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SENATE BILL 5679

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State of Washington

61st Legislature

2009 Regular Session

By Senators Keiser, Kohl-Welles, McDermott, Murray, Pridemore, Kauffman, Hatfield, Franklin, McAuliffe, Kline, and Oemig

Read first time 01/28/09. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to the family security act; amending RCW 49.86.005,  
2 49.86.010, 49.86.020, 49.86.030, 49.86.050, 49.86.060, 49.86.070,  
3 49.86.080, 49.86.090, 49.86.100, 49.86.110, 49.86.120, 49.86.130,  
4 49.86.140, 49.86.160, 49.86.170, 49.86.180, 49.86.190, 49.86.210, and  
5 50.29.021; reenacting and amending RCW 43.79A.040; adding new sections  
6 to chapter 49.86 RCW; adding a new section to chapter 82.04 RCW;  
7 creating a new section; repealing RCW 49.86.040; providing an effective  
8 date; and providing an expiration date.

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

10 **Sec. 1.** RCW 49.86.005 and 2007 c 357 s 1 are each amended to read  
11 as follows:

12 The legislature finds that, although family and medical leave laws  
13 have assisted individuals to balance the demands of the workplace with  
14 their family responsibilities, more needs to be done to achieve the  
15 goals of (~~parent and child bonding~~) family care, children and family  
16 health, workforce stability, and economic security. In particular, the  
17 legislature finds that many individuals do not have access to family  
18 and medical leave laws, and those who do may not be in a financial  
19 position to take family and medical leave that is unpaid, and that

1 employer-paid benefits meet only a relatively small part of this need.  
2 The legislature declares it to be in the public interest to establish  
3 a program that: (1) Allows parents to bond with a newborn or newly  
4 placed child, and workers to care for family members with a serious  
5 health condition or to recover from their own serious health condition;  
6 (2) provides limited and additional income support for a reasonable  
7 period while an individual is away from work on family and medical  
8 leave; (3) reduces the impact on state income support programs by  
9 increasing an individual's ability to provide caregiving services for  
10 ((a—child)) family members while maintaining an employment  
11 relationship; and (4) establishes a wage replacement benefit to be  
12 coordinated with current existing state and federal family and medical  
13 leave laws.

14 **Sec. 2.** RCW 49.86.010 and 2007 c 357 s 3 are each amended to read  
15 as follows:

16 The definitions in this section apply throughout this chapter  
17 unless the context clearly requires otherwise.

18 (1)(a) With respect to leave for the birth or placement of a child,  
19 "application year" means the twelve-month period beginning on the date  
20 of the birth or placement of the child.

21 (b) With respect to leave for a family member's serious health  
22 condition or the individual's serious health condition, "application  
23 year" means the twelve-month period beginning on the first day of the  
24 calendar week in which an individual files an initial application for  
25 family and medical leave insurance benefits ((and, thereafter, the  
26 twelve-month period beginning with the first day of the calendar week  
27 in which the individual next files an application for family leave  
28 insurance benefits after the expiration of the individual's last  
29 preceding application year)).

30 (c) No application year may begin before the individual's last  
31 preceding application year has expired.

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

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

34 ((3) "Child" means a biological or an adopted child.

35 (4) "Department" means the state agency to be directed to  
36 administer the family leave insurance program.

37 (5) "Director" means the director of the department.

1 ~~(6)~~) (4) "Child," "health care provider," "parent," "serious  
2 health condition," and "spouse" means the same as in RCW 49.78.020.

3 (5) "Commissioner" means the commissioner of the department.

4 (6) "Department" means the employment security department.

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

7 ~~((7))~~ (8) "Employment" has the meaning provided in RCW 50.04.100.

8 ~~((8))~~ (9) "Family and medical leave" means leave~~((:—(a) Because~~  
9 ~~of the birth of a child of the employee and in order to care for the~~  
10 ~~child; or (b) because of the placement of a child with the employee for~~  
11 ~~adoption))~~ for a family member's serious health condition, leave for  
12 the birth or placement of a child, and leave for the individual's  
13 serious health condition as these types of leave are defined in RCW  
14 49.78.020 and described in RCW 49.78.220.

15 ~~((9))~~ (10) "Family and medical leave insurance benefits" means  
16 the benefits payable under RCW 49.86.050 and 49.86.060.

17 ~~((10))~~ (11) "Family member" means a child, spouse, domestic  
18 partner, or parent of the individual.

19 (12) "Federal family and medical leave act" means the federal  
20 family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107  
21 Stat. 6).

22 ~~((11))~~ (13) "Premium" or "premiums" means payments required by  
23 this chapter to be made to the department for the family and medical  
24 leave insurance account under RCW 49.86.170.

25 (14) "Qualifying year" means the first four of the last five  
26 completed calendar quarters or, if eligibility is not established, the  
27 last four completed calendar quarters immediately preceding the first  
28 day of the individual's application year.

29 ~~((12))~~ (15) "Regularly working" means the average number of hours  
30 per workweek that an individual worked in the two quarters of the  
31 individual's qualifying year in which total wages were highest.

32 **Sec. 3.** RCW 49.86.020 and 2007 c 357 s 4 are each amended to read  
33 as follows:

34 (1) The department shall establish and administer a family and  
35 medical leave insurance program and pay family and medical leave  
36 insurance benefits as specified in this chapter.

1 (2) The department shall establish procedures and forms for filing  
2 claims for benefits under this chapter. The department shall notify  
3 the employer within five business days of a claim being filed under RCW  
4 49.86.030.

5 (3) The department may require that an individual attest that:

6 (a) There has been a birth or placement of a child, or the  
7 individual or the individual's family member has a serious health  
8 condition, as applicable; and

9 (b) The individual is not earning waiting period credits or  
10 receiving benefits under chapter 7.68 RCW, Title 50 or 51 RCW, or other  
11 applicable federal or state crime victims' compensation, unemployment  
12 compensation, industrial insurance, or disability insurance laws; and

13 (c) The individual's serious health condition is not a result of  
14 the individual's perpetration of a gross misdemeanor or felony.

15 (4) The department may require that a claim for benefits under this  
16 chapter be supported by a certification issued by the health care  
17 provider providing health care to the individual or the individual's  
18 family member, as applicable.

19 (5) The department shall use information sharing and integration  
20 technology to facilitate the disclosure of relevant information or  
21 records by (~~the employment security department~~) another state agency,  
22 so long as an individual consents to the disclosure as required under  
23 RCW 49.86.030(~~(+4)~~) (1)(d).

24 (~~(+4)~~) (6) Information contained in the files and records  
25 pertaining to an individual under this chapter are confidential and not  
26 open to public inspection, other than to public employees in the  
27 performance of their official duties. However, the individual or an  
28 authorized representative of an individual may review the records or  
29 receive specific information from the records on the presentation of  
30 the signed authorization of the individual. An employer or the  
31 employer's duly authorized representative may review the records of an  
32 individual employed by the employer in connection with a pending claim.  
33 At the department's discretion, other persons may review records when  
34 such persons are rendering assistance to the department at any stage of  
35 the proceedings on any matter pertaining to the administration of this  
36 chapter.

37 (~~(+5)~~) (7) The department shall develop and implement an outreach  
38 program to ensure that individuals who may be eligible to receive

1 family and medical leave insurance benefits under this chapter are made  
2 aware of these benefits. Outreach information shall explain, in an  
3 easy to understand format, eligibility requirements, the claims  
4 process, weekly benefit amounts, maximum benefits payable, notice and  
5 medical certification requirements, reinstatement and nondiscrimination  
6 rights, confidentiality, and ~~((coordination of leave))~~ the relationship  
7 between employment protection, leave from employment, and wage  
8 replacement benefits under this chapter and other laws, collective  
9 bargaining agreements, and employer policies. Outreach information  
10 shall be prepared by the department with technical assistance from the  
11 department of labor and industries. Outreach information shall be  
12 available in English and other primary languages as defined in RCW  
13 74.04.025.

14 **Sec. 4.** RCW 49.86.030 and 2007 c 357 s 5 are each amended to read  
15 as follows:

16 ~~((Beginning October 1, 2009,))~~ (1) Family and medical leave  
17 insurance benefits are payable to an individual during a period in  
18 which the individual is unable to perform his or her regular or  
19 customary work because he or she is on family and medical leave if the  
20 individual:

21 ~~((+1))~~ (a) Files a claim for benefits in the six-week period  
22 beginning on the first day of the calendar week in which the individual  
23 is on leave for the birth or placement of a child, or in each week in  
24 which the individual is on ((family)) leave for a family member's  
25 serious health condition or the individual's serious health condition,  
26 and as required by rules adopted by the ~~((director))~~ commissioner;

27 ~~((+2))~~ (b) Has been employed for at least six hundred eighty hours  
28 ~~((in employment))~~ during the individual's qualifying year;

29 ~~((+3))~~ (c) Establishes an application year. An application year  
30 may not be established if the qualifying year includes hours worked  
31 before establishment of a previous application year;

32 ~~((+4))~~ (d) Consents to the disclosure of information or records  
33 deemed private and confidential under ~~((chapter 50.13 RCW))~~ state law.  
34 Initial disclosure of this information and these records by ~~((the~~  
35 ~~employment security department))~~ another state agency to the department  
36 is solely for purposes related to the administration of this chapter.

1 Further disclosure of this information or these records is subject to  
2 RCW 49.86.020(~~(+3+)~~) (5) and section 14 of this act;

3 ~~((+5+)) (e) Discloses whether or not he or she owes child support~~  
4 ~~obligations as defined in RCW 50.40.050; (~~and~~~~

5 ~~(+6) Documents that he or she has provided)) (f) Provides the~~  
6 ~~employer from whom family and medical leave is to be taken with written~~  
7 ~~notice of the individual's intention to take family and medical leave~~  
8 ~~in the same manner as an employee is required to provide notice in RCW~~  
9 ~~49.78.250 and in the individual's claim for benefits, attests that~~  
10 ~~written notice has been provided; and~~

11 (g) Provides a document authorizing the individual's or the family  
12 member's health care provider, as applicable, to disclose the  
13 individual's or the family member's health care information in the form  
14 of the certification of a serious health condition. To be valid, the  
15 disclosure authorization must satisfy the requirements set forth in RCW  
16 70.02.030.

17 (2)(a) With respect to leave for the birth or placement of a child,  
18 family and medical leave insurance benefits are payable beginning as  
19 soon as funds are available on or after July 1, 2010, but no later than  
20 June 1, 2011.

21 (b) With respect to leave for a family member's serious health  
22 condition or the individual's serious health condition, family and  
23 medical leave insurance benefits are payable beginning January 1, 2012.

24 NEW SECTION. Sec. 5. A new section is added to chapter 49.86 RCW  
25 to read as follows:

26 With respect to leave for the individual's serious health  
27 condition, an individual is disqualified from family and medical leave  
28 insurance benefits beginning with the first day of the calendar week,  
29 and continuing for the next fifty-two consecutive weeks, in which the  
30 individual is suffering from a serious health condition resulting from  
31 the individual's perpetration of a gross misdemeanor or felony.

32 Sec. 6. RCW 49.86.050 and 2007 c 357 s 7 are each amended to read  
33 as follows:

34 ~~((The maximum number of weeks during which family leave~~  
35 ~~insurance benefits are payable in an application year is five weeks.~~  
36 ~~However,)) Benefits are not payable during a waiting period consisting~~

1 of the first seven calendar days of family and medical leave taken in  
2 an 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 completed claim is (~~filed~~) received or the  
7 family and medical leave began, whichever is later, and subsequent  
8 payments must be made (~~semimonthly~~) biweekly 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~~)  
18 commissioner may exercise his or her discretion to waive, in whole or  
19 in part, the amount of any such payments where the recovery would be  
20 against equity and good conscience.

21 (c) If an individual dies before he or she receives a payment of  
22 benefits, the payment shall be made by the department and distributed  
23 consistent with the terms of the decedent's will or, if the decedent  
24 dies intestate, consistent with the terms of RCW 11.04.015.

25 **Sec. 7.** RCW 49.86.060 and 2007 c 357 s 8 are each amended to read  
26 as follows:

27 The amount of family and medical leave insurance benefits shall be  
28 determined as follows:

29 (1) (~~The weekly benefit shall be two hundred fifty dollars per~~  
30 ~~week~~) For an individual who at the time of beginning family and  
31 medical leave was regularly working thirty-five hours or more per week  
32 and who is on family and medical leave for thirty-five hours or more  
33 per week:

34 (a) The weekly benefit amount shall be two hundred fifty dollars  
35 per week for weeks beginning before January 1, 2012, and thereafter  
36 shall be the adjusted weekly benefit amount calculated under subsection  
37 (4) of this section; and

1       (b) The maximum benefit payable shall be five times the weekly  
2 benefit amount specified in (a) of this subsection.

3       (2) ~~((If))~~ For an individual who at the time of beginning family  
4 and medical leave was regularly working thirty-five hours or more per  
5 week and who is on family and medical leave for less than thirty-five  
6 hours but at least eight hours in a week ~~((, the individual's))~~:

7       (a) The weekly benefit shall be .025 times the ((maximum)) weekly  
8 benefit amount specified in subsection (1)(a) of this section times the  
9 number of hours of family and medical leave taken in the week~~((-~~  
10 ~~Benefits are not payable for less than eight hours of family leave~~  
11 ~~taken in a week))~~;

12       (b) The maximum benefit payable shall be the same as the amount  
13 specified in subsection (1)(b) of this section.

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

22       (4) By September 30, 2011, and by each subsequent September 30th,  
23 the department shall calculate to the nearest dollar an adjusted weekly  
24 benefit amount to account for inflation using the consumer price index  
25 for urban wage earners and clerical workers, CPI-W, or a successor  
26 index, for the twelve completed calendar months before each September  
27 30th as calculated by the United States department of labor. Each  
28 adjusted weekly benefit amount calculated under this subsection takes  
29 effect on the following January 1st.

30       (5) In no case shall an individual's weekly benefit amount exceed  
31 the individual's average weekly wage.

32       (6) In no case shall benefits be payable for less than eight hours  
33 of family and medical leave taken in a week.

34       (7) If an individual discloses that he or she owes child support  
35 obligations under RCW 49.86.030 and the department determines that the  
36 individual is eligible for benefits, the department shall notify the  
37 applicable state or local child support enforcement agency and deduct



1 and withhold an amount from benefits in a manner consistent with RCW  
2 50.40.050.

3 ~~((5) If the internal revenue service determines that family leave  
4 insurance benefits under this chapter are subject to federal income tax  
5 and an individual elects to have federal income tax deducted and  
6 withheld from benefits, the department shall deduct and withhold the  
7 amount specified in the federal internal revenue code in a manner  
8 consistent with RCW 49.86.070.))~~

9 **Sec. 8.** RCW 49.86.070 and 2007 c 357 s 9 are each amended to read  
10 as follows:

11 ~~((1))~~ If the internal revenue service determines that family and  
12 medical leave insurance benefits under this chapter are subject to  
13 federal income tax, the department must advise an individual filing a  
14 ~~((new))~~ claim for family and medical leave insurance benefits, at the  
15 time of filing such claim, that(~~(+~~

16 ~~(a))~~ the internal revenue service has determined that benefits are  
17 subject to federal income tax(~~(+~~

18 ~~(b))~~ and requirements exist pertaining to estimated tax  
19 payments(~~(+~~

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

23 ~~(d) The individual is permitted to change a previously elected  
24 withholding status.~~

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

28 ~~(3) The director shall follow all procedures specified by the  
29 federal internal revenue service pertaining to the deducting and  
30 withholding of income tax)).~~

31 **Sec. 9.** RCW 49.86.080 and 2007 c 357 s 10 are each amended to read  
32 as follows:

33 (1) If family and medical leave insurance benefits are paid  
34 erroneously or as a result of willful misrepresentation, or if a claim  
35 for family and medical leave benefits is rejected after benefits are  
36 paid, RCW 51.32.240 shall apply, except that appeals are governed by

1 RCW 49.86.120, penalties are paid into the family and medical leave  
2 insurance account, and the department shall seek repayment of benefits  
3 from the recipient. The department shall issue an overpayment  
4 assessment setting forth the reasons for, and the amount of, the  
5 overpayment.

6 (2) Whenever such an overpayment assessment becomes conclusive and  
7 final, the department may file with the superior court clerk of any  
8 county within the state a warrant in the amount of the overpayment  
9 assessment plus a filing fee under RCW 36.18.012(10). However, the  
10 department must first give at least twenty days notice by certified  
11 mail return receipt requested, to the individual's last known address  
12 of the intended action.

13 (a) The clerk of the county where the warrant is filed shall  
14 immediately designate a superior court cause number for the warrant.  
15 The clerk shall cause to be entered in the judgment docket under the  
16 superior court cause number assigned to the warrant the name of the  
17 person or persons mentioned in the warrant, the amount of the  
18 overpayment assessment, and the date when the warrant was filed.

19 (b) The amount of the warrant as docketed shall become a lien upon  
20 the title to, and any interest in, all real and personal property of  
21 the person or persons against whom the warrant is issued, the same as  
22 a judgment in a civil case duly docketed in the office of the clerk.  
23 A warrant so docketed shall be sufficient to support the issuance of  
24 writs of execution and writs of garnishment in favor of the state in  
25 the manner provided by law for a civil judgment.

26 (c) A copy of the warrant shall be mailed to the person or persons  
27 mentioned in the warrant by certified mail to the person's last known  
28 address within ten days of its filing with the clerk.

29 **Sec. 10.** RCW 49.86.090 and 2007 c 357 s 11 are each amended to  
30 read as follows:

31 (1) During a period in which an individual receives family and  
32 medical leave insurance benefits or earns waiting period credits under  
33 this chapter, the individual is entitled to family and medical leave  
34 and, at the established ending date of leave, to be restored to a  
35 position of employment with the employer from whom leave was taken.

36 (2) The individual entitled to leave under this section shall be

1 restored to a position of employment in the same manner as an employee  
2 entitled to leave under chapter 49.78 RCW is restored to a position of  
3 employment, as specified in RCW 49.78.280.

4 (3) This section applies only to an individual if:

5 (a) The employer from whom the individual takes family and medical  
6 leave employs ~~((more than))~~ twenty-five or more employees for each  
7 working day during each of twenty or more calendar workweeks in the  
8 current or preceding calendar year within seventy-five miles of the  
9 employee's worksite; and

10 (b) The individual has been employed for at least twelve months by  
11 that employer, and for at least one thousand two hundred fifty hours of  
12 service with that employer during the previous twelve-month period.

13 (4) This section shall be enforced by the department of labor and  
14 industries as provided in chapter 49.78 RCW.

15 **Sec. 11.** RCW 49.86.100 and 2007 c 357 s 12 are each amended to  
16 read as follows:

17 If spouses or ~~((people involved in a legal relationship established~~  
18 ~~under chapter 26.60 RCW who are))~~ domestic partners entitled to leave  
19 under this chapter are employed by the same employer, the employer may  
20 require that spouses or ~~((people involved in such a relationship~~  
21 ~~governed by Title 26 RCW))~~ domestic partners not take such leave  
22 concurrently if such leave is taken: (1) For the birth or placement of  
23 a child; or (2) for a parent's serious health condition.

24 **Sec. 12.** RCW 49.86.110 and 2007 c 357 s 13 are each amended to  
25 read as follows:

26 (1) Beginning January 1, 2014, an employer of individuals not  
27 covered by this chapter or a self-employed person, including a sole  
28 proprietor, partner, or joint venturer, may elect coverage under this  
29 chapter for all individuals in its employ for an initial period of not  
30 less than three years or a subsequent period of not less than one year  
31 immediately following another period of coverage. The employer or  
32 self-employed person must file a notice of election in writing with the  
33 ~~((director))~~ commissioner, as required by the department. The election  
34 becomes effective on the date of filing the notice with the  
35 commissioner.

1 (2) An employer or self-employed person who has elected coverage  
2 may withdraw from coverage within thirty days after the end of the  
3 three-year period of coverage, or at such other times as the  
4 ((director)) commissioner may prescribe by rule, by filing ((written))  
5 a notice of withdrawal in writing with the ((director)) commissioner,  
6 such withdrawal to take effect not sooner than thirty days after filing  
7 the notice with the commissioner. Within five days of filing written  
8 notice of the withdrawal with the ((director)) commissioner, an  
9 employer must provide written notice of the withdrawal to all  
10 individuals in the employer's employ.

11 (3) The department may cancel elective coverage if the employer or  
12 self-employed person fails to make required payments or reports. The  
13 department may collect due and unpaid premiums and may levy an  
14 additional premium for the remainder of the period of coverage. The  
15 cancellation shall be effective no later than thirty days from the date  
16 of the notice in writing advising the employer or self-employed person  
17 of the cancellation. Within five days of receiving written notice of  
18 the cancellation from the commissioner, an employer must provide  
19 written notice of the cancellation to all individuals in the employer's  
20 employ.

21 (4) In developing and implementing the requirements of this  
22 section, the department shall adopt government efficiencies to improve  
23 administration and reduce costs. These efficiencies may include, but  
24 are not limited to, requiring that payments be made in a manner and at  
25 intervals unique to the elective coverage program.

26 NEW SECTION. Sec. 13. A new section is added to chapter 49.86 RCW  
27 to read as follows:

28 (1) Beginning January 1, 2011, for each individual, each employer  
29 shall pay a premium of two cents per hour worked, up to a maximum of  
30 forty hours per week, to the department. Each employer may deduct from  
31 the pay of each individual the full amount that the employer is  
32 required to pay for the individual.

33 (2) Payments shall be made in the manner and at such intervals as  
34 provided in this chapter and directed by the department, and shall be  
35 deposited in the family and medical leave insurance account. In  
36 developing and implementing the requirements of this section and  
37 section 14 of this act, the department shall adopt government

1 efficiencies to improve administration and reduce costs. These  
2 efficiencies shall include combined reporting and payment, with a  
3 single return, of premiums under this section and contributions under  
4 chapter 50.24 RCW. In the payment of premiums, a fractional part of a  
5 cent shall be disregarded unless it amounts to one-half cent or more,  
6 in which case it shall be increased to one cent.

7 (3) By September 1, 2011, and by each subsequent September 1st, the  
8 commissioner shall adjust the amount of the premium to ensure that the  
9 amount is the lowest rate necessary to pay family and medical leave  
10 insurance benefits and administrative costs, and maintain actuarial  
11 solvency in accordance with recognized insurance principles, of the  
12 family and medical leave insurance program on a current basis, and to  
13 repay loaned funds from the supplemental pension fund, if any, as  
14 required in RCW 49.86.190. The adjusted amount of the premium takes  
15 effect for the calendar year beginning after the relevant September  
16 1st.

17 NEW SECTION. **Sec. 14.** A new section is added to chapter 49.86 RCW  
18 to read as follows:

19 (1) In the form and at the times specified in this chapter and by  
20 the commissioner, an employer shall make reports, furnish information,  
21 and make payments of premiums as required by section 13 of this act to  
22 the department. In developing and implementing the requirements of  
23 this section and section 13 of this act, the department shall adopt  
24 government efficiencies to improve administration and reduce costs.  
25 These efficiencies shall include combined reporting and payment, with  
26 a single return, of premiums under this section and contributions under  
27 chapter 50.24 RCW. If the employer is a temporary help company that  
28 provides employees on a temporary basis to its customers, the temporary  
29 help company is considered the employer for purposes of this section.  
30 However, if the temporary help company fails to remit the required  
31 premiums, the customer to whom the employees were provided is liable  
32 for paying the premiums.

33 (2)(a) An employer must keep at his or her place of business a  
34 record of employment from which the information needed by the  
35 department for purposes of this chapter may be obtained. This record  
36 shall at all times be open to the inspection of the commissioner or  
37 department employees designated by the commissioner.

1 (b) Information obtained from employer records under this chapter  
2 is confidential and not open to public inspection, other than to public  
3 employees in the performance of their official duties. However, an  
4 interested party shall be supplied with information from employer  
5 records to the extent necessary for the proper presentation of the case  
6 in question. An employer may authorize inspection of its records by  
7 written consent.

8 (3) The requirements relating to the assessment and collection of  
9 family and medical leave insurance premiums are the same as the  
10 requirements relating to the assessment and collection of contributions  
11 under Title 50 RCW, including but not limited to penalties, interest,  
12 and department lien rights and collection remedies. These requirements  
13 apply to:

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

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

20 (c) A successor in the manner specified in RCW 50.24.210; and

21 (d) An officer, member, or owner having control or supervision of  
22 payment and/or reporting of family and medical leave insurance, or who  
23 is charged with the responsibility for the filing of returns, in the  
24 manner specified in RCW 50.24.230.

25 (4) Notwithstanding subsection (3) of this section, appeals are  
26 governed by RCW 49.86.120.

27 **Sec. 15.** RCW 49.86.120 and 2007 c 357 s 14 are each amended to  
28 read as follows:

29 (1) Except as provided in section 16(1) of this act, a person  
30 ((aggrieved by a decision of the department under this chapter must))  
31 may file a notice of appeal ((with the director)) from any  
32 determination or redetermination made by the department with the  
33 commissioner, by mail or personally, within thirty days after the date  
34 on which a copy of the department's decision was ((communicated to))  
35 served on the person. Upon receipt of the notice of appeal, the  
36 ((director)) commissioner shall request the assignment of an

1 administrative law judge in accordance with chapter 34.05 RCW to  
2 conduct a hearing and issue a proposed decision and order. The hearing  
3 shall be conducted in accordance with chapter 34.05 RCW.

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

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

26 NEW SECTION. Sec. 16. A new section is added to chapter 49.86 RCW  
27 to read as follows:

28 (1) A determination of amount of benefits potentially payable  
29 issued under this chapter shall not serve as a basis for appeal under  
30 RCW 49.86.120. However, the determination shall be subject to request  
31 by the individual on family and medical leave for redetermination by  
32 the commissioner at any time within one year from the date of delivery  
33 or mailing of such determination, or any redetermination thereof. A  
34 redetermination shall be furnished to the individual in writing and  
35 provide the basis for appeal under RCW 49.86.120.

36 (2) A determination of denial of benefits shall become final, in  
37 the absence of timely appeal therefrom. The commissioner may

1 redetermine such determinations at any time within one year from  
2 delivery or mailing to correct an error in identity, omission of fact,  
3 or misapplication of law with respect to the facts.

4 (3) A determination of allowance of benefits shall become final, in  
5 the absence of a timely appeal therefrom. The commissioner may  
6 redetermine such allowance at any time within two years following the  
7 application year in which such allowance was made in order to recover  
8 any benefits for which recovery is provided under RCW 49.86.080.

9 (4) A redetermination may be made at any time: (a) To conform to  
10 a final court decision applicable to either an initial determination or  
11 a determination of denial or allowance of benefits; (b) in the event of  
12 a back pay award or settlement affecting the allowance of benefits; or  
13 (c) in the case of misrepresentation or willful failure to report a  
14 material fact. Written notice of any such redetermination shall be  
15 promptly given by mail or delivered to such interested parties as were  
16 notified of the initial determination or determination of denial or  
17 allowance of benefits and any new interested party or parties who,  
18 pursuant to such regulation as the commissioner may prescribe, would be  
19 an interested party.

20 **Sec. 17.** RCW 49.86.130 and 2007 c 357 s 15 are each amended to  
21 read as follows:

22 (1) An employer, temporary help company, employment agency,  
23 employee organization, or other person may not discharge, expel, or  
24 otherwise discriminate against ((a person)) an individual because he or  
25 she has filed or communicated to the employer an intent to file a  
26 claim, a complaint, or an appeal, or has testified or is about to  
27 testify or has assisted in any proceeding, under this chapter, at any  
28 time, including during the waiting period described in RCW 49.86.050  
29 and the period in which the person receives family and medical leave  
30 insurance benefits under this chapter. ((This section shall be  
31 enforced as provided in RCW 51.48.025.))

32 (2) Any individual who believes that he or she has been discharged  
33 or otherwise discriminated against by an employer in violation of this  
34 section may file a complaint with the commissioner alleging  
35 discrimination within ninety days of the date of the alleged violation.  
36 Upon receipt of such complaint, the commissioner shall cause an  
37 investigation to be made as the commissioner deems appropriate. Within



1 ninety days of the receipt of a complaint filed under this section, the  
2 commissioner shall notify the complainant of his or her determination.  
3 If, upon such investigation, it is determined that this section has  
4 been violated, the commissioner shall bring an action in the superior  
5 court of the county in which the violation is alleged to have occurred.

6 (3) If the commissioner determines that this section has not been  
7 violated, the individual may institute the action on his or her own  
8 behalf.

9 (4) In any action brought under this section, the superior court  
10 shall have jurisdiction, for cause shown, to restrain violations of  
11 subsection (1) of this section and to order all appropriate relief  
12 including rehiring or reinstatement of the individual with back pay.

13 **Sec. 18.** RCW 49.86.140 and 2007 c 357 s 16 are each amended to  
14 read as follows:

15 ~~(1)((a) Leave taken under this chapter must be taken concurrently~~  
16 ~~with any leave taken))~~ If an individual is entitled to employment  
17 protection under this chapter and under the federal family and medical  
18 leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) (~~or~~  
19 ~~under)), chapter 49.78 RCW, or other applicable federal, state, or  
20 local law, the individual is entitled to employment protection under  
21 the other applicable law most favorable to the individual.~~

22 ~~((b) An))~~ (2) Except as provided in this subsection, if an  
23 individual is entitled to family and medical leave under this chapter  
24 and under the federal family and medical leave act, chapter 49.78 RCW,  
25 or other applicable federal, state, or local law, the employer may  
26 require that leave (~~taken~~) under this chapter be taken concurrently  
27 (~~or otherwise coordinated~~) with leave (~~allowed~~) under (~~the terms~~  
28 of a collective bargaining agreement or employer policy, as applicable,  
29 for the birth or placement of a child)) other applicable laws. The  
30 employer must give individuals in its employ written notice of this  
31 requirement. An individual may not increase the duration of his or her  
32 entitlement to leave from employment by tacking on leave under this  
33 chapter to leave under other applicable laws. Leave from employment  
34 under this chapter is in addition to leave from employment during which  
35 benefits are paid or are payable under Title 51 RCW or other applicable  
36 federal or state industrial insurance laws.

1       (3) In any week in which an individual is earning waiting period  
2 credits or receiving benefits under chapter 7.68 RCW, Title 50 or 51  
3 RCW, or other applicable federal or state crime victims' compensation,  
4 unemployment compensation, industrial insurance, or disability  
5 insurance laws, the individual is disqualified from receiving family  
6 and medical leave insurance benefits under this chapter.

7       (4)(a) Except as provided in this section, this chapter does not  
8 prohibit an employer from negotiating a collective bargaining agreement  
9 or adopting employer policies, as applicable, to coordinate existing  
10 benefits with leave from employment and wage replacement benefits  
11 required under this chapter.

12       ~~((2)(a))~~ (b) This chapter does not diminish an employer's  
13 obligation to comply with a collective bargaining agreement or employer  
14 policy, as applicable, that provides greater employment protection,  
15 leave ~~((for the birth))~~ from employment, or ~~((placement of a child))~~  
16 wage replacement benefits than under this chapter.

17       ~~((b))~~ (c) An individual's ~~((right to leave))~~ rights to employment  
18 protection, leave from employment, and wage replacement benefits  
19 under this chapter may not be diminished by a collective bargaining agreement  
20 entered into or renewed or an employer policy adopted or retained after  
21 ~~((July 1, 2008))~~ the effective date of this section. Any agreement by  
22 an individual to waive his or her rights under this chapter is void as  
23 against public policy.

24       (d) If an employer provides wage replacement benefits to an  
25 individual while on family and medical leave through disability  
26 insurance or any other means, the individual may elect whether first to  
27 receive such benefits or receive family and medical leave insurance  
28 benefits under this chapter. An individual may not be required to  
29 receive the individual's wage replacement benefits, if any, before  
30 receiving family and medical leave insurance benefits under this  
31 chapter.

32       **Sec. 19.** RCW 49.86.160 and 2007 c 357 s 18 are each amended to  
33 read as follows:

34       The ~~((director))~~ commissioner may adopt rules as necessary to  
35 implement this chapter. In adopting rules, the ~~((director))~~  
36 commissioner shall maintain consistency with the rules adopted to  
37 implement the federal family and medical leave act, and chapter 49.78

1 RCW, to the extent such rules are not in conflict with this chapter.  
2 The provisions of RCW 34.05.328 do not apply to rules adopted by the  
3 commissioner to implement RCW 49.86.060(1) or section 13(3) of this  
4 act.

5 **Sec. 20.** RCW 49.86.170 and 2007 c 357 s 19 are each amended to  
6 read as follows:

7 The family and medical leave insurance account is created in the  
8 custody of the state treasurer. All receipts from the premiums imposed  
9 under this act must be deposited in the account. Expenditures from the  
10 account may be used only for the purposes of the family and medical  
11 leave insurance program. (~~Only the director of the department of~~  
12 ~~labor and industries or the director's designee may authorize~~  
13 ~~expenditures from the account.~~) Only the commissioner or the  
14 commissioner's designee may authorize expenditures from the account.  
15 The account is subject to the allotment procedures under chapter 43.88  
16 RCW. An appropriation is required for administrative expenses, but not  
17 for benefit payments.

18 **Sec. 21.** RCW 49.86.180 and 2007 c 357 s 20 are each amended to  
19 read as follows:

20 Whenever, in the judgment of the state investment board, there  
21 shall be in the family and medical leave insurance account funds in  
22 excess of that amount deemed by the state investment board to be  
23 sufficient to meet the current expenditures properly payable therefrom,  
24 the state investment board shall have full power to invest, reinvest,  
25 manage, contract, or sell or exchange investments acquired with such  
26 excess funds in the manner prescribed by RCW 43.84.150, and not  
27 otherwise.

28 **Sec. 22.** RCW 43.79A.040 and 2008 c 239 s 9, 2008 c 208 s 9, 2008  
29 c 128 s 20, and 2008 c 122 s 24 are each reenacted and amended to read  
30 as follows:

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

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

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

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

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

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

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

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

25 **Sec. 23.** RCW 49.86.190 and 2007 c 357 s 22 are each amended to  
26 read as follows:

27 If necessary to ensure that money is available in the family and  
28 medical leave insurance account for the initial administration of the  
29 family and medical leave insurance program, the director of labor and  
30 industries may, from time to time before July 1, ((2009)) 2011, lend  
31 funds from the supplemental pension fund to the family and medical  
32 leave insurance account. These loaned funds may be expended solely for  
33 the initial administration of the program under this chapter. The  
34 ((director of labor and industries)) commissioner shall repay the  
35 supplemental pension fund, plus its proportionate share of earnings  
36 from investment of moneys in the supplemental pension fund during the

1 loan period, from the family and medical leave insurance account within  
2 ((two)) three years of the date of the loan. This section expires  
3 October 1, ((2011)) 2014.

4 **Sec. 24.** RCW 49.86.210 and 2007 c 357 s 26 are each amended to  
5 read as follows:

6 Beginning ((September 1, 2010)) December 1, 2011, the department  
7 shall report to the legislature by September 1st of each year on  
8 projected and actual program participation, premium rates, fund  
9 balances, benefits paid, information on program participants, costs of  
10 providing benefits, and outreach efforts.

11 **Sec. 25.** RCW 50.29.021 and 2008 c 323 s 2 are each amended to read  
12 as follows:

13 (1) This section applies to benefits charged to the experience  
14 rating accounts of employers for claims that have an effective date on  
15 or after January 4, 2004.

16 (2)(a) An experience rating account shall be established and  
17 maintained for each employer, except employers as described in RCW  
18 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make  
19 payments in lieu of contributions, taxable local government employers  
20 as described in RCW 50.44.035, and those employers who are required to  
21 make payments in lieu of contributions, based on existing records of  
22 the employment security department.

23 (b) Benefits paid to an eligible individual shall be charged to the  
24 experience rating accounts of each of such individual's employers  
25 during the individual's base year in the same ratio that the wages paid  
26 by each employer to the individual during the base year bear to the  
27 wages paid by all employers to that individual during that base year,  
28 except as otherwise provided in this section.

29 (c) When the eligible individual's separating employer is a covered  
30 contribution paying base year employer, benefits paid to the eligible  
31 individual shall be charged to the experience rating account of only  
32 the individual's separating employer if the individual qualifies for  
33 benefits under:

34 (i) RCW 50.20.050(2)(b)(i), as applicable, and became unemployed  
35 after having worked and earned wages in the bona fide work; or

36 (ii) RCW 50.20.050(2)(b) (v) through (x).

1 (3) The legislature finds that certain benefit payments, in whole  
2 or in part, should not be charged to the experience rating accounts of  
3 employers except those employers described in RCW 50.44.010, 50.44.030,  
4 and 50.50.030 who have properly elected to make payments in lieu of  
5 contributions, taxable local government employers described in RCW  
6 50.44.035, and those employers who are required to make payments in  
7 lieu of contributions, as follows:

8 (a) Benefits paid to any individual later determined to be  
9 ineligible shall not be charged to the experience rating account of any  
10 contribution paying employer. However, when a benefit claim becomes  
11 invalid due to an amendment or adjustment of a report where the  
12 employer failed to report or inaccurately reported hours worked or  
13 remuneration paid, or both, all benefits paid will be charged to the  
14 experience rating account of the contribution paying employer or  
15 employers that originally filed the incomplete or inaccurate report or  
16 reports. An employer who reimburses the trust fund for benefits paid  
17 to workers and who fails to report or inaccurately reported hours  
18 worked or remuneration paid, or both, shall reimburse the trust fund  
19 for all benefits paid that are based on the originally filed incomplete  
20 or inaccurate report or reports.

21 (b) Benefits paid to an individual filing under the provisions of  
22 chapter 50.06 RCW shall not be charged to the experience rating account  
23 of any contribution paying employer only if:

24 (i) The individual files under RCW 50.06.020(1) after receiving  
25 crime victims' compensation for a disability resulting from a nonwork-  
26 related occurrence; or

27 (ii) The individual files under RCW 50.06.020(2).

28 (c) Benefits paid which represent the state's share of benefits  
29 payable as extended benefits defined under RCW 50.22.010(6) shall not  
30 be charged to the experience rating account of any contribution paying  
31 employer.

32 (d) In the case of individuals who requalify for benefits under RCW  
33 50.20.050 or 50.20.060, benefits based on wage credits earned prior to  
34 the disqualifying separation shall not be charged to the experience  
35 rating account of the contribution paying employer from whom that  
36 separation took place.

37 (e) Benefits paid to an individual who qualifies for benefits under

1 RCW 50.20.050(2)(b) (iv) or (xi), as applicable, shall not be charged  
2 to the experience rating account of any contribution paying employer.

3 (f) With respect to claims with an effective date on or after the  
4 first Sunday following April 22, 2005, benefits paid that exceed the  
5 benefits that would have been paid if the weekly benefit amount for the  
6 claim had been determined as one percent of the total wages paid in the  
7 individual's base year shall not be charged to the experience rating  
8 account of any contribution paying employer.

9 (4)(a) A contribution paying base year employer, not otherwise  
10 eligible for relief of charges for benefits under this section, may  
11 receive such relief if the benefit charges result from payment to an  
12 individual who:

13 (i) Last left the employ of such employer voluntarily for reasons  
14 not attributable to the employer;

15 (ii) Was discharged for misconduct or gross misconduct connected  
16 with his or her work not a result of inability to meet the minimum job  
17 requirements;

18 (iii) Is unemployed as a result of closure or severe curtailment of  
19 operation at the employer's plant, building, worksite, or other  
20 facility. This closure must be for reasons directly attributable to a  
21 catastrophic occurrence such as fire, flood, or other natural disaster;  
22 (~~(iv)~~)

23 (iv) Continues to be employed on a regularly scheduled permanent  
24 part-time basis by a base year employer and who at some time during the  
25 base year was concurrently employed and subsequently separated from at  
26 least one other base year employer. Benefit charge relief ceases when  
27 the employment relationship between the employer requesting relief and  
28 the claimant is terminated. This subsection does not apply to shared  
29 work employers under chapter 50.06 RCW; or

30 (v) Worked for an employer for six weeks or less, and was laid off  
31 at the end of temporary employment when that individual temporarily  
32 replaced a permanent employee receiving family and medical leave  
33 insurance benefits under chapter 49.86 RCW, and the layoff is due to  
34 the return of that permanent employee. This subsection applies to  
35 claims with an effective date on or after July 4, 2010.

36 (b) The employer requesting relief of charges under this subsection  
37 must request relief in writing within thirty days following mailing to  
38 the last known address of the notification of the valid initial



1 determination of such claim, stating the date and reason for the  
2 separation or the circumstances of continued employment. The  
3 commissioner, upon investigation of the request, shall determine  
4 whether relief should be granted.

5 NEW SECTION. **Sec. 26.** A new section is added to chapter 82.04 RCW  
6 to read as follows:

7 In computing the tax imposed under this chapter, a credit is  
8 allowed for an employer that hires a replacement worker to replace an  
9 employee who has taken family and medical leave under chapter 49.86  
10 RCW. The credit is equal to one thousand two hundred dollars for each  
11 replacement worker hired on or after July 1, 2010. To qualify for the  
12 credit, fewer than fifty employees must be employed by the employer at  
13 the time the replacement worker is hired. The credit may not exceed  
14 the tax otherwise due under this chapter for the tax reporting period.  
15 Unused credit may not be carried over to be credited against taxes  
16 incurred in subsequent tax reporting periods. No refunds may be  
17 granted for credits under this section.

18 NEW SECTION. **Sec. 27.** RCW 49.86.040 (Disqualification from  
19 benefits) and 2007 c 357 s 6 are each repealed.

20 NEW SECTION. **Sec. 28.** The code reviser is directed to put the  
21 accounts and funds listed in RCW 43.79A.040(4) in alphabetical order.

22 NEW SECTION. **Sec. 29.** If any provision of this act or its  
23 application to any person or circumstance is held invalid, the  
24 remainder of the act or the application of the provision to other  
25 persons or circumstances is not affected.

26 NEW SECTION. **Sec. 30.** A new section is added to chapter 49.86 RCW  
27 to read as follows:

28 This chapter may be known and cited as the family security act.

29 NEW SECTION. **Sec. 31.** This act takes effect August 1, 2009.

--- END ---