

1 2220 AMH VANC H3123.1

2 **HB 2220 - H AMD 668 6-19-91 FAILED**

3 By Representative Vance

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 49.78.020 and 1989 1st ex.s. c 11 s 2 are each  
8 amended to read as follows:

9 Unless the context clearly requires otherwise, the definitions in  
10 this section apply throughout this chapter.

11 (1) "Child" means a biological ~~((or))~~, adopted, or foster child  
12 when placement with the employee is the permanent plan, or a stepchild,  
13 living with the employee.

14 (2) "Department" means the department of labor and industries.

15 (3) "Employee" means a person other than an independent contractor  
16 employed by an employer ~~((on a continuous basis for the previous))~~ for  
17 at least fifty-two weeks within the previous seventy-eight weeks and  
18 for at least ((thirty-five)) an average of thirty-two hours per week.

19 (4) "Employer" means: (a) Any person, firm, corporation,  
20 partnership, business trust, legal representative, or other business  
21 entity which engages in any business, industry, profession, or activity  
22 in this state and includes any unit of local government including, but  
23 not limited to, a county, city, town, municipal corporation, quasi-  
24 municipal corporation, or political subdivision, which (i) employed a  
25 daily average of one hundred or more employees during the last calendar  
26 quarter at the place where the employee requesting leave reports for  
27 work, or (ii) employed a daily average of one hundred or more employees  
28 during the last calendar quarter within a twenty mile radius of the

1 place where the employee requesting leave reports for work, where the  
2 employer maintains a central hiring location and customarily transfers  
3 employees among workplaces; and (b) the state, state institutions, and  
4 state agencies.

5 (5) "Family leave" means leave from employment, as provided in RCW  
6 49.78.030, to care for a newborn ((or)), a newly adopted child ((under  
7 the age of six or a child under eighteen years old with a terminal  
8 health condition, as provided in RCW 49.78.030)), or a newly placed  
9 foster child, or to care for a child with a serious health condition.

10 (6) "Health care provider" means a person licensed as a physician  
11 under chapter 18.71 ((RCW or an osteopath under chapter)) or 18.57 RCW.

12 (7) "Parent" means a biological, foster, or adoptive parent, or a  
13 stepparent.

14 (8) "Reduced leave schedule" means leave scheduled for fewer than  
15 an employee's usual number of hours or days per workweek.

16 (9) ((~~"Terminal health condition" means a condition caused by~~  
17 ~~injury, disease, or illness, that, within reasonable medical judgment,~~  
18 ~~is incurable and will produce death within the period of leave to which~~  
19 ~~the employee is entitled.~~)) "Serious health condition" means an  
20 illness, injury, impairment, or physical or mental condition, whether  
21 or not preexisting, that requires:

22 (a) Inpatient care in a hospital, hospice, or residential medical  
23 care facility; or

24 (b) Continuing treatment or continuing supervision by a health care  
25 provider."

26 "**Sec. 2.** RCW 49.78.030 and 1989 1st ex.s. c 11 s 3 are each  
27 amended to read as follows:

28 (1) An employee is entitled to twelve workweeks of family leave  
29 during any twenty-four month period to: (a) Care for a newborn child

1 ~~((or))~~ of the employee, an adopted child of the employee who is under  
2 the age of ~~((six))~~ sixteen at the time of placement for adoption~~((7))~~  
3 or~~((7))~~ a foster child when placement with the employee is the  
4 permanent plan and the foster child is under the age of sixteen at the  
5 time of placement; or (b) care for ~~((a child under eighteen years old~~  
6 of the employee who has a terminal)) a child with a serious health  
7 condition. Leave under subsection (1)(a) of this section shall be  
8 completed within twelve months after the birth or placement for  
9 adoption or foster care, as applicable. ~~((An employee is entitled to~~  
10 leave under subsection (1)(b) of this section only once for any given  
11 child)) For the leave under subsection (1)(b) of this section to apply  
12 for the care of the employee's child, the child must be under the age  
13 of eighteen, or be eighteen years of age or older and incapable of  
14 self-care because of a mental or physical impairment.

15 (2) Family leave may be taken on a reduced leave schedule subject  
16 to the approval of the employer.

17 (3) The leave required by this section may be unpaid. If an  
18 employer provides paid family leave for fewer than twelve workweeks,  
19 the additional workweeks of leave added to attain the twelve-workweek  
20 total may be unpaid. An employer may require an employee to first use  
21 up the employee's total accumulation of leave to which the employee is  
22 otherwise entitled before going on family leave; however, except as  
23 provided in subsection (4) of this section, nothing in this section  
24 requires an employer to offer employees more than twelve total  
25 workweeks of leave during any twenty-four month period. An employer is  
26 not required to allow an employee to use the employee's other leave in  
27 place of the leave provided under this chapter.

28 (4) The leave required by this section is in addition to any leave  
29 for sickness or temporary disability because of pregnancy or  
30 childbirth.

1 (5) An employer may limit or deny family leave to either:

2 (a) Up to ten percent of the employer's (~~workforce~~) work force in  
3 the state designated as key personnel by the employer. Any designation  
4 made under this (~~section~~) subsection shall take effect thirty days  
5 after it is issued and may be changed no more than once in any twelve-  
6 month period. The designation shall be in writing and shall be  
7 displayed in a conspicuous place. An employer shall not designate key  
8 personnel on the basis of age or gender or for the purpose of evading  
9 the requirements of this chapter. No employee may be designated as key  
10 personnel after giving notice of intent to take leave pursuant to RCW  
11 49.78.040(~~(. The designation shall be in writing and shall be~~  
12 ~~displayed in a conspicuous place)~~); or

13 (b) If the employer does not designate key personnel, the highest  
14 paid ten percent of the employer's employees in the state."

15 "**Sec. 3.** RCW 49.78.040 and 1989 1st ex.s. c 11 s 4 are each  
16 amended to read as follows:

17 (1) An employee planning to take family leave under RCW  
18 49.78.030(1)(a) shall provide the employer with written notice at least  
19 thirty days in advance of the anticipated date of delivery or placement  
20 for adoption or foster care, stating the dates during which the  
21 employee intends to take family leave. The employee shall adhere to  
22 the dates stated in the notice unless:

23 (a) The birth is premature;

24 (b) The mother is incapacitated due to birth such that she is  
25 unable to care for the child;

26 (c) The employee takes physical custody of the newly adopted child  
27 at an unanticipated time and is unable to give notice thirty days in  
28 advance; (~~or~~)

1       (d) The employee takes physical custody of the newly placed foster  
2 child at an unanticipated time and is unable to give notice thirty days  
3 in advance; or

4       (e) The employer and employee agree to alter the dates of family  
5 leave stated in the notice.

6       (2) In cases of premature birth, incapacity, or unanticipated  
7 placement for adoption or foster care referred to in subsection (1) of  
8 this section, the employee must give notice of revised dates of family  
9 leave as soon as possible but at least within one working day of the  
10 birth or placement (~~((for adoption))~~) or incapacitation of the mother.

11       (3) If family leave under RCW 49.78.030(1)(b) is foreseeable, the  
12 employee shall provide the employer with written notice at least  
13 fourteen days in advance of the expected leave and shall make a  
14 reasonable effort to schedule the leave so as not to unduly disrupt the  
15 operations of the employer. If family leave under RCW 49.78.030(1)(b)  
16 is not foreseeable fourteen or more days before the leave is to take  
17 place, the employee shall notify the employer of the expected leave as  
18 soon as possible, but at least within one working day of the beginning  
19 of the leave.

20       (4) If the employee fails to give the notice required by this  
21 section, the employer may reduce or increase the family leave required  
22 by this chapter by three weeks."

23       **"Sec. 4.** RCW 49.78.050 and 1989 1st ex.s. c 11 s 5 are each  
24 amended to read as follows:

25       (1) In the event of any dispute under this chapter regarding  
26 premature birth, incapacitation of the mother, maternity disability, or  
27 (~~((terminal condition of a child))~~) serious health condition of a child,  
28 an employer may require confirmation by a health care provider of: (a)  
29 The date of the birth; (b) the date on which incapacity because of

1 childbirth or disability because of pregnancy or childbirth commenced  
2 or will probably commence, and its probable duration; or (c) for family  
3 leave under RCW 49.78.030(1)(b), the fact that the child has a  
4 (~~terminal~~) serious health condition.

5 (2) An employer may require, at the employer's expense, that the  
6 employee obtain the opinion of a second health care provider selected  
7 by the employer concerning any information required under subsection  
8 (1) of this section. If the health care providers disagree on any  
9 factor which is determinative of the employee's eligibility for family  
10 leave, the two health care providers shall select a third health care  
11 provider, whose opinion, obtained at the employer's expense, shall be  
12 conclusive."

13 "Sec. 5. RCW 49.78.070 and 1989 1st ex.s. c 11 s 7 are each  
14 amended to read as follows:

15 (1) Subject to subsection (2) of this section, an employee who  
16 exercises any right provided under RCW 49.78.030 shall be entitled,  
17 upon return from leave or during any reduced leave schedule:

18 (a) To the same position held by the employee when the leave  
19 commenced; or

20 (b) To a position with equivalent benefits and pay at a workplace  
21 within twenty miles of the employee's workplace when leave commenced;  
22 or

23 (c) If the employer's circumstances have so changed that the  
24 employee cannot be reinstated (~~to the same position, or a position of~~  
25 ~~equivalent pay and benefits~~) under either (a) or (b) of this  
26 subsection, the employee shall be reinstated in any other position  
27 which is vacant and for which the employee is qualified. The filling  
28 of a position held by an employee on family leave under this chapter  
29 shall not by itself constitute changed circumstances.

1 (2) The entitlement under subsection (1) of this section is subject  
2 to bona fide changes in compensation or work duties, and does not apply  
3 if:

4 (a) The employee's position is eliminated by a bona fide  
5 restructuring, or reduction-in-force;

6 (b) The employee's workplace is permanently or temporarily shut  
7 down for at least thirty days;

8 (c) The employee's workplace is moved to a location at least sixty  
9 miles from the location of the workplace when leave commenced;

10 (d) An employee on family leave takes another job; or

11 (e) The employee fails to provide timely notice of family leave as  
12 required under RCW 49.78.040, or fails to return on the established  
13 ending date of leave."

14 "Sec. 6. RCW 49.78.130 and 1989 1st ex.s. c 11 s 13 are each  
15 amended to read as follows:

16 No employer, employment agency, labor union, or other person shall  
17 discharge, expel, or otherwise discriminate against any person because  
18 he or she has opposed any practices forbidden by this chapter, or  
19 because he or she has filed a complaint, testified, or assisted in any  
20 proceeding under this chapter, or has exercised any rights afforded by  
21 this chapter."

22 "NEW SECTION. Sec. 7. A new section is added to chapter 49.12 RCW  
23 to read as follows:

24 No employer may discharge or in any manner discriminate against any  
25 employee because he or she has filed a complaint, testified, or  
26 assisted in any proceeding under RCW 49.12.270 through 49.12.295, or  
27 has exercised any rights afforded by RCW 49.12.270 through 49.12.295."

1        "NEW SECTION.   **Sec. 8.**   The following acts or parts of acts are  
2 each repealed:

3           (1) RCW 49.78.060 and 1989 1st ex.s. c 11 s 6; and

4           (2) RCW 49.78.210 and 1989 1st ex.s. c 11 s 21."

5        "NEW SECTION.   **Sec. 9.**   A new section is added to chapter 49.78 RCW  
6 to read as follows:

7           To facilitate the orderly application of chapter ..., Laws of 1991  
8 ex. sess. (House Bill No. 2220), to employees covered by an unexpired  
9 collective bargaining agreement that expires on or after January 1,  
10 1992, or by an employee benefit program or plan with a stated year  
11 ending on or after the effective date of this section, the chapter  
12 shall apply to these employees the later of:   (1) The first day  
13 following expiration of the collective bargaining agreement; or (2) the  
14 first day of the next plan year, as applicable."

15        "NEW SECTION.   **Sec. 10.**   This act shall take effect January 1,  
16 1992."

17   **HB 2220** - H AMD  
18        By Representative Vance

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20           On page 1, line 2 of the title, after "responsibilities;" strike  
21 the remainder of the title and insert "amending RCW 49.78.020,  
22 49.78.030, 49.78.040, 49.78.050, 49.78.070, and 49.78.130; adding a new  
23 section to chapter 49.12 RCW; adding a new section to chapter 49.78  
24 RCW; repealing RCW 49.78.060 and 49.78.210; and providing an effective  
25 date."