



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-5890/1
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2023 SENATE BILL 1064

February 26, 2024 - Introduced by Senators L. JOHNSON, ROYS, CARPENTER, SMITH, AGARD, SPREITZER, LARSON, HESSELBEIN, WIRCH and PFAFF, cosponsored by Representatives HONG, HAYWOOD, JOERS, CONLEY, C. ANDERSON, MOORE OMOKUNDE, SNODGRASS, STUBBS, CLANCY, OHNSTAD, MADISON, SINICKI, BALDEH, EMERSON, NEUBAUER, SHELTON, BARE, PALMERI, VINING, RATCLIFF, CONSIDINE, ANDRACA, J. ANDERSON, SUBECK and BILLINGS. Referred to Committee on Labor, Regulatory Reform, Veterans and Military Affairs.

1 **AN ACT** *to repeal* 103.10 (1) (a) 1., 103.10 (1) (a) 2., 103.10 (1m) and 103.10 (14)
2 (b); *to renumber and amend* 103.10 (1) (a) (intro.); *to amend* 103.10 (1) (b),
3 103.10 (1) (c), 103.10 (3) (a) 1., 103.10 (3) (a) 3., 103.10 (3) (b) 1., 103.10 (3) (b)
4 2., 103.10 (3) (b) 3., 103.10 (6) (b) (intro.), 103.10 (6) (b) 1., 103.10 (7) (a), 103.10
5 (7) (b) (intro.), 103.10 (7) (b) 1., 103.10 (12) (c), 103.10 (14) (a), 103.12 (2), 103.12
6 (3), 111.322 (2m) (a), 111.322 (2m) (b) and 227.03 (2); *to repeal and recreate*
7 165.68 (1) (a) 3.; and *to create* 20.445 (1) (w), 25.17 (1) (er), 25.52, 103.10 (1)
8 (an), 103.10 (1) (ao), 103.10 (1) (db), 103.10 (1) (dm), 103.10 (1) (dp), 103.10 (1)
9 (gm), 103.10 (1) (gr), 103.10 (1) (j), 103.10 (3) (b) 4., 103.10 (3) (b) 5., 103.10 (3)
10 (b) 6., 103.10 (3) (b) 7., 103.10 (3) (b) 8., 103.10 (6) (c), 103.10 (7) (d), 103.10 (8m),
11 103.10 (11) (d), 103.10 (14) (c) and (d), 103.105 and 103.12 (4) of the statutes;
12 **relating to:** the establishment of a family and medical leave insurance
13 program; family leave to care for a family member and for the active duty of a
14 family member; the employers that must allow an employee to take family or

SENATE BILL 1064

1 medical leave; allowing a local government to adopt ordinances requiring
2 employers to provide leave benefits; providing an exemption from emergency
3 rule procedures; providing an exemption from rule-making procedures;
4 granting rule-making authority; making an appropriation; and providing a
5 penalty.

Analysis by the Legislative Reference Bureau

Introduction

This bill does all of the following: expands the family and medical leave law to allow an employee covered under that law to take family leave to care for a family member and for the active duty of a family member; lowers the threshold number of employees above which an employer must allow an employee to take family or medical leave; and establishes a family and medical leave insurance program under which certain covered individuals may receive benefits while taking family or medical leave. The bill defines “family member” as a spouse or domestic partner of an employee or self-employed individual; a parent, child, sibling, brother-in-law, sister-in-law, grandparent, stepgrandparent, or grandchild of an employee or self-employed individual, or of an employee’s or self-employed individual’s spouse or domestic partner; or any other person who is related by blood, marriage, or adoption to an employee or self-employed individual, or to an employee’s or self-employed individual’s spouse or domestic partner, and whose close association with the employee, self-employed individual, spouse, or domestic partner makes the person the equivalent of a family member of the employee, self-employed individual, spouse, or domestic partner.

Family and medical leave expansion

Under current law, an employer, including the state, that employs at least 50 individuals on a permanent basis in this state must allow an employee who has been employed by the employer for more than 52 consecutive weeks and who has worked for the employer for at least 1,000 hours during the preceding 52 weeks to take up to eight weeks of family leave in a 12-month period for the birth or adoptive placement of a child or to care for a child, spouse, domestic partner, or parent of the employee or a parent of the spouse or domestic partner of the employee who has a serious health condition and up to two weeks of medical leave in a 12-month period when the employee has a serious health condition that makes the employee unable to perform the employee’s employment duties.

The bill expands the definition of “family leave” to include leave to obtain services or care for, to move the residence of, or to prepare for a civil or criminal action for an employee or the employee’s family member who is a victim of domestic abuse, sexual abuse, or stalking.

SENATE BILL 1064

The bill requires an employer, including the state, to allow an employee to take family leave for up to 12 weeks for the birth, adoption, or placement of a child for foster care and up to 14 weeks in the aggregate for any kind of family leave. The bill also allows an employee to take family leave as provided under current law to care for a family member of the employee who has a serious health condition. In addition, the bill requires an employer to allow an employee to take family leave because of any qualifying exigency, as determined by the Department of Workforce Development by rule, arising out of the fact that the family member of the employee is on deployment with the U.S. armed forces on covered active duty or has been notified of an impending call or order to covered active duty.

Family and medical leave insurance program

The bill creates a family and medical leave insurance program, to be administered by DWD, under which a covered individual who is on family or medical leave is eligible, beginning on January 1, 2026, to receive up to 12 weeks of family or medical leave insurance benefits as specified in the bill from the family and medical leave insurance trust fund created under the bill. For purposes of the bill:

1. A “covered individual” is an individual who worked for any employer and earned at least \$1,000 in the calendar year prior to the year in which the covered individual claims family or medical leave insurance benefits (application year) or a self-employed individual who elects coverage under the program, regardless of whether the individual is employed or unemployed at the time the individual files an application for family or medical leave insurance benefits.

2. “Family leave” means leave from employment, self-employment, or availability for employment for the birth, adoptive placement, foster placement, or pre-placement activities of a child; to care for a family member who has a serious health condition; because of any qualifying exigency arising out of the fact that the family member is on covered active duty or has been notified of an impending call or order to covered active duty; to obtain services or care for, to move the residence of, or to prepare for a civil or criminal action for an employee or family member who is a victim of domestic abuse, sexual abuse, or stalking; or for bone marrow and organ donation.

3. “Medical leave” means leave from employment when a covered individual has a serious health condition that makes the individual unable to perform his or her employment duties, leave from self-employment when a covered individual has a serious health condition that makes the individual unable to perform the duties of his or her self-employment, or leave from availability for employment when a covered individual has a serious health condition that makes the individual unable to perform the duties of any suitable employment.

Under the bill, the amount of family or medical leave insurance benefits for a week for which those benefits are payable is as follows:

1. For a covered individual, for the amount of the individual’s wages that are up to 50 percent of the state average weekly wages in the calendar year before the individual’s application year, 90 percent of that individual’s average weekly earnings.

SENATE BILL 1064

2. For a covered individual, for the amount of the individual's wages that are more than 50 percent of the state average weekly earnings in the calendar year before the individual's application year, 50 percent of that individual's average weekly earnings.

The weekly benefits payable to a covered individual cannot exceed the state average weekly wages.

In addition, the bill provides that family or medical leave insurance benefits are payable beginning on the first day of family or medical leave. The bill also provides that no family or medical leave insurance benefits are payable for any period of family or medical leave in which a covered individual is receiving unemployment benefits or worker's compensation benefits.

Beginning on January 1, 2025, the bill requires each individual employed in this state, including an individual employed by the state, and each self-employed individual who elects coverage under the family and medical leave insurance program to contribute to the trust fund a percentage of his or her wages from employment or income from self-employment determined by DWD in consultation with the commissioner of insurance that is sufficient to finance the payments of benefits under the program and the administration of the program. The bill requires DWD to collect those contributions in the same manner as DWD collects contributions to the unemployment reserve fund under current law. Under the bill, an employer with more than 50 employees must contribute one-half of the employee-required contribution. The bill requires DWD to implement tiered rates for contributions by an employer with 50 or fewer employees.

The bill further does the following:

1. Allows a covered individual whose claim for family or medical leave insurance benefits is denied by DWD, or who believes the amount of approved benefits is less than what the individual is entitled to, to request a hearing on the denial or benefits approved and requires DWD to process the request for hearing in the same manner that requests for hearings on unemployment insurance claims are processed under current law.

2. Requires employers to place employees who return from family or medical leave, and who received family or medical leave insurance benefits, in the same position or a similar position upon returning from leave and to maintain any health insurance coverage that was in place before the employee took the leave.

3. Allows DWD to seek repayment of family or medical leave insurance benefits that are paid erroneously or as a result of willful misrepresentation in the same manner that DWD recovers erroneous payments of unemployment insurance benefits under current law or to waive recovery of an erroneous payment of those benefits if the erroneous payment was not the fault of the individual who received it and if requiring repayment would be contrary to equity and good conscience.

4. Provides that if an individual willfully makes a false statement or representation, or willfully fails to disclose a material fact, to obtain family or medical leave insurance benefits, the individual is disqualified from receiving those benefits for up to one year after the date of the disqualification.

SENATE BILL 1064

Finally, the bill allows a city, village, town, or county to enact and enforce ordinances requiring employers to provide leave from employment to their employees if those ordinances are more generous than those provided under state law.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.445 (1) (w) of the statutes is created to read:

2 20.445 (1) (w) *Family and medical leave insurance trust fund.* From the family
3 and medical leave insurance trust fund, all moneys deposited in that fund under s.
4 103.105 (9) for the payments of family or medical leave insurance benefits under s.
5 103.105 (3) and for the administration of the family and medical leave insurance
6 program under s. 103.105.

7 **SECTION 2.** 25.17 (1) (er) of the statutes is created to read:

8 25.17 (1) (er) Family and medical leave insurance trust fund (s. 25.52);

9 **SECTION 3.** 25.52 of the statutes is created to read:

10 **25.52 Family and medical leave insurance trust fund.** There is created
11 a separate nonlapsible trust fund designated as the family and medical leave
12 insurance trust fund, to consist of all moneys deposited in that fund under s. 103.105
13 (9).

14 **SECTION 4.** 103.10 (1) (a) (intro.) of the statutes is renumbered 103.10 (1) (a)
15 and amended to read:

16 103.10 (1) (a) “Child” means a natural, adopted, or foster child, a stepchild, a
17 child for whom the individual stood or stands in the place of a parent, or a legal ward
18 to whom any of the following applies:

SENATE BILL 1064

1 **SECTION 5.** 103.10 (1) (a) 1. of the statutes is repealed.

2 **SECTION 6.** 103.10 (1) (a) 2. of the statutes is repealed.

3 **SECTION 7.** 103.10 (1) (an) of the statutes is created to read:

4 103.10 (1) (an) “Covered active duty” means any of the following:

5 1. For a member of a regular component of the U.S. armed forces, duty during
6 the deployment of the member with the U.S. armed forces.

7 2. For a member of a reserve component of the U.S. armed forces, duty during
8 the deployment of the member with the U.S. armed forces under a call or order to
9 active duty under a provision of law specified in 10 USC 101 (a) (13) (B).

10 **SECTION 8.** 103.10 (1) (ao) of the statutes is created to read:

11 103.10 (1) (ao) “Domestic abuse” has the meaning given in s. 968.075 (1) (a).

12 **SECTION 9.** 103.10 (1) (b) of the statutes is amended to read:

13 103.10 (1) (b) ~~Except as provided in sub. (1m) (b) 2. and s. 452.38, “employee”~~
14 means an individual employed in this state by an employer, ~~except the employer’s~~
15 ~~parent, spouse, domestic partner, or child.~~

16 **SECTION 10.** 103.10 (1) (c) of the statutes is amended to read:

17 103.10 (1) (c) ~~Except as provided in sub. (1m) (b) 3., “employer”~~ “Employer”
18 means a person engaging in any activity, enterprise, or business in this state
19 ~~employing at least 50 individuals on a permanent basis.~~ “Employer” includes the
20 state and any office, department, independent agency, authority, institution,
21 association, society, or other body in state government created or authorized to be
22 created by the constitution or any law, including the legislature and the courts.

23 **SECTION 11.** 103.10 (1) (db) of the statutes is created to read:

24 103.10 (1) (db) “Family member” means a spouse or domestic partner of an
25 employee; a parent, child, sibling, brother-in-law, sister-in-law, grandparent,

SENATE BILL 1064

1 stepgrandparent, or grandchild of an employee or of an employee's spouse or
2 domestic partner; or any other person who is related by blood, marriage, or adoption
3 to an employee or to an employee's spouse or domestic partner or whose close
4 association with the employee, spouse, or domestic partner makes the person the
5 equivalent of a family member of the employee, spouse, or domestic partner.

6 **SECTION 12.** 103.10 (1) (dm) of the statutes is created to read:

7 103.10 (1) (dm) "Grandchild" means the child of a child.

8 **SECTION 13.** 103.10 (1) (dp) of the statutes is created to read:

9 103.10 (1) (dp) "Grandparent" means the parent of a parent.

10 **SECTION 14.** 103.10 (1) (gm) of the statutes is created to read:

11 103.10 (1) (gm) "Sexual abuse" means conduct that is in violation of s. 940.225,
12 944.30 (1m), 948.02, 948.025, 948.05, 948.051, 948.055, 948.06, 948.085, 948.09, or
13 948.10 or that is in violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.

14 **SECTION 15.** 103.10 (1) (gr) of the statutes is created to read:

15 103.10 (1) (gr) "Sibling" means a brother, sister, half brother, half sister,
16 stepbrother, or stepsister, whether by blood, marriage, foster status, or adoption.

17 **SECTION 16.** 103.10 (1) (j) of the statutes is created to read:

18 103.10 (1) (j) "Stalking" means to engage in a course of conduct, as defined in
19 s. 940.32 (1) (a), that meets the criteria of s. 940.32 (2) (a).

20 **SECTION 17.** 103.10 (1m) of the statutes is repealed.

21 **SECTION 18.** 103.10 (3) (a) 1. of the statutes is amended to read:

22 103.10 (3) (a) 1. In a 12-month period no employee may take more than ~~6~~ 12
23 weeks of family leave under par. (b) 1. ~~and, 2., and 4. to 8.~~

24 **SECTION 19.** 103.10 (3) (a) 3. of the statutes is amended to read:

SENATE BILL 1064**SECTION 19**

1 103.10 (3) (a) 3. In a 12-month period no employee may take more than ~~8~~ 14
2 weeks of family leave for any combination of reasons specified under par. (b).

3 **SECTION 20.** 103.10 (3) (b) 1. of the statutes is amended to read:

4 103.10 (3) (b) 1. The birth of the employee's natural child, if the leave begins
5 within ~~16~~ 52 weeks of the child's birth.

6 **SECTION 21.** 103.10 (3) (b) 2. of the statutes is amended to read:

7 103.10 (3) (b) 2. The placement of a child with the employee for adoption or as
8 a precondition to adoption under s. 48.90 (2), but not both, or for foster care, including
9 pre-placement activities, if the leave begins within ~~16~~ 52 weeks of the child's
10 placement.

11 **SECTION 22.** 103.10 (3) (b) 3. of the statutes is amended to read:

12 103.10 (3) (b) 3. To care for the employee's ~~child, spouse, domestic partner, or~~
13 ~~parent, family member~~ if the ~~child, spouse, domestic partner, or parent~~ family
14 member has a serious health condition.

15 **SECTION 23.** 103.10 (3) (b) 4. of the statutes is created to read:

16 103.10 (3) (b) 4. Because of any qualifying exigency, as determined by the
17 department by rule, arising out of the fact that the family member of the employee
18 is on covered active duty or has been notified of an impending call or order to covered
19 active duty.

20 **SECTION 24.** 103.10 (3) (b) 5. of the statutes is created to read:

21 103.10 (3) (b) 5. Because the employee or the employee's family member is the
22 victim of domestic abuse, stalking, or sexual abuse, and the employee is using leave
23 to seek medical attention or obtain psychological or other counseling for the
24 employee or the employee's family member to recover from any health condition
25 caused by domestic abuse, sexual abuse, or stalking.

SENATE BILL 1064

1 **SECTION 25.** 103.10 (3) (b) 6. of the statutes is created to read:

2 103.10 (3) (b) 6. Because the employee or the employee's family member is the
3 victim of domestic abuse, stalking, or sexual abuse, and the employee is using leave
4 to obtain services for the employee or the employee's family member from an
5 organization that provides services to victims of domestic abuse, sexual abuse, or
6 stalking.

7 **SECTION 26.** 103.10 (3) (b) 7. of the statutes is created to read:

8 103.10 (3) (b) 7. Because the employee or the employee's family member is the
9 victim of domestic abuse, stalking, or sexual abuse, and the employee is using leave
10 to relocate the residence of the employee or the employee's family member due to
11 domestic abuse, sexual abuse, or stalking.

12 **SECTION 27.** 103.10 (3) (b) 8. of the statutes is created to read:

13 103.10 (3) (b) 8. Because the employee or the employee's family member is the
14 victim of domestic abuse, stalking, or sexual abuse, and the employee is using leave
15 to initiate, prepare for, or testify, assist, or otherwise participate in any civil or
16 criminal action or proceeding relating to domestic abuse, sexual abuse, or stalking.

17 **SECTION 28.** 103.10 (6) (b) (intro.) of the statutes is amended to read:

18 103.10 (6) (b) (intro.) If an employee intends to take family leave because of the
19 planned medical treatment or supervision of a ~~child, spouse, domestic partner, or~~
20 parent family member or intends to take medical leave because of the planned
21 medical treatment or supervision of the employee, the employee shall do all of the
22 following:

23 **SECTION 29.** 103.10 (6) (b) 1. of the statutes is amended to read:

24 103.10 (6) (b) 1. Make a reasonable effort to schedule the medical treatment
25 or supervision so that it does not unduly disrupt the employer's operations, subject

SENATE BILL 1064**SECTION 29**

1 to the approval of the health care provider of the ~~child, spouse, domestic partner,~~
2 ~~parent,~~ family member or employee.

3 **SECTION 30.** 103.10 (6) (c) of the statutes is created to read:

4 103.10 (6) (c) If an employee intends to take leave under sub. (3) (b) 4. that is
5 foreseeable because the family member of the employee is on covered active duty or
6 has been notified of an impending call or order to covered active duty, the employee
7 shall provide notice of that intention to the employer in a reasonable and practicable
8 manner.

9 **SECTION 31.** 103.10 (7) (a) of the statutes is amended to read:

10 103.10 (7) (a) If an employee requests family leave for a reason described in sub.
11 (3) (b) 3. or requests medical leave, the employer may require the employee to provide
12 certification, as described in par. (b), issued by the health care provider or Christian
13 Science practitioner of the ~~child, spouse, domestic partner, parent,~~ family member
14 or employee, whichever is appropriate.

15 **SECTION 32.** 103.10 (7) (b) (intro.) of the statutes is amended to read:

16 103.10 (7) (b) (intro.) No employer may require certification under par. (a)
17 stating more than the following:

18 **SECTION 33.** 103.10 (7) (b) 1. of the statutes is amended to read:

19 103.10 (7) (b) 1. That the ~~child, spouse, domestic partner, parent,~~ family
20 member or employee has a serious health condition.

21 **SECTION 34.** 103.10 (7) (d) of the statutes is created to read:

22 103.10 (7) (d) If an employee requests leave under sub. (3) (b) 4., the employer
23 may require the employee to provide certification that the family member of the
24 employee is on covered active duty or has been notified of an impending call or order
25 to covered active duty issued at such time and in such manner as the department may

SENATE BILL 1064

1 prescribe by rule, and the employee shall provide a copy of that certification to the
2 employer in a timely manner.

3 **SECTION 35.** 103.10 (8m) of the statutes is created to read:

4 103.10 (8m) SELF-ATTESTATION FOR VICTIM OF DOMESTIC ABUSE, SEXUAL ABUSE, OR
5 STALKING. If an employee requests leave under sub. (3) (b) 5. to 8., the employer may
6 require the employee to provide a self-attestation that the employee or the
7 employee's family member is the victim of domestic abuse, sexual abuse, or stalking.

8 **SECTION 36.** 103.10 (11) (d) of the statutes is created to read:

9 103.10 (11) (d) No employer may consider leave taken under this section as an
10 absence that may lead to or result in discipline, discharge, demotion, suspension, or
11 any other adverse action against an employee.

12 **SECTION 37.** 103.10 (12) (c) of the statutes is amended to read:

13 103.10 (12) (c) If 2 or more health care providers disagree about any of the
14 information required to be certified under sub. (7) (b), the department may appoint
15 another health care provider to examine the ~~child, spouse, domestic partner, parent,~~
16 family member or employee and render an opinion as soon as possible. The
17 department shall promptly notify the employee and the employer of the
18 appointment. The employer and the employee shall each pay 50 percent of the cost
19 of the examination and opinion.

20 **SECTION 38.** 103.10 (14) (a) of the statutes is amended to read:

21 103.10 (14) (a) Each employer shall post, in one or more conspicuous places
22 where notices to employees are customarily posted, a notice in a form approved by
23 the department setting forth employees' rights under this section. Each employer
24 shall provide such a written notice to each employee upon hiring and annually
25 thereafter, when an employee requests leave, and when the employer learns that an

SENATE BILL 1064**SECTION 38**

1 employee's leave request may be for family or medical leave under this section. Any
2 employer who violates this subsection shall forfeit not more than \$100 for each
3 offense.

4 **SECTION 39.** 103.10 (14) (b) of the statutes is repealed.

5 **SECTION 40.** 103.10 (14) (c) and (d) of the statutes are created to read:

6 103.10 (14) (c) The notice required under this subsection shall include all of the
7 following:

8 1. An employee's right to family or medical leave under this section.

9 2. The amount of family or medical leave generally available for employees.

10 3. The procedure for requesting family or medical leave.

11 4. The prohibition on discriminatory or retaliatory personnel actions against
12 a person for requesting or taking family or medical leave.

13 5. An employee's right to file a complaint for violations of this section.

14 (d) The notice required under this subsection shall be provided in English, the
15 language typically used in communications between the employer and an individual
16 employee, and any other language that is the primary language of at least 20 percent
17 of employees at a workplace.

18 **SECTION 41.** 103.105 of the statutes is created to read:

19 **103.105 Family and medical leave insurance program. (1) DEFINITIONS.**

20 In this section:

21 (a) "Application year" means the 12-month period beginning on the first day
22 of the first calendar week for which family or medical leave insurance benefits are
23 claimed by a covered individual.

SENATE BILL 1064

1 (b) "Average weekly earnings" means one-thirteenth of the earnings from the
2 quarter of a covered individual's base period in which the individual's earnings were
3 the highest.

4 (c) "Base period" means the period that is used to compute a covered
5 individual's benefit rights under this section consisting of one of the following:

6 1. The first 4 of the 5 most recently completed quarters preceding the first day
7 of a covered individual's application year.

8 2. If the first quarter of the 5 most recently completed quarters was included
9 in the base period applicable to a covered individual's application year, the last 4
10 completed calendar quarters.

11 3. If a covered individual does not qualify to receive benefits using the period
12 described in subd. 1. or 2., the period consisting of the 4 most recently completed
13 quarters preceding the individual's application year.

14 (d) "Child" means a natural, adopted, or foster child, a stepchild, the child of
15 a domestic partner, a child for whom the covered individual stands or stood in the
16 place of a parent, or a legal ward.

17 (e) "Covered individual" means an individual who worked for any employer or
18 employers and earned at least \$1,000 during the base period or a self-employed
19 individual who elects coverage under sub. (2), regardless of whether the individual
20 is employed or unemployed at the time the individual files an application for family
21 or medical leave insurance benefits.

22 (f) "Domestic partner" has the meaning given in s. 40.02 (21c) or 770.01 (1).

23 (g) "Employee" means an individual employed in this state by an employer.

24 (h) "Employer" means a person engaging in any activity, enterprise, or business
25 in this state. "Employer" includes the state and any office, department, independent

SENATE BILL 1064**SECTION 41**

1 agency, authority, institution, association, society, or other body in state government
2 created or authorized to be created by the constitution or any law, including the
3 legislature and the courts.

4 (i) "Family leave" means leave from employment, self-employment, or
5 availability for employment for a reason specified in s. 103.10 (3) (b) 1. to 8. or 103.11
6 (4).

7 (j) "Family or medical leave insurance benefits" means family or medical leave
8 insurance benefits payable under this section from the family and medical leave
9 insurance trust fund.

10 (k) "Family member" means a spouse or domestic partner of a covered
11 individual; a parent, child, sibling, brother-in-law, sister-in-law, grandparent,
12 stepgrandparent, or grandchild of a covered individual or a covered individual's
13 spouse or domestic partner; or any other person who is related by blood, marriage,
14 or adoption to a covered individual or to a covered individual's spouse or domestic
15 partner or whose close association with the covered individual, spouse, or domestic
16 partner makes the person the equivalent of a family member of the covered
17 individual, spouse, or domestic partner.

18 (L) "Grandchild" means the child of a child.

19 (m) "Grandparent" means the parent of a parent.

20 (n) "Medical leave" means leave from employment, self-employment, or
21 availability for employment when a covered individual has a serious health condition
22 that makes the individual unable to perform the individual's employment or
23 self-employment duties or makes the individual unable to perform the duties of any
24 suitable employment.

SENATE BILL 1064

1 (o) “Parent” means a natural parent, foster parent, adoptive parent,
2 stepparent, legal guardian of a covered individual or a covered individual’s spouse
3 or domestic partner, or individual who stood in the place of a parent when the covered
4 individual or the covered individual’s spouse or domestic partner was a minor.

5 (p) “Self-employed individual” means a sole proprietor, independent
6 contractor, partner of a partnership, member of a limited liability company, or other
7 self-employed individual engaged in a vocation, profession, or business in this state.

8 (q) “Serious health condition” has the meaning given in s. 103.10 (1) (g).

9 (r) “Sibling” means a brother, sister, half brother, half sister, stepbrother, or
10 stepsister, whether by blood, marriage, adoption, or foster relationship.

11 (s) “Spouse” means a covered individual’s legal husband or wife.

12 **(2) ELECTION BY SELF-EMPLOYED INDIVIDUAL.** A self-employed individual may
13 elect to be covered under this section by filing a written notice of election with the
14 department in a form and manner prescribed by the department by rule. An initial
15 election under this subsection becomes effective on the date on which the notice of
16 election is filed, shall be for a period of not less than 3 years, and may be renewed for
17 subsequent one-year periods by the filing of a written notice with the department
18 that the self-employed individual intends to continue coverage under this section.
19 A self-employed individual who elects coverage under this section may withdraw
20 that election no earlier than 3 years after the date of the initial election or at such
21 other times as the department may prescribe by rule by providing notice of that
22 withdrawal to the department not less than 30 days before the expiration date of the
23 election.

24 **(3) ELIGIBILITY FOR BENEFITS.** (a) A covered individual who is on family or
25 medical leave is eligible to receive family or medical leave insurance benefits in the

SENATE BILL 1064**SECTION 41**

1 amount specified in sub. (4) and for the duration specified in sub. (5). No family or
2 medical leave insurance benefits are payable for any period of family or medical leave
3 for which a covered individual is receiving unemployment insurance benefits under
4 ch. 108 or worker's compensation benefits under ch. 102 for a total disability.

5 (b) To receive family or medical leave insurance benefits, a covered individual
6 shall file a claim for those benefits not more than 60 days before the anticipated start
7 date of family or medical leave and not more than 90 days after the start date in the
8 manner that the department prescribes by rule. The department may waive the
9 90-day deadline for good cause. On receipt of a claim for family or medical leave
10 insurance benefits, the department may request from the employee's employer or
11 from the self-employed individual any information necessary for the department to
12 determine the individual's eligibility for those benefits and the amount and duration
13 of those benefits. The employer or self-employed individual shall provide that
14 information to the department within the time and in the manner that the
15 department prescribes by rule. A covered individual is not required to provide exact
16 dates of leave on an application for benefits, and the department may modify benefits
17 amounts through a claims modification process. If the department determines that
18 a covered individual is eligible to receive family or medical leave insurance benefits,
19 the department shall provide those benefits to the individual as provided in subs. (4)
20 to (6).

21 (4) AMOUNT OF BENEFITS. (a) For the purposes of this subsection, average
22 weekly earnings shall be calculated as set forth in s. 102.11 (1). Subject to pars. (b)
23 and (c), the amount of family or medical leave insurance benefits for a week of leave
24 for which those benefits are payable is as follows:

SENATE BILL 1064

1 1. For the amount of the covered individual's average weekly earnings that are
2 up to 50 percent of the state average weekly earnings as determined under s. 108.05,
3 90 percent of that individual's average weekly earnings.

4 2. For the amount of the covered individual's average weekly earnings that are
5 more than 50 percent of the state average weekly earnings as determined under s.
6 108.05, 50 percent of that individual's average weekly earnings.

7 (b) The amount of family or medical leave insurance benefits for a fractional
8 week of leave for which those benefits are payable is one-seventh of the covered
9 individual's weekly benefit amount under par. (a), multiplied by the number of days
10 of leave taken that week. Family or medical leave insurance benefits are not payable
11 for a period of leave of less than one day in duration.

12 (c) The maximum weekly benefit amount of a covered individual's family or
13 medical leave insurance benefits is the state average weekly earnings, as determined
14 under s. 108.05. The department shall annually have the maximum amount of the
15 weekly benefit published in the Wisconsin Administrative Register.

16 (d) Subject to the maximum amount provided under this subsection, the benefit
17 amount for a covered individual shall be based on the proportion of the covered
18 individual's typical workweek spent at the employment from which the covered
19 individual is taking family or medical leave. A covered individual who has more than
20 one employer and who is receiving benefits based on the individual's employment
21 with one employer may continue to work and receive pay from another employer.

22 **(5) DURATION OF BENEFITS.** (a) The maximum number of weeks for which family
23 or medical leave insurance benefits are payable in an application year is 12 weeks
24 for any leave specified under ss. 103.10 (3) (b) 1. to 8 and 103.11 and 14 weeks for any
25 combination of leave specified under ss. 103.10 (3) and (4) and 103.11. A covered

SENATE BILL 1064**SECTION 41**

1 individual may be paid family or medical leave insurance benefits continuously or,
2 at the option of the covered individual, intermittently.

3 (b) Family or medical leave insurance benefits are payable beginning on the
4 first day that a covered individual takes family or medical leave. The first payment
5 of family or medical leave insurance benefits shall be made no later than one week
6 after a covered individual files a claim for those benefits or within one week of the
7 first day the claim is approved, whichever is later. Subsequent payments shall be
8 made no less often than semimonthly.

9 **(6) EMPLOYER-PROVIDED BENEFITS.** (a) Nothing in this section prohibits an
10 employer from providing employees with rights to family or medical leave insurance
11 benefits that are more generous to the employee than the benefits provided under
12 this section. Except as provided in par. (b), no employer may require an employee
13 to use or exhaust paid leave or other benefits provided by an employer before or while
14 receiving benefits under this section. An employee may use any accrued paid leave
15 benefits while receiving benefits under this section, unless the aggregate amount of
16 money would exceed the employee's average weekly earnings.

17 (b) An employer may require that benefits paid under this section be
18 coordinated with payments under the terms of a short-term disability policy, a
19 stand-alone bank of paid leave designated solely for family or medical leave, or
20 under a collective bargaining agreement or employer policy. An employer shall
21 provide employees with written notice of this requirement.

22 **(7) POSITION UPON RETURN FROM LEAVE.** (a) When an employee who receives
23 benefits under this section returns from family leave or medical leave, the employee's
24 employer shall follow the procedures set forth in s. 103.10 (8) to place the employee
25 in a position with the employer.

SENATE BILL 1064

1 (b) No employer may, because an employee received family or medical leave
2 insurance benefits, reduce or deny an employment benefit that accrued to the
3 employee before the employee's leave began or, consistent with s. 103.10 (8), accrued
4 after the employee's leave began.

5 (8) TAX TREATMENT OF BENEFITS. With respect to the federal income taxation of
6 family or medical leave insurance benefits, the department shall do all of the
7 following:

8 (a) Request an opinion from the internal revenue service on the taxability of
9 the benefits under federal law.

10 (b) At the time a covered individual files a claim for those benefits, advise the
11 individual that those benefits may be subject to federal income taxation, that
12 requirements exist under federal law pertaining to estimated tax payments, and
13 that the individual may elect to have federal income taxes withheld from the
14 individual's benefit payments and may change that election not more than one time
15 in an application year.

16 (c) Allow the covered individual to elect to have federal income tax deducted
17 and withheld from the individual's benefit payments, allow the individual to change
18 that election not more than one time in an application year, and deduct and withhold
19 that tax in accordance with the individual's election as provided under 26 USC 3402.

20 (d) Upon making a deduction under par. (c), transfer the amount deducted from
21 the family and medical leave insurance trust fund to the federal internal revenue
22 service.

23 (e) In deducting and withholding federal income taxes from a covered
24 individual's benefit payments, follow all procedures specified by the federal internal
25 revenue service pertaining to the deducting and withholding of federal income tax.

SENATE BILL 1064**SECTION 41**

1 **(9) FAMILY AND MEDICAL LEAVE INSURANCE TRUST FUND.** (a) The department shall
2 determine the amount of the required contribution by each employee, self-employed
3 individual who elects coverage under sub. (2), and each employer. The required
4 contribution shall be based on the employee's wages or the self-employed
5 individual's earnings. Except as otherwise provided in this paragraph, the required
6 contribution for an employee shall be equally shared between each employee and the
7 employee's employer. For an employer with 50 or fewer employees, the department
8 shall establish tiers of reduced contribution rates based on the number of the
9 employer's employees. No employer contribution is required from self-employed
10 individuals, and such individuals shall be required to pay only one-half of the
11 required contribution.

12 (b) Each employer shall withhold from the wages of its employees the amount
13 determined by the department under this subsection.

14 (c) The department shall collect the contributions withheld by employers and
15 employer-required contributions under par. (a) in the same manner as the
16 department collects contributions to the unemployment reserve fund under s.
17 108.17. Section 108.10 applies to issues regarding liability of employers for
18 contributions under this subsection.

19 (d) The department shall collect contributions from self-employed individuals
20 pursuant to procedures established by the department under sub. (13) (b).

21 (e) The department shall deposit contributions received under this subsection
22 into the family and medical leave insurance trust fund and credit them to the
23 appropriation account under s. 20.445 (1) (w).

24 (f) The department shall use moneys deposited into the family and medical
25 leave insurance trust fund to pay benefits under sub. (3) and to pay for the

SENATE BILL 1064

1 administration of the family and medical leave insurance program under this section
2 and for no other purpose.

3 **(10) DENIAL OF CLAIMS; OVERPAYMENTS.** (a) A covered individual whose claim for
4 family or medical leave insurance benefits is denied by the department, or who
5 believes that benefits approved under this section are less than what the individual
6 is entitled to receive, may request a hearing on the denial or approved benefits, and
7 the department shall process the request for a hearing in the same manner that
8 requests for hearings on unemployment insurance claims are processed under s.
9 108.09.

10 (b) If the department pays family or medical leave insurance benefits
11 erroneously or as a result of willful misrepresentation, the department may seek
12 repayment of those benefits in the same manner that the department recovers
13 erroneous payments of unemployment insurance benefits under ss. 108.095, 108.22
14 (8), and 108.225. The department may waive recovery of an erroneous payment of
15 family or medical leave insurance benefits if the erroneous payment was not the fault
16 of the individual who received it and if requiring repayment would be contrary to
17 equity and good conscience. If an individual willfully makes a false statement or
18 representation, or willfully fails to disclose a material fact, to obtain family or
19 medical leave insurance benefits under this section, the department may determine
20 that the individual is disqualified from receiving those benefits for up to one year
21 after the date of the disqualification.

22 **(11) PROHIBITED ACTS.** (a) No person may interfere with, restrain, or deny the
23 exercise of any right provided under this section.

24 (b) No person may discharge or otherwise discriminate or retaliate against any
25 person for exercising any right provided under this section, opposing a practice

SENATE BILL 1064**SECTION 41**

1 prohibited under this section, filing a complaint or attempting to enforce any right
2 provided under this section, or testifying or assisting in any action or proceeding to
3 enforce any right provided under this section.

4 (c) No collective bargaining agreement or employer policy may diminish or
5 abridge an employee's rights under this section, including any policy regarding
6 employee absences. Any agreement purporting to waive or modify an employee's
7 rights under this section is void as against public policy and unenforceable.

8 **(12) ENFORCEMENT.** (a) Any individual who believes that his or her rights under
9 this section have been interfered with, restrained, or denied in violation of sub. (11)
10 (a) or that he or she has been discharged or otherwise discriminated against in
11 violation of sub. (11) (b) may, within 60 days after the violation occurs or the
12 individual should reasonably have known that the violation occurred, whichever is
13 later, file a complaint with the department alleging the violation, and the
14 department shall process the complaint in the same manner as complaints filed
15 under s. 103.10 (12) (b) are processed. If the department finds that an employer has
16 violated sub. (11) (a) to (c), the department may order the employer to take action to
17 remedy the violation, including providing the requested family or medical leave,
18 reinstating an employee, providing back pay accrued not more than 2 years before
19 the complaint was filed, and, notwithstanding s. 814.04 (1), paying reasonable actual
20 attorney fees to the complainant.

21 (b) After the completion of an administrative proceeding under par. (a),
22 including judicial review, an employee or the department may bring an action in
23 circuit court against an employer to recover damages caused by a violation of sub.
24 (11) (a) to (c). Section 103.10 (13) (b) applies to the commencement of an action under
25 this paragraph.

SENATE BILL 1064

1 **(13) ADMINISTRATION.** The department shall administer the family and medical
2 leave insurance program under this section. In administering the program, the
3 department shall do all of the following:

4 (a) Establish procedures and forms for filing claims for benefits under this
5 section.

6 (b) Establish procedures and forms for collecting contributions from
7 self-employed individuals.

8 (c) Collect demographic information of claimants.

9 (d) Promulgate rules to implement this section.

10 (e) Use information sharing and integration technology to facilitate the
11 exchange of information as necessary for the department to perform its duties under
12 this section.

13 (f) Conduct a public outreach campaign to inform employers, employees,
14 self-employed individuals, and other covered individuals regarding the family and
15 medical leave insurance program under this section. Information provided under
16 this paragraph shall be provided in English and in any other language customarily
17 spoken by more than 20 percent of the population of this state.

18 (g) By September 1 of each year, submit a report to the governor, the joint
19 committee on finance, and the appropriate standing committees of the legislature
20 under s. 13.172 (3) on the family and medical leave insurance program under this
21 section. The report shall include all of the following:

22 1. The projected and actual rates of participation in the program, aggregated
23 by reason for use of the paid leave benefits.

24 2. The premium rates for coverage under the program.

SENATE BILL 1064**SECTION 41**

1 3. The current balance and projected balance for the upcoming year in the
2 family and medical leave insurance trust fund under s. 25.52.

3 4. Average duration of paid leave benefits, aggregated by reason for use of the
4 paid leave benefits.

5 5. Average weekly benefit amount.

6 6. Aggregated demographic information about each applicant and covered
7 individual who received benefits in the preceding calendar year, including age,
8 gender, race, ethnicity, primary language, residential zip code, average weekly
9 earnings, occupation, and employment type.

10 7. Number of appeals filed and outcomes of appeals.

11 8. For leave benefits paid to a covered individual who received benefits because
12 of caring for a family member with a serious health condition, the relationship of the
13 family member to the covered individual.

14 9. A description of the department's outreach efforts under par. (f).

15 **(14) RECORDS.** Notwithstanding s. 19.35 (1), individual personal information
16 maintained by the department under this section is confidential and not open to
17 public inspection and copying and may be disclosed only as follows:

18 (a) On the request of the individual who is the subject of the information or the
19 individual's authorized representative, to the individual or representative.

20 (b) With the written permission of the individual who is the subject of the
21 information or the individual's authorized representative, to a person named in the
22 permission.

23 (c) To a public employee for use in the performance of the public employee's
24 official duties in the administration of the family and medical leave insurance
25 program under this section.

SENATE BILL 1064

1 (d) Under a court order or an order of a hearing examiner that is obtained upon
2 prior notice to the department and a showing to the court or hearing examiner that
3 the information is relevant to a pending court or administrative action.

4 **(15) NOTICE POSTED.** (a) Each employer shall post, on its website and in one or
5 more conspicuous places where notices to employees are customarily posted, a notice
6 in a form provided by the department setting forth employees' rights under this
7 section. Each employer shall also provide annually thereafter such a written notice
8 individually to each employee upon hiring the employee. Any employer that violates
9 this subsection shall forfeit not more than \$100 for each violation.

10 (b) The notice required under this section shall include all of the following:

11 1. An employee's right to family or medical leave insurance benefits under this
12 section.

13 2. The amount of family or medical leave insurance benefits generally available
14 for each employee.

15 3. The procedure for filing a claim for benefits.

16 4. The prohibition on discriminatory or retaliatory personnel actions against
17 a person for applying for or receiving family or medical leave insurance benefits.

18 5. An employee's right to file a complaint for violations of this section.

19 (c) The notice required under this section shall be provided in English, the
20 language typically used in communications between the employer and an individual
21 employee, and any other language that is the primary language of at least 20 percent
22 of employees at a workplace.

23 **SECTION 42.** 103.12 (2) of the statutes is amended to read:

24 103.12 (2) In this section, "employment benefit" means anything of value, other
25 than wages and salary, that an employer makes available to an employee, including

SENATE BILL 1064**SECTION 42**

1 a retirement, benefit, a pension, benefit, a profit sharing, benefit, or an insurance,
2 or leave benefit. “Employment benefit” does not include a leave benefit.

3 **SECTION 43.** 103.12 (3) of the statutes is amended to read:

4 103.12 (3) (a) Except as provided in ss. ~~103.10 (1m) (d)~~ and s. 103.11 (2) (d), no
5 city, village, town, or county may enact or enforce an ordinance requiring an
6 employer to provide certain employment benefits to its employees, to provide a
7 minimum level of employment benefits to its employees, or to prescribe the terms or
8 conditions of employment benefits provided to its employees.

9 (b) Except as provided in ss. ~~103.10 (1m) (d)~~ and s. 103.11 (2) (d), if a city, village,
10 town, or county has in effect on April 18, 2018, an ordinance requiring an employer
11 to provide certain employment benefits or to provide a minimum level of employment
12 benefits to its employees, the ordinance does not apply and may not be enforced.

13 **SECTION 44.** 103.12 (4) of the statutes is created to read:

14 103.12 (4) Notwithstanding sub. (3), a city, village, town, or county may enact
15 or enforce an ordinance requiring an employer to provide leave benefits to its
16 employees if those benefits are more generous than the leave benefits provided under
17 state law.

18 **SECTION 45.** 111.322 (2m) (a) of the statutes is amended to read:

19 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
20 right under s. 103.02, 103.10, 103.105, 103.11, 103.13, 103.28, 103.32, 103.34,
21 103.455, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55, or ss. 101.58 to 101.599
22 or 103.64 to 103.82.

23 **SECTION 46.** 111.322 (2m) (b) of the statutes is amended to read:

24 111.322 (2m) (b) The individual testifies or assists in any action or proceeding
25 held under or to enforce any right under s. 103.02, 103.10, 103.105, 103.11, 103.13,

SENATE BILL 1064

1 103.28, 103.32, 103.34, 103.455, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55,
2 or ss. 101.58 to 101.599 or 103.64 to 103.82.

3 **SECTION 47.** 165.68 (1) (a) 3. of the statutes is repealed and recreated to read:

4 165.68 (1) (a) 3. Conduct that is in violation of s. 940.225, 944.30 (1m), 948.02,
5 948.025, 948.05, 948.051, 948.055, 948.06, 948.085, 948.09, or 948.10 or that is in
6 violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.

7 **SECTION 48.** 227.03 (2) of the statutes is amended to read:

8 227.03 (2) Except as provided in s. ss. 103.105 (9) and (10) and 108.105, only
9 the provisions of this chapter relating to rules are applicable to matters arising out
10 of s. 66.191, 1981 stats., s. 40.65 (2), 289.33, 303.07 (7) or 303.21 or subch. II of ch.
11 107 or ch. 102, 108 or 949.

12 **SECTION 49. Nonstatutory provisions.**

13 (1) PROPOSED PERMANENT RULES. The department of workforce development
14 shall submit in proposed form the rules required under s. 103.105 (13) (d) to the
15 legislative council staff under s. 227.15 (1) no later than the first day of the 4th month
16 beginning after the effective date of this subsection.

17 (2) RULE-MAKING EXCEPTIONS FOR PERMANENT RULES.

18 (a) Notwithstanding s. 227.135 (2), the department of workforce development
19 is not required to present the statement of the scope of the rules required under s.
20 103.105 (13) (d) to the department of administration for review by the department
21 of administration and approval by the governor.

22 (b) Notwithstanding s. 227.185, the department of workforce development is
23 not required to present the rules required under s. 103.105 (13) (d) in final draft form
24 to the governor for approval.

SENATE BILL 1064**SECTION 49**

1 (c) Notwithstanding s. 227.137 (2), the department of workforce development
2 is not required to prepare an economic impact analysis for the rules required under
3 s. 103.105 (13) (d).

4 (d) Notwithstanding ss. 227.14 (2g) and 227.19 (3) (e), the department of
5 workforce development is not required to submit the proposed rules required under
6 s. 103.105 (13) (d) to the small business regulatory review board and is not required
7 to prepare a final regulatory flexibility analysis for those rules.

8 (3) **EMERGENCY RULES.** Using the procedure under s. 227.24, the department of
9 workforce development shall promulgate the rules required under s. 103.105 (13) (d)
10 for the period before the effective date of the permanent rules promulgated under s.
11 103.105 (13) (d) but not to exceed the period authorized under s. 227.24 (1) (c), subject
12 to extension under s. 227.24 (2). Notwithstanding s. 227.24 (1) (a), (2) (b), and (3),
13 the department is not required to provide evidence that promulgating a rule under
14 this subsection as an emergency rule is necessary for the preservation of public
15 peace, health, safety, or welfare and is not required to provide a finding of an
16 emergency for a rule promulgated under this subsection. Notwithstanding s. 227.24
17 (1) (e) 1d. and 1g., the department is not required to prepare a statement of the scope
18 of the rules promulgated under this subsection or present the rules to the governor
19 for approval.

20 (4) **FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM STAFF.** The authorized FTE
21 positions for the department of workforce development are increased by 45.0 GPR
22 positions in fiscal year 2023-24, and by 198.0 GPR positions in fiscal year 2024-25,
23 to be funded from the appropriation under s. 20.445 (1) (w) for the purpose of
24 administering the family and medical leave insurance program under s. 103.105.

SECTION 50. Fiscal changes.

