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SECOND SUBSTITUTE SENATE BILL 5659

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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; providing an expiration date;  
4 and providing a contingent expiration 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 or

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

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

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

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

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

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

25 (5) "Domestic partner" means an unmarried person eighteen years of  
26 age or older: (a) With whom the individual entered into a close  
27 personal relationship when both parties were mentally competent and has  
28 maintained a close personal relationship solely with that person for a  
29 minimum of six continuous months; (b) with whom the individual shares  
30 a regular and permanent residence; (c) with whom the individual has  
31 agreed to be jointly responsible for basic living expenses incurred  
32 during the domestic partnership; and (d) to whom the individual is not  
33 related by blood as would bar marriage.

34 (6) "Employer" means: (a) The same as in RCW 50.04.080; and (b)  
35 the state and its political subdivisions.

36 (7) "Employment" has the meaning provided in RCW 50.04.100.

1 (8) "Family and medical leave" means leave for a family member's  
2 serious health condition, leave for the birth or placement of a child,  
3 and leave for the employee's serious health condition as defined in RCW  
4 49.78.020 and described in RCW 49.78.220.

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

7 (10) "Family member" means a child, spouse or domestic partner, or  
8 the parent of the individual.

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

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

15 (13) "Qualifying year" means the first four of the last five  
16 completed calendar quarters or the last four completed calendar  
17 quarters immediately preceding the first day of the individual's  
18 application year.

19 (14) "Regularly working" means the average number of hours per  
20 workweek that an individual worked in the two quarters of the  
21 individual's qualifying year in which total wages were highest.

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

23 (1) The department shall establish and administer a family and medical  
24 leave insurance program and pay family and medical leave insurance  
25 benefits as specified in this chapter.

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

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

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

1 (5) Information contained in the files and records pertaining to an  
2 individual under this chapter are confidential and not open to public  
3 inspection, other than to public employees in the performance of their  
4 official duties. However, the individual or an authorized  
5 representative of an individual may review the records or receive  
6 specific information from the records on the presentation of the signed  
7 authorization of the individual. An employer or the employer's duly  
8 authorized representative may review the records of an individual  
9 employed by the employer in connection with a pending claim. At the  
10 department's discretion, other persons may review records when such  
11 persons are rendering assistance to the department at any stage of the  
12 proceedings on any matter pertaining to the administration of this  
13 chapter.

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

26 NEW SECTION. **Sec. 4.** ELIGIBILITY FOR BENEFITS. Beginning July 1,  
27 2009, family and medical leave insurance benefits are payable to an  
28 individual during a period in which the individual is unable to perform  
29 his or her regular or customary work because he or she is on family and  
30 medical leave if the individual:

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

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

36 (3) Establishes an application year. An application year may not

1 be established if the qualifying year includes hours worked before  
2 establishment of a previous application year;

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

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

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

16 (7) Authorizes the individual's health care provider or provides a  
17 document authorizing the family member's health care provider, as  
18 applicable, to disclose the individual's or family member's health care  
19 information in the form of the certification of a serious health  
20 condition. To be valid, the disclosure authorization must satisfy the  
21 requirements set forth in RCW 70.02.030.

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

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

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

33 NEW SECTION. **Sec. 6.** DURATION OF BENEFITS. (1) The maximum  
34 number of weeks during which family and medical leave insurance  
35 benefits are payable in an application year is five weeks. However,  
36 benefits are not payable during a waiting period consisting of the

1 first seven calendar days of family and medical leave taken in an  
2 application year with respect to a particular type of family and  
3 medical leave, whether the first seven calendar days of family and  
4 medical leave are employer paid or unpaid.

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

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

21 (c) If an individual dies before he or she receives a payment of  
22 benefits, the payment shall be made to the surviving spouse or domestic  
23 partner, or the child or children if there is no surviving spouse or  
24 domestic partner. If there is no surviving spouse or domestic partner,  
25 and no child or children, the payment shall be made by the department  
26 and distributed consistent with the terms of the decedent's will or, if  
27 the decedent dies intestate, consistent with the terms of RCW  
28 11.04.015.

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

31 (1) For weeks of family and medical leave beginning before July 1,  
32 2010, the weekly benefit shall be two hundred fifty dollars per week  
33 for an individual who at the time of beginning family and medical leave  
34 was regularly working thirty-five hours or more per week. By June 30,  
35 2010, and by each subsequent June 30th, the department shall calculate  
36 to the nearest dollar an adjusted maximum weekly benefit to account for  
37 inflation using the consumer price index for urban wage earners and

1 clerical workers, CPI-W, or a successor index, for the twelve completed  
2 calendar months before each June 30th as calculated by the United  
3 States department of labor. The adjusted maximum weekly benefit takes  
4 effect for weeks of family and medical leave beginning after the  
5 relevant June 30th.

6 (2) If an individual who at the time of beginning family and  
7 medical leave was regularly working thirty-five hours or more per week  
8 is on family and medical leave for less than thirty-five hours but at  
9 least eight hours in a week, the individual's weekly benefit shall be  
10 .025 times the maximum weekly benefit times the number of hours of  
11 family and medical leave taken in the week. Benefits are not payable  
12 for less than eight hours of family and medical leave taken in a week.

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

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

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

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

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

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

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

7 (d) The individual is permitted to change a previously elected  
8 withholding status.

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

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

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

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

28 (2) Regardless of the number of employees employed by the employer,  
29 the individual entitled to leave under this section shall be restored  
30 to a position of employment in the same manner as an employee entitled  
31 to leave under chapter 49.78 RCW is restored to a position of  
32 employment, as specified in RCW 49.78.280.

33 (3) This section applies only to an individual who has been  
34 employed for at least twelve months by the employer from whom family  
35 and medical leave is taken, and for at least one thousand two hundred



1 fifty hours of service with the employer during the previous twelve-  
2 month period.

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

5 NEW SECTION. **Sec. 11.** EMPLOYMENT BY SAME EMPLOYER. If spouses or  
6 domestic partners entitled to leave under this chapter are employed by  
7 the same employer, the employer may require that spouses or domestic  
8 partners not take such leave concurrently, if such leave is taken: (1)  
9 For the birth or placement of a child; or (2) for a parent's serious  
10 health condition.

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

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

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

1        NEW SECTION.    **Sec. 13.**    AMOUNT OF PREMIUMS.    (1) Beginning January  
2    1, 2009, for each individual, each employer shall pay a premium of two  
3    cents per hour worked, up to a maximum of forty hours per week, to the  
4    department. Each employer shall deduct from the pay of each individual  
5    the full amount that the employer is required to pay for the  
6    individual.

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

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

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

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

33       (b) Information obtained from employer records under this chapter  
34   is confidential and not open to public inspection, other than to public  
35   employees in the performance of their official duties. However, an  
36   interested party shall be supplied with information from employer

1 records to the extent necessary for the proper presentation of the case  
2 in question. An employer may authorize inspection of its records by  
3 written consent.

4 (3) The requirements relating to the assessment and collection of  
5 family and medical leave insurance premiums are the same as the  
6 requirements relating to the assessment and collection of industrial  
7 insurance premiums under Title 51 RCW, including but not limited to  
8 penalties, interest, and department lien rights and collection  
9 remedies. These requirements apply to:

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

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

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

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

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

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

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

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

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

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

22 NEW SECTION. **Sec. 16.** PROHIBITED ACTS. An employer, temporary  
23 help company, employment agency, employee organization, or other person  
24 may not discharge, expel, or otherwise discriminate against a person  
25 because he or she has filed or communicated to the employer an intent  
26 to file a claim, a complaint, or an appeal, or has testified or is  
27 about to testify or has assisted in any proceeding, under this chapter,  
28 at any time, including during the waiting period described in section  
29 6 of this act and the period in which the person receives family and  
30 medical leave insurance benefits under this chapter. This section  
31 shall be enforced as provided in RCW 51.48.025.

32 NEW SECTION. **Sec. 17.** COORDINATION WITH OTHER LAWS, AGREEMENTS,  
33 AND POLICIES. (1) Employment protection under other laws. If an  
34 individual is entitled to employment protection under this chapter and  
35 under the federal family and medical leave act, chapter 49.78 RCW, or

1 other applicable federal, state, or local law, the individual is  
2 entitled to employment protection under the other applicable law most  
3 favorable to the individual.

4 (2) Leave from employment under other laws. Except as provided in  
5 this subsection, if an individual is entitled to family and medical  
6 leave under this chapter and under the federal family and medical leave  
7 act, chapter 49.78 RCW, or other applicable federal, state, or local  
8 law, the employer may require that leave under this chapter be taken  
9 concurrently with leave under other applicable laws. The employer must  
10 give individuals in its employ written notice of this requirement. An  
11 individual may not increase the duration of his or her leave from  
12 employment by tacking on leave under this chapter to leave under other  
13 applicable laws. Leave from employment under this chapter is in  
14 addition to leave from employment during which benefits are paid or are  
15 payable under Title 51 RCW or other applicable federal or state  
16 industrial insurance laws.

17 (3) Wage replacement benefits under other laws. In any week in  
18 which an individual is earning waiting period credits or receiving  
19 benefits under chapter 7.68 RCW, Title 50 RCW, or Title 51 RCW, or  
20 other applicable federal or state crime victims' compensation,  
21 unemployment compensation, industrial insurance, or disability  
22 insurance laws, the individual is disqualified from receiving family  
23 leave insurance benefits under this chapter.

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

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

35 (c) If an employer provides wage replacement benefits to an  
36 individual while on family and medical leave through disability  
37 insurance or any other means, the individual may elect whether first to  
38 receive such benefits or receive family and medical leave insurance

1 benefits under this chapter. An individual may not be required to  
2 receive the individual's wage replacement benefits, if any, before  
3 receiving family and medical leave insurance benefits under this  
4 chapter. In no case shall the individual's weekly benefit exceed the  
5 individual's average weekly wage.

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

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

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

28 NEW SECTION. **Sec. 21.** INVESTMENT OF FAMILY AND MEDICAL LEAVE  
29 INSURANCE ACCOUNT. Whenever, in the judgment of the state investment  
30 board, there shall be in the family and medical leave insurance account  
31 funds in excess of that amount deemed by the state investment board to  
32 be sufficient to meet the current expenditures properly payable  
33 therefrom, the state investment board shall have full power to invest,

1 reinvest, manage, contract, or sell or exchange investments acquired  
2 with such excess funds in the manner prescribed by RCW 43.84.150, and  
3 not otherwise.

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

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

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

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

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

24 (b) The following accounts and funds shall receive their  
25 proportionate share of earnings based upon each account's or fund's  
26 average daily balance for the period: The Washington promise  
27 scholarship account, the college savings program account, the  
28 Washington advanced college tuition payment program account, the  
29 agricultural local fund, the American Indian scholarship endowment  
30 fund, the foster care scholarship endowment fund, the foster care  
31 endowed scholarship trust fund, the students with dependents grant  
32 account, the basic health plan self-insurance reserve account, the  
33 contract harvesting revolving account, the Washington state combined  
34 fund drive account, the commemorative works account, the Washington  
35 international exchange scholarship endowment fund, the developmental  
36 disabilities endowment trust fund, the energy account, the fair fund,  
37 the family and medical leave insurance account, the fruit and vegetable

1 inspection account, the future teachers conditional scholarship  
2 account, the game farm alternative account, the grain inspection  
3 revolving fund, the juvenile accountability incentive account, the law  
4 enforcement officers' and firefighters' plan 2 expense fund, the local  
5 tourism promotion account, the produce railcar pool account, the  
6 regional transportation investment district account, the rural  
7 rehabilitation account, the stadium and exhibition center account, the  
8 youth athletic facility account, the self-insurance revolving fund, the  
9 sulfur dioxide abatement account, the children's trust fund, the  
10 Washington horse racing commission Washington bred owners' bonus fund  
11 account, the Washington horse racing commission class C purse fund  
12 account, the individual development account program account, the  
13 Washington horse racing commission operating account (earnings from the  
14 Washington horse racing commission operating account must be credited  
15 to the Washington horse racing commission class C purse fund account),  
16 the life sciences discovery fund, and the reading achievement account.  
17 However, the earnings to be distributed shall first be reduced by the  
18 allocation to the state treasurer's service fund pursuant to RCW  
19 43.08.190.

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

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

31 NEW SECTION. **Sec. 23.** LOANS. If necessary to ensure that money  
32 is available in the family and medical leave insurance account for the  
33 initial administration of the family and medical leave insurance  
34 program and the payment of benefits under this chapter, the director  
35 may, from time to time before July 1, 2009, lend funds from the  
36 supplemental pension fund to the family and medical leave insurance  
37 account. These loaned funds may be expended solely for the purposes of



1 administering the program and paying benefits under this chapter. The  
2 director shall repay the supplemental pension fund, plus its  
3 proportionate share of earnings from investment of moneys in the  
4 supplemental pension fund during the loan period, from the family and  
5 medical leave insurance account within one year of the date of the  
6 loan. This section expires October 1, 2010.

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

9 There shall be, in the office of the state treasurer, a fund to be  
10 known and designated as the "supplemental pension fund". The director  
11 shall be the administrator thereof. (~~Said~~) The fund shall be used  
12 for the sole purposes of making the additional payments therefrom  
13 prescribed in this title and the loans therefrom authorized in section  
14 23 of this act.

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

19 NEW SECTION. **Sec. 26.** SEVERABILITY. If any provision of this act  
20 or its application to any person or circumstance is held invalid, the  
21 remainder of the act or the application of the provision to other  
22 persons or circumstances is not affected.

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

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

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