

SIXTIETH LEGISLATURE - REGULAR SESSION

SEVENTY NINTH DAY

House Chamber, Olympia, Tuesday, March 27, 2007

The House was called to order at 9:55 a.m. by the Speaker (Representative Lovick presiding).

Reading of the Journal of the previous day was dispensed with and it was ordered to stand approved.

INTRODUCTION & FIRST READING

HB 2395 by Representatives Fromhold, McDonald and Morrell

AN ACT Relating to leasing state lands and development rights on state lands to public agencies; amending RCW 79.13.010, 79.13.060, and 79.13.110; creating a new section; and declaring an emergency.

Referred to Committee on Capital Budget.

There being no objection, the bill listed on the day's introduction sheet under the fourth order of business were referred to the committees so designated.

REPORTS OF STANDING COMMITTEES

March 23, 2007

SB 5011 Prime Sponsor, Senator Kohl-Welles: Removing the expiration date on the 2006 beer and wine distribution bill. Reported by Committee on Commerce & Labor

MAJORITY recommendation: Do pass. Signed by Representatives Conway, Chairman; Wood, Vice Chairman; Condotta, Ranking Minority Member; Green; Moeller and Williams.

Passed to Committee on Rules for second reading.

March 23, 2007

SB 5079 Prime Sponsor, Senator Marr: Including supreme court and court of appeals commissioners to solemnize marriages. Reported by Committee on Judiciary

MAJORITY recommendation: Do pass. Signed by Representatives Lantz, Chairman; Goodman, Vice Chairman; Rodne, Ranking Minority Member; Warnick,

Assistant Ranking Minority Member; Ahern; Flannigan; Kirby; Moeller; Pedersen; Ross and Williams.

Passed to Committee on Rules for second reading.

March 26, 2007

SSB 5228 Prime Sponsor, Senator Committee On Judiciary: Revising provisions concerning actions under the consumer protection act. Reported by Committee on Judiciary

MAJORITY recommendation: Do pass. Signed by Representatives Lantz, Chairman; Goodman, Vice Chairman; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern; Flannigan; Kirby; Moeller; Pedersen; Ross and Williams.

Passed to Committee on Rules for second reading.

March 23, 2007

SSB 5244 Prime Sponsor, Senate Committee On Human Services & Corrections: Implementing the deficit reduction act. Reported by Committee on Judiciary

MAJORITY recommendation: Do pass. Signed by Representatives Lantz, Chairman; Goodman, Vice Chairman; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern; Flannigan; Kirby; Moeller; Pedersen; Ross and Williams.

Referred to Committee on Appropriations.

March 23, 2007

ESSB 5290 Prime Sponsor, Senate Committee On Labor, Commerce, Research & Development: Establishing industrial insurance medical and chiropractic advisory committees. Reported by Committee on Commerce & Labor

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 51.36 RCW to read as follows:

(1) The department shall establish an industrial insurance medical advisory committee. The industrial insurance medical advisory committee shall advise the department on matters related to the provision of safe, effective, and cost-effective treatments for injured workers, including but not limited to the development of practice guidelines and coverage criteria, review of coverage decisions and technology assessments, review of medical programs, and review of rules pertaining to health care issues. The industrial insurance medical advisory committee may provide peer review and advise and assist the department in the resolution of controversies, disputes, and problems between the department and the providers of medical care. The industrial insurance medical advisory committee must consider the best available scientific evidence and expert opinion of committee members. The department may hire any expert or service or create an ad hoc committee, group, or subcommittee it deems necessary to fulfill the purposes of the industrial insurance medical advisory committee. In addition, the industrial insurance medical advisory committee may consult nationally recognized experts in evidence-based health care on particularly controversial issues.

(2) The industrial insurance medical advisory committee is composed of up to fourteen members appointed by the director. The director shall select twelve members from the nominations provided by statewide clinical groups, specialties, and associations, including but not limited to the following: Family or general practice, orthopedics, neurology, neurosurgery, general surgery, physical medicine and rehabilitation, psychiatry, internal medicine, osteopathic, pain management, and occupational medicine. At least two members must be physicians who are recognized for expertise in evidence-based medicine. The director may choose up to two additional members, not necessarily from the nominations submitted, who have expertise in occupational medicine.

(3) The industrial insurance medical advisory committee shall choose its chair from among its membership.

(4) The members of the industrial insurance medical advisory committee, including hired experts and any ad hoc group or subcommittee: (a) Are immune from civil liability for any official acts performed in good faith to further the purposes of the industrial insurance medical advisory committee; and (b) may be compensated for participation in the work of the industrial insurance medical advisory committee in accordance with a personal services contract to be executed after appointment and before commencement of activities related to the work of the industrial insurance medical advisory committee.

(5) The members of the industrial insurance medical advisory committee shall disclose all potential financial conflicts of interest including contracts with or employment by a manufacturer, provider, or vendor of health technologies, drugs, medical devices, diagnostic tools, or other medical services during their term or for eighteen months before their appointment. As a condition of appointment, each person must agree to the terms and conditions regarding conflicts of interest as determined by the director.

(6) The industrial insurance medical advisory committee shall meet at the times and places designated by the director and hold meetings during the year as necessary to provide advice to the director. Meetings of the industrial insurance medical advisory committee are subject to chapter 42.30 RCW, the open public meetings act.

(7) The industrial insurance medical advisory committee shall coordinate with the state health technology assessment program and state prescription drug program as necessary. As provided by RCW 70.14.100 and 70.14.050, the decisions of the state health technology

assessment program and those of the state prescription drug program hold greater weight than decisions made by the department's industrial insurance medical advisory committee under Title 51 RCW.

(8) Neither the industrial insurance medical advisory committee nor any group is an agency for purposes of chapter 34.05 RCW.

(9) The department shall provide administrative support to the industrial insurance medical advisory committee and adopt rules to carry out the purposes of this section.

(10) The chair and ranking minority member of the house of representatives commerce and labor committee or the chair and ranking minority member of the senate labor, commerce, research and development committee, or successor committees, may request that the industrial insurance medical advisory committee review a medical issue related to industrial insurance and provide a written report to the house of representatives commerce and labor committee and the senate labor, commerce, research and development committee, or successor committees. The industrial insurance medical advisory committee is not required to act on the request.

(11) The workers' compensation advisory committee may request that the industrial insurance medical advisory committee consider specific medical issues that have arisen multiple times during the work of the workers' compensation advisory committee. The industrial insurance medical advisory committee is not required to act on the request.

**NEW SECTION. Sec. 2.** A new section is added to chapter 51.36 RCW to read as follows:

(1) The department shall establish an industrial insurance chiropractic advisory committee. The industrial insurance chiropractic advisory committee shall advise the department on matters related to the provision of safe, effective, and cost-effective chiropractic treatments for injured workers. The industrial insurance chiropractic advisory committee may provide peer review and advise and assist the department in the resolution of controversies, disputes, and problems between the department and the providers of chiropractic care.

(2) The industrial insurance chiropractic advisory committee is composed of up to nine members appointed by the director. The director must consider nominations from recognized statewide chiropractic groups such as the Washington state chiropractic association. At least two members must be chiropractors who are recognized for expertise in evidence-based practice or occupational health.

(3) The industrial insurance chiropractic advisory committee shall choose its chair from among its membership.

(4) The members of the industrial insurance chiropractic advisory committee and any ad hoc group or subcommittee: (a) Are immune from civil liability for any official acts performed in good faith to further the purposes of the industrial insurance chiropractic advisory committee; and (b) may be compensated for participation in the work of the industrial insurance chiropractic advisory committee in accordance with a personal services contract to be executed after appointment and before commencement of activities related to the work of the industrial insurance chiropractic advisory committee.

(5) The members of the industrial insurance chiropractic advisory committee shall disclose all potential financial conflicts of interest including contracts with or employment by a manufacturer, provider, or vendor of health technologies, drugs, medical devices, diagnostic tools, or other medical services during their term or for eighteen months before their appointment. As a condition of

appointment, each person must agree to the terms and conditions regarding conflicts of interest as determined by the director.

(6) The industrial insurance chiropractic advisory committee shall meet at the times and places designated by the director and hold meetings during the year as necessary to provide advice to the director. Meetings of the industrial insurance chiropractic advisory committee are subject to chapter 42.30 RCW, the open public meetings act.

(7) The industrial insurance chiropractic advisory committee shall coordinate with the state health technology assessment program and state prescription drug program as necessary. As provided by RCW 70.14.100 and 70.14.050, the decisions of the state health technology assessment program and those of the state prescription drug program hold greater weight than decisions made by the department's industrial insurance chiropractic advisory committee under Title 51 RCW.

(8) Neither the industrial insurance chiropractic advisory committee nor any group is an agency for purposes of chapter 34.05 RCW.

(9) The department shall provide administrative support to the industrial insurance chiropractic advisory committee and adopt rules to carry out the purposes of this section.

(10) The chair and ranking minority member of the house of representatives commerce and labor committee or the chair and ranking minority member of the senate labor, commerce, research and development committee, or successor committees, may request that the industrial insurance chiropractic advisory committee review a medical issue related to industrial insurance and provide a written report to the house of representatives commerce and labor committee and the senate labor, commerce, research and development committee, or successor committees. The industrial insurance chiropractic advisory committee is not required to act on the request.

(11) The workers' compensation advisory committee may request that the industrial insurance chiropractic advisory committee consider specific medical issues that have arisen multiple times during the work of the workers' compensation advisory committee. The industrial insurance chiropractic advisory committee is not required to act on the request.

**NEW SECTION. Sec. 3.** The director, the industrial insurance medical advisory committee, and the industrial insurance chiropractic advisory committee shall report to the appropriate committees of the legislature on the following:

(1) A summary of the types of issues reviewed by the industrial insurance medical advisory committee and the industrial insurance chiropractic advisory committee and decisions in each matter;

(2) Whether the industrial insurance medical advisory committee or the industrial insurance chiropractic advisory committee became involved in the resolution of any disputes or controversies and the results of those disputes or controversies as a result of the involvement of the industrial insurance medical advisory committee or the industrial insurance chiropractic advisory committee;

(3) The extent to which the industrial insurance medical advisory committee and the industrial insurance chiropractic advisory committee conducted any peer reviews and the results of those reviews;

(4) The extent of any practice guidelines or coverage criteria developed by the industrial insurance medical advisory committee or the industrial insurance chiropractic advisory committee and the success of those developments; and

(5) The extent to which the industrial insurance medical advisory committee and the industrial insurance chiropractic advisory

committee provided advice on coverage decisions and technology assessments.

The report is due no later than June 30, 2011, and must contain a recommendation about whether the industrial insurance medical advisory committee and the industrial insurance chiropractic advisory committee should continue as originally configured or whether any changes are needed."

Signed by Representatives Conway, Chairman; Wood, Vice Chairman; Condotta, Ranking Minority Member; Green; Moeller and Williams.

Passed to Committee on Rules for second reading.

March 23, 2007

SSB 5336 Prime Sponsor, Senate Committee On Government Operations & Elections: Protecting individuals in domestic partnerships by granting certain rights and benefits. Reported by Committee on Judiciary

MAJORITY recommendation: Do pass. Signed by Representatives Lantz, Chairman; Goodman, Vice Chairman; Flannigan; Kirby; Moeller; Pedersen and Williams.

MINORITY recommendation: Do not pass. Signed by Representatives Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern and Ross.

Passed to Committee on Rules for second reading.

March 23, 2007

SSB 5340 Prime Sponsor, Senate Committee On Judiciary: Defining disability in the Washington law against discrimination. Reported by Committee on Judiciary

MAJORITY recommendation: Do pass as amended.

On page 1, beginning on line 5, strike all of section 1

Renumber the remaining sections accordingly

Signed by Representatives Lantz, Chairman; Goodman, Vice Chairman; Flannigan; Kirby; Moeller; Pedersen and Williams.

MINORITY recommendation: Do not pass. Signed by Representatives Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern and Ross.

Passed to Committee on Rules for second reading.

March 23, 2007

SB 5382 Prime Sponsor, Senator Kauffman: Authorizing record checks for employees and applicants for employment at bureau of Indian affairs-funded schools. Reported by Committee on State Government & Tribal Affairs

MAJORITY recommendation: Do pass. Signed by Representatives Hunt, Chairman; Appleton, Vice Chairman; Chandler, Ranking Minority Member; Green; Kretz; McDermott; Miloscia and Ormsby.

Passed to Committee on Rules for second reading.

March 23, 2007

SSB 5405 Prime Sponsor, Senate Committee On Judiciary: Providing procedures for judicial orders concerning distraint of personal property. Reported by Committee on Judiciary

MAJORITY recommendation: Do pass. Signed by Representatives Lantz, Chairman; Goodman, Vice Chairman; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern; Flannigan; Kirby; Moeller; Pedersen; Ross and Williams.

Passed to Committee on Rules for second reading.

March 23, 2007

SB 5635 Prime Sponsor, Senator Brandland: Revising provisions relating to limitations on polygraph tests. Reported by Committee on Commerce & Labor

MAJORITY recommendation: Do pass. Signed by Representatives Conway, Chairman; Wood, Vice Chairman; Condotta, Ranking Minority Member; Green; Moeller and Williams.

Passed to Committee on Rules for second reading.

March 23, 2007

SSB 5639 Prime Sponsor, Senate Committee On Labor, Commerce, Research & Development: Authorizing a caterer's endorsement for licensed microbreweries. Reported by Committee on Commerce & Labor

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 66.24.244 and 2006 c 302 s 3 and 2006 c 44 s 2 are each reenacted and amended to read as follows:

(1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor, including strong beer, per year.

(2) Any microbrewery (~~(license)~~) licensed under this section may also act as a distributor and/or retailer for beer and strong beer of its own production. Any microbrewery licensed under this section may act as a distributor for beer of its own production. Strong beer may not be sold at a farmers market or under any endorsement which may authorize microbreweries to sell beer at farmers markets. Any microbrewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers. A microbrewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) The board may issue a license allowing a microbrewery to operate a spirits, beer, and wine restaurant under RCW 66.24.420.

(4) The board may issue ((an endorsement to this)) a license to a microbrewery allowing for on-premises consumption of beer, including strong beer, wine, or both of other manufacture if purchased from a Washington state-licensed distributor. ((Each endorsement shall cost two hundred dollars per year, or four hundred dollars per year allowing the sale and service of both beer and wine.

(4)) The microbrewer ((obtaining such endorsement)) must determine, at the time the ((endorsement)) license is issued, whether the licensed premises will be operated ((either)) as a tavern with persons under twenty-one years of age not allowed as provided for in RCW 66.24.330, or as a beer and/or wine restaurant as described in RCW 66.24.320.

(5) A microbrewery that holds a spirits, beer, and wine restaurant license or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320 and 66.24.420.

(6)(a) A microbrewery licensed under this section may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a microbrewery will sell beer at a qualifying farmers market, the microbrewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the microbrewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the microbrewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection ~~((5))~~ (6) do not constitute the tasting or sampling privilege of a microbrewery. The microbrewery may not store beer at a farmers market beyond the hours that the microbrewery offers bottled beer for sale. The microbrewery may not act as a distributor from a farmers market location.

(e) Before a microbrewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any microbrewery with an endorsement approved under this subsection ~~((5))~~ (6) to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other

designated locations at which an approved microbrewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved microbrewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of the application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection ~~((5))~~ (6)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and any additional rules necessary to implement this section.

(g) For the purposes of this subsection ~~((5))~~ (6):

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

**Sec. 2.** RCW 66.24.244 and 2006 c 44 s 2 are each amended to read as follows:

(1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor, including strong beer, per year.

(2) Any microbrewery ~~((license))~~ licensed under this section may also act as a distributor and/or retailer for beer and strong beer of its own production. Strong beer may not be sold at a farmers market or under any endorsement which may authorize microbreweries to sell beer at farmers markets. Any microbrewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers. A microbrewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) The board may issue a license allowing a microbrewery to operate a spirits, beer, and wine restaurant under RCW 66.24.420.

~~(4) The board may issue ((an endorsement to this)) a license to a microbrewery allowing for on-premises consumption of beer, including strong beer, wine, or both of other manufacture if purchased from a Washington state-licensed distributor. ((Each endorsement shall cost two hundred dollars per year, or four hundred dollars per year allowing the sale and service of both beer and wine.~~

~~(4)) The microbrewer ((obtaining such endorsement)) must determine, at the time the ((endorsement)) license is issued, whether the licensed premises will be operated ((either)) as a tavern with persons under twenty-one years of age not allowed as provided for in RCW 66.24.330, or as a beer and/or wine restaurant as described in RCW 66.24.320.~~

(5) A microbrewery that holds a spirits, beer, and wine restaurant license or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320 and 66.24.420.

~~(6)(a) A microbrewery licensed under this section may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.~~

~~(b) For each month during which a microbrewery will sell beer at a qualifying farmers market, the microbrewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the microbrewery may offer beer for sale at a qualifying farmers market.~~

~~(c) The beer sold at qualifying farmers markets must be produced in Washington.~~

~~(d) Each approved location in a qualifying farmers market is deemed to be part of the microbrewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection ~~((5))~~ (6) do not constitute the tasting or sampling privilege of a microbrewery. The microbrewery may not store beer at a farmers market beyond the hours that the microbrewery offers bottled beer for sale. The microbrewery may not act as a distributor from a farmers market location.~~

~~(e) Before a microbrewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any microbrewery with an endorsement approved under this subsection ~~((5))~~ (6) to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved microbrewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved microbrewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of the application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection ~~((5))~~ (6)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.~~

~~(f) The board may adopt rules establishing the application and approval process under this section and any additional rules necessary to implement this section.~~

~~(g) For the purposes of this subsection ~~((5))~~(6):~~

~~(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this~~

state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

**Sec. 3.** RCW 66.28.010 and 2006 c 330 s 28, 2006 c 92 s 1, and 2006 c 43 s 1 are each reenacted and amended to read as follows:

(1)(a) No manufacturer, importer, distributor, or authorized representative, or person financially interested, directly or indirectly, in such business; whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, unless the retail business is owned by a corporation in which a manufacturer or importer has no direct stock ownership and there are no interlocking officers and directors, the retail license is held by a corporation that is not owned directly or indirectly by a manufacturer or importer, the sales of liquor are incidental to the primary activity of operating the property as a hotel, alcoholic beverages produced by the manufacturer or importer or their subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation or the retail licensee; nor shall any manufacturer, importer, distributor, or authorized representative own any of the property upon which such licensed persons conduct their business; nor shall any such licensed person, under any arrangement whatsoever, conduct his or her business upon property in which any manufacturer, importer, distributor, or authorized representative has any interest unless title to that property is owned by a corporation in which a manufacturer has no direct stock ownership and there are no interlocking officers or directors, the retail license is held by a corporation that is not owned directly or indirectly by the manufacturer, the sales of liquor are incidental to the primary activity of operating the property either as a hotel or as an amphitheater offering live musical and similar live entertainment activities to the public, alcoholic beverages produced by the manufacturer or any of its subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation of the retail licensee. Except as provided in subsection (3) of this section, no manufacturer, importer, distributor, or authorized representative shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive,

under an arrangement, an advance of moneys or moneys' worth. "Person" as used in this section only shall not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, distributor, or authorized representative as long as the bank, savings and loan association, or institutional investor does not influence or attempt to influence the purchasing practices of the retailer with respect to alcoholic beverages. Except as otherwise provided in this section, no manufacturer, importer, distributor, or authorized representative shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, distributor, or authorized representative sell at retail any liquor as herein defined. A corporation granted an exemption under this subsection may use debt instruments issued in connection with financing construction or operations of its facilities.

(b) Nothing in this section shall prohibit a licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and nothing in this section shall prohibit a domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor. Nothing in this section shall prohibit a microbrewery holding a beer and/or wine restaurant license under RCW 66.24.320 from holding the same privileges and endorsements attached to the beer and/or wine restaurant license.

(c) Nothing in this section shall prohibit a licensed distiller, domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a spirits, beer, and wine restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a spirits, beer, and wine restaurant premises on the property on which the primary manufacturing facility of the licensed distiller, domestic brewer, microbrewery, or domestic winery is located or on contiguous property owned or leased by the licensed distiller, domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW. Nothing in this section shall prohibit a microbrewery holding a spirits, beer, and wine restaurant license under RCW 66.24.420 from holding the same privileges and endorsements attached to the spirits, beer, and wine restaurant license.

(d) Nothing in this section prohibits retail licensees with a caterer's endorsement issued under RCW 66.24.320 or 66.24.420 from operating on a domestic winery premises.

(e) Nothing in this section prohibits an organization qualifying under RCW 66.24.375 formed for the purpose of constructing and operating a facility to promote Washington wines from holding retail licenses on the facility property or leasing all or any portion of such facility property to a retail licensee on the facility property if the members of the board of directors or officers of the board for the organization include officers, directors, owners, or employees of a licensed domestic winery. Financing for the construction of the facility must include both public and private money.

(f) Nothing in this section prohibits a bona fide charitable nonprofit society or association registered as a 501(c)(3) under the internal revenue code and having an officer, director, owner, or

employee of a licensed domestic winery or a wine certificate of approval holder on its board of directors from holding a special occasion license under RCW 66.24.380.

(g) Nothing in this section prohibits domestic wineries and retailers licensed under chapter 66.24 RCW from jointly producing brochures and materials promoting tourism in Washington state which contain information regarding retail licensees, domestic wineries, and their products.

(h) Nothing in this section prohibits domestic wineries and retail licensees from identifying the wineries on private labels authorized under RCW 66.24.400, 66.24.425, and 66.24.450.

(i) Until July 1, 2007, nothing in this section prohibits a nonprofit statewide organization of microbreweries formed for the purpose of promoting Washington's craft beer industry as a trade association registered as a 501(c) with the internal revenue service from holding a special occasion license to conduct up to six beer festivals.

(2) Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in accordance with chapter 34.05 RCW manufacturers, distributors, and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stockroom inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands; and perform such similar normal business services as the board may by regulation prescribe.

(3)(a) This section does not prohibit a manufacturer, importer, or distributor from providing services to a special occasion licensee for: (i) Installation of draft beer dispensing equipment or advertising, (ii) advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, or (iii) a special occasion licensee from receiving any such services as may be provided by a manufacturer, importer, or distributor. Nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business which provides, for a compensation commensurate in value to the services provided, bottling, canning or other services to a manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor distributor's business and transferring the license shall not be deemed to have a financial interest under this section if the person (i) lacks any ownership in or control of the distributor, (ii) is not employed by the distributor, and (iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the distributor.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsection (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section.

(5) A public house license issued under RCW 66.24.580 does not violate the provisions of this section as to a retailer having an interest directly or indirectly in a liquor-licensed manufacturer.

**NEW SECTION. Sec. 4.** Section 1 of this act expires June 30, 2008.

**NEW SECTION. Sec. 5.** Section 2 of this act takes effect June 30, 2008."

Signed by Representatives Conway, Chairman; Wood, Vice Chairman; Condotta, Ranking Minority Member; Green; Moeller and Williams.

Passed to Committee on Rules for second reading.

March 23, 2007

E2SSB 5659 Prime Sponsor, Senate Committee On Ways & Means: Establishing family and medical leave insurance. Reported by Committee on Commerce & Labor

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1. FINDINGS AND DECLARATIONS.** The legislature finds that, although family and medical leave laws have assisted individuals to balance the demands of the workplace with their family responsibilities, more needs to be done to achieve the goals of family care, children and family health, workforce stability, and economic security. In particular, the legislature finds that many individuals do not have access to family and medical leave laws, and those who do may not be in a financial position to take family and medical leave that is unpaid, and that employer-paid benefits meet only a relatively small part of this need. The legislature declares it to be in the public interest to establish a program that: (1) Allows parents to bond with a newborn or newly placed child, and workers to care for seriously ill family members; (2) provides limited and additional income support for a reasonable period while an individual is away from work on family and medical leave; (3) reduces the impact on state income support programs by increasing an individual's ability to provide caregiving services for family members while maintaining an employment relationship; and (4) establishes a wage replacement benefit to be coordinated with current existing state and federal family and medical leave laws.

**NEW SECTION. Sec. 2. DEFINITIONS.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Application year" means the twelve-month period beginning on the first day of the calendar week in which an individual files an application for family and medical leave insurance benefits and, thereafter, the twelve-month period beginning with the first day of the calendar week in which the individual next files an application for family and medical leave insurance benefits after the expiration of the individual's last preceding application year.

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

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

(4) "Child," "department," "director," "health care provider," "parent," "serious health condition," and "spouse" mean the same as in RCW 49.78.020.

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

(6) "Employment" has the meaning provided in RCW 50.04.100.

(7) "Family and medical leave" means leave for a family member's serious health condition and leave for the birth or placement of a child as these types of leave are defined in RCW 49.78.020 and described in RCW 49.78.220.

(8) "Family and medical leave insurance benefits" means the benefits payable under sections 6 and 7 of this act.

(9) "Family member" means a child, spouse, or the parent of the individual, or a person involved in a legal relationship governed by Title 26 RCW.

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

(11) "Premium" or "premiums" means payments required by this chapter to be made to the department for the family and medical leave insurance account under section 20 of this act.

(12) "Qualifying year" means the first four of the last five completed calendar quarters or the last four completed calendar quarters immediately preceding the first day of the individual's application year.

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

**NEW SECTION. Sec. 3. FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.** (1) The department shall establish and administer a family and medical leave insurance program and pay family and medical leave insurance benefits as specified in this chapter.

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

(3) The department may require that a claim for benefits under this chapter be supported by a certification issued by the health care provider providing health care to the individual's family member.

(4) The department shall use information sharing and integration technology to facilitate the disclosure of relevant information or records by the employment security department, so long as an individual consents to the disclosure as required under section 4(4) of this act.

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

(6) The department shall develop and implement an outreach program to ensure that individuals who may be eligible to receive family and medical leave insurance benefits under this chapter are made aware of these benefits. Outreach information shall explain, in an easy to understand format, eligibility requirements, the claims process, weekly benefit amounts, maximum benefits payable, notice and medical certification requirements, reinstatement and nondiscrimination rights, confidentiality, and the relationship between employment protection, leave from employment, and wage

replacement benefits under this chapter and other laws, collective bargaining agreements, and employer policies. Outreach information shall be available in English and other primary languages as defined in RCW 74.04.025.

**NEW SECTION. Sec. 4. ELIGIBILITY FOR BENEFITS.** Beginning October 1, 2009, family and medical leave insurance benefits are payable to an individual during a period in which the individual is unable to perform his or her regular or customary work because he or she is on family and medical leave if the individual:

(1) Files a claim for benefits in each week in which the individual is on family and medical leave, and as required by rules adopted by the director;

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

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

(4) Consents to the disclosure of information or records deemed private and confidential under chapter 50.13 RCW. Initial disclosure of this information and these records by the employment security department to the department is solely for purposes related to the administration of this chapter. Further disclosure of this information or these records is subject to sections 3(4) and 14(2)(b) of this act;

(5) Discloses whether or not he or she owes child support obligations as defined in RCW 50.40.050;

(6) Documents that he or she has provided the employer from whom family and medical leave is to be taken with written notice of the individual's intention to take family and medical leave in the same manner as an employee is required to provide notice in RCW 49.78.250; and

(7) Provides a document authorizing the family member's health care provider to disclose the family member's health care information in the form of the certification of a serious health condition. To be valid, the disclosure authorization must satisfy the requirements set forth in RCW 70.02.030.

**NEW SECTION. Sec. 5. DISQUALIFICATION FROM BENEFITS.** An individual is disqualified from family and medical leave insurance benefits beginning with the first day of the calendar week, and continuing for the next fifty-two consecutive weeks, in which the individual willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this chapter.

**NEW SECTION. Sec. 6. DURATION OF BENEFITS.** (1) The maximum number of weeks during which family and medical leave insurance benefits are payable in an application year is five weeks. However, benefits are not payable during a waiting period consisting of the first seven calendar days of family and medical leave taken in an application year with respect to a particular type of family and medical leave, whether the first seven calendar days of family and medical leave are employer paid or unpaid.

(2)(a) The first payment of benefits must be made to an individual within two weeks after the claim is filed or the family and medical leave began, whichever is later, and subsequent payments must be made semimonthly thereafter.

(b) The payment of benefits under this chapter shall not be considered a binding determination of the obligations of the department under this chapter. The acceptance of compensation by the individual shall likewise not be considered a binding determination of his or her rights under this chapter. Whenever any



payment of benefits under this chapter has been made and timely appeal therefrom has been made where the final decision is that the payment was improper, the individual shall repay it and recoupment may be made from any future payment due to the individual on any claim under this chapter. The director may exercise his or her discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(c) If an individual dies before he or she receives a payment of benefits, the payment shall be made to the surviving spouse or the person with whom the individual is involved in a legal relationship governed by Title 26 RCW, or to the child or children if there is no surviving spouse or person with whom the individual is involved in a legal relationship governed by Title 26 RCW. If there is no surviving spouse or person with whom the individual is involved in a legal relationship governed by Title 26 RCW, and no child or children, the payment shall be made by the department and distributed consistent with the terms of the decedent's will or, if the decedent dies intestate, consistent with the terms of RCW 11.04.015.

**NEW SECTION. Sec. 7. AMOUNT OF BENEFITS.** The amount of family and medical leave insurance benefits shall be determined as follows:

(1) For weeks of family and medical leave beginning before July 1, 2010, the weekly benefit shall be two hundred fifty dollars per week for an individual who at the time of beginning family and medical leave was regularly working thirty-five hours or more per week. By June 30, 2010, and by each subsequent June 30th, the department shall calculate to the nearest dollar an adjusted maximum weekly benefit to account for inflation using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index, for the twelve completed calendar months before each June 30th as calculated by the United States department of labor. The adjusted maximum weekly benefit takes effect for weeks of family and medical leave beginning after the relevant June 30th.

(2) If an individual who at the time of beginning family and medical leave was regularly working thirty-five hours or more per week is on family and medical leave for less than thirty-five hours but at least eight hours in a week, the individual's weekly benefit shall be .025 times the maximum weekly benefit times the number of hours of family and medical leave taken in the week. Benefits are not payable for less than eight hours of family and medical leave taken in a week.

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

(4) If an individual discloses that he or she owes child support obligations under section 4 of this act and the department determines that the individual is eligible for benefits, the department shall notify the applicable state or local child support enforcement agency and deduct and withhold an amount from benefits in a manner consistent with RCW 50.40.050.

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

**NEW SECTION. Sec. 8. FEDERAL INCOMETAX.** (1) If the internal revenue service determines that family and medical leave insurance benefits under this chapter are subject to federal income tax, the department must advise an individual filing a new claim for family and medical leave insurance benefits, at the time of filing such claim, that:

(a) The internal revenue service has determined that benefits are subject to federal income tax;

(b) Requirements exist pertaining to estimated tax payments;

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

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

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

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

**NEW SECTION. Sec. 9. ADJUSTMENT TO BENEFITS.** If family and medical leave insurance benefits are paid erroneously or as a result of willful misrepresentation, or if a claim for family and medical leave benefits is rejected after benefits are paid, RCW 51.32.240 shall apply, except that appeals are governed by section 15 of this act, penalties are paid into the family and medical leave insurance account, and the department shall seek repayment of benefits from the recipient.

**NEW SECTION. Sec. 10. LEAVE AND EMPLOYMENT PROTECTION.** (1) During a period in which an individual receives family and medical leave insurance benefits or earns waiting period credits under this chapter, the individual is entitled to family and medical leave and, at the established ending date of leave, to be restored to a position of employment with the employer from whom leave was taken.

(2) The individual entitled to leave under this section shall be restored to a position of employment in the same manner as an employee entitled to leave under chapter 49.78 RCW is restored to a position of employment, as specified in RCW 49.78.280.

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

(a) The employer from whom the individual takes family and medical leave employs more than twenty-five employees; and

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

(4) This section shall be enforced as provided in chapter 49.78 RCW.

**NEW SECTION. Sec. 11. EMPLOYMENT BY SAME EMPLOYER.** If spouses or people involved in a legal relationship governed by Title 26 RCW entitled to leave under this chapter are employed by the same employer, the employer may require that spouses or people involved in a legal relationship governed by Title 26 RCW not take such leave concurrently, if such leave is taken: (1) For the birth or placement of a child; or (2) for a parent's serious health condition.

**NEW SECTION. Sec. 12. ELECTIVE COVERAGE.** (1) An employer of individuals not covered by this chapter or a self-

employed person, including a sole proprietor, partner, or joint venturer, may elect coverage under this chapter for all individuals in its employ for an initial period of not less than three years or a subsequent period of not less than one year immediately following another period of coverage. The employer or self-employed person must file a notice of election in writing with the director, as required by the department. The election becomes effective on the date of filing the notice.

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

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

**NEW SECTION. Sec. 13. AMOUNT OF PREMIUMS.** (1) Beginning January 1, 2009, for each individual, each employer shall pay a premium of two cents per hour worked, up to a maximum of forty hours per week, to the department. Each employer shall deduct from the pay of each individual the full amount that the employer is required to pay for the individual.

(2) Payments shall be made in the manner and at such intervals as the department directs for deposit in the family and medical leave insurance account. In the payment of premiums, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) By December 1, 2009, and by each subsequent December 1st, the director shall adjust the amount of the premium to ensure that the amount is the lowest rate necessary to pay family and medical leave insurance benefits and administrative costs, and maintain actuarial solvency in accordance with recognized insurance principles, of the family and medical leave insurance program on a current basis, and to repay loaned funds from the supplemental pension fund, if any, as required in section 23 of this act. The adjusted amount of the premium takes effect for the calendar year beginning after the relevant December 1st.

**NEW SECTION. Sec. 14. REPORTING AND RECORDKEEPING.** (1) In the form and at the times specified by the director, an employer shall make reports, furnish information, and remit premiums as required by section 13 of this act to the department. If the employer is a temporary help company that provides employees on a temporary basis to its customers, the temporary help company is considered the employer for purposes of this section. However, if the temporary help company fails to remit the required premiums, the customer to whom the employees were provided is liable for paying the premiums.

(2)(a) An employer must keep at his or her place of business a record of employment from which the information needed by the department for purposes of this chapter may be obtained. This record

shall at all times be open to the inspection of the director or department employees designated by the director.

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

(3) The requirements relating to the assessment and collection of family and medical leave insurance premiums are the same as the requirements relating to the assessment and collection of industrial insurance premiums under Title 51 RCW, including but not limited to penalties, interest, and department lien rights and collection remedies. These requirements apply to:

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

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

(c) A public entity that engages in work or lets a contract for work, in the manner specified in RCW 51.12.050;

(d) A person, firm, or corporation who lets a contract for work, in the manner specified in RCW 51.12.070;

(e) A successor, as defined in RCW 51.08.177, in the manner specified in RCW 51.16.200; and

(f) An officer, member, manager, or other person having control or supervision of payment and/or reporting of family and medical leave insurance, or who is charged with the responsibility for the filing of returns, in the manner specified in RCW 51.48.055.

(4) Notwithstanding subsection (3) of this section, appeals are governed by section 15 of this act.

**NEW SECTION. Sec. 15. APPEALS.** (1) A person aggrieved by a decision of the department under this chapter must file a notice of appeal with the director, by mail or personally, within thirty days after the date on which a copy of the department's decision was communicated to the person. Upon receipt of the notice of appeal, the director shall request the assignment of an administrative law judge in accordance with chapter 34.05 RCW to conduct a hearing and issue a proposed decision and order. The hearing shall be conducted in accordance with chapter 34.05 RCW.

(2) The administrative law judge's proposed decision and order shall be final and not subject to further appeal unless, within thirty days after the decision is communicated to the interested parties, a party petitions for review by the director. If the director's review is timely requested, the director may order additional evidence by the administrative law judge. On the basis of the evidence before the administrative law judge and such additional evidence as the director may order to be taken, the director shall render a decision affirming, modifying, or setting aside the administrative law judge's decision. The director's decision becomes final and not subject to further appeal unless, within thirty days after the decision is communicated to the interested parties, a party files a petition for judicial review as provided in chapter 34.05 RCW. The director is a party to any judicial action involving the director's decision and shall be represented in the action by the attorney general.

(3) If, upon administrative or judicial review, the final decision of the department is reversed or modified, the administrative law judge or the court in its discretion may award reasonable attorneys'

fees and costs to the prevailing party. Attorneys' fees and costs owed by the department, if any, are payable from the family and medical leave insurance account.

**NEW SECTION. Sec. 16. PROHIBITED ACTS.** An employer, temporary help company, employment agency, employee organization, or other person may not discharge, expel, or otherwise discriminate against a person because he or she has filed or communicated to the employer an intent to file a claim, a complaint, or an appeal, or has testified or is about to testify or has assisted in any proceeding, under this chapter, at any time, including during the waiting period described in section 6 of this act and the period in which the person receives family and medical leave insurance benefits under this chapter. This section shall be enforced as provided in RCW 51.48.025.

**NEW SECTION. Sec. 17. COORDINATION WITH OTHER LAWS, AGREEMENTS, AND POLICIES.** (1) Employment protection under other laws. If an individual is entitled to employment protection under this chapter and under the federal family and medical leave act, chapter 49.78 RCW, or other applicable federal, state, or local law, the individual is entitled to employment protection under the other applicable law most favorable to the individual.

(2) Leave from employment under other laws. Except as provided in this subsection, if an individual is entitled to family and medical leave under this chapter and under the federal family and medical leave act, chapter 49.78 RCW, or other applicable federal, state, or local law, the employer may require that leave under this chapter be taken concurrently with leave under other applicable laws. The employer must give individuals in its employ written notice of this requirement. An individual may not increase the duration of his or her leave from employment by tacking on leave under this chapter to leave under other applicable laws. Leave from employment under this chapter is in addition to leave from employment during which benefits are paid or are payable under Title 51 RCW or other applicable federal or state industrial insurance laws.

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

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

(b) This chapter does not diminish an employer's obligation to comply with a collective bargaining agreement or employer policy, as applicable, that provides greater employment protection, leave from employment, or wage replacement benefits than under this chapter.

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

(d) If an employer provides wage replacement benefits to an individual while on family and medical leave through disability insurance or any other means, the individual may elect whether first to receive such benefits or receive family and medical leave insurance benefits under this chapter. An individual may not be required to receive the individual's wage replacement benefits, if any, before receiving family and medical leave insurance benefits under this chapter. In no case shall the individual's weekly benefit exceed the individual's average weekly wage.

**NEW SECTION. Sec. 18. NO CONTINUING ENTITLEMENT OR CONTRACTUAL RIGHT.** This chapter does not create a continuing entitlement or contractual right. The legislature reserves the right to amend or repeal all or part of this chapter at any time, and a benefit or other right granted under this chapter exists subject to the legislature's power to amend or repeal this chapter. There is no vested private right of any kind against such amendment or repeal.

**NEW SECTION. Sec. 19. RULES.** The director may adopt rules as necessary to implement this chapter. In adopting rules, the director shall maintain consistency with the rules adopted to implement the federal family and medical leave act, and chapter 49.78 RCW, to the extent such rules are not in conflict with this chapter.

**NEW SECTION. Sec. 20. ACCOUNT.** The family and medical leave insurance account is created in the custody of the state treasurer. All receipts from the premium imposed under section 13 of this act or the penalties imposed under section 14 of this act must be deposited in the account. Expenditures from the account may be used only for the purposes of the family and medical leave insurance program. Only the director or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW. An appropriation is required for administrative expenses, but not for benefit payments.

**NEW SECTION. Sec. 21. INVESTMENT OF FAMILY AND MEDICAL LEAVE INSURANCE ACCOUNT.** Whenever, in the judgment of the state investment board, there shall be in the family and medical leave insurance account funds in excess of that amount deemed by the state investment board to be sufficient to meet the current expenditures properly payable therefrom, the state investment board shall have full power to invest, reinvest, manage, contract, or sell or exchange investments acquired with such excess funds in the manner prescribed by RCW 43.84.150, and not otherwise.

**Sec. 22.** RCW 43.79A.040 and 2006 c 311 s 21 and 2006 c 120 s 2 are each reenacted and amended to read as follows:

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

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

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to

financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

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

(b) The following accounts and funds shall receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington promise scholarship account, the college savings program account, the Washington advanced college tuition payment program account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the students with dependents grant account, the basic health plan self-insurance reserve account, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the Washington international exchange scholarship endowment fund, the developmental disabilities endowment trust fund, the energy account, the fair fund, the family and medical leave insurance account, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the grain inspection revolving fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the produce railcar pool account, the regional transportation investment district account, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the sulfur dioxide abatement account, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account (earnings from the Washington horse racing commission operating account must be credited to the Washington horse racing commission class C purse fund account), the life sciences discovery fund, and the reading achievement account. However, the earnings to be distributed shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

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

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

**NEW SECTION. Sec. 23. LOANS.** If necessary to ensure that money is available in the family and medical leave insurance account for the initial administration of the family and medical leave insurance program and the payment of benefits under this chapter, the director of labor and industries may, from time to time before July 1, 2009, lend funds from the supplemental pension fund to the family and medical leave insurance account. These loaned funds may be expended solely for the purposes of administering the program and paying benefits under this chapter. The director of labor and industries shall repay the supplemental pension fund, plus its proportionate share of earnings from investment of moneys in the

supplemental pension fund during the loan period, from the family and medical leave insurance account within two years of the date of the loan. This section expires October 1, 2011.

**Sec. 24.** RCW 51.44.033 and 1975 1st ex.s. c 224 s 16 are each amended to read as follows:

There shall be, in the office of the state treasurer, a fund to be known and designated as the "supplemental pension fund". The director shall be the administrator thereof. ~~((Said))~~ The fund shall be used for the sole purposes of making the additional payments therefrom prescribed in this title and the loans therefrom authorized in section 23 of this act.

**NEW SECTION. Sec. 25. REPORTS TO THE LEGISLATURE.** Beginning September 1, 2010, the department shall report to the legislature by September 1st of each year on projected and actual program participation, premium rates, fund balances, and outreach efforts.

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

**TAX CREDIT.** In computing the tax imposed under this chapter, a credit is allowed for an employer that hires a replacement worker to replace an employee who has taken family or medical leave under chapter 49.— RCW (sections 1 through 21, 25, 27, and 28 of this act). The credit is equal to one thousand two hundred dollars for each replacement worker hired on or after October 1, 2009. To qualify for the credit, fewer than fifty employees shall be employed by the employer at the time the replacement worker is hired. The credit shall not exceed the tax otherwise due under this chapter for the tax reporting period. Unused credit may not be carried over to be credited against taxes incurred in subsequent tax reporting periods. No refunds shall be granted for credits under this section.

**NEW SECTION. Sec. 27. SEVERABILITY.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 28. CAPTIONS.** Captions used in this act are not any part of the law.

**NEW SECTION. Sec. 29. CODIFICATION.** Sections 1 through 21, 25, 27, and 28 of this act constitute a new chapter in Title 49 RCW."

Correct the title.

Signed by Representatives Conway, Chairman; Wood, Vice Chairman; Green; Moeller and Williams.

MINORITY recommendation: Do not pass. Signed by Representatives Condotta, Ranking Minority Member; Passed to Committee on Appropriations.

March 23, 2007

**SSB 5720** Prime Sponsor, Senate Committee On Judiciary: Conforming legal notice broadcast requirements to current practice. Reported by Committee on State Government & Tribal Affairs

MAJORITY recommendation: Do pass. Signed by Representatives Hunt, Chairman; Appleton, Vice Chairman; Chandler, Ranking Minority Member; Green; Kretz; McDermott; Miloscia and Ormsby.

Passed to Committee on Rules for second reading.

March 23, 2007

SB 5879 Prime Sponsor, Senator Fairley: Authorizing payroll deductions for retiree organization dues. Reported by Committee on State Government & Tribal Affairs

MAJORITY recommendation: Do pass. Signed by Representatives Hunt, Chairman; Appleton, Vice Chairman; Green; McDermott; Miloscia and Ormsby.

MINORITY recommendation: Do not pass. Signed by Representatives Chandler, Ranking Minority Member; Kretz.

Passed to Committee on Rules for second reading.

March 23, 2007

SSB 5895 Prime Sponsor, Senate Committee On Consumer Protection & Housing: Regarding sellers' disclosures for residential real property sales. Reported by Committee on Commerce & Labor

MAJORITY recommendation: Do pass. Signed by Representatives Conway, Chairman; Wood, Vice Chairman; Condotta, Ranking Minority Member; Green; Moeller and Williams.

Passed to Committee on Rules for second reading.

March 23, 2007

SSB 5898 Prime Sponsor, Senate Committee On Labor, Commerce, Research & Development: Authorizing the use of a common carrier for the shipment of wine. Reported by Committee on Commerce & Labor

MAJORITY recommendation: Do pass. Signed by Representatives Conway, Chairman; Wood, Vice Chairman; Condotta, Ranking Minority Member; Green; Moeller and Williams.

Passed to Committee on Rules for second reading.

March 23, 2007

SB 5926 Prime Sponsor, Senator Kohl-Welles: Creating a joint legislative task force to review the underground economy in the construction industry. Reported by Committee on Commerce & Labor

MAJORITY recommendation: Do pass. Signed by Representatives Conway, Chairman; Wood, Vice Chairman; Condotta, Ranking Minority Member; Green; Moeller and Williams.

Referred to Committee on Appropriations.

There being no objection, the bills listed on the day's committee reports sheet under the fifth order of business were referred to the committees so designated.

The Speaker (Representative Lovick presiding) called upon Representative O'Brien to preside.

### SUPPLEMENTAL REPORTS OF STANDING COMMITTEES

March 26, 2007

HB 1871 Prime Sponsor, Representative Santos: Regarding education system benchmarks and monitoring. Reported by Committee on Appropriations

MAJORITY recommendation: The second substitute bill be substituted therefor and the second substitute do pass and do not pass the substitute bill by Committee on Education. Signed by Representatives Sommers, Chairman; Dunshee, Vice Chairman; Haler, Assistant Ranking Minority Member; Anderson; Cody; Conway; Darneille; Ericks; Fromhold; Grant; Haigh; Hunt; Hunter; Kagi; Kenney; Kessler; Linville; McDermott; McIntire; Morrell; Pettigrew; Schual-Berke; Seaquist and P. Sullivan.

MINORITY recommendation: Do not pass. Signed by Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Buri; Chandler; Hinkle; Kretz; McDonald; Priest and Walsh.

March 27, 2007

HB 1882 Prime Sponsor, Representative Wallace: Implementing Washington learns higher education recommendations. Reported by Committee on Appropriations

MAJORITY recommendation: The second substitute bill be substituted therefor and the second substitute do pass and do not pass the substitute bill by Committee on Higher Education. Signed by Representatives Sommers, Chairman; Dunshee, Vice Chairman; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Anderson; Buri; Chandler; Cody; Ericks; Fromhold; Grant; Haigh; Haler; Hinkle; Hunt; Hunter; Kagi; Kenney; Kretz; McDermott; McDonald; McIntire; Morrell; Pettigrew; Priest; Schual-Berke; Seaquist; P. Sullivan and Walsh.

MINORITY recommendation: Do not pass. Signed by Representatives Conway; Darneille; Dunn; Kessler and Linville.

FRANK CHOPP, Speaker  
RICHARD NAFZIGER, Chief Clerk

March 26, 2007

HB 1906 Prime Sponsor, Representative Hunter: Improving mathematics and science education. Reported by Committee on Appropriations

MAJORITY recommendation: The second substitute bill be substituted therefor and the second substitute do pass and do not pass the substitute bill by Committee on Education. Signed by Representatives Sommers, Chairman; Dunshee, Vice Chairman; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Anderson; Buri; Chandler; Cody; Conway; Darneille; Ericks; Fromhold; Grant; Haigh; Haler; Hinkle; Hunter; Kagi; Kenney; Kessler; Kretz; Linville; McDermott; McDonald; McIntire; Morrell; Pettigrew; Priest; Schual-Berke; Seaquist; P. Sullivan and Walsh.

MINORITY recommendation: Without recommendation. Signed by Representative Hunt.

March 27, 2007

HB 2262 Prime Sponsor, Representative Barlow: Providing salary bonuses for individuals certified by the national board for professional teaching standards. Reported by Committee on Appropriations

MAJORITY recommendation: The second substitute bill be substituted therefor and the second substitute do pass and do not pass the substitute bill by Committee on Education. Signed by Representatives Sommers, Chairman; Dunshee, Vice Chairman; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Anderson; Buri; Chandler; Cody; Conway; Darneille; Dunn; Ericks; Fromhold; Grant; Haigh; Hinkle; Hunt; Hunter; Kagi; Kenney; Kessler; Kretz; Linville; McDermott; McDonald; McIntire; Morrell; Pettigrew; Priest; Schual-Berke; Seaquist; P. Sullivan and Walsh.

MINORITY recommendation: Signed by Representatives Alexander, Ranking Minority Member; McDonald and Schual-Berke.

There being no objection, the bills listed on the day's committee reports sheet under the fifth order of business were placed on the Second Reading calendar.

There being no objection, the House advanced to the eleventh order of business.

There being no objection, the House adjourned until 10:00 a.m., March 28, 2007, the 80th Day of the Regular Session.

Draft