
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5659

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Keiser, Kohl-Welles, Fairley, Franklin, Brown and Kline)

READ FIRST TIME 03/05/07.

1 AN ACT Relating to family and medical leave insurance; amending RCW
2 51.44.033; reenacting and amending RCW 43.79A.040; adding a new chapter
3 to Title 49 RCW; creating a new section; and providing an expiration
4 date.

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

6 NEW SECTION. **Sec. 1.** FINDINGS AND DECLARATIONS. The legislature
7 finds that, although family and medical leave laws have assisted
8 individuals to balance the demands of the workplace with their family
9 responsibilities, more needs to be done to achieve the goals of family
10 care, children and family health, workforce stability, and economic
11 security. In particular, the legislature finds that many individuals
12 employed by employers with less than fifty employees do not have access
13 to family and medical leave laws, and those who do may not be in a
14 financial position to take family and medical leave that is unpaid, and
15 that employer-paid benefits, including family and medical leave and
16 disability benefits, meet only a relatively small part of this need.
17 The legislature declares it to be in the public interest to establish
18 a program that: (1) Allows parents to bond with a newborn or newly
19 placed child, and workers to care for seriously ill family members,

1 regardless of the size of their employer; (2) provides limited and
2 additional income support for a reasonable period while an individual
3 is away from work on family and medical leave; (3) reduces the impact
4 on state income support programs by increasing an individual's ability
5 to provide caregiving services for family members while maintaining an
6 employment relationship; and (4) establishes a wage replacement benefit
7 to be coordinated with current existing state and federal family and
8 medical leave laws.

9 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
10 section apply throughout this chapter unless the context clearly
11 requires otherwise.

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

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

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

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

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

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

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

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

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

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

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

4 (12) "Qualifying year" means the first four of the last five
5 completed calendar quarters or the last four completed calendar
6 quarters immediately preceding the first day of the individual's
7 application year.

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

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

12 (1) The department shall establish and administer a family and medical
13 leave insurance program and pay family and medical leave insurance
14 benefits as specified in this chapter.

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

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

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

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

1 persons are rendering assistance to the department at any stage of the
2 proceedings on any matter pertaining to the administration of this
3 chapter.

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

16 NEW SECTION. **Sec. 4.** ELIGIBILITY FOR BENEFITS. Beginning October
17 1, 2009, family and medical leave insurance benefits are payable to an
18 individual during a period in which the individual is unable to perform
19 his or her regular or customary work because he or she is on family and
20 medical leave if the individual:

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

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

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

29 (4) Consents to the disclosure of information or records deemed
30 private and confidential under chapter 50.13 RCW. Initial disclosure
31 of this information and these records by the employment security
32 department to the department is solely for purposes related to the
33 administration of this chapter. Further disclosure of this information
34 or these records is subject to sections 3(4) and 14(2)(b) of this act;

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

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

6 (7) Authorizes the individual's health care provider or provides a
7 document authorizing the family member's health care provider, as
8 applicable, to disclose the individual's or family member's health care
9 information in the form of the certification of a serious health
10 condition. To be valid, the disclosure authorization must satisfy the
11 requirements set forth in RCW 70.02.030.

12 NEW SECTION. **Sec. 5.** DISQUALIFICATION FROM BENEFITS. An
13 individual is disqualified from family and medical leave insurance
14 benefits beginning with the first day of the calendar week, and
15 continuing for the next fifty-two consecutive weeks, in which the
16 individual:

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

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

23 NEW SECTION. **Sec. 6.** DURATION OF BENEFITS. (1) The maximum
24 number of weeks during which family and medical leave insurance
25 benefits are payable in an application year is five weeks. However,
26 benefits are not payable during a waiting period consisting of the
27 first seven calendar days of family and medical leave taken in an
28 application year with respect to a particular type of family and
29 medical leave, whether the first seven calendar days of family and
30 medical leave are employer paid or unpaid.

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

35 (b) The payment of benefits under this chapter shall not be
36 considered a binding determination of the obligations of the department

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

11 (c) If an individual dies before he or she receives a payment of
12 benefits, the payment shall be made to the surviving spouse, the child
13 or children if there is no surviving spouse, or a person with whom the
14 individual is involved in a relationship governed by Title 26 RCW. If
15 there is no surviving spouse, child or children, or a person with whom
16 the individual is involved in a relationship governed by Title 26 RCW,
17 the payment shall be made by the department and distributed consistent
18 with the terms of the decedent's will or, if the decedent dies
19 intestate, consistent with the terms of RCW 11.04.015.

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

22 (1) For weeks of family and medical leave beginning before July 1,
23 2010, the weekly benefit shall be two hundred fifty dollars per week
24 for an individual who at the time of beginning family and medical leave
25 was regularly working thirty-five hours or more per week. By June 30,
26 2010, and by each subsequent June 30th, the department shall calculate
27 to the nearest dollar an adjusted maximum weekly benefit to account for
28 inflation using the consumer price index for urban wage earners and
29 clerical workers, CPI-W, or a successor index, for the twelve completed
30 calendar months before each June 30th as calculated by the United
31 States department of labor. The adjusted maximum weekly benefit takes
32 effect for weeks of family and medical leave beginning after the
33 relevant June 30th.

34 (2) If an individual who at the time of beginning family and
35 medical leave was regularly working thirty-five hours or more per week
36 is on family and medical leave for less than thirty-five hours but at
37 least eight hours in a week, the individual's weekly benefit shall be

1 .025 times the maximum weekly benefit times the number of hours of
2 family and medical leave taken in the week. Benefits are not payable
3 for less than eight hours of family and medical leave taken in a week.

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

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

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

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

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

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

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

35 (d) The individual is permitted to change a previously elected
36 withholding status.

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

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

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

14 NEW SECTION. **Sec. 10.** LEAVE AND EMPLOYMENT PROTECTION. (1)
15 During a period in which an individual receives family and medical
16 leave insurance benefits or earns waiting period credits under this
17 chapter, the individual is entitled to family and medical leave and, at
18 the established ending date of leave, to be restored to a position of
19 employment with the employer from whom leave was taken.

20 (2) Regardless of the number of employees employed by the employer,
21 the individual entitled to leave under this section shall be restored
22 to a position of employment in the same manner as an employee entitled
23 to leave under chapter 49.78 RCW is restored to a position of
24 employment, as specified in RCW 49.78.280.

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

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

32 (5) This section does not apply to individuals employed by an
33 employer with twenty-five or fewer employees.

34 NEW SECTION. **Sec. 11.** EMPLOYMENT BY SAME EMPLOYER. If spouses or
35 people involved in a legal relationship governed by Title 26 RCW

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

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

15 (2) An employer or self-employed person who has elected coverage
16 may withdraw from coverage within thirty days after the end of the
17 three-year period of coverage, or at such other times as the director
18 may prescribe by rule, by filing written notice with the director, such
19 withdrawal to take effect not sooner than thirty days after filing the
20 notice. Within five days of filing written notice of the withdrawal
21 with the director, an employer must provide written notice of the
22 withdrawal to all individuals in the employer's employ.

23 (3) The department may cancel elective coverage if the employer or
24 self-employed person fails to make required payments or reports. The
25 department may collect due and unpaid premiums and may levy an
26 additional premium for the remainder of the period of coverage. The
27 cancellation shall be effective no later than thirty days from the date
28 of the notice in writing advising the employer or self-employed person
29 of the cancellation. Within five days of receiving written notice of
30 the cancellation from the director, an employer must provide written
31 notice of the cancellation to all individuals in the employer's employ.

32 NEW SECTION. **Sec. 13.** AMOUNT OF PREMIUMS. (1) Beginning January
33 1, 2009, for each individual, each employer shall pay a premium of two
34 cents per hour worked, up to a maximum of forty hours per week, to the
35 department. Each employer shall deduct from the pay of each individual

1 the full amount that the employer is required to pay for the
2 individual.

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

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

15 NEW SECTION. **Sec. 14.** REPORTING AND RECORDKEEPING. (1) In the
16 form and at the times specified by the director, an employer shall make
17 reports, furnish information, and remit premiums as required by section
18 13 of this act to the department. If the employer is a temporary help
19 company that provides employees on a temporary basis to its customers,
20 the temporary help company is considered the employer for purposes of
21 this section. However, if the temporary help company fails to remit
22 the required premiums, the customer to whom the employees were provided
23 is liable for paying the premiums.

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

29 (b) Information obtained from employer records under this chapter
30 is confidential and not open to public inspection, other than to public
31 employees in the performance of their official duties. However, an
32 interested party shall be supplied with information from employer
33 records to the extent necessary for the proper presentation of the case
34 in question. An employer may authorize inspection of its records by
35 written consent.

36 (3) The requirements relating to the assessment and collection of
37 family and medical leave insurance premiums are the same as the

1 requirements relating to the assessment and collection of industrial
2 insurance premiums under Title 51 RCW, including but not limited to
3 penalties, interest, and department lien rights and collection
4 remedies. These requirements apply to:

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

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

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

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

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

17 (f) An officer, member, manager, or other person having control or
18 supervision of payment and/or reporting of family and medical leave
19 insurance, or who is charged with the responsibility for the filing of
20 returns, in the manner specified in RCW 51.48.055.

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

23 NEW SECTION. **Sec. 15.** APPEALS. (1) A person aggrieved by a
24 decision of the department under this chapter must file a notice of
25 appeal with the director, by mail or personally, within thirty days
26 after the date on which a copy of the department's decision was
27 communicated to the person. Upon receipt of the notice of appeal, the
28 director shall request the assignment of an administrative law judge in
29 accordance with chapter 34.05 RCW to conduct a hearing and issue a
30 proposed decision and order. The hearing shall be conducted in
31 accordance with chapter 34.05 RCW.

32 (2) The administrative law judge's proposed decision and order
33 shall be final and not subject to further appeal unless, within thirty
34 days after the decision is communicated to the interested parties, a
35 party petitions for review by the director. If the director's review
36 is timely requested, the director may order additional evidence by the
37 administrative law judge. On the basis of the evidence before the

1 administrative law judge and such additional evidence as the director
2 may order to be taken, the director shall render a decision affirming,
3 modifying, or setting aside the administrative law judge's decision.
4 The director's decision becomes final and not subject to further appeal
5 unless, within thirty days after the decision is communicated to the
6 interested parties, a party files a petition for judicial review as
7 provided in chapter 34.05 RCW. The director is a party to any judicial
8 action involving the director's decision and shall be represented in
9 the action by the attorney general.

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

16 NEW SECTION. **Sec. 16.** PROHIBITED ACTS. An employer, temporary
17 help company, employment agency, employee organization, or other person
18 may not discharge, expel, or otherwise discriminate against a person
19 because he or she has filed or communicated to the employer an intent
20 to file a claim, a complaint, or an appeal, or has testified or is
21 about to testify or has assisted in any proceeding, under this chapter,
22 at any time, including during the waiting period described in section
23 6 of this act and the period in which the person receives family and
24 medical leave insurance benefits under this chapter. This section
25 shall be enforced as provided in RCW 51.48.025.

26 NEW SECTION. **Sec. 17.** COORDINATION WITH OTHER LAWS, AGREEMENTS,
27 AND POLICIES. (1) Employment protection under other laws. If an
28 individual is entitled to employment protection under this chapter and
29 under the federal family and medical leave act, chapter 49.78 RCW, or
30 other applicable federal, state, or local law, the individual is
31 entitled to employment protection under the other applicable law most
32 favorable to the individual.

33 (2) Leave from employment under other laws. Except as provided in
34 this subsection, if an individual is entitled to family and medical
35 leave under this chapter and under the federal family and medical leave
36 act, chapter 49.78 RCW, or other applicable federal, state, or local

1 law, the employer may require that leave under this chapter be taken
2 concurrently with leave under other applicable laws. The employer must
3 give individuals in its employ written notice of this requirement. An
4 individual may not increase the duration of his or her leave from
5 employment by tacking on leave under this chapter to leave under other
6 applicable laws. Leave from employment under this chapter is in
7 addition to leave from employment during which benefits are paid or are
8 payable under Title 51 RCW or other applicable federal or state
9 industrial insurance laws.

10 (3) Wage replacement benefits under other laws. In any week in
11 which an individual is earning waiting period credits or receiving
12 benefits under chapter 7.68 RCW, Title 50 RCW, or Title 51 RCW, or
13 other applicable federal or state crime victims' compensation,
14 unemployment compensation, industrial insurance, or disability
15 insurance laws, the individual is disqualified from receiving family
16 leave insurance benefits under this chapter.

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

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

28 (c) If an employer provides wage replacement benefits to an
29 individual while on family and medical leave through disability
30 insurance or any other means, the individual may elect whether first to
31 receive such benefits or receive family and medical leave insurance
32 benefits under this chapter. An individual may not be required to
33 receive the individual's wage replacement benefits, if any, before
34 receiving family and medical leave insurance benefits under this
35 chapter. In no case shall the individual's weekly benefit exceed the
36 individual's average weekly wage.

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

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

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

23 NEW SECTION. **Sec. 21.** INVESTMENT OF FAMILY AND MEDICAL LEAVE
24 INSURANCE ACCOUNT. Whenever, in the judgment of the state investment
25 board, there shall be in the family and medical leave insurance account
26 funds in excess of that amount deemed by the state investment board to
27 be sufficient to meet the current expenditures properly payable
28 therefrom, the state investment board shall have full power to invest,
29 reinvest, manage, contract, or sell or exchange investments acquired
30 with such excess funds in the manner prescribed by RCW 43.84.150, and
31 not otherwise.

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

34 (1) Money in the treasurer's trust fund may be deposited, invested,

1 and reinvested by the state treasurer in accordance with RCW 43.84.080
2 in the same manner and to the same extent as if the money were in the
3 state treasury.

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

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

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

18 (b) The following accounts and funds shall receive their
19 proportionate share of earnings based upon each account's or fund's
20 average daily balance for the period: The Washington promise
21 scholarship account, the college savings program account, the
22 Washington advanced college tuition payment program account, the
23 agricultural local fund, the American Indian scholarship endowment
24 fund, the foster care scholarship endowment fund, the foster care
25 endowed scholarship trust fund, the students with dependents grant
26 account, the basic health plan self-insurance reserve account, the
27 contract harvesting revolving account, the Washington state combined
28 fund drive account, the commemorative works account, the Washington
29 international exchange scholarship endowment fund, the developmental
30 disabilities endowment trust fund, the energy account, the fair fund,
31 the family and medical leave insurance account, the fruit and vegetable
32 inspection account, the future teachers conditional scholarship
33 account, the game farm alternative account, the grain inspection
34 revolving fund, the juvenile accountability incentive account, the law
35 enforcement officers' and firefighters' plan 2 expense fund, the local
36 tourism promotion account, the produce railcar pool account, the
37 regional transportation investment district account, the rural
38 rehabilitation account, the stadium and exhibition center account, the

1 youth athletic facility account, the self-insurance revolving fund, the
2 sulfur dioxide abatement account, the children's trust fund, the
3 Washington horse racing commission Washington bred owners' bonus fund
4 account, the Washington horse racing commission class C purse fund
5 account, the individual development account program account, the
6 Washington horse racing commission operating account (earnings from the
7 Washington horse racing commission operating account must be credited
8 to the Washington horse racing commission class C purse fund account),
9 the life sciences discovery fund, and the reading achievement account.
10 However, the earnings to be distributed shall first be reduced by the
11 allocation to the state treasurer's service fund pursuant to RCW
12 43.08.190.

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

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

24 NEW SECTION. **Sec. 23.** LOANS. If necessary to ensure that money
25 is available in the family and medical leave insurance account for the
26 initial administration of the family and medical leave insurance
27 program and the payment of benefits under this act, the director of
28 labor and industries may, from time to time before July 1, 2009, lend
29 funds from the supplemental pension fund to the family and medical
30 leave insurance account. These loaned funds may be expended solely for
31 the purposes of administering the program and paying benefits under
32 this act. The director of labor and industries shall repay the
33 supplemental pension fund, plus its proportionate share of earnings
34 from investment of moneys in the supplemental pension fund during the
35 loan period, from the family and medical leave insurance account within
36 two years of the date of the loan. This section expires October 1,
37 2011.

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

3 There shall be, in the office of the state treasurer, a fund to be
4 known and designated as the "supplemental pension fund". The director
5 shall be the administrator thereof. (~~Said~~) The fund shall be used
6 for the sole purposes of making the additional payments therefrom
7 prescribed in this title and the loans therefrom authorized in section
8 23 of this act.

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

13 NEW SECTION. **Sec. 26.** TAX CREDIT. In computing the tax imposed
14 under this chapter, a credit is allowed for businesses employing fifty
15 or fewer persons who hire a worker to replace an employee who has taken
16 family or medical leave under this chapter or chapter 49.78 RCW. The
17 credit is one thousand two hundred dollars for each replacement
18 employee hired. A tax credit claimed under this section may not be
19 carried over to another year.

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

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

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

--- END ---