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**Commerce & Labor Committee**

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**E2SSB 5069**

**Brief Description:** Establishing family leave insurance.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Keiser, Kohl-Welles, Franklin, Thibaudeau, Brown, Kline and Regala).

**Brief Summary of Engrossed Second Substitute Bill**

- Establishes the family leave insurance program.
- Provides for payment of benefits of \$250 per week for up to five weeks to employees on family leave.
- Provides for assessment of premiums of 2 cents per hour worked per employee, to be deducted by employers from employee wages and submitted by employers to the Department of Labor and Industries.

**Hearing Date:** 3/24/05

**Staff:** Jill Reinmuth (786-7134).

**Background:**

Federal and state laws provide that certain employees are entitled to unpaid family and medical leave.

Federal Law: Under the federal Family and Medical Leave Act, eligible employees are entitled to take up to 12 weeks of unpaid leave in a 12-month period for specified family and medical reasons, and to be reinstated to their original jobs or equivalent jobs.

An eligible employee is one who: (1) works for a covered employer; and (2) has worked for the same employer for at least 12 months, and for at least 1,250 hours over the previous 12 months. An eligible employee is not one who works at a location at which the employer employs less than 50 employees if the total number employed within 75 miles of that worksite is less than 50.

A covered employer is a private employer that had 50 or more employees in at least 20 weeks of the current or preceding year.

Leave may be taken for: (1) the birth and care of a child of the employee; (2) the placement of a child with the employee for adoption or foster care; (3) the care of an immediate family member

who has a serious health condition; or (4) the serious health condition of the employee that makes the employee unable to work.

State Law: Under the state Family Leave Law, eligible employees are entitled to reinstatement to workplaces within 20 miles of their original workplaces. Employees are also entitled to leave for sickness or temporary disability related to pregnancy or childbirth in addition to leave under federal law. Enforcement of other provisions of the state Family Leave Law is currently suspended.

### **Summary of Bill:**

A new partial wage replacement program, the family leave insurance program, is established. Beginning on September 3, 2006, benefits of \$250 per week for up to five weeks are paid to employees on family leave. Premiums are 2 cents per hour worked per employee. Employers deduct premiums from employee wages, and submit premiums to the Department of Labor and Industries (Department). The program is administered by the Department.

Family Leave: "Family leave" means leave: (1) to care for a newborn child; (2) to care for a child placed with the employee for adoption or foster care; and (3) to care for a child, spouse, or parent of an employee or spouse with a serious health condition.

Eligible Employees: An individual is eligible to receive benefits if he or she: (1) is employed by an employer subject to unemployment compensation; and (2) has worked 960 hours in employment covered by unemployment compensation during either the first four of the last five calendar quarters or the last four calendar quarters completed before beginning family leave or has been continuously employed for the twelve months preceding the month in which he or she files for benefits, whichever is less.

Covered Employers: An employer is covered if the employer is: (1) subject to unemployment compensation; or (2) the state and its political subdivisions. An employer does not include a person or entity who employs fewer than fifty employees. An employer or a self-employed person not mandatorily covered, including an employer who employs fewer than fifty employees, may elect to be covered.

Other Requirements: If leave is foreseeable, the employee is required to provide notice of leave to his or her employer. If leave is to care for a family member with a serious health condition, the employee may be required by the Department to support his or her claim with medical certification.

Disqualification: An employee is disqualified from receiving benefits if the employee made false statements to obtain benefits.

Other Leave and/or Compensation: Family leave for which an individual is receiving benefits must be taken concurrently with leave under federal, state, or local law. An employee may elect when he or she uses any paid leave. An employer may not require an employee to exhaust any paid leave before receiving benefits. An employee may not receive benefits while entitled to certain workers' compensation or unemployment compensation benefits.

Benefits: An eligible employee on family leave is entitled to receive benefits for a maximum of five weeks in an application year. The amount of the weekly benefit is \$250 for an eligible

employee who was regularly working 40 or more hours per week and is on leave for the same number of hours. Benefits are prorated for an eligible employee who was regularly working less than 40 hours per week, and for an eligible employee who is on leave for fewer hours per week than he or she was regularly working.

**Reinstatement:** An eligible employee is entitled to return to the same job or an equivalent position at the end of the period in which he or she receives benefits only if he or she is entitled to reinstatement under the federal Family and Medical Leave Act, the state Family Leave Law, or other applicable federal, state, or local law. Otherwise, there is no entitlement to reinstatement.

**Premiums:** Beginning on January 1, 2006, an employer is required to submit the premium, and is authorized to retain the full amount of the premium from employee wages. The premium is 2 cents per hour worked per employee. The amount of the premium may be reduced by the Department to ensure that it is at the lowest rate necessary to pay benefits and administrative costs, and maintain actuarial solvency of the program on a current basis.

**Penalties:** An employee who receives benefits erroneously or as a result of willful misrepresentation must repay the benefits and may be subject to penalties. An employer that fails to make reports or pay premiums required by the Department is subject to sanctions, including penalties, interest, and collection procedures.

**Confidentiality:** Information in an employee's record is not subject to public disclosure, but an employer may review the records of its employee in connection with a pending claim. Information that the Department obtains from employers' records for administration of the program is not subject to public disclosure.

**Discrimination:** An employer or other person may not discriminate against a person for filing a claim for benefits, communicating an intent to file a claim, or testifying or assisting in a proceeding related to a family leave insurance.

**Dedicated Account:** A dedicated account is established. Premiums and penalties are paid into and benefits are paid out of the account.

**Loan:** If necessary, the director may loan funds from the supplemental pension fund to the family leave insurance account. The loaned funds are for the purposes of administering the family leave insurance program and paying family leave insurance benefits. The loan funds must be repaid, with interest, from the family leave insurance account to the supplemental pension fund within one year of the initial loan, and within three months of any subsequent loans.

**Reports:** Beginning on September 1, 2006, and annually thereafter, the Department must report to the Legislature on program participation, premium rates, fund balances, and outreach efforts.

**Rulemaking:** The bill contains provisions requiring the exercise of rule-making powers by the Department of Labor and Industries.

**Appropriation:** None.

**Fiscal Note:** Requested on March 22, 2005.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.