  
32 forces is ordered to active duty pursuant to either sections 12301  
33 and 12302 of Title 10 of the United States Code or Title 32 of the  
34 United States Code.

35 (5) "Spouse" means a husband or wife, as the case may be, or  
36 state registered domestic partner.

37 **Sec. 93.** RCW 49.77.030 and 2008 c 71 s 3 are each amended to  
38 read as follows:

1 TECHNICAL AMENDMENT TO ADDRESS CROSS-REFERENCE TO REPEALED  
2 SECTION. (1) During a period of military conflict, an employee who is  
3 the spouse of a member of the armed forces of the United States,  
4 national guard, or reserves who has been notified of an impending  
5 call or order to active duty or has been deployed is entitled to a  
6 total of fifteen days of unpaid leave per deployment after the  
7 military spouse has been notified of an impending call or order to  
8 active duty and before deployment or when the military spouse is on  
9 leave from deployment.

10 (2)(a) Except as provided in (b) of this subsection, any employee  
11 who takes leave under this chapter for the intended purpose of the  
12 leave is entitled((+-(a))), on return from the leave:

13 (i) To be restored by the employer to ((a)) the position of  
14 employment ((in the same manner as an employee entitled to leave  
15 under chapter 49.78 RCW is restored to a position of employment, as  
16 specified in RCW 49.78.280; and (b) to continue benefits in the same  
17 manner as an employee entitled to leave under chapter 49.78 RCW  
18 continues benefits, as specified in RCW 49.78.290.

19 +3)) held by the employee when the leave commenced; or

20 (ii) To be restored to an equivalent position with equivalent  
21 employment benefits, pay, and other terms and conditions of  
22 employment at a workplace within twenty miles of the employee's  
23 workplace when leave commenced.

24 (b) The taking of leave under this chapter may not result in the  
25 loss of any employment benefits accrued before the date on which the  
26 leave commenced.

27 (c) Nothing in this section entitles any restored employee to:

28 (i) The accrual of any seniority or employment benefits during  
29 any period of leave; or

30 (ii) Any right, benefit, or position of employment other than any  
31 right, benefit, or position to which the employee would have been  
32 entitled had the employee not taken the leave.

33 (d) Nothing in this subsection (2) prohibits an employer from  
34 requiring an employee on leave to report periodically to the employer  
35 on the status and intention of the employee to return to work.

36 (3) An employer may deny restoration under subsection (2) of this  
37 section to any salaried employee who is among the highest paid ten  
38 percent of the employees employed by the employer within seventy-five  
39 miles of the facility at which the employee is employed if:

1 (a) Denial is necessary to prevent substantial and grievous  
2 economic injury to the operations of the employer;

3 (b) The employer notifies the employee of the intent of the  
4 employer to deny restoration on such basis at the time the employer  
5 determines that the injury would occur; and

6 (c) The leave has commenced and the employee elects not to return  
7 to employment after receiving the notice.

8 (4) If the employee on leave under this chapter is not eligible  
9 for any employer contribution to medical or dental benefits under an  
10 applicable collective bargaining agreement or employer policy during  
11 any period of leave, an employer shall allow the employee to  
12 continue, at the employee's expense, medical or dental insurance  
13 coverage, in accordance with state or federal law. The premium to be  
14 paid by the employee shall not exceed one hundred two percent of the  
15 applicable premium for the leave period.

16 (5) An employee who seeks to take leave under this chapter must  
17 provide the employer with notice, within five business days of  
18 receiving official notice of an impending call or order to active  
19 duty or of a leave from deployment, of the employee's intention to  
20 take leave under this chapter.

21 ~~((4) An employer from which an employee seeks to take leave or~~  
22 ~~takes leave under this chapter shall not engage in prohibited acts as~~  
23 ~~specified in RCW 49.78.300.~~

24 ~~(5))~~ (6) An employee who takes leave under this chapter may  
25 elect to substitute any of the accrued leave to which the employee  
26 may be entitled for any part of the leave provided under this  
27 chapter.

28 ~~((6))~~ (7) The department shall administer the provisions of  
29 this chapter, and may adopt rules as necessary to implement this  
30 chapter.

31 ~~((7) This chapter shall be enforced as provided in chapter 49.78~~  
32 ~~RCW.))~~

33 NEW SECTION. Sec. 94. A new section is added to chapter 49.77  
34 RCW to read as follows:

35 TECHNICAL SECTION TO ADDRESS CROSS-REFERENCE TO REPEALED SECTION.

36 (1) It is unlawful for any employer to:

37 (a) Interfere with, restrain, or deny the exercise of, or the  
38 attempt to exercise, any right provided under this chapter; or

1 (b) Discharge or in any other manner discriminate against any  
2 individual for opposing any practice made unlawful by this chapter.

3 (2) It is unlawful for any person to discharge or in any other  
4 manner discriminate against any individual because the individual  
5 has:

6 (a) Filed any charge, or has instituted or caused to be  
7 instituted any proceeding, under or related to this chapter;

8 (b) Given, or is about to give, any information in connection  
9 with any inquiry or proceeding relating to any right provided under  
10 this chapter; or

11 (c) Testified, or is about to testify, in any inquiry or  
12 proceeding relating to any right provided under this chapter.

13 NEW SECTION. **Sec. 95.** A new section is added to chapter 49.77  
14 RCW to read as follows:

15 TECHNICAL SECTION TO ADDRESS CROSS-REFERENCE TO REPEALED SECTION.  
16 Upon complaint by an employee, the director shall investigate to  
17 determine if there has been compliance with this chapter and the  
18 rules adopted under this chapter. If the investigation indicates that  
19 a violation may have occurred, a hearing must be held in accordance  
20 with chapter 34.05 RCW. The director must issue a written  
21 determination including his or her findings after the hearing. A  
22 judicial appeal from the director's determination may be taken in  
23 accordance with chapter 34.05 RCW, with the prevailing party entitled  
24 to recover reasonable costs and attorneys' fees.

25 NEW SECTION. **Sec. 96.** A new section is added to chapter 49.77  
26 RCW to read as follows:

27 TECHNICAL SECTION TO ADDRESS CROSS-REFERENCE TO REPEALED SECTION.  
28 An employer who is found, in accordance with section 95 of this act,  
29 to have violated a requirement of this chapter and the rules adopted  
30 under this chapter, is subject to a civil penalty of not less than  
31 one thousand dollars for each violation. Civil penalties must be  
32 collected by the department and deposited into the family and medical  
33 leave enforcement account.

34 NEW SECTION. **Sec. 97.** A new section is added to chapter 49.77  
35 RCW to read as follows:

36 TECHNICAL SECTION TO ADDRESS CROSS-REFERENCE TO REPEALED SECTION.  
37 (1) Any employer who violates section 94 of this act is liable:

1 (a) For damages equal to:  
2 (i) The amount of:  
3 (A) Any wages, salary, employment benefits, or other compensation  
4 denied or lost to such employee by reason of the violation; or  
5 (B) In a case in which wages, salary, employment benefits, or  
6 other compensation have not been denied or lost to the employee, any  
7 actual monetary losses sustained by the employee as a direct result  
8 of the violation, such as the cost of providing care, up to a sum  
9 equal to twelve weeks of wages or salary for the employee;  
10 (ii) The interest on the amount described in (a)(i) of this  
11 subsection calculated at the prevailing rate; and  
12 (iii) An additional amount as liquidated damages equal to the sum  
13 of the amount described in (a)(i) of this subsection and the interest  
14 described in (a)(ii) of this subsection, except that if an employer  
15 who has violated section 94 of this act proves to the satisfaction of  
16 the court that the act or omission which violated section 94 of this  
17 act was in good faith and that the employer had reasonable grounds  
18 for believing that the act or omission was not a violation of section  
19 94 of this act, the court may, in the discretion of the court, reduce  
20 the amount of the liability to the amount and interest determined  
21 under (a)(i) and (ii) of this subsection, respectively; and  
22 (b) For such equitable relief as may be appropriate, including  
23 employment, reinstatement, and promotion.  
24 (2) An action to recover the damages or equitable relief  
25 prescribed in subsection (1) of this section may be maintained  
26 against any employer in any court of competent jurisdiction by any  
27 one or more employees for and on behalf of:  
28 (a) The employees; or  
29 (b) The employees and other employees similarly situated.  
30 (3) The court in such an action shall, in addition to any  
31 judgment awarded to the plaintiff, allow reasonable attorneys' fees,  
32 reasonable expert witness fees, and other costs of the action to be  
33 paid by the defendant.

34 NEW SECTION. **Sec. 98.** REPEALERS. The following acts or parts of  
35 acts are each repealed:

36 (1) RCW 49.78.010 (Legislative findings) and 2006 c 59 s 1 & 1989  
37 1st ex.s. c 11 s 1;  
38 (2) RCW 49.78.020 (Definitions) and 2009 c 521 s 135, 2006 c 59 s  
39 2, 1996 c 178 s 14, & 1989 1st ex.s. c 11 s 2;

- 1 (3) RCW 49.78.090 (Administration) and 1989 1st ex.s. c 11 s 9;
- 2 (4) RCW 49.78.220 (Entitlement to leave) and 2006 c 59 s 3;
- 3 (5) RCW 49.78.230 (Leave taken intermittently or on reduced leave
- 4 schedule) and 2006 c 59 s 4;
- 5 (6) RCW 49.78.240 (Unpaid leave permitted—Relationship to paid
- 6 leave) and 2006 c 59 s 5;
- 7 (7) RCW 49.78.250 (Foreseeable leave) and 2006 c 59 s 6;
- 8 (8) RCW 49.78.260 (Spouses employed by same employer) and 2006 c
- 9 59 s 7;
- 10 (9) RCW 49.78.270 (Certification) and 2006 c 59 s 8;
- 11 (10) RCW 49.78.280 (Employment protection) and 2006 c 59 s 9;
- 12 (11) RCW 49.78.290 (Employment benefits) and 2006 c 59 s 10;
- 13 (12) RCW 49.78.300 (Prohibited acts) and 2006 c 59 s 11;
- 14 (13) RCW 49.78.310 (Complaint investigations by director) and
- 15 2006 c 59 s 12;
- 16 (14) RCW 49.78.320 (Civil penalty) and 2006 c 59 s 13;
- 17 (15) RCW 49.78.330 (Civil action by employees) and 2006 c 59 s
- 18 14;
- 19 (16) RCW 49.78.340 (Notice—Penalties) and 2006 c 59 s 15;
- 20 (17) RCW 49.78.350 (Family and medical leave enforcement account)
- 21 and 2006 c 59 s 16;
- 22 (18) RCW 49.78.360 (Effect on other laws) and 2006 c 59 s 17;
- 23 (19) RCW 49.78.370 (Effect on existing employment benefits) and
- 24 2006 c 59 s 18;
- 25 (20) RCW 49.78.380 (Encouragement of more generous leave
- 26 policies) and 2006 c 59 s 19;
- 27 (21) RCW 49.78.390 (Relationship to federal family and medical
- 28 leave act) and 2006 c 59 s 20;
- 29 (22) RCW 49.78.400 (Rules) and 2006 c 59 s 21;
- 30 (23) RCW 49.78.410 (Construction) and 2006 c 59 s 22;
- 31 (24) RCW 49.78.901 (Effective date—1989 1st ex.s. c 11) and 1989
- 32 1st ex.s. c 11 s 27; and
- 33 (25) RCW 49.78.904 (Construction—Chapter applicable to state
- 34 registered domestic partnerships—2009 c 521) and 2009 c 521 s 134.

35 **Sec. 99.** REPEALERS. The following acts or parts of acts are each  
36 repealed:

- 37 (1) RCW 49.86.005 (Findings) and 2007 c 357 s 1;
- 38 (2) RCW 49.86.010 (Definitions) and 2007 c 357 s 3;

- 1 (3) RCW 49.86.020 (Family leave insurance program) and 2007 c 357  
2 s 4;
- 3 (4) RCW 49.86.030 (Eligibility for benefits) and 2013 2nd sp.s. c  
4 26 s 1, 2011 1st sp.s. c 25 s 1, 2009 c 544 s 1, & 2007 c 357 s 5;
- 5 (5) RCW 49.86.040 (Disqualification from benefits) and 2007 c 357  
6 s 6;
- 7 (6) RCW 49.86.050 (Duration of benefits—Payment of benefits) and  
8 2007 c 357 s 7;
- 9 (7) RCW 49.86.060 (Amount of benefits) and 2007 c 357 s 8;
- 10 (8) RCW 49.86.070 (Federal income tax) and 2007 c 357 s 9;
- 11 (9) RCW 49.86.080 (Erroneous payments—Payments induced by willful  
12 misrepresentation—Claim rejected after payments) and 2007 c 357 s 10;
- 13 (10) RCW 49.86.090 (Leave and employment protection) and 2007 c  
14 357 s 11;
- 15 (11) RCW 49.86.100 (Employment by same employer) and 2007 c 357 s  
16 12;
- 17 (12) RCW 49.86.110 (Elective coverage) and 2007 c 357 s 13;
- 18 (13) RCW 49.86.120 (Appeals) and 2007 c 357 s 14;
- 19 (14) RCW 49.86.130 (Prohibited acts—Discrimination—Enforcement)  
20 and 2007 c 357 s 15;
- 21 (15) RCW 49.86.140 (Coordination of leave) and 2007 c 357 s 16;
- 22 (16) RCW 49.86.150 (Continuing entitlement or contractual rights—  
23 Not created) and 2007 c 357 s 17;
- 24 (17) RCW 49.86.160 (Rules) and 2007 c 357 s 18;
- 25 (18) RCW 49.86.170 (Family leave insurance account) and 2009 c 4  
26 s 905 & 2007 c 357 s 19;
- 27 (19) RCW 49.86.180 (Family leave insurance account funds—  
28 Investment) and 2007 c 357 s 20;
- 29 (20) RCW 49.86.210 (Reports) and 2013 2nd sp.s. c 26 s 2, 2011  
30 1st sp.s. c 25 s 2, 2009 c 544 s 2, & 2007 c 357 s 26;
- 31 (21) RCW 49.86.902 (Effective dates—2007 c 357) and 2007 c 357 s  
32 30; and
- 33 (22) RCW 49.86.903 (Construction—Chapter applicable to state  
34 registered domestic partnerships—2009 c 521) and 2009 c 521 s 136.

35 NEW SECTION. **Sec. 100.** CODIFICATION. Sections 1 through 82, 84  
36 through 88, and 101 of this act constitute a new chapter in a new  
37 title to be codified as Title 50A RCW.

1        NEW SECTION.    **Sec. 101.**    FEDERAL SEVERABILITY. If any part of  
2 this act is found to be in conflict with federal requirements that  
3 are a prescribed condition to the allocation of federal funds to the  
4 state or the eligibility of employers in this state for federal  
5 unemployment tax credits, the conflicting part of this act is  
6 inoperative solely to the extent of the conflict, and the finding or  
7 determination does not affect the operation of the remainder of this  
8 act. Rules adopted under this act must meet federal requirements that  
9 are a necessary condition to the receipt of federal funds by the  
10 state or the granting of federal unemployment tax credits to  
11 employers in this state.

12        NEW SECTION.    **Sec. 102.**    STATE SEVERABILITY. If any provision of  
13 this act or its application to any person or circumstance is held  
14 invalid, the remainder of the act or the application of the provision  
15 to other persons or circumstances is not affected.

16        NEW SECTION.    **Sec. 103.**    EFFECTIVE DATE. Sections 90 through 98  
17 of this act take effect December 31, 2019.

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