

SENATE BILL REPORT

SB 5263

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 3, 2011

Title: An act relating to leave enforcement under the family care act.

Brief Description: Regarding enforcement of family leave violations.

Sponsors: Senators Keiser, Kohl-Welles and Conway.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 1/25/11, 2/01/11, 2/03/11
[DPS, w/oRec].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 5263 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Keiser and Kline.

Minority Report: That it be referred without recommendation.

Signed by Senators Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member; Hewitt.

Staff: Ingrid Mungia (786-7423)

Background: Washington's Family Care Act allows workers with available paid sick leave or other paid time off to care for a sick child with a routine illness; a spouse, registered domestic partner, parent, parent-in-law, or grandparent with a serious or emergency health condition; and an adult child with a disability.

An employer may not discharge, demote or discipline an employee for leave taken under this law. Violations of the family care provisions relating to the choice of leave provision and the posting of a poster which describes an employer's obligations may result in the Department of Labor and Industries (Department) issuing a monetary penalty not to exceed \$200 for each violation. An employer that continues to violate the terms of the statute may be subject to a fine not to exceed \$1,000 for each violation. The Department does not have the authority to enforce the discrimination section of the Family Care Act.

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.

Summary of Bill (Recommended Substitute): The Department must administer, investigate, and enforce violations as they relate to an employer discharging, demoting or disciplining an employee because the employee exercised or attempted to exercise any right under the Family Care Act or has filed a complaint, testified, or assisted in a proceeding under the Family Care Act.

The Department may issue a notice of infraction if the Department believes an employer has discriminated against an employee because the employee exercised or attempted to exercise their rights under the Family Care Act.

An employee retains the right to pursue any judicial, administrative, or other action available with respect to an employer.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Substitute): Clarifies that the Department may issue a citation and charge a penalty for the violations throughout the chapter. Clarifies an employee has a right to file a private right of action regarding a violation of the Family Care Act. Removes references allowing the Department to administer, investigate and enforce violations and issue infraction and monetary penalties relating to the poster requirements. Retains the two hundred dollar penalty provision in the Family Care Act.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: This has to do with the Family Care Act. It allows workers to use their own sick leave to take care of family emergencies. The Department has no legal authority to enforce the Family Care Act. This doesn't set out any new policy, this is basically a technical amendment. This is a good policy and raises the penalty from \$200 to \$500. The \$500 amount is more consistent with similar statutes recently passed into law. For families and employers in Washington State, the Family Care Act has been working in support of clarifying the enforcement authority.

OTHER: This is a technical fix for the most part. The concern is with the increase in the penalty amount. We should leave the amount at the current level and not increase the fee. The fee increase is excessive and unreasonable as it relates to penalties for not posting posters. There is concern regarding the terms for discrimination and if the language as written could include layoffs or demotions, especially in this economy.

Persons Testifying: PRO: Senator Keiser, prime sponsor; Marilyn Watkins, Economic Opportunity Institute.

OTHER: Tamara Jones, Department of Labor & Industries; Scott Dilley, Washington Farm Bureau; Cary Smith, IBA.