

# SENATE BILL REPORT

## E2SSB 5659

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As Amended by House, April 20, 2007

**Title:** An act relating to family and medical leave insurance.

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

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

**Brief History:**

**Committee Activity:** Labor, Commerce, Research & Development: 2/22/07, 2/27/07[DPS-WM, DNP].

Ways & Means: 3/05/07 [DP2S, DNP].

Passed Senate: 3/14/07, 32-17.

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### SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

**Majority Report:** That Substitute Senate Bill No. 5659 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin, Murray and Prentice.

**Minority Report:** Do not pass.

Signed by Senators Clements, Ranking Minority Member, Hewitt and Holmquist.

**Staff:** Jennifer Strus (786-7316)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5659 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Fairley, Hatfield, Hobbs, Keiser, Kohl-Welles, Oemig, Rasmussen, Regala and Rockefeller.

**Minority Report:** Do not pass.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Carrell, Honeyford, Parlette and Schoesler.

**Staff:** Paula Moore (786-7449)

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**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: The state Family Leave Law generally conforms to federal law and related regulations, with certain exceptions. Upon returning from leave, eligible employees are entitled to be returned 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. Employers must allow employees to continue their health coverage at their own expense during leave.

**Summary of Engrossed Second Substitute Bill:** A new partial wage replacement program, the family and medical leave insurance program, is established. Beginning on October 1, 2009, benefits of \$250 per week for up to five weeks are paid to individuals on family and medical leave. Premiums of two cents per hour worked per individual are assessed. Employers are required to pay the premiums, and are authorized to retain the premiums from earnings. The program is administered by the Department of Labor and Industries (L&I).

Family and Medical Leave: "Family and medical leave" means leave as defined and described in the state Family Leave Law for: (1) the birth or placement of a child; or (2) a family member's serious health condition. "Family member" means the individual's child, spouse, parent, or a person involved in a legal relationship governed by Title 26 RCW.

Eligibility: An individual is eligible to receive benefits if he or she has worked 680 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 and medical leave. An employer or a self-employed person not mandatorily covered may elect coverage.

Other Requirements: If leave is foreseeable, the individual 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 individual may be required by the L&I to support his or her claim with medical certification.

Disqualification: An individual is disqualified from receiving benefits if the individual made false statements to obtain benefits or, with respect to leave for the employee's own serious health condition, if the condition resulted from perpetration of a gross misdemeanor or felony.

Other Leave and/or Compensation: An employer may require an individual who is receiving benefits to take the leave concurrently with leave under federal, state, or local law, with certain exceptions. An employer may not require an individual to exhaust paid leave or disability insurance before receiving benefits. An individual may not increase the amount of leave to which the individual is entitled under the federal Family and Medical Leave Act and other laws by "tacking on" any leave to which the individual is entitled under the family and medical leave insurance program. An individual may not receive benefits while entitled to certain workers' compensation, unemployment compensation, crime victims' compensation, or disability insurance benefits.

Benefits: Before July 1, 2010, an individual is entitled to receive benefits for a maximum of five weeks in an application year. Initially, the amount of the weekly benefit is \$250 for an individual who was regularly working 35 or more hours per week and is on leave for the same number of hours. Benefits are prorated for an individual who was regularly working less than 40 hours per week, and for an individual who is on leave for fewer hours per week than he or she was regularly working. Each year thereafter, the amount of the weekly benefit is adjusted for inflation by L&I. Starting on June 30, 2010, the individual's weekly benefit may not exceed the individual's average weekly wage.

Reinstatement: An individual is entitled to be restored to a position of employment in the same manner as an employee entitled to leave under the state Family Leave Law is restored to a position of employment, unless the individual is employed by an employer with 25 or fewer employees. However, the individual must have worked for the same employer for at least 12 months, and for at least 1,250 hours over the previous 12 months.

Premiums: Beginning on January 1, 2009, an employer is required to pay premiums, and is authorized to retain premiums from earnings. Initially the premium is two cents per hour worked per individual. Every year thereafter, the amount of the premium is adjusted by L&I 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 individual 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 L&I 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.

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 and medical leave insurance.

Loan: If necessary, the director of L&I may loan funds from the supplemental pension fund to the family and medical leave insurance account. The loan funds must be repaid, with interest, from the family and medical leave insurance account to the supplemental pension fund within two years of the loan.

**Tax Credit:** A business and occupation (B&O) tax credit of \$1,200 is provided for each replacement worker hired for small businesses hiring replacement workers for those workers taking family and medical leave.

**Reports:** Beginning on September 1, 2010, and annually thereafter, L&I must report to the Legislature on program participation, premium rates, fund balances, and outreach efforts.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony (Labor, Commerce, Research & Development):**

PRO: Many patients are discharged from the hospital before they are ready and they need someone to be with them for awhile after they return home. Many relatives would like to assist but can't afford to leave their jobs to do so. This means that some people have to reside in a nursing home for a period of time which is far more expensive than providing family members with family leave insurance. Workers' productivity at work is low if they are worried about sick family members at home. Family leave insurance is economical and is the right thing to do. Workers will make errors at work or be less productive because they are distracted by a sick family member. Holding a position open for someone on family leave is much cheaper than hiring a new employee. These family leave insurance programs work and this bill is modeled after those in other states that have worked.

CON: Ninety-six percent of the small business representatives surveyed about this bill oppose it. Many small businesses actually pay for leave in different ways. Small businesses don't need the regimen provided by this bill; it is easier for them to handle this issue internally with their own employees in a way that works for everyone involved. Small retailers cannot carry someone for five weeks while they are on family leave. How will they stay afloat if they are paying someone overtime to fill a spot vacated by someone taking family leave? We don't think the two cents an hour premium is enough to fund this program. If it isn't enough, then employers will be expected to fill in the gaps. This approach adds a sixth layer of leave programs for workers in this state. Employers and employees need to come together and come up with a flexible approach to take time off to care for sick relatives.

**Persons Testifying (Labor, Commerce, Research & Development):** PRO: Senator Keiser, prime sponsor; Jerri Wood, Lance Armstrong Foundation; Sean O'Sullivan, Association of Western Pulp and Paper Workers; Sharon Ness, United Food and Commercial Workers Local 141; Dolores Guhndrone, Hallmark, Inc.; Marilyn Watkins, Economic Opportunity Institute.

CON: Kris Tefft, Association of Washington Business; Vicky Marin, Washington Retail Association; Carolyn Logue, National Federation of International Business.

**Staff Summary of Public Testimony (Ways & Means):** PRO: The fiscal impact to the General Fund is limited only to the state's cost as an employer. These are just initial costs. The bill uses L&I funding for its loan. The premiums will pay the costs of the benefits.

CON: We are concerned with the funding. There is not enough funding for this program in the long-term. Over time, it appears less money will come into this program and employers will be asked to fill the gap.

**Persons Testifying (Ways & Means):** PRO: Pam Crone, Washington State Labor Council, Northwest Women's Law Center.

CON: Vicki Marin, Washington Retail Association.

**House Amendment(s):** Creates a thirteen-member joint legislative task force on family leave insurance.

Specifies that the task force consists of the following: Four legislative members that are the chairs and the ranking members of the Senate Labor, Commerce, Research and Development Committee and the House Commerce and Labor Committee; four legislative members - one member of each of the largest caucuses in the Senate, appointed by the majority leader of the Senate, and one member of each of the largest caucuses in the House of Representatives, appointed by the speaker of the House of Representatives. There are also four nonlegislative members consisting of one large business representative, one small business representative, one labor representative, and one representative of advocates for family leave; and one gubernatorial appointee.

Requires the task force to study the following: Financing for benefits and administrative costs; program implementation and administration; government efficiencies that improve program administration and reduce program costs; and program impacts, if any, the unemployment compensation system, and options for mitigating such impacts.

Requires the task force to report its findings and recommendations, including recommendations as to the specific manner in which the benefits and the administrative costs should be financed as well as proposed legislation, to the Legislature by January 1, 2008. The task force expires July 1, 2009. The section establishing the task force takes effect immediately.

Family leave can be taken for the birth or adoption of a child.

Does not specify the state agency responsible for administering the family leave insurance program.

Specifies that leave under the bill must be taken concurrently with leave taken under the federal Family and Medical Leave Act or the state Family Leave Law. Permits employers to require that leave under the bill be taken concurrently or otherwise coordinated with leave allowed under collective bargaining agreements or employer policies.

Specifies that funds in the Family Leave Insurance Account loaned from the Supplemental Pension Fund may be expended solely for the initial administration of the family leave insurance program.

Authorizes the Department of Labor and Industries to contract or enter into interagency agreements for the initial administration of the family leave insurance program.

Appropriates up to \$18 million from the Family Leave Insurance Account to the Department of Labor and Industries for the initial administration of the family leave insurance program.

The sections relating to the initial administration of the family leave insurance program take effect immediately. The sections relating to the payment of benefits take effect July 1, 2008.