

1999 DRAFTING REQUEST

Bill

Received: **11/12/1998**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Spencer Black (608) 266-7521**

By/Representing: **Memo**

This file may be shown to any legislator: **NO**

Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Employ Priv - family leave**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Family, medical and school activities leave

Instructions:

redraft 1997 AB 166

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1			lpaasch 02/12/1999	_____	lrb_docadmin 02/12/1999		S&L
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/3	malaigm 09/15/1999	ygeller 09/15/1999	jfrantze 09/15/1999	_____	lrb_docadmin 09/15/1999	lrb_docadmin 09/17/1999	

FE Sent For:

10/4/99

<END>

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FE Sent For:

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8/9/15

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<ENDS>

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FE Sent For:

Jg 9/14
Jg/Km 9/14
<END>

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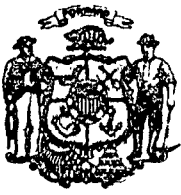
redraft 1997 AB 166

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1/?	malaigm	1/1 rgt 12/1/98 1/1 jlg 2/11	2-DLP.	2-DLP JG			

FE Sent For:

<END>



State of Wisconsin

~~1997~~ 1998 LEGISLATURE

1999-2000

08541
LRB-1736/2
GMM:km&jlg:km
jlg

due MONDAY
~~1997~~ BILL
1999

Regenerate

1 AN ACT *to repeal* 103.10 (1)(a) 1. and 2., 103.10 (3)(a) 2., 103.10 (3)(a) 3., 103.10

2 (3) (b) (intro.), 103.10 (3) (c), 103.10 (4) (title), 103.10 (4) (b), 103.10 (12) (c),

3 103.10 (13) (b) 2., 103.10 (14) (b), 252.17 (3) (i) and 252.17 (4) (c); *to renumber*

4 103.10 (3) (b) 3., 103.10 (3) (d) and 103.10 (4) (c); *to renumber and amend*

5 103.10 (1) (a) (intro.), 103.10 (3) (a) 1., 103.10 (3) (b) 1., 103.10 (3) (b) 2., 103.10

6 (4) (a), 103.10 (5) (b), 103.10 (7) (c) and 103.10 (14) (a); *to consolidate,*

7 *renumber and amend* 103.10 (13) (b) (intro.) and 1.; *to amend* 103.10 (title),

8 103.10 (1) (c), 103.10 (1) (d), 103.10 (1) (f), 103.10 (1) (g) (intro.), 103.10 (1) (g)

9 2., 103.10 (2) (a), 103.10 (2) (c), 103.10 (3) (title), 103.10 (5) (a), 103.10 (6) (a),

10 103.10 (6) (b) (intro.), 103.10 (6) (b) 1., 103.10 (6) (b) 2., 103.10 (7) (a), 103.10 (7)

11 (b) 4., 103.10 (8) (a), 103.10 (8) (b), 103.10 (9) (a), 103.10 (9) (b), 103.10 (10),

12 103.10 (12) (b), 103.10 (12) (d), 103.10 (13) (a), 108.04 (1) (b) 3. (intro.), 111.322

13 (2m) (a), 111.322 (2m) (b), 111.91 (2) (f), 230.35 (2m), 252.17 (4) (a) and 632.897

14 (6); *to repeal and recreate* 103.10 (8) (c), 103.10 (9) (c), 103.10 (9) (d), 103.10

BILL

1 (11)(c) and 893.96 (title); and *to create* 103.10 (1) (fr), 103.10 (4g) (title), 103.10
 2 (4m), 103.10 (5) (b) 2., 103.10 (6) (c), 103.10 (7) (c) 2., 103.10 (7) (d), 103.10 (7)
 3 (e), 103.10 (8) (d), 103.10 (11) (d), 103.10 (12) (e), 103.10 (12) (f), 103.10 (12) (g),
 4 103.10 (13) (c), 103.10 (15), 103.10 (16) and 230.35 (2n) of the statutes; **relating**
 5 **to:** various changes to the family and medical leave law, leave for school
 6 conferences and activities and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the Wisconsin family and medical leave law to conform that law in certain respects to the federal family and medical leave law. The bill also allows an employe to take school conference and activities leave.

Family or medical leave

Under current law, an employer, including the state, that employs at least 50 individuals on a permanent basis must permit an employe to take ~~12~~^{8 1/2} weeks of family leave in a 12-month period and ~~4~~^{two} weeks of medical leave in a 12-month period. This bill requires an employer, including the state, that employs at least 35 individuals for each working day during each of 20 or more weeks in the current or preceding year to permit an employe to take 12 weeks of family or medical leave in a 12-month period.

Under current law, an employe may take family or medical leave only if the employe has been employed by the same employer for more than 52 consecutive weeks. Under the bill, an employe may take family or medical leave only if the employe has been employed for more than 52 consecutive weeks by the employer from whom the leave is requested.

Under current law, an employe may take family leave for the birth or adoptive placement of the employe's child, if the leave begins within 16 weeks after the birth or placement. This bill permits an employe to begin family leave within 12 months before or after the birth or placement of a child and permits family leave for a foster care placement as well.

Under current law, an employe may also take family leave to care for a child, spouse or parent, including a spouse's parent, who has a serious health condition. This bill expands the definition of "child" to include an individual for whom the employe stands in the place of a parent without having formally adopted or assumed guardianship of that individual. The bill also expands the definition of "parent" to include an individual who stood in the place of a parent of the employe or the employe's spouse, when the employe or spouse was a child, without having formally adopted or assumed guardianship of that individual.

Under current law, an employe may take medical leave if the employe has a serious health condition that makes the employe unable to perform his or her

Or treatment
foster care

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employment *duties*. Under the bill, an employe may take medical leave if the employe has a serious health condition that makes the employe unable to perform the *functions* of his or her employment.

Under current law, if an employe intends to take leave for the birth or placement of a child or for planned medical treatment, the employe must give notice to the employer in a manner that is reasonable and practicable. This bill requires the employe to give 30 days' notice in those situations that are foreseeable, unless the birth or placement will take place, or the medical treatment will begin, within 30 days, in which case the bill permits reasonable and practicable notice.

School conference and activities leave

The bill allows any employe of an employer employing at least 35 individuals to take no more than 16 hours of school conference and activities leave in a 12-month period. School conference and activities leave may be taken to attend school conferences or classroom activities relating to the employe's child that cannot be scheduled during nonwork hours. In addition, if the employe's child is in day care or is attending preschool or prekindergarten, the employe may also take school conference and activities leave to observe and monitor the services or programming received by the child, if that observation and monitoring cannot be scheduled during nonwork hours. An employe is not entitled to receive wages or salary while taking school activities leave, but may substitute, for portions of school conference and activities leave, other types of paid or unpaid leave provided by the employer, except that an employe may not substitute paid leave for school conference and activities leave for attending a school conference or activity for less than one hour. An employe who intends to take leave to attend a school conference or activity must give the employer advance notice of the leave and make a reasonable effort to schedule the leave so that it does not unduly disrupt the operations of the employer.

~~For purposes of school conference and activities leave, "child" includes a person 18 years of age or over who is a biological, adopted or foster child, a stepchild or a legal ward of an employe or who is a person for whom the employe stands in the place of a parent; and "school" means a day care center licensed by the department of health and family services, a day care provider certified for funding by a county department of human services or social services, a day care program established or contracted for by a school board, a public, parochial or private preschool or prekindergarten or a public, parochial or private school that provides an educational program for one or more grades between kindergarten and 12.~~ (DWD) ✓

Certification of health condition

Under current law, an employer may require an employe to obtain a ^{second} ~~and~~ opinion, at the employer's expense, concerning the certification ~~provided by the employe's health care provider.~~ Also under current law, if the employe has commenced an administrative proceeding regarding the alleged denial of leave due to a serious health condition of the employe or of a child, spouse or parent, and if the original certification and ^{second} ~~second~~ opinion differ, the department of industry, labor and job development ~~(DILJD)~~ may appoint a health care provider to render a ^{third} ~~second~~ opinion, with the expense of obtaining that opinion to be shared equally by the employer and employe. This bill permits the employer to require the employe, prior to any

workfare

if an employe requests family leave to care for a child, spouse or parent who has a serious health condition or medical leave to care for the employe's serious health condition, the employer may require the employe to provide a certification of that serious health condition by a health care provider. Currently, ~~it is~~ **NOT**

also that

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administrative proceedings, to obtain a ~~2nd~~^{third} opinion at the employer's expense if the original certification and ~~2nd~~^{second} opinion differ. The employer and employe must jointly designate the ~~2nd~~^{third} opinion provider.

Also, under the bill, the employer may require an employe to obtain recertification of the original certification on a regular basis, to report periodically on the employe's status and intention of returning to work and to obtain certification that the employe is able to return to work. If the employe is not able to return to work as planned, the bill permits the employer to require the employe to provide certification that the employe's serious health condition prevented the employe from performing the functions of his or her position on the day on which the leave expired.

Employment and benefits protection

Under current law, upon the return of an employe from family or medical leave, an employer must place the employe in the position that the employe held immediately before that leave began, if the position is vacant, or, if the position is not vacant, in an equivalent employment position having equivalent pay, benefits, and other terms and conditions of employment. This bill permits the employer to place an employe who is returning from family, medical or school conference and activities leave either in the employe's old position or in an equivalent position without regard to whether the old position is vacant.

Under current law, an employer must maintain group health insurance coverage for an employe on leave under the conditions that applied immediately before the leave. This bill requires an employer to maintain that coverage for an employe who is on family, medical or school conference and activities leave at the level and under the conditions that the employer would have provided coverage if the employe had continued in employment.

Under current law, an employer may require an employe to place in escrow with the employer the premium for ~~8~~^{eight} weeks of group health insurance coverage and the employer may keep from that escrow account the amount that the employer paid for that coverage if the employe does not return from leave. This bill eliminates the escrow requirement, but permits the employer to recover those premiums if the employe does not return to work from family, medical or school conference and activities leave for reasons other than the recurrence, onset or continuation of a serious health condition or other circumstances beyond the employe's control.

Enforcement

Under current law, an employe who believes that his or her employer has violated the family or medical leave law may file a complaint with DHJD within 30 days after the employe knew or should have known of the violation. This bill extends that time limit to 300 days after the date of the last event constituting the alleged violation of the family, medical or school conference and activities leave law.

Under current law, if DHJD finds that an employer has violated the family or medical leave law, DHJD may order the employer to take action to remedy the violation, including providing the requested leave, reinstating the employe, providing back pay accrued not more than ~~2~~^{two} years before the complaint was filed and paying reasonable actual attorney fees. This bill eliminates the ~~2~~^{two} year limit on back pay for a violation of the family, medical or school conference and activities leave law.

began

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premiums

ends his or her employment during or within 30 days after the leave

DHJD (use 3 times)

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and includes among the remedies that ~~DILJE~~ may order for such a violation the promotion of the employe and the provision of benefits to the employe.

Under current law, an employe or ~~DILJE~~ may bring a civil action in circuit court against an employer to recover damages caused by a violation of the family or medical leave law. Currently, a civil action under the family or medical leave law is barred unless commenced within the later of 60 days after the completion of an administrative proceeding, including judicial review, for the violation or 12 months after the violation occurred or the employe or ~~DILJE~~ reasonably should have known that the violation occurred. This bill permits an employe or ~~DILJE~~ to bring an action for a violation of the family, medical or school conference and activities leave law on behalf of the employe, or on behalf of the employe and other employes similarly situated. The bill also eliminates the 12-month period within which an action must be commenced so that an action must be commenced within 60 days after the completion of administrative proceedings. Finally, the bill specifies that, if the circuit court finds that an employer has violated the family, medical or school conference and activities leave law, the circuit court may order the employer to take action to remedy the violation and to pay the following damages:

1. Damages equal to the amount of compensation that the employe lost because of the violation or, if the employe did not lose any compensation, any actual monetary loss sustained as a direct result of the violation up to a sum equal to 12 weeks of wages or salary.

2. As liquidated damages, an amount equal to the damages described in paragraph 1., except that the court may reduce the amount of damages to the amount described in paragraph 1. if the court finds that the violation was committed in good faith and that the employer had reasonable grounds to believe that ~~his or her~~ act or omission was not a violation of the family, medical or school conference and activities leave law.

its

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

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

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part of starts

- 1 SECTION 1. 103.10 (title) of the statutes is amended to read:
- 2 103.10 (title) Family or medical and school conference and activities
- 3 leave.
- 4 SECTION 2. 103.10 (1)(a) (intro.) of the statutes is renumbered 103.10 (1)(a) and
- 5 amended to read:

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SECTION 2

proof w/ stats.

1 103.10 (1) (a) "Child" means a ~~natural~~ biological, adopted, foster or treatment
 2 foster child, a stepchild or a legal ward ~~to whom any of the following applies: of an~~
 3 employe or a person for whom an employe stands in the place of a parent and includes
 4 a person 18 years of age or over who is a biological, adopted, foster or treatment foster
 5 child, a stepchild or a legal ward of an employe or who is a person for whom an
 6 employe stands in the place of a parent.

7 **SECTION 3.** 103.10 (1) (a) 1. and 2. of the statutes are repealed.

8 **SECTION 4.** 103.10 (1) (c) of the statutes is amended to read:

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9 103.10 (1) (c) ~~Except as provided in sub. (14) (b), "employer"~~ "Employer" means
 10 a person engaging in any activity, enterprise or business in this state employing at
 11 ~~least 50~~ 35 individuals on a permanent basis for each working day during each of 20
 12 or more calendar weeks in the current or preceding year. "Employer" includes the
 13 state, its political subdivisions and any office, department, independent agency,
 14 authority, institution, association, society or other body in state or local government
 15 created or authorized to be created by the constitution or any law, including the
 16 legislature and the courts. "Employer" also includes any person who acts, directly
 17 or indirectly, in the interest of an employer with respect to an employe and any
 18 successor in interest of an employer.

19 **SECTION 5.** 103.10 (1) (d) of the statutes is amended to read:

20 103.10 (1) (d) "Employment benefit" means ~~an insurance, leave or retirement~~
 21 ~~a benefit which that~~ an employer provides or makes available to an employe,
 22 including group life insurance, health insurance, disability insurance, sick leave,
 23 annual leave, educational benefits and pensions, regardless of whether those
 24 benefits are provided by a practice or policy of the employer or through an employe
 25 benefit plan, as defined in 29 USC 1002 (3).

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SECTION 6. 103.10 (1) (f) of the statutes is amended to read:

103.10 (1) (f) "Parent" means a natural biological parent, foster parent, treatment foster parent, adoptive parent, stepparent or legal guardian of an employe or an employe's spouse or a person who stood in the place of a parent of the employe or the employe's spouse when the employe or spouse was a child.

SECTION 7. 103.10 (1) (fr) of the statutes is created to read:

103.10 (1) (fr) "School" means a child care provider, as defined in s. 49.001 (1), a public, parochial or private preschool or prekindergarten or a public, parochial or private school ^{that} ~~which~~ provides an educational program for one or more grades between kindergarten and 12 and ^{that} ~~which~~ is commonly known as a kindergarten, elementary school, middle school, junior high school, senior high school or high school.

SECTION 8. 103.10 (1) (g) (intro.) of the statutes is amended to read:

103.10 (1) (g) (intro.) "Serious health condition" means ~~a disabling physical or mental~~ an illness, injury, impairment or physical or mental condition involving any of the following:

SECTION 9. 103.10 (1) (g) 2. of the statutes is amended to read:

103.10 (1) (g) 2. ~~Outpatient care that requires continuing~~ Continuing treatment ~~or supervision~~ by a health care provider.

SECTION 10. 103.10 (2) (a) of the statutes is amended to read:

103.10 (2) (a) Nothing in this section prohibits an employer from providing employes with rights to family leave ~~or medical leave which~~ or school conference and activities leave that are more generous to the employe than the rights provided under this section.

SECTION 11. 103.10 (2) (c) of the statutes is amended to read:

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SECTION 11

1 103.10 (2) (c) This section only applies to an employe who has been employed
 2 for more than 52 consecutive weeks by the same employer ~~for more than 52~~
 3 ~~consecutive weeks~~ from whom leave under sub. (3) is requested and who worked for
 4 the ~~that~~ employer for at least 1,000 hours during the preceding 52-week period,
 5 except that for purposes of school conference and activities leave under sub. (4m) this
 6 section applies to any employe of an employer.

7 **SECTION 12.** 103.10 (3) (title) of the statutes is amended to read:

8 103.10 (3) (title) FAMILY OR MEDICAL LEAVE.

9 **SECTION 13.** 103.10 (3) (a) 1. of the statutes is renumbered 103.10 (3) (intro.) *ae*
 10 and amended to read:

11 103.10 (3) (intro.) In a 12-month period ~~no an~~ employe may take ~~more than 6~~
 12 12 weeks of family leave under par. (b) 1. and 2. for any one or more of the following
 13 reasons:

14 **SECTION 14.** 103.10 (3) (a) 2. of the statutes is repealed.

15 **SECTION 15.** 103.10 (3) (a) 3. of the statutes is repealed.

16 **SECTION 16.** 103.10 (3) (b) (intro.) of the statutes is repealed.

17 **SECTION 17.** 103.10 (3) (b) 1. of the statutes is renumbered 103.10 (3) (a) *ae*
 18 and amended to read:

19 103.10 (3) (a) The birth of the employe's ~~natural~~ biological child, if the leave
 20 begins within ~~16 weeks of~~ 12 months before or after the child's birth.

21 **SECTION 18.** 103.10 (3) (b) 2. of the statutes is renumbered 103.10 (3) (b) and
 22 amended to read:

23 103.10 (3) (b) The placement of a child under 18 years of age with the employe
 24 for adoption or as a precondition to adoption under s. 48.90 (2), but not both, or for

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or treatment foster care

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~~foster care~~, if the leave begins within ~~16 weeks of~~ 12 months before or after the child's placement.

SECTION 19. 103.10 (3) (b) 3. of the statutes is renumbered 103.10 (3) (c).

SECTION 20. 103.10 (3) (c) of the statutes is repealed.

SECTION 21. 103.10 (3) (d) of the statutes is renumbered 103.10 (4g) (a).

SECTION 22. 103.10 (4) (title) of the statutes is repealed.

SECTION 23. 103.10 (4) (a) of the statutes is renumbered 103.10 (3) (d) and amended to read:

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103.10 (3) (d) ~~Subject to pars. (b) and (c), an employe who has a Δ serious health condition which that makes the employe unable to perform his or her employment duties may take medical leave for the period during which he or she is unable to perform these duties the functions of the employe's position.~~

SECTION 24. 103.10 (4) (b) of the statutes is repealed.

SECTION 25. 103.10 (4) (c) of the statutes is renumbered 103.10 (4g) (b).

SECTION 26. 103.10 (4g) (title) of the statutes is created to read:

103.10 (4g) (title) SCHEDULING OF FAMILY OR MEDICAL LEAVE.

SECTION 27. 103.10 (4m) of the statutes is created to read:

103.10 (4m) SCHOOL CONFERENCE AND ACTIVITIES LEAVE. Subject to sub. (6) (c),

an employe may take no more than 16 hours of school conference and activities leave in a 12-month period for the purpose of attending school conferences or classroom activities relating to the employe's child that cannot be scheduled during nonwork hours. If the employe's child is receiving care from a child care provider, as defined in s. 49.001 (1), or is attending a public, private or parochial preschool or prekindergarten, the employe may also use the school conference and activities leave provided under this subsection to observe and monitor the services or programming

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1 received by the child, if that observation and monitoring cannot be scheduled during
2 nonwork hours.

3 **SECTION 28.** 103.10[✓] (5) (a) of the statutes is amended to read:

4 103.10 (5) (a) This section does not entitle an employe to receive wages or salary
5 while taking family leave ~~or, medical leave or school conference and activities leave.~~

6 **SECTION 29.** 103.10[✓] (5) (b) of the statutes is renumbered 103.10 (5) (b) 1. ^{← [underscored comma]} and
7 amended to read:

8 103.10 (5) (b) 1. ~~An~~ [✓] Subject to subd. 2., an employe may substitute, for portions
9 of family leave ~~or,~~ medical leave or school conference and activities leave, paid or
10 unpaid leave of any other type provided by the employer.

11 **SECTION 30.** 103.10[✓] (5) (b) 2. of the statutes is created to read:

12 103.10 (5) (b) 2. Notwithstanding subd. 1.,[✓] an employe may not substitute paid
13 leave for school conference and activities leave for attending a school conference or
14 activity for less than one hour.

15 **SECTION 31.** 103.10[✓] (6) (a) of the statutes is amended to read:

16 103.10 (6) (a) If an employe intends to take family leave ~~for the reasons in under~~
17 sub. (3) (b) 1. ~~or 2.~~ [✓] (a) or (b) that is foreseeable because of the expected birth or
18 placement of a child, the employe shall, in a reasonable and practicable manner, give
19 the employer advance notice of the expected birth or placement employe's intention
20 to take that leave not less than 30 days before the date the leave is to begin, except
21 that, if the date of the birth or placement requires the leave to begin in less than 30
22 days, the employe shall provide notice to the employer in a reasonable and
23 practicable manner.

24 **SECTION 32.** 103.10[✓] (6) (b) (intro.) of the statutes is amended to read:

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1 103.10 (6) (b) (intro.) If an employe intends to take family leave because of
 2 under sub. (3) (c) or (d) that is foreseeable based on the planned medical treatment
 3 ~~or supervision of the employe or of a child, spouse or parent or intends to take medical~~
 4 ~~leave because of the planned medical treatment or supervision of the employe, the~~
 5 employe shall do all of the following:

6 **SECTION 33.** 103.10 (6) (b) 1. of the statutes is amended to read:

7 103.10 (6) (b) 1. Make a reasonable effort to schedule the medical treatment
 8 ~~or supervision~~ so that it does not unduly disrupt the employer's operations, subject
 9 to the approval of the health care provider of the child, spouse, parent or employe.

10 **SECTION 34.** 103.10 (6) (b) 2. of the statutes is amended to read:

11 103.10 (6) (b) 2. Give the employer advance notice of the ~~medical treatment or~~
 12 ~~supervision~~ employe's intention to take that leave not less than 30 days before the
 13 leave is to begin, except that, if the date of the ^{Medical} treatment requires the leave to begin
 14 in less than 30 days, the employe shall provide notice to the employer in a reasonable
 15 and practicable manner.

16 **SECTION 35.** 103.10 (6) (c) of the statutes is created to read:

17 103.10 (6) (c) If an employe intends to take leave under sub. (4m) ^(plan) for the
 18 purpose of attending a school conference or activity, the employe shall do all of the
 19 following:

- 20 1. Make a reasonable effort to schedule the leave so that it does not unduly
- 21 disrupt the employer's operations.
- 22 2. Give the employer advance notice of the leave in a reasonable and practicable
- 23 manner.

24 **SECTION 36.** 103.10 (7) (a) of the statutes is amended to read:

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1 103.10 (7) (a) If an employe requests family leave for a reason described in
 2 under sub. (3) (b) 3. or requests medical leave (c) or (d), the employer may require the
 3 employe to provide certification, as described in par. (b), issued by the health care
 4 provider or Christian Science practitioner of the child, spouse, parent or employe,
 5 whichever is appropriate, and the employe shall provide a copy of that certification
 6 to the employer in a timely manner.

7 SECTION 37. 103.10 (7) (b) 4. of the statutes is amended to read:

8 103.10 (7) (b) 4. If the employe requests medical leave, ~~an explanation of the~~
 9 ~~extent to which~~ under sub. (3) (d), a statement that the employe is unable to perform
 10 ~~his or her employment duties~~ the functions of the employe's position.

11 SECTION 38. 103.10 (7) (c) of the statutes is renumbered 103.10 (7) (c) 1. ~~and~~
 12 amended to read:

13 103.10 (7) (c) 1. ~~The~~ If the employer has reason to doubt the validity of a
 14 certification provided under par. (a), the employer may require the employe to obtain
 15 the opinion of a 2nd health care provider, chosen designated or approved and paid
 16 for by the employer, concerning any information certified under par. (b).

17 SECTION 39. 103.10 (7) (c) 2. of the statutes is created to read:

18 103.10 (7) (c) 2. A health care provider designated or approved under subd. 1.
 19 may not be employed on a regular basis by the employer.

20 SECTION 40. 103.10 (7) (d) of the statutes is created to read:

21 103.10 (7) (d) If a 2nd opinion obtained under par. (c) 1. differs from the opinion
 22 in the certification provided under par. (a), the employer may require the employe
 23 to obtain the opinion of a 3rd health care provider, designated or approved by the
 24 employer and employe jointly and paid for by the employer, concerning any

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1 information certified under par. (b). The employer and employe shall accept the 3rd
2 opinion obtained under this paragraph as final and binding upon them.

3 **SECTION 41.** 103.10 (7) (e) of the statutes is created to read:

4 103.10 (7) (e) The employer may require that an employe obtain
5 recertifications after the original certification under par. (b) on a reasonable basis.

6 **SECTION 42.** 103.10 (8) (a) of the statutes is amended to read:

7 103.10 (8) (a) ~~Subject to par. (c) (d), when~~ ^{when} an employe returns from who takes
8 family leave or, medical leave or school conference and activities leave returns from
9 that leave, ^[underscored comma] his or her employer shall immediately place the employe in an
10 employment position as follows:

11 1. If In the employment position which the employe held ~~immediately before~~
12 when the family leave or, medical leave or school conference and activities leave
13 began is ~~vacant when the employe returns, in that position.~~

14 2. If ~~the employment position which the employe held immediately before the~~
15 ~~family leave or medical leave began is not vacant when the employe returns, in~~ In
16 an equivalent employment position having equivalent compensation, employment
17 ~~benefits, working shift, hours of employment and other terms and conditions of~~
18 employment.

19 **SECTION 43.** 103.10 (8) (b) of the statutes is amended to read:

20 103.10 (8) (b) No employer may, because an employe received family leave or,
21 medical leave or school conference and activities leave, reduce or deny an
22 employment benefit which accrued to the employe before his or her leave began or,
23 ~~consistent with sub. (9), accrued after his or her leave began.~~

24 **SECTION 44.** 103.10 (8) (c) of the statutes is repealed and recreated to read:

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[underscored comma]

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1 103.10 (8) (c) An employer may require an employe who is on family or medical
2 leave to report periodically to the employer on the employe's status and intention of
3 returning to work.

4 SECTION 45. 103.10 (8) (d) of the statutes is created to read:

5 103.10 (8) (d) Notwithstanding par. (a), an employer may adopt a uniformly
6 applied practice or policy that requires an employe who is returning from leave under
7 sub. (3) (d) to obtain a certification from the employe's health care provider that the
8 employe is able to return to work.

9 SECTION 46. 103.10 (9) (a) of the statutes is amended to read:

10 103.10 (9) (a) Except as provided in par. (b), nothing in this section entitles a
11 returning employe to a right, employment benefit or employment position to which
12 the employe would not have been entitled had he or she not taken family leave ~~or~~ or ^[underline comma]
13 medical leave or school conference and activities leave or to the accrual of any
14 seniority or employment benefit during a period of family leave ~~or~~ or ^[underline comma]
15 school conference and activities leave.

16 SECTION 47. 103.10 (9) (b) of the statutes is amended to read:

17 103.10 (9) (b) Subject to par. (c), during a period ~~that~~ an employe takes family
18 leave ~~or~~ or ^[underline comma] medical leave or school conference and activities leave, his or her employer
19 shall maintain group health insurance coverage at the level and under the conditions
20 that ~~applied immediately before the family leave or medical leave began.~~ If the
21 ~~employe continues making any contribution required for participation in the group~~
22 ~~health insurance plan, the employer shall continue making group health insurance~~
23 ~~premium contributions as if the employe had not taken the family leave or medical~~
24 the employer would have provided coverage if the employe had continued in
25 employment continuously during that leave.

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1 **SECTION 48.** 103.10 (9) (c) of the statutes is repealed and recreated to read:

2 103.10 (9) (c) An employer may recover from an employe the premium paid by
3 the employer to maintain group health insurance coverage for the employe during
4 a period of unpaid family leave, medical leave or school conference and activities
5 leave if the employe fails to return from that leave after the period of leave to which
6 the employe is entitled has expired for a reason other than the continuation,
7 recurrence or onset of a serious health condition that entitles the employe to leave
8 under sub. (3) (c) or (d) or other circumstances beyond the control of the employe.

9 **SECTION 49.** 103.10 (9) (d) of the statutes is repealed and recreated to read:

10 103.10 (9) (d) If an employe claims that he or she is unable to return to work
11 because of the continuation, recurrence or onset of a serious health condition that
12 entitles the employe to leave under sub. (3) (d), the employer may require the
13 employe to provide certification issued by the health care provider or Christian
14 Science practitioner that a serious health condition prevented the employe from
15 being able to perform the functions of the employe's position on the day that the
16 employe's leave expired. The employe shall provide a copy of the certification under
17 this paragraph to the employer in a timely manner.

18 **SECTION 50.** 103.10 (10) of the statutes is amended to read:

19 103.10 (10) ALTERNATIVE EMPLOYMENT. Nothing in this section prohibits an
20 employer and an employe with a serious health condition from mutually agreeing to
21 alternative employment for the employe while the serious health condition lasts. No
22 period of alternative employment, with the same employer, reduces the employe's
23 right to family leave or, medical leave or school conference and activities leave.

24 **SECTION 51.** 103.10 (11) (c) of the statutes is repealed and recreated to read:

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1 103.10 (11) (c) 1. No person may discharge or in any manner discriminate
 2 against any individual for filing a complaint or attempting to enforce any right under
 3 this section or for testifying or assisting in any action or proceeding to enforce any
 4 right under this section.

5 2. No person may discharge or in any manner discriminate against any
 6 individual because that person believes that the individual has engaged or may
 7 engage in an activity described in subd. 1.

8 **SECTION 52.** 103.10 (11) (d) of the statutes is created to read:

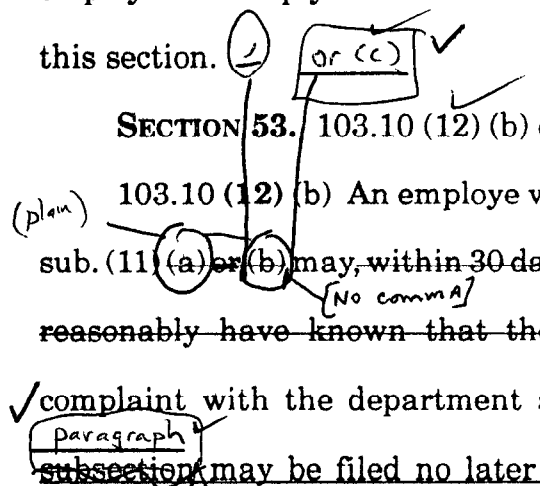
9 103.10 (11) (d) Notwithstanding pars. (a) to (c), any action taken by an
 10 employer to comply with 29 USC 2601 to 2654 is not considered to be a violation of
 11 this section.

12 **SECTION 53.** 103.10 (12) (b) of the statutes is amended to read:

13 103.10 (12) (b) An employe who believes that his or her employer has violated
 14 sub. (11) (a) or (b) may, within 30 days after the violation occurs or the employe should
 15 reasonably have known that the violation occurred, whichever is later, file a
 16 complaint with the department alleging the violation. A complaint under this
 17 paragraph ~~subsection~~ may be filed no later than 300 days after the date of the last event
 18 constituting the alleged violation for which the complaint is brought. Except as
 19 provided in s. 230.45 (1m), the department shall investigate the complaint and shall
 20 attempt to resolve the complaint by conference, conciliation or persuasion. If the
 21 complaint is not resolved and the department finds probable cause to believe a
 22 violation has occurred, the department shall proceed with notice and a hearing on
 23 the complaint as provided in ch. 227. The hearing shall be held within 60 days after
 24 the department receives the complaint.

25 **SECTION 54.** 103.10 (12) (c) of the statutes is repealed.

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1 **SECTION 55.** 103.10 (12) (d) of the statutes is amended to read: (plan) ✓

2 103.10 (12) (d) The department shall issue its decision and order within 30 days

3 after the hearing. If the department finds that an employer violated sub. (11) (a) or

4 (b) it may order the employer to take action to remedy the violation, including

5 providing requested family leave or, medical leave or school conference and activities

6 leave, reinstating an employe, promoting an employe, providing back pay accrued

7 not more than 2 years before the complaint was filed and employment benefits to an

8 employe and paying reasonable actual attorney fees to the complainant.

9 **SECTION 56.** 103.10 (12) (e) of the statutes is created to read:

10 103.10 (12) (e) Any respondent or complainant who is dissatisfied with the

11 findings and order of the examiner may file a written petition with the department

12 for review by the commission of the findings and order.

13 **SECTION 57.** 103.10 (12) (f) of the statutes is created to read: ✓

14 103.10 (12) (f) If no petition is filed within 21 days ^{under par. (e)} ~~from~~ ^{after} the date ^{on which} ~~that~~ a copy

15 of the findings and order of the examiner is mailed to the last-known address of the

16 respondent, the findings and order shall be considered final. If a timely petition is

17 filed, the commission, on review, may either affirm, reverse or modify the findings

18 or order in whole or in part, or set aside the findings and order and remand to the

19 department for further proceedings. ^{those} ~~Such~~ actions shall be based on a review of the

20 evidence submitted. If the commission is satisfied that a respondent or complainant

21 has been prejudiced because of exceptional delay in the receipt of a copy of any

22 findings and orders ^{the commission} ~~it~~ may extend ^{for} ~~the time~~ another 21 days ^{the time} ~~for~~ filing the petition with

23 the department.

24 **SECTION 58.** 103.10 (12) (g) of the statutes is created to read:

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the commission

in the decision

after

(use twice)
of the decision

1 103.10 (12) (g) On motion, the commission may set aside, modify or change any
 2 decision made by the commission, at any time within 28 days ~~from~~ the date thereof
 3 if it discovers any mistake therein, or upon the grounds of newly discovered evidence.
 4 The commission may on its own motion, for reasons it considers sufficient, set aside
 5 any final decision of the commission within one year after the date thereof upon
 6 grounds of mistake or newly discovered evidence, and remand the case to the
 7 department for further proceedings.

SECTION 59. 103.10 (13) (a) of the statutes is amended to read:

8
 9 103.10 (13) (a) An employe or the department may bring an action in circuit
 10 court against an employer on behalf of the employe, or on behalf of the employe and
 11 other employes similarly situated, to recover damages, as described in par. (c),
 12 caused by a violation of sub. (11) after the completion of an administrative
 13 proceeding, including judicial review, concerning the same violation. that

SECTION 60. 103.10 (13) (b) (intro.) and 1. of the statutes are consolidated, renumbered 103.10 (13) (b) and amended to read:

16 103.10 (13) (b) An action under par. (a) shall be commenced within the later
 17 of the following periods, or be barred: 1. Within 60 days from after the completion
 18 of an administrative proceeding, including judicial review, concerning the same
 19 violation, or be barred.

SECTION 61. 103.10 (13) (b) 2. of the statutes is repealed.

SECTION 62. 103.10 (13) (c) of the statutes is created to read:

22 103.10 (13) (c) If a circuit court finds that an employer has violated sub. (11),
 23 it may order the employer to take action to remedy the violation, including providing
 24 the requested family leave, medical leave or school conference and activities leave,
 25 reinstating an employe, promoting an employe and paying reasonable actual

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(a), (b) or (c)

(a) (b) or (c)

BILL

1 attorney fees to the complainant, notwithstanding s. 814.04 (1), and to pay all of the
2 following damages to the affected employe:

3 1. Damages equal to the amount of any wages, salary, employment benefits or
4 other compensation that was denied to or lost by the employe because of the violation
5 or, if the employe has not lost or been denied any wages, salary, employment benefits
6 or other compensation, any actual monetary losses sustained by the employe as a
7 direct result of the violation up to a sum equal to 12 weeks of wages or salary for the
8 employe.

(a), (b) or (c) use twice

9 2. As liquidated damages, an amount equal to the damages described in subd.
10 1., except that the court may reduce the amount of damages that the employer is
11 liable for to the amount described in subd. 1. if the employer shows that the act or
12 omission that was in violation of sub. (11) was in good faith and that the employer
13 had reasonable grounds to believe that the act or omission was not a violation of sub.
14 (11).

15 **SECTION 63.** 103.10 (14) (a) of the statutes is renumbered 103.10 (14) and
16 amended to read:

17 103.10 (14) NOTICE POSTED. Each employer shall post, in ~~one or more~~
18 conspicuous places on the employer's premises where notices to employes and
19 applicants for employment are customarily posted, a notice in a form prepared or
20 approved by the department setting forth employes' rights under this section
21 excerpts from, or summaries of, the pertinent provisions of this section and
22 information relating to the filing of a complaint under sub. (12) or a civil action under
23 sub. (13). Any employer who wilfully violates this subsection shall forfeit not more
24 than \$100 for each offense.

25 **SECTION 64.** 103.10 (14) (b) of the statutes is repealed.

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SECTION 65. 103.10 (15) of the statutes is created to read:

103.10 (15) LOCAL ORDINANCES. A county, city, village or town may enact an ordinance that provides employes with rights to family leave, medical leave or school conference and activities leave that are more generous to the employe than the rights provided under this section.

SECTION 66. 103.10 (16) of the statutes is created to read:

103.10 (16) RULES. The department shall promulgate rules to implement this section. Those rules shall conform to 29 CFR 825 to the extent that 29 CFR 825 is consistent with this section.

SECTION 67. 108.04 (1) (b) 3. (intro.) of the statutes is amended to read:

108.04 (1) (b) 3. (intro.) While the employe is on family or medical leave under the federal family and medical leave act of 1993 (P.L. 103-3), 29 USC 2601 to 2654, or s. 103.10 or school conference and activities leave under s. 103.10, until whichever of the following occurs first:

SECTION 68. 111.322 (2m) (a) of the statutes is amended to read:

111.322 (2m) (a) The individual files a complaint or attempts to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12, 109.03 or 109.07 or ss. 101.58 to 101.599 or 103.64 to 103.82.

SECTION 69. 111.322 (2m) (b) of the statutes is amended to read:

111.322 (2m) (b) The individual testifies or assists in any action or proceeding held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12, 109.03 or 109.07 or ss. 101.58 to 101.599 or 103.64 to 103.82.

SECTION 70. 111.91 (2) (f) of the statutes is amended to read:

111.91 (2) (f) Family leave and medical leave rights below the minimum afforded under the federal family and medical leave act of 1993, 29 USC 2601 to 2654.

erase

~~for family medical or school activities leave under~~

1988

108.04 (1) (b) 3. (intro.)

108.04

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20-22

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s. 103.10 family leave, medical leave ← erase

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and ~~s. 103.10~~ and school conference and activities leave rights below the minimum afforded under s. 103.10. Nothing in this paragraph prohibits the employer from bargaining on rights to family leave or medical leave which are more generous to the employe than the rights provided under the federal family and medical leave act of 1993, 29 USC 2601 to 2654 and s. 103.10 and on rights to school conference and activities leave which are more generous to the employe than the rights provided under s. 103.10.

SECTION 71. 230.35 (2m) of the statutes is amended to read:

~~230.35 (2m) An employe shall be eligible for medical or family leave under s. 103.10 upon the expiration, extension or renewal of any collective bargaining agreement in effect on April 26, 1988, which covers the employe. An employe shall be eligible for medical or family leave under the federal family and medical leave act of 1993, 29 USC 2601 to 2654, upon the expiration, extension or renewal of any collective bargaining agreement in effect on August 5, 1993, which covers the employe or on February 5, 1994, whichever is earlier.~~

SECTION 72. 230.35 (2n) of the statutes is created to read:

230.35 (2n) An employe shall be eligible for school conference and activities leave under s. 103.10 upon the expiration, extension or renewal of any collective bargaining agreement in effect on the effective date of this subsection ... [revisor inserts date], which covers the employe.

SECTION 73. 252.17 (3) (i) of the statutes is repealed.

SECTION 74. 252.17 (4) (a) of the statutes is amended to read:

252.17 (4) (a) Except as provided in pars. (b) and (c) par. (b), if an individual satisfies sub. (3), the department shall pay the amount of each premium payment for coverage under the group health plan under sub. (3) (d) that is due from the

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Insert 21-20

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1 individual on or after the date on which the individual becomes eligible for a subsidy
2 under sub. (3). The department may not refuse to pay the full amount of the
3 individual's contribution to each premium payment because the coverage that is
4 provided to the individual who satisfies sub. (3) includes coverage of the individual's
5 spouse and dependents. Except as provided in par. (b), the department shall
6 terminate the payments under this section when the individual's unpaid medical
7 leave ends, when the individual no longer satisfies sub. (3) or upon the expiration of
8 29 months after the unpaid medical leave began, whichever occurs first.

9 **SECTION 75.** 252.17 (4) (c) of the statutes is repealed.

10 **SECTION 76.** 632.897 (6) of the statutes is amended to read:

11 632.897 (6) If the terminated insured elects to continue group coverage as
12 provided in this section, the insurer may require conversion to individual coverage
13 by the terminated insured and his or her spouse and dependents 18 months after the
14 terminated insured elects the group coverage ~~except as provided in s. 103.10 (9) (d).~~
15 The conditions, rights and procedures governing conversion under sub. (4) (a) apply
16 to this conversion.

17 **SECTION 77.** 893.96 (title) of the statutes is repealed and recreated to read:

18 **893.96 (title) Family, medical and school conference and activities**
19 **leave; civil remedies.**

20 **SECTION 78. Initial applicability.**

21 (1) This act first applies to an employe, as defined in section 103.10 (1) (b) of
22 the statutes, who is affected by a collective bargaining agreement that ~~is in effect on~~
23 ~~the effective date of this subsection on the day after the collective bargaining~~
24 ~~agreement expires or~~ on the day on which the collective bargaining agreement ~~is~~
25 extended, modified or renewed, whichever ~~is earlier~~.

That contains provisions inconsistent with this act

occurs first

EXPIRES OR IS

Insert 20-22

Section #. 111.322 (2m) (a) of the statutes is amended to read:

111.322 (2m) (a) The individual files a complaint or attempts to enforce any right under s. 103.02, ~~103.10~~, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12, 109.03, 109.07 or 109.075 or ss. 101.58 to 101.599 or 103.64 to 103.82.

History: 1981 c. 334; 1989 a. 228, 359; 1997 a. 237.

↓

Insert 20-22)

Section #. 111.322 (2m) (b) of the statutes is amended to read:

111.322 (2m) (b) The individual testifies or assists in any action or proceeding held under or to enforce any right under s. 103.02, ~~103.10~~, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12, 109.03, 109.07 or 109.075 or ss. 101.58 to 101.599 or 103.64 to 103.82.

History: 1981 c. 334; 1989 a. 228, 359; 1997 a. 237.

(edit)

Insert 21-20

Section #. 230.35 (2m) of the statutes is amended to read:

230.35 (2m) An employe shall be eligible for medical or family leave under s. 103.10 upon the expiration, extension or renewal of any collective bargaining agreement in effect on April 26, 1988, which covers the employe.

History: 1971 c. 91, 125, 183, 211, 226; 1971 c. 270 ss. 70, 71, 83, 104; Stats. 1971 s. 16.30; 1973 c. 51, 243; 1975 c. 28, 39, 41; 1975 c. 147 s. 54; 1975 c. 189, 199, 421, 422; 1977 c. 44; 1977 c. 187 s. 135; 1977 c. 196 ss. 56, 118, 130 (3), (5), (12), 131; 1977 c. 273; 1977 c. 418 ss. 726, 727, 924 (13m); Stats. 1977 s. 230.35; 1979 c. 34, 89; 1979 c. 110 s. 60 (11); 1979 c. 221; 1981 c. 20, 96, 140; 1983 a. 27 s. 2200 (15); 1983 a. 30 ss. 4 to 11, 14; 1983 a. 71, 140; 1983 a. 192 ss. 220, 221, 304; 1985 a. 119; 1987 a. 63, 287, 340, 399, 403; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 12, 47; 1995 a. 37, 178; 1997 a. 118, 307.

An employe shall be eligible for school activities leave under s. 103.10 upon the expiration, extension or renewal of any collective bargaining agreement in effect on the effective date of this subsection [reviser inserts date], which covers the employe.

Insert 21-20

✓ or school activities

Section #. 230.45 (1) (k) of the statutes is amended to read:

230.45 (1) (k) Receive and process complaints of violations relating to family ~~or~~ medical leave under s. 103.10 (12).

History: 1977 c. 196; 1979 c. 221; 1981 c. 334 s. 25 (2); 1981 c. 360; 1983 a. 27, 398, 409; 1987 a. 140, 331; 1987 a. 403 s. 256; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 16; 1995 a. 27; 1997 a. 131, 216.

(end of insert)

ATTAL
M

LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 2/12/99

To: Representative Black

Relating to LRB drafting number: LRB-0851

Topic

Family, medical and school activities leave

Subject(s)

Employ Priv - family leave

1. **JACKET** the draft for introduction _____

in the **Senate** ____ or the **Assembly** ____ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached fm
A revised draft will be submitted for your approval with changes incorporated.

*per our conversation
2/13/99*

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Gordon M. Malaise, Senior Legislative Attorney
Telephone: (608) 266-9738

Rep. Black

9/13/99

1/2 Include school activities leave

Leave out the rest



2
RMR

1999 BILL

Repeal to

1 **AN ACT to repeal** 103.10 (1) (a) 1. and 2., 103.10 (3) (a) 2., 103.10 (3) (a) 3., 103.10
2 (3) (b) (intro.), 103.10 (3) (c), 103.10 (4) (title), 103.10 (4) (b), 103.10 (12) (c),
3 103.10 (13) (b) 2., 103.10 (14) (b), 252.17 (3) (i) and 252.17 (4) (c); **to renumber**
4 103.10 (3) (b) 3., 103.10 (3) (d) and 103.10 (4) (c); **to renumber and amend**
5 103.10 (1) (a) (intro.), 103.10 (3) (a) 1., 103.10 (3) (b) 1., 103.10 (3) (b) 2., 103.10
6 (4) (a), 103.10 (5) (b), 103.10 (7) (c) and 103.10 (14) (a); **to consolidate,**
7 **renumber and amend** 103.10 (13) (b) (intro.) and 1.; **to amend** 103.10 (title),
8 103.10 (1) (c), 103.10 (1) (d), 103.10 (1) (f), 103.10 (1) (g) (intro.), 103.10 (1) (g)
9 2., 103.10 (2) (a), 103.10 (2) (c), 103.10 (3) (title), 103.10 (5) (a), 103.10 (6) (a),
10 103.10 (6) (b) (intro.), 103.10 (6) (b) 1., 103.10 (6) (b) 2., 103.10 (7) (a), 103.10 (7)
11 (b) 4., 103.10 (8) (a), 103.10 (8) (b), 103.10 (9) (a), 103.10 (9) (b), 103.10 (10),
12 103.10 (12) (b), 103.10 (12) (d), 103.10 (13) (a), 108.04 (1) (b) 3. (intro.), 111.322
13 (2m) (a), 111.322 (2m) (b), 111.91 (2) (f), 230.35 (2m), 230.45 (1) (k), 252.17 (4)
14 (a) and 632.897 (6); **to repeal and recreate** 103.10 (8) (c), 103.10 (9) (c), 103.10

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1 (9) (d), 103.10 (11) (c) and 893.96 (title); and **to create** 103.10 (1) (fr), 103.10 (4g)
 2 (title), 103.10 (4m), 103.10 (5) (b) 2., 103.10 (6) (c), 103.10 (7) (c) 2., 103.10 (7)
 3 (d), 103.10 (7) (e), 103.10 (8) (d), 103.10 (11) (d), 103.10 (12) (e), 103.10 (12) (f),
 4 103.10 (12) (g), 103.10 (13) (c), 103.10 (15) and 103.10 (16) of the statutes;
 5 **relating to:** various changes to the family and medical leave law, leave for
 6 school conferences and activities and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the Wisconsin family and medical leave law to conform that law in certain respects to the federal family and medical leave law. The bill also allows an employe to take school conference and activities leave.

Family or medical leave

Under current law, an employer, including the state, that employs at least 50 individuals on a permanent basis must permit an employe to take six weeks of family leave in a 12-month period and two weeks of medical leave in a 12-month period. This bill requires an employer, including the state, that employs at least 35 individuals for each working day during each of 20 or more weeks in the current or preceding year to permit an employe to take 12 weeks of family or medical leave in a 12-month period.

Under current law, an employe may take family or medical leave only if the employe has been employed by the same employer for more than 52 consecutive weeks. Under the bill, an employe may take family or medical leave only if the employe has been employed for more than 52 consecutive weeks by the employer from whom the leave is requested.

Under current law, an employe may take family leave for the birth or adoptive placement of the employe's child, if the leave begins within 16 weeks after the birth or placement. This bill permits an employe to begin family leave within 12 months before or after the birth or placement of a child and permits family leave for a foster care or treatment foster care placement as well.

Under current law, an employe may also take family leave to care for a child, spouse or parent, including a spouse's parent, who has a serious health condition. This bill expands the definition of "child" to include an individual for whom the employe stands in the place of a parent without having formally adopted or assumed guardianship of that individual. The bill also expands the definition of "parent" to include an individual who stood in the place of a parent of the employe or the employe's spouse, when the employe or spouse was a child, without having formally adopted or assumed guardianship of that individual.

Under current law, an employe may take medical leave if the employe has a serious health condition that makes the employe unable to perform his or her

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employment *duties*. Under the bill, an employe may take medical leave if the employe has a serious health condition that makes the employe unable to perform the *functions* of his or her employment.

Under current law, if an employe intends to take leave for the birth or placement of a child or for planned medical treatment, the employe must give notice to the employer in a manner that is reasonable and practicable. This bill requires the employe to give 30 days' notice in those situations that are foreseeable, unless the birth or placement will take place, or the medical treatment will begin, within 30 days, in which case the bill permits reasonable and practicable notice.

School conference and activities leave

The bill allows any employe of an employer employing at least ~~25~~⁵⁰ individuals to take no more than 16 hours of school conference and activities leave in a 12-month period. School conference and activities leave may be taken to attend school conferences or classroom activities relating to the employe's child that cannot be scheduled during nonwork hours. In addition, if the employe's child is in day care or is attending preschool or prekindergarten, the employe may also take school conference and activities leave to observe and monitor the services or programming received by the child, if that observation and monitoring cannot be scheduled during nonwork hours. An employe is not entitled to receive wages or salary while taking school activities leave, but may substitute, for portions of school conference and activities leave, other types of paid or unpaid leave provided by the employer, except that an employe may not substitute paid leave for school conference and activities leave for attending a school conference or activity for less than one hour. An employe who intends to take leave to attend a school conference or activity must give the employer advance notice of the leave and make a reasonable effort to schedule the leave so that it does not unduly disrupt the operations of the employer.

Certification of health condition

Under current law, if an employe requests family leave to care for a child, spouse or parent who has a serious health condition or medical leave to care for the employe's serious health condition, the employer may require the employe to provide a certification of that serious health condition by a health care provider. Currently, an employer may also require an employe to obtain a second opinion, at the employer's expense, concerning that certification. Also under current law, if the employe has commenced an administrative proceeding regarding the alleged denial of leave due to a serious health condition of the employe or of a child, spouse or parent, and if the original certification and second opinion differ, the department of workforce development (DWD) may appoint a health care provider to render a third opinion, with the expense of obtaining that opinion to be shared equally by the employer and employe. This bill permits the employer to require the employe, prior to any administrative proceedings, to obtain a third opinion at the employer's expense if the original certification and second opinion differ. The employer and employe must jointly designate the third opinion provider.

Also, under the bill, the employer may require an employe to obtain recertification of the original certification on a regular basis, to report periodically on the employe's status and intention of returning to work and to obtain certification

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that the employe is able to return to work. If the employe is not able to return to work as planned, the bill permits the employer to require the employe to provide certification that the employe's serious health condition prevented the employe from performing the functions of his or her position on the day on which the leave expired.

Employment and benefits protection

Under current law, upon the return of an employe from family or medical leave, an employer must place the employe in the position that the employe held immediately before that leave began, if the position is vacant, or, if the position is not vacant, in an equivalent employment position having equivalent pay, benefits, and other terms and conditions of employment. This bill permits the employer to place an employe who is returning from family, medical or school conference and activities leave either in the employe's old position or in an equivalent position without regard to whether the old position is vacant.

Under current law, an employer must maintain group health insurance coverage for an employe on leave under the conditions that applied immediately before the leave began. This bill requires an employer to maintain that coverage for an employe who is on family, medical or school conference and activities leave at the level and under the conditions that the employer would have provided coverage if the employe had continued in employment.

Under current law, an employer may require an employe to place in escrow with the employer the premium for eight weeks of group health insurance coverage and the employer may keep from that escrow account the premiums that the employer paid for that coverage if the employe ends his or her employment during or within 30 days after the leave. This bill eliminates the escrow requirement, but permits the employer to recover those premiums if the employe does not return to work from family, medical or school conference and activities leave for reasons other than the recurrence, onset or continuation of a serious health condition or other circumstances beyond the employe's control.

Enforcement

Under current law, an employe who believes that his or her employer has violated the family or medical leave law may file a complaint with DWD within 30 days after the employe knew or should have known of the violation. This bill extends that time limit to 300 days after the date of the last event constituting the alleged violation of the family, medical or school conference and activities leave law.

Under current law, if DWD finds that an employer has violated the family or medical leave law, DWD may order the employer to take action to remedy the violation, including providing the requested leave, reinstating the employe, providing back pay accrued not more than two years before the complaint was filed and paying reasonable actual attorney fees. This bill eliminates the two-year limit on back pay for a violation of the family, medical or school conference and activities leave law and includes among the remedies that DWD may order for such a violation the promotion of the employe and the provision of benefits to the employe.

Under current law, an employe or DWD may bring a civil action in circuit court against an employer to recover damages caused by a violation of the family or medical leave law. Currently, a civil action under the family or medical leave law is

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barred unless commenced within the later of 60 days after the completion of an administrative proceeding, including judicial review, for the violation or 12 months after the violation occurred or the employe or DWD reasonably should have known that the violation occurred. This bill permits an employe or DWD to bring an action for a violation of the family, medical or school conference and activities leave law on behalf of the employe, or on behalf of the employe and other employes similarly situated. The bill also eliminates the 12-month period within which an action must be commenced so that an action must be commenced within 60 days after the completion of administrative proceedings. Finally, the bill specifies that, if the circuit court finds that an employer has violated the family, medical or school conference and activities leave law, the circuit court may order the employer to take action to remedy the violation and to pay the following damages:

1. Damages equal to the amount of compensation that the employe lost because of the violation or, if the employe did not lose any compensation, any actual monetary loss sustained as a direct result of the violation up to a sum equal to 12 weeks of wages or salary.

2. As liquidated damages, an amount equal to the damages described in paragraph 1., except that the court may reduce the amount of damages to the amount described in paragraph 1. if the court finds that the violation was committed in good faith and that the employer had reasonable grounds to believe that its act or omission was not a violation of the family, medical or school conference and activities leave 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.** 103.10 (title) of the statutes is amended to read:

2 **103.10** (title) **Family or, medical and school conference and activities**
3 **leave.**

4 ~~**SECTION 2.** 103.10 (1) (a) (intro.) of the statutes is renumbered 103.10 (1) (a) and~~
5 ~~amended to read:~~

6 ~~103.10 (1) (a) "Child" means a natural biological, adopted, foster or treatment~~
7 ~~foster child, a stepchild or a legal ward to whom any of the following applies: of an~~
8 ~~employe or a person for whom an employe stands in the place of a parent and includes~~
9 ~~a person 18 years of age or over who is a biological, adopted, foster or treatment foster~~

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BILL**SECTION 2**

1 child, a stepchild or a legal ward of an employe or who is a person for whom an
2 employe stands in the place of a parent.

3 **SECTION 3.** 103.10 (1) (a) 1. and 2. of the statutes are repealed.

4 **SECTION 4.** 103.10 (1) (c) of the statutes is amended to read:

5 103.10 (1) (c) ~~Except as provided in sub. (14) (b), “employer”~~ “Employer” means
6 a person engaging in any activity, enterprise or business in this state employing at
7 least ~~50~~ 35 individuals ~~on a permanent basis for each working day during each of 20~~
8 ~~or more calendar weeks in the current or preceding year.~~ “Employer” includes the
9 state, its political subdivisions and any office, department, independent agency,
10 authority, institution, association, society or other body in state or local government
11 created or authorized to be created by the constitution or any law, including the
12 legislature and the courts. “Employer” also includes any person who acts, directly
13 or indirectly, in the interest of an employer with respect to an employe and any
14 successor in interest of an employer.

15 **SECTION 5.** 103.10 (1) (d) of the statutes is amended to read:

16 103.10 (1) (d) ~~“Employment benefit” means an insurance, leave or retirement~~
17 a benefit which that an employer provides or makes available to an employe,
18 including group life insurance, health insurance, disability insurance, sick leave,
19 annual leave, educational benefits and pensions, regardless of whether those
20 benefits are provided by a practice or policy of the employer or through an employe
21 benefit plan, as defined in 29 USC 1002 (3).

22 **SECTION 6.** 103.10 (1) (f) of the statutes is amended to read:

23 103.10 (1) (f) ~~“Parent” means a natural biological parent, foster parent,~~
24 treatment foster parent, adoptive parent, stepparent or legal guardian of an employe

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~~or an employee's spouse or a person who stood in the place of a parent of the employee or the employee's spouse when the employee or spouse was a child.~~

SECTION 7. 103.10 (1) (fr) of the statutes is created to read:

103.10 (1) (fr) "School" means a child care provider, as defined in s. 49.001 (1), a public, parochial or private preschool or prekindergarten or a public, parochial or private school that provides an educational program for one or more grades between kindergarten and 12 and that is commonly known as a kindergarten, elementary school, middle school, junior high school, senior high school or high school.

~~**SECTION 8.** 103.10 (1) (g) (intro.) of the statutes is amended to read:~~

~~103.10 (1) (g) (intro.) "Serious health condition" means a disabling physical or mental an illness, injury, impairment or physical or mental condition involving any of the following:~~

~~**SECTION 9.** 103.10 (1) (g) 2. of the statutes is amended to read:~~

~~103.10 (1) (g) 2. Outpatient care that requires continuing Continuing treatment or supervision by a health care provider.~~

SECTION 10. 103.10 (2) (a) of the statutes is amended to read:

103.10 (2) (a) Nothing in this section prohibits an employer from providing employes with rights to family leave or, medical leave ~~which~~ school conference and activities leave that are more generous to the employe than the rights provided under this section.

~~**SECTION 11.** 103.10 (2) (c) of the statutes is amended to read:~~

~~103.10 (2) (c) This section only applies to an employe who has been employed for more than 52 consecutive weeks by the same employer for more than 52 consecutive weeks from whom leave under sub. (3) is requested and who worked for the that employer for at least 1,000 hours during the preceding 52-week period.~~

BILL**SECTION 11**

1 ~~except that for purposes of school conference and activities leave under sub. (4m) this~~
2 ~~section applies to any employe of an employer.~~

3 **SECTION 12.** 103.10 (3) (title) of the statutes is amended to read:

4 103.10 (3) (title) FAMILY OR MEDICAL LEAVE.

5 **SECTION 13.** 103.10 (3) (a) 1. of the statutes is renumbered 103.10 (3) (intro.)
6 and amended to read:

7 103.10 (3) (intro.) In a 12-month period ~~no~~ an employe may take ~~more than 6~~
8 12 weeks of family leave under par. (b) 1. and 2. for any one or more of the following
9 reasons:

10 **SECTION 14.** 103.10 (3) (a) 2. of the statutes is repealed.

11 **SECTION 15.** 103.10 (3) (a) 3. of the statutes is repealed.

12 **SECTION 16.** 103.10 (3) (b) (intro.) of the statutes is repealed.

13 **SECTION 17.** 103.10 (3) (b) 1. of the statutes is renumbered 103.10 (3) (a) and
14 amended to read:

15 103.10 (3) (a) The birth of the employe's ~~natural~~ biological child, if the leave
16 begins within ~~16 weeks of~~ 12 months before or after the child's birth.

17 **SECTION 18.** 103.10 (3) (b) 2. of the statutes is renumbered 103.10 (3) (b) and
18 amended to read:

19 103.10 (3) (b) The placement of a child under 18 years of age with the employe
20 for adoption or as a precondition to adoption under s. 48.90 (2), but not both, or for
21 foster care or treatment foster care, if the leave begins within ~~16 weeks of~~ 12 months
22 before or after the child's placement.

23 **SECTION 19.** 103.10 (3) (b) 3. of the statutes is renumbered 103.10 (3) (c).

24 **SECTION 20.** 103.10 (3) (c) of the statutes is repealed.

25 **SECTION 21.** 103.10 (3) (d) of the statutes is renumbered 103.10 (4g) (a).

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SECTION 22. 103.10 (4) (title) of the statutes is repealed.

SECTION 23. 103.10 (4) (a) of the statutes is renumbered 103.10 (3) (d) and amended to read:

103.10 (3) (d) ~~Subject to pars. (b) and (c), an employe who has a A serious health condition which that makes the employe unable to perform his or her employment duties may take medical leave for the period during which he or she is unable to perform those duties the functions of the employe's position.~~

SECTION 24. 103.10 (4) (b) of the statutes is repealed.

SECTION 25. 103.10 (4) (c) of the statutes is renumbered 103.10 (4g) (b).

SECTION 26. 103.10 (4g) (title) of the statutes is created to read:

~~103.10 (4g) (title) SCHEDULING OF FAMILY OR MEDICAL LEAVE.~~

SECTION 27. 103.10 (4m) of the statutes is created to read:

103.10 (4m) SCHOOL CONFERENCE AND ACTIVITIES LEAVE. Subject to sub. (6) (c), an employe may take no more than 16 hours of school conference and activities leave in a 12-month period for the purpose of attending school conferences or classroom activities relating to the employe's child that cannot be scheduled during nonwork hours. ~~If the employe's child is receiving care from a child care provider, as defined in s. 49.001 (1), or is attending a public, private or parochial preschool or prekindergarten,~~ ^{an} the employe may also use the school conference and activities leave provided under this subsection to observe and monitor the services or programming ~~received by the child,~~ if that observation and monitoring cannot be scheduled during nonwork hours.

SECTION 28. 103.10 (5) (a) of the statutes is amended to read:

103.10 (5) (a) This section does not entitle an employe to receive wages or salary while taking family leave or, medical leave or school conference and activities leave.

provided to the employe's child by a child care provider, as defined in s. 49.001 (1), or a public, private or parochial preschool or prekindergarten

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1 **SECTION 29.** 103.10 (5) (b) of the statutes is renumbered 103.10 (5) (b) 1. and
2 amended to read:

3 103.10 (5) (b) 1. ~~An~~ Subject to subd. 2., an employe may substitute, for portions
4 of family leave or, medical leave or school conference and activities leave, paid or
5 unpaid leave of any other type provided by the employer.

6 **SECTION 30.** 103.10 (5) (b) 2. of the statutes is created to read:

7 103.10 (5) (b) 2. Notwithstanding subd. 1., an employe may not substitute paid
8 leave for school conference and activities leave for attending a school conference or
9 activity for less than one hour.

10 ~~**SECTION 31.** 103.10 (6) (a) of the statutes is amended to read:~~

11 ~~103.10 (6) (a) If an employe intends to take family leave for the reasons in under~~
12 ~~sub. (3) (b) 1. or 2. (a) or (b) that is foreseeable because of the expected birth or~~
13 ~~placement of a child, the employe shall, in a reasonable and practicable manner, give~~
14 ~~the employer advance notice of the expected birth or placement employe's intention~~
15 ~~to take that leave not less than 30 days before the date the leave is to begin, except~~
16 ~~that, if the date of the birth or placement requires the leave to begin in less than 30~~
17 ~~days, the employe shall provide notice to the employer in a reasonable and~~
18 ~~practicable manner.~~

19 **SECTION 32.** 103.10 (6) (b) (intro.) of the statutes is amended to read:

20 103.10 (6) (b) (intro.) If an employe intends to take family leave because of
21 under sub. (3) (c) or (d) that is foreseeable based on the planned medical treatment
22 or supervision of the employe or of a child, spouse or parent or intends to take medical
23 leave because of the planned medical treatment or supervision of the employe, the
24 employe shall do all of the following:

25 ~~**SECTION 33.** 103.10 (6) (b) 1. of the statutes is amended to read:~~

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1 103.10 (6) (b) 1. Make a reasonable effort to schedule the medical treatment
2 or supervision so that it does not unduly disrupt the employer's operations, subject
3 to the approval of the health care provider of the child, spouse, parent or employe.

4 **SECTION 34.** 103.10 (6) (b) 2. of the statutes is amended to read:

5 103.10 (6) (b) 2. Give the employer advance notice of the medical treatment or
6 supervision employe's intention to take that leave not less than 30 days before the
7 leave is to begin, except that, if the date of the medical treatment requires the leave
8 to begin in less than 30 days, the employe shall provide notice to the employer in a
9 reasonable and practicable manner.

10 **SECTION 35.** 103.10 (6) (c) of the statutes is created to read:

11 103.10 (6) (c) If an employe intends to take leave under sub. (4m) for the
12 purpose of attending a school conference or activity, the employe shall do all of the
13 following:

14 1. Make a reasonable effort to schedule the leave so that it does not unduly
15 disrupt the employer's operations.

16 2. Give the employer advance notice of the leave in a reasonable and practicable
17 manner.

18 **SECTION 36.** 103.10 (7) (a) of the statutes is amended to read:

19 103.10 (7) (a) If an employe requests family leave for a reason described in
20 under sub. (3) (b) 3. or requests medical leave (c) or (d), the employer may require the
21 employe to provide certification, as described in par. (b), issued by the health care
22 provider or Christian Science practitioner of the child, spouse, parent or employe,
23 whichever is appropriate, and the employe shall provide a copy of that certification
24 to the employer in a timely manner.

25 **SECTION 37.** 103.10 (7) (b) 4. of the statutes is amended to read:

BILL**SECTION 37**

1 103.10 (7) (b) 4. ~~If the employe requests medical leave, an explanation of the~~
2 ~~extent to which~~ under sub. (3)(d), a statement that the employe is unable to perform
3 ~~his or her employment duties~~ the functions of the employe's position.

4 **SECTION 38.** 103.10 (7) (c) of the statutes is renumbered 103.10 (7) (c) 1. and
5 amended to read:

6 103.10 (7) (c) 1. ~~The~~ If the employer has reason to doubt the validity of a
7 certification provided under par. (a), the employer may require the employe to obtain
8 the opinion of a 2nd health care provider, chosen designated or approved and paid
9 for by the employer, concerning any information certified under par. (b).

10 **SECTION 39.** 103.10 (7) (c) 2. of the statutes is created to read:

11 103.10 (7) (c) 2. A health care provider designated or approved under subd. 1.
12 may not be employed on a regular basis by the employer.

13 **SECTION 40.** 103.10 (7) (d) of the statutes is created to read:

14 103.10 (7) (d) If a 2nd opinion obtained under par. (c) 1. differs from the opinion
15 in the certification provided under par. (a), the employer may require the employe
16 to obtain the opinion of a 3rd health care provider, designated or approved by the
17 employer and employe jointly and paid for by the employer, concerning any
18 information certified under par. (b). The employer and employe shall accept the 3rd
19 opinion obtained under this paragraph as final and binding upon them.

20 **SECTION 41.** 103.10 (7) (e) of the statutes is created to read:

21 103.10 (7) (e) The employer may require that an employe obtain
22 ~~recertifications after the original certification under par. (b) on a reasonable basis.~~

23 **SECTION 42.** 103.10 (8) (a) of the statutes is amended to read:

24 103.10 (8) (a) ~~Subject to par. (e), when~~ When an employe returns from who
25 takes family leave or, medical leave or school conference and activities leave returns

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~~from that leave, his or her employer shall immediately place the employe in an employment position as follows:~~

~~1. If in the employment position which the employe held immediately before when the family leave or, medical leave or school conference and activities leave began is vacant when the employe returns, in that position.~~

~~2. If the employment position which the employe held immediately before the family leave or medical leave began is not vacant when the employe returns, in In an equivalent employment position having equivalent compensation, employment benefits, working shift, hours of employment and other terms and conditions of employment.~~

SECTION 43. 103.10 (8) (b) of the statutes is amended to read:

103.10 (8) (b) No employer may, because an employe received family leave or, medical leave or school conference and activities leave, reduce or deny an employment benefit which accrued to the employe before his or her leave began or, consistent with sub. (9), accrued after his or her leave began.

~~**SECTION 44.** 103.10 (8) (c) of the statutes is repealed and recreated to read:~~

~~103.10 (8) (c) An employer may require an employe who is on family or medical leave to report periodically to the employer on the employe's status and intention of returning to work.~~

SECTION 45. 103.10 (8) (d) of the statutes is created to read:

103.10 (8) (d) Notwithstanding par. (a), an employer may adopt a uniformly applied practice or policy that requires an employe who is returning from leave under sub. (3) (d) to obtain a certification from the employe's health care provider that the employe is able to return to work.

SECTION 46. 103.10 (9) (a) of the statutes is amended to read:

BILL**SECTION 46**

1 103.10 (9) (a) Except as provided in par. (b), nothing in this section entitles a
2 returning employe to a right, employment benefit or employment position to which
3 the employe would not have been entitled had he or she not taken family leave ~~or,~~
4 medical leave or school conference and activities leave or to the accrual of any
5 seniority or employment benefit during a period of family leave ~~or,~~ medical leave or
6 school conference and activities leave.

7 ~~SECTION 47. 103.10 (9) (b) of the statutes is amended to read: ✓~~

8 103.10 (9) (b) Subject to par. (c), during a period that an employe takes family
9 leave ~~or,~~ medical leave or school conference and activities leave, his or her employer
10 shall maintain group health insurance coverage at the level and under the conditions
11 that applied ~~immediately before the family leave or medical leave began.~~ If the
12 employe continues making any contribution required for participation in the group
13 health insurance plan, ~~the employer shall continue making group health insurance~~
14 premium contributions as if the employe had not taken the family leave or medical
15 the employer would have provided coverage if the employe had continued in
16 employment continuously during that leave.

17 SECTION 48. 103.10 (9) (c) of the statutes is repealed and recreated to read:

18 103.10 (9) (c) An employer may recover from an employe the premium paid by
19 the employer to maintain group health insurance coverage for the employe during
20 a period of unpaid family leave, medical leave or school conference and activities
21 leave if the employe fails to return from that leave after the period of leave to which
22 the employe is entitled has expired for a reason other than the continuation,
23 recurrence or onset of a serious health condition that entitles the employe to leave
24 under sub. (3) (c) or (d) or other circumstances beyond the control of the employe.

25 SECTION 49. 103.10 (9) (d) of the statutes is repealed and recreated to read:

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~~103.10 (9) (d) If an employe claims that he or she is unable to return to work because of the continuation, recurrence or onset of a serious health condition that entitles the employe to leave under sub. (3) (d), the employer may require the employe to provide certification issued by the health care provider or Christian Science practitioner that a serious health condition prevented the employe from being able to perform the functions of the employe's position on the day that the employe's leave expired. The employe shall provide a copy of the certification under this paragraph to the employer in a timely manner.~~

SECTION 50. 103.10 (10) of the statutes is amended to read:

103.10 (10) ALTERNATIVE EMPLOYMENT. Nothing in this section prohibits an employer and an employe with a serious health condition from mutually agreeing to alternative employment for the employe while the serious health condition lasts. No period of alternative employment, with the same employer, reduces the employe's right to family leave or, medical leave or school conference and activities leave.

~~**SECTION 51.** 103.10 (11) (c) of the statutes is repealed and recreated to read:~~

~~103.10 (11) (c) 1. No person may discharge or in any manner discriminate against any individual for filing a complaint or attempting to enforce any right under this section or for testifying or assisting in any action or proceeding to enforce any right under this section.~~

~~2. No person may discharge or in any manner discriminate against any individual because that person believes that the individual has engaged or may engage in an activity described in subd. 1.~~

~~**SECTION 52.** 103.10 (11) (d) of the statutes is created to read:~~

BILL**SECTION 52**

1 ~~103.10 (11) (d) Notwithstanding pars. (a) to (c), any action taken by an~~
2 ~~employer to comply with 29 USC 2601 to 2654 is not considered to be a violation of~~
3 ~~this section.~~

4 **SECTION 53.** 103.10 (12) (b) of the statutes is amended to read:

5 103.10 (12) (b) An employe who believes that his or her employer has violated
6 sub. (11) (a) ~~or~~, (b) ~~or~~ (c) may, ~~within 30 days after the violation occurs or the employe~~
7 ~~should reasonably have known that the violation occurred, whichever is later, file a~~
8 ~~complaint with the department alleging the violation. A complaint under this~~
9 ~~paragraph may be filed no later than 300 days after the date of the last event~~
10 ~~constituting the alleged violation for which the complaint is brought. Except as~~
11 ~~provided in s. 230.45 (1m), the department shall investigate the complaint and shall~~
12 ~~attempt to resolve the complaint by conference, conciliation or persuasion. If the~~
13 ~~complaint is not resolved and the department finds probable cause to believe a~~
14 ~~violation has occurred, the department shall proceed with notice and a hearing on~~
15 ~~the complaint as provided in ch. 227. The hearing shall be held within 60 days after~~
16 ~~the department receives the complaint.~~

17 ~~**SECTION 54.** 103.10 (12) (c) of the statutes is repealed.~~

18 **SECTION 55.** 103.10 (12) (d) of the statutes is amended to read:

19 103.10 (12) (d) The department shall issue its decision and order within 30 days
20 after the hearing. If the department finds that an employer violated sub. (11) (a) ~~or~~,
21 (b), ~~or~~ (c) it may order the employer to take action to remedy the violation, including
22 providing the requested family leave ~~or~~, medical leave or school conference and
23 activities leave, reinstating an employe, promoting an employe, providing back pay
24 ~~accrued not more than 2 years before the complaint was filed and employment~~

BILL

1 benefits to an employe and paying reasonable actual attorney fees to the
2 complainant.

3 **SECTION 56.** 103.10 (12) (e) of the statutes is created to read:

4 103.10 (12) (e) Any respondent or complainant who is dissatisfied with the
5 findings and order of the examiner may file a written petition with the department
6 for review by the commission of the findings and order.

7 **SECTION 57.** 103.10 (12) (f) of the statutes is created to read:

8 103.10 (12) (f) If no petition under par. (e) is filed within 21 days after the date
9 on which a copy of the findings and order of the examiner is mailed to the last-known
10 address of the respondent, the findings and order shall be considered final. If a
11 timely petition is filed, the commission, on review, may either affirm, reverse or
12 modify the findings or order in whole or in part, or set aside the findings and order
13 and remand to the department for further proceedings. Those actions shall be based
14 on a review of the evidence submitted. If the commission is satisfied that a
15 respondent or complainant has been prejudiced because of exceptional delay in the
16 receipt of a copy of any findings and orders, the commission may extend for another
17 21 days the time for filing the petition with the department.

18 **SECTION 58.** 103.10 (12) (g) of the statutes is created to read:

19 103.10 (12) (g) On motion, the commission may set aside, modify or change any
20 decision made by the commission, at any time within 28 days after the date of the
21 decision if the commission discovers any mistake in the decision, or upon the grounds
22 of newly discovered evidence. The commission may on its own motion, for reasons
23 it considers sufficient, set aside any final decision of the commission within one year
24 after the date of the decision upon grounds of mistake or newly discovered evidence,
25 and remand the case to the department for further proceedings.

BILL**SECTION 59**

1 **SECTION 59.** 103.10 (13) (a) of the statutes is amended to read:

2 103.10 (13) (a) An employe or the department may bring an action in circuit
3 court against an employer on behalf of the employe, or on behalf of the employe and
4 other employes similarly situated, to recover damages, as described in par. (c),
5 caused by a violation of sub. (11) (a), (b) or (c) after the completion of an
6 administrative proceeding, including judicial review, concerning ~~the same~~ that
7 violation.

8 **SECTION 60.** 103.10 (13) (b) (intro.) and 1. of the statutes are consolidated,
9 renumbered 103.10 (13) (b) and amended to read:

10 103.10 (13) (b) An action under par. (a) shall be commenced ~~within the later~~
11 ~~of the following periods, or be barred: 1. Within 60 days from~~ after the completion
12 of an administrative proceeding, including judicial review, concerning the same
13 violation, or be barred.

14 **SECTION 61.** 103.10 (13) (b) 2. of the statutes is repealed.

15 **SECTION 62.** 103.10 (13) (c) of the statutes is created to read:

16 103.10 (13) (c) If a circuit court finds that an employer has violated sub. (11)
17 (a), (b) or (c), it may order the employer to take action to remedy the violation,
18 including providing the requested family leave, medical leave or school conference
19 and activities leave, reinstating an employe, promoting an employe and paying
20 reasonable actual attorney fees to the complainant, notwithstanding s. 814.04 (1),
21 and to pay all of the following damages to the affected employe:

22 1. Damages equal to the amount of any wages, salary, employment benefits or
23 other compensation that was denied to or lost by the employe because of the violation
24 or, if the employe has not lost or been denied any wages, salary, employment benefits
25 or other compensation, any actual monetary losses sustained by the employe as a

BILL

1 direct result of the violation up to a sum equal to 12 weeks of wages or salary for the
2 employe.

3 2. As liquidated damages, an amount equal to the damages described in subd.
4 1., except that the court may reduce the amount of damages that the employer is
5 liable for to the amount described in subd. 1. if the employer shows that the act or
6 omission that was in violation of sub. (11) (a), (b) or (c) was in good faith and that the
7 employer had reasonable grounds to believe that the act or omission was not a
8 violation of sub. (11) (a), (b) or (c).

9 **SECTION 63.** 103.10 (14) (a) of the statutes is renumbered 103.10 (14) and
10 amended to read:

11 103.10 (14) NOTICE POSTED. Each employer shall post, in one or more
12 conspicuous places on the employer's premises where notices to employes and
13 applicants for employment are customarily posted, a notice in a form prepared or
14 approved by the department setting forth employes' rights under this section
15 excerpts from, or summaries of, the pertinent provisions of this section and
16 information relating to the filing of a complaint under sub. (12) or a civil action under
17 sub. (13). Any employer who wilfully violates this subsection shall forfeit not more
18 than \$100 for each offense.

19 **SECTION 64.** 103.10 (14) (b) of the statutes is repealed.

20 **SECTION 65.** 103.10 (15) of the statutes is created to read:

21 103.10 (15) LOCAL ORDINANCES. A county, city, village or town may enact an
22 ordinance that provides employes with rights to family leave, medical leave or school
23 conference and activities leave that are more generous to the employe than the rights
24 provided under this section.

25 **SECTION 66.** 103.10 (16) of the statutes is created to read:

BILL

SECTION 66

1 ~~103.10 (16) RULES. The department shall promulgate rules to implement this~~
 2 ~~section. Those rules shall conform to 29 CFR 825 to the extent that 29 CFR 825 is~~
 3 ~~consistent with this section.~~

4 **SECTION 67.** 108.04 (1) (b) 3. (intro.) of the statutes is amended to read:

5 108.04 (1) (b) 3. (intro.) While the employe is on family or medical leave under
 6 the federal family and medical leave act of 1993 (P.L. 103-3), 29 USC 2601 to 2654,
 7 or s. 103.10 or school conference and activities leave under s. 103.10, until whichever
 8 of the following occurs first:

9 ~~**SECTION 68.** 111.322 (2m) (a) of the statutes is amended to read:~~

10 ~~111.322 (2m) (a) The individual files a complaint or attempts to enforce any~~
 11 ~~right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12,~~
 12 ~~109.03, 109.07 or 109.075 or ss. 101.58 to 101.599 or 103.64 to 103.82.~~

13 ~~**SECTION 69.** 111.322 (2m) (b) of the statutes is amended to read:~~

14 ~~111.322 (2m) (b) The individual testifies or assists in any action or proceeding~~
 15 ~~held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32,~~
 16 ~~103.455, 103.50, 104.12, 109.03, 109.07 or 109.075 or ss. 101.58 to 101.599 or 103.64~~
 17 ~~to 103.82.~~

18 **SECTION 70.** 111.91 (2) (f) of the statutes is amended to read:

19 111.91 (2) (f) Family leave and medical leave rights below the minimum
 20 afforded under the federal family and medical leave act of 1993, 29 USC 2601 to 2654,
 21 and s. 103.10 and school conference and activities leave rights below the minimum
 22 afforded under s. 103.10. Nothing in this paragraph prohibits the employer from
 23 bargaining on rights to family leave or medical leave which are more generous to the
 24 employe than the rights provided under the federal family and medical leave act of
 25 1993, 29 USC 2601 to 2654 and s. 103.10 and on rights to school conference and

✓
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BILL

1 activities leave which are more generous to the employe than the rights provided
2 under s. 103.10.

3 **SECTION 71.** 230.35 (2m) of the statutes is amended to read:

4 230.35 (2m) An employe shall be eligible for medical or family leave under s.
5 103.10 upon the expiration, extension or renewal of any collective bargaining
6 agreement in effect on April 26, 1988, which covers the employe. An employe shall
7 be eligible for school activities leave under s. 103.10 upon the expiration, extension
8 or renewal of any collective bargaining agreement in effect on the effective date of
9 this subsection [revisor inserts date], which covers the employe.

10 **SECTION 72.** 230.45 (1) (k) of the statutes is amended to read:

11 230.45 (1) (k) Receive and process complaints of violations relating to family
12 ~~or~~, medical or school activities leave under s. 103.10 (12).

13 ~~**SECTION 73.** 252.17 (3) (i) of the statutes is repealed.~~

14 **SECTION 74.** 252.17 (4) (a) of the statutes is amended to read:

15 252.17 (4) (a) Except as provided in ~~pars. (b) and (e)~~ par. (b), if an individual
16 satisfies sub. (3), the department shall pay the amount of each premium payment for
17 coverage under the group health plan under sub. (3) (d) that is due from the
18 individual on or after the date on which the individual becomes eligible for a subsidy
19 under sub. (3). The department may not refuse to pay the full amount of the
20 individual's contribution to each premium payment because the coverage that is
21 provided to the individual who satisfies sub. (3) includes coverage of the individual's
22 spouse and dependents. Except as provided in par. (b), the department shall
23 terminate the payments under this section when the individual's unpaid medical
24 leave ends, when the individual no longer satisfies sub. (3) or upon the expiration of
25 29 months after the unpaid medical leave began, whichever occurs first.

BILL

1 **SECTION 75.** 252.17 (4) (c) of the statutes is repealed.

2 **SECTION 76.** 632.897 (6) of the statutes is amended to read:

3 ~~632.897 (6) If the terminated insured elects to continue group coverage as~~
4 ~~provided in this section, the insurer may require conversion to individual coverage~~
5 ~~by the terminated insured and his or her spouse and dependents 18 months after the~~
6 ~~terminated insured elects the group coverage except as provided in s. 103.10 (9) (d).~~
7 The conditions, rights and procedures governing conversion under sub. (4) (a) apply
to this conversion.

8 **SECTION 77.** 893.96 (title) of the statutes is repealed and recreated to read:

9 **893.96 (title) Family, medical and school conference and activities**
10 **leave; civil remedies.**

11 **SECTION 78. Initial applicability.**

12 (1) This act first applies to an employe, as defined in section 103.10 (1) (b) of
13 the statutes, who is affected by a collective bargaining agreement that contains
14 provisions inconsistent with this act on the day on which the collective bargaining
15 agreement expires or is extended, modified or renewed, whichever occurs first.

16 **SECTION 79. Effective date.**

17 (1) This act takes effect on the first day of the 6th month beginning after
18 publication.
19

20 (END)

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228

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB
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(INSERT A)

Under current law, an employer, including the state, employing at least 50 individuals on a permanent basis in this state must permit an employe to take six weeks of family leave in a 12-month period and two weeks of medical leave in a 12-month period if that employe has been employed by the employer for more than 52 consecutive weeks and has worked for the employer for at least 1,000 hours during the preceding 52-week period. Family leave may be taken for the birth or adoptive placement of a new child or to care for a child, spouse or parent who has a serious health condition. Medical leave may be taken when the employe has a serious health condition ~~which~~ makes the employe unable to perform the employe's employment duties. An employe is not entitled to receive wages or salary while taking family leave or medical leave, but may substitute, for portions of family or medical leave, other types of paid or unpaid leave provided by the employer. An employe who intends to take family or medical leave for the birth or adoptive placement of a child or for planned medical treatment must give the employer advance notice of the birth or adoptive placement or planned medical treatment. In addition, for planned medical treatment, the employe must make a reasonable effort to schedule the medical treatment so that it does not unduly disrupt the operations of the employer.

This bill allows any employe of an employer employing at least ~~five~~ 50 individuals on a permanent basis in this state to take no more than 16 hours of school conference and activities leave in a 12-month period. School conference and activities leave may be taken to attend school conferences or classroom activities relating to the employe's child that cannot be scheduled during nonworking hours. In addition, school conference and activities leave may be taken to observe and monitor the day care, preschool or prekindergarten services or programming received by an employe's child, if that observation and monitoring cannot be scheduled during nonworking hours. An employe is not entitled to receive wages or salary while taking school conference and activities leave, but may substitute, for portions of school conference and activities leave, other types of paid or unpaid leave provided by the employer, except that an employe may not substitute paid leave for school conference and activities leave for attending a school conference or activity for less than one hour. An employe who intends to take leave to attend a school conference or activity must give the employer advance notice of the leave and must make a reasonable effort to schedule the leave so that it does not unduly disrupt the operations of the employer.

For purposes of this bill, "child" includes a person 18 years of age or over who is a natural, adopted, foster or treatment foster child, a stepchild or a legal ward of an employe, and "school" means a day care center licensed by the department of health and family services, a day care provider certified for funding by a county department of human services or social services, a day care program established or contracted for by a school board, a public, parochial or private preschool or prekindergarten or a public, parochial or private school that provides an educational program for one or more grades between kindergarten and 12.

(END OF INSERT)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB
.....

(INSERT 7-2)

SECTION 1. 103.10 (1) (a) (intro.) of the statutes is renumbered 103.10 (1) (a)^X and amended to read:

103.10 (1) (a) "Child" means a natural, adopted, foster or treatment foster child, a stepchild or a legal ward ~~to whom any of the following applies: of an employe, or a person for whom an employe stands in the place of a parent, and includes a person 18 years of age or over who is a natural, adopted, foster or treatment foster child, a stepchild or a legal ward of an employe or who is a person for whom an employe stands in the place of a parent.~~

SECTION 2. 103.10 (1) (a) 1. and 2. of the statutes are repealed.^X

(END OF INSERT 7-2)

(INSERT 9-11)

SECTION 3. 103.10 (2) (c)^X of the statutes is amended to read:

103.10 (2) (c) This section only applies to an employe who has been employed by the same employer for more than 52 consecutive weeks and who worked for the employer for at least 1,000 hours during the preceding 52-week period, except that for purposes of school conference and activities leave under sub. (4m), this section applies to any employe of an employer.[✓]

(END OF INSERT 9-11)

(INSERT 13-10)

SECTION 4. 103.10 (8) (a) (intro.)^X of the statutes is amended to read:

103.10 (8) (a) (intro.) Subject to par. (c), when an employe returns from family leave ~~or~~, medical leave or school conference and activities leave,[✓] his or her employer shall immediately place the employe in an employment position as follows:

SECTION 5. 103.10 (8) (a) 1. ^X of the statutes is amended to read:

103.10 (8) (a) 1. If the employment position which the employe held immediately before the family leave ~~or~~, medical leave or school conference and activities leave began is vacant when the employe returns, in that position.

SECTION 6. 103.10 (8) (a) 2. ^X of the statutes is amended to read:

103.10 (8) (a) 2. If the employment position which the employe held immediately before the family leave ~~or~~, medical leave [✓]or school conference and activities leave began is not vacant when the employe returns, in an equivalent employment position having equivalent compensation, benefits, working shift, hours of employment and other terms and conditions of employment.

(END OF INSERT 13-10)

(INSERT 13-24)

SECTION 7. 103.10 (8) (c) ^X of the statutes is amended to read:

103.10 (8) (c) Notwithstanding par. (a), if an employe on a family, medical or family school conference and activities [✓]leave wishes to return to work before the end of the leave as scheduled, the employer shall place the employe in an employment position of the type described in par. (a) 1. or 2. within a reasonable time not exceeding the duration of the leave as scheduled.

(END OF INSERT 13-24)

(INSERT 15-8)

SECTION 8. 103.10 (9) (b) ^X of the statutes is amended to read:

103.10 (9) (b) Subject to par. (c), during a period an employe takes family leave ~~or~~, medical leave or school conference and activities leave, [✓]his or her employer shall maintain group health insurance coverage under the conditions that applied

immediately before the family leave ~~or~~, medical leave or school conference and activities leave began. If the employe continues making any contribution required for participation in the group health insurance plan, the employer shall continue making group health insurance premium contributions as if the employe had not taken the family leave ~~or~~, medical leave or school conference and activities leave.

SECTION 9. 103.10 (9) (c) 4. [✓] of the statutes is amended to read:

103.10 (9) (c) 4. If an employe ends his or her employment with an employer during or within 30 days after a period of family leave ~~or~~, medical leave or school conference and activities leave, the employer may deduct from the amount returned to the employe under subd. 3. any premium or similar expense paid by the employer for the employe's group health insurance coverage while the employe was on family leave ~~or~~, medical leave or school conference and activities leave.[✓]

SECTION 10. 103.10 (9) (d) [✓] of the statutes is amended to read:

103.10 (9) (d) If an employe ends his or her employment with an employer during or at the end of a period of family leave ~~or~~, medical leave or school conference and activities leave, the time period for conversion to individual coverage under s. 632.897 (6) shall be calculated as beginning on the day that the employe began the period of family leave ~~or~~, medical leave or school conference and activities leave.

(END OF INSERT 15-8)

(INSERT 20-3)

[✓]
SECTION 11. 103.10 (12) (d) of the statutes is amended to read:

103.10 (12) (d) The department shall issue its decision and order within 30 days after the hearing. If the department finds that an employer violated sub. (11) (a) or (b), it may order the employer to take action to remedy the violation, including

providing the requested family leave ~~or~~, medical leave [✓] or school conference and activities leave, reinstating an employe, providing back pay accrued not more than 2 years before the complaint was filed and paying reasonable actual attorney fees to the complainant.

SECTION 12. 103.10 (14) (b) [✓] of the statutes is amended to read:

103.10 (14) (b) Any person employing at least 25 individuals shall post, in one or more conspicuous places where notices to employes are customarily posted, a notice describing the person's policy with respect to leave for the reasons described in subs. (3) (b) ~~and~~, (4) (a) and (4m).[✓]

(END OF INSERT 20-3)

(INSERT 22-8)

SECTION 13. 253.10 (3) (d) 1. [✓] of the statutes is amended to read:

253.10 (3) (d) 1. Geographically indexed materials that are designed to inform a woman about public and private agencies, including adoption agencies, and services that are available to provide information on family planning, as defined in s. 253.07 (1) (a), including natural family planning information, to provide ultrasound imaging services, to assist her if she has received a diagnosis that her unborn child has a disability or if her pregnancy is the result of sexual assault or incest and to assist her through pregnancy, upon childbirth and while the child is dependent. The materials shall include a comprehensive list of the agencies available, a description of the services that they offer and a description of the manner in which they may be contacted, including telephone numbers and addresses, or, at the option of the department, the materials shall include a toll-free, 24-hour telephone number that may be called to obtain an oral listing of available agencies

and services in the locality of the caller and a description of the services that the agencies offer and the manner in which they may be contacted. The materials shall provide information on the availability of governmentally funded programs that serve pregnant women and children. Services identified for the woman shall include aid to families with dependent children under s. 49.19, medical assistance for pregnant women and children under s. 49.47 (4) (am), the job opportunities and basic skills program under s. 49.193, the availability of family ~~or~~, medical and school conference and activities leave under s. 103.10, child care services, child support laws and programs and the credit for expenses for household and dependent care and services necessary for gainful employment under section 21 of the internal revenue code. The materials shall state that it is unlawful to perform an abortion for which consent has been coerced, that any physician who performs or induces an abortion without obtaining the woman's voluntary and informed consent is liable to her for damages in a civil action and is subject to a civil penalty, that the father of a child is liable for assistance in the support of the child, even in instances in which the father has offered to pay for an abortion, and that adoptive parents may pay the costs of prenatal care, childbirth and neonatal care. The materials shall include information, for a woman whose pregnancy is the result of sexual assault or incest, on legal protections available to the woman and her child if she wishes to oppose establishment of paternity or to terminate the father's parental rights. The materials shall state that fetal ultrasound imaging and auscultation of fetal heart tone services are obtainable by pregnant women who wish to use them and shall describe the services.

(END OF INSERT 22-8)

9/15/99

Rep. Black:

Take out amended definition of "child",
ie., do not apply school activities leave to
children 18 or over.



State of Wisconsin
1999 - 2000 LEGISLATURE

[Handwritten signature]

LRB-0851/4
GMM:pgt&jlg:jf
3
RNR

1999 BILL

[Handwritten arrow pointing to the text below]
[Handwritten word: Regenerate]

1 **AN ACT to repeal** 103.10 (1) (a) 1. and 2.; **to renumber and amend** 103.10 (1)
2 (a) (intro.) and 103.10 (5) (b); **to amend** 103.10 (title), 103.10 (2) (a), 103.10 (2)
3 (c), 103.10 (5) (a), 103.10 (8) (a) (intro.), 103.10 (8) (a) 1., 103.10 (8) (a) 2., 103.10
4 (8) (b), 103.10 (8) (c), 103.10 (9) (a), 103.10 (9) (b), 103.10 (9) (c) 4., 103.10 (9) (d),
5 103.10 (10), 103.10 (12) (d), 103.10 (14) (b), 108.04 (1) (b) 3. (intro.), 111.91 (2)
6 (f), 230.35 (2m), 230.45 (1) (k) and 253.10 (3) (d) 1.; **to repeal and recreate**
7 893.96 (title); and **to create** 103.10 (1) (fr), 103.10 (4m), 103.10 (5) (b) 2. and
8 103.10 (6) (c) of the statutes; **relating to:** leave for school conferences and
9 activities.

Analysis by the Legislative Reference Bureau

Under current law, an employer, including the state, employing at least 50 individuals on a permanent basis in this state must permit an employe to take six weeks of family leave in a 12-month period and two weeks of medical leave in a 12-month period if that employe has been employed by the employer for more than 52 consecutive weeks and has worked for the employer for at least 1,000 hours during the preceding 52-week period. Family leave may be taken for the birth or adoptive placement of a new child or to care for a child, spouse or parent who has a serious

BILL

health condition. Medical leave may be taken when the employe has a serious health condition that makes the employe unable to perform the employe's employment duties. An employe is not entitled to receive wages or salary while taking family leave or medical leave, but may substitute, for portions of family or medical leave, other types of paid or unpaid leave provided by the employer. An employe who intends to take family or medical leave for the birth or adoptive placement of a child or for planned medical treatment must give the employer advance notice of the birth or adoptive placement or planned medical treatment. In addition, for planned medical treatment, the employe must make a reasonable effort to schedule the medical treatment so that it does not unduly disrupt the operations of the employer.

This bill allows *any* employe of an employer employing at least 50 individuals on a permanent basis in this state to take no more than 16 hours of school conference and activities leave in a 12-month period. School conference and activities leave may be taken to attend school conferences or classroom activities relating to the employe's child that cannot be scheduled during nonworking hours. In addition, school conference and activities leave may be taken to observe and monitor the day care, preschool or prekindergarten services or programming received by an employe's child, if that observation and monitoring cannot be scheduled during nonworking hours. An employe is not entitled to receive wages or salary while taking school conference and activities leave, but may substitute, for portions of school conference and activities leave, other types of paid or unpaid leave provided by the employer, except that an employe may not substitute paid leave for school conference and activities leave for attending a school conference or activity for less than one hour. An employe who intends to take leave to attend a school conference or activity must give the employer advance notice of the leave and must make a reasonable effort to schedule the leave so that it does not unduly disrupt the operations of the employer.

For purposes of this bill, ~~“child” includes a person 18 years of age or over who is a natural, adopted, foster or treatment foster child, a stepchild or a legal ward of an employe, and~~ “school” means a day care center licensed by the department of health and family services, a day care provider certified for funding by a county department of human services or social services, a day care program established or contracted for by a school board, a public, parochial or private preschool or prekindergarten or a public, parochial or private school that provides an educational program for one or more grades between kindergarten and 12.

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.** 103.10 (title) of the statutes is amended to read:
- 2 **103.10 (title) Family or, medical and school conference and activities**
- 3 **leave.**

BILL

1 **SECTION 2.** 103.10 (1) (a) (intro.) of the statutes is renumbered 103.10 (1) (a) and
2 amended to read:

3 103.10 (1) (a) “Child” means a natural, adopted, foster or treatment foster
4 child, a stepchild or a legal ward ~~to whom any of the following applies:~~ of an employe,
5 and includes a person 18 years of age or over who is a natural, adopted, foster or
6 treatment foster child, a stepchild or a legal ward of an employe.

7 **SECTION 3.** 103.10 (1) (a) 1. and 2. of the statutes are repealed.

8 **SECTION 4.** 103.10 (1) (fr) of the statutes is created to read:

9 103.10 (1) (fr) “School” means a child care provider, as defined in s. 49.001 (1),
10 a public, parochial or private preschool or prekindergarten or a public, parochial or
11 private school that provides an educational program for one or more grades between
12 kindergarten and 12 and that is commonly known as a kindergarten, elementary
13 school, middle school, junior high school, senior high school or high school.

14 **SECTION 5.** 103.10 (2) (a) of the statutes is amended to read:

15 103.10 (2) (a) Nothing in this section prohibits an employer from providing
16 employes with rights to family leave ~~or~~, medical leave which or school conference and
17 activities leave that are more generous to the employe than the rights provided under
18 this section.

19 **SECTION 6.** 103.10 (2) (c) of the statutes is amended to read:

20 103.10 (2) (c) This section only applies to an employe who has been employed
21 by the same employer for more than 52 consecutive weeks and who worked for the
22 employer for at least 1,000 hours during the preceding 52-week period, except that
23 for purposes of school conference and activities leave under sub. (4m), this section
24 applies to any employe of an employer.

25 **SECTION 7.** 103.10 (4m) of the statutes is created to read:

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1 103.10 (4m) SCHOOL CONFERENCE AND ACTIVITIES LEAVE. Subject to sub. (6) (c),
2 an employe may take no more than 16 hours of school conference and activities leave
3 in a 12-month period for the purpose of attending school conferences or classroom
4 activities relating to the employe's child that cannot be scheduled during nonwork
5 hours. An employe may also use the school conference and activities leave provided
6 under this subsection to observe and monitor the services or programming provided
7 to the employe's child by a child care provider, as defined in s. 49.001 (1), or a public,
8 private or parochial preschool or prekindergarten, if that observation and
9 monitoring cannot be scheduled during nonwork hours.

10 **SECTION 8.** 103.10 (5) (a) of the statutes is amended to read:

11 103.10 (5) (a) This section does not entitle an employe to receive wages or salary
12 while taking family leave or, medical leave or school conference and activities leave.

13 **SECTION 9.** 103.10 (5) (b) of the statutes is renumbered 103.10 (5) (b) 1. and
14 amended to read:

15 103.10 (5) (b) 1. ~~An~~ Subject to subd. 2., an employe may substitute, for portions
16 of family leave or, medical leave or school conference and activities leave, paid or
17 unpaid leave of any other type provided by the employer.

18 **SECTION 10.** 103.10 (5) (b) 2. of the statutes is created to read:

19 103.10 (5) (b) 2. Notwithstanding subd. 1., an employe may not substitute paid
20 leave for school conference and activities leave for attending a school conference or
21 activity for less than one hour.

22 **SECTION 11.** 103.10 (6) (c) of the statutes is created to read:

23 103.10 (6) (c) If an employe intends to take leave under sub. (4m) for the
24 purpose of attending a school conference or activity, the employe shall do all of the
25 following:

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1 1. Make a reasonable effort to schedule the leave so that it does not unduly
2 disrupt the employer's operations.

3 2. Give the employer advance notice of the leave in a reasonable and practicable
4 manner.

5 **SECTION 12.** 103.10 (8) (a) (intro.) of the statutes is amended to read:

6 103.10 (8) (a) (intro.) Subject to par. (c), when an employe returns from family
7 leave ~~or~~, medical leave or school conference and activities leave, his or her employer
8 shall immediately place the employe in an employment position as follows:

9 **SECTION 13.** 103.10 (8) (a) 1. of the statutes is amended to read:

10 103.10 (8) (a) 1. If the employment position which the employe held
11 immediately before the family leave ~~or~~, medical leave or school conference and
12 activities leave began is vacant when the employe returns, in that position.

13 **SECTION 14.** 103.10 (8) (a) 2. of the statutes is amended to read:

14 103.10 (8) (a) 2. If the employment position which the employe held
15 immediately before the family leave ~~or~~, medical leave or school conference and
16 activities leave began is not vacant when the employe returns, in an equivalent
17 employment position having equivalent compensation, benefits, working shift,
18 hours of employment and other terms and conditions of employment.

19 **SECTION 15.** 103.10 (8) (b) of the statutes is amended to read:

20 103.10 (8) (b) No employer may, because an employe received family leave ~~or~~,
21 medical leave or school conference and activities leave, reduce or deny an
22 employment benefit which accrued to the employe before his or her leave began ~~or~~,
23 ~~consistent with sub. (9), accrued after his or her leave began.~~

24 **SECTION 16.** 103.10 (8) (c) of the statutes is amended to read:

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1 103.10 (8) (c) Notwithstanding par. (a), if an employe on a family, medical or
2 family school conference and activities leave wishes to return to work before the end
3 of the leave as scheduled, the employer shall place the employe in an employment
4 position of the type described in par. (a) 1. or 2. within a reasonable time not
5 exceeding the duration of the leave as scheduled.

6 **SECTION 17.** 103.10 (9) (a) of the statutes is amended to read:

7 103.10 (9) (a) Except as provided in par. (b), nothing in this section entitles a
8 returning employe to a right, employment benefit or employment position to which
9 the employe would not have been entitled had he or she not taken family leave ~~or~~,
10 medical leave or school conference and activities leave or to the accrual of any
11 seniority or employment benefit during a period of family leave ~~or~~, medical leave or
12 school conference and activities leave.

13 **SECTION 18.** 103.10 (9) (b) of the statutes is amended to read:

14 103.10 (9) (b) Subject to par. (c), during a period an employe takes family leave
15 ~~or~~, medical leave or school conference and activities leave, his or her employer shall
16 maintain group health insurance coverage under the conditions that applied
17 immediately before the family leave ~~or~~, medical leave or school conference and
18 activities leave began. If the employe continues making any contribution required
19 for participation in the group health insurance plan, the employer shall continue
20 making group health insurance premium contributions as if the employe had not
21 taken the family leave ~~or~~, medical leave or school conference and activities leave.

22 **SECTION 19.** 103.10 (9) (c) 4. of the statutes is amended to read:

23 103.10 (9) (c) 4. If an employe ends his or her employment with an employer
24 during or within 30 days after a period of family leave ~~or~~, medical leave or school
25 conference and activities leave, the employer may deduct from the amount returned

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1 to the employe under subd. 3. any premium or similar expense paid by the employer
2 for the employe's group health insurance coverage while the employe was on family
3 leave ~~or~~, medical leave or school conference and activities leave.

4 **SECTION 20.** 103.10 (9) (d) of the statutes is amended to read:

5 103.10 (9) (d) If an employe ends his or her employment with an employer
6 during or at the end of a period of family leave ~~or~~, medical leave or school conference
7 and activities leave, the time period for conversion to individual coverage under s.
8 632.897 (6) shall be calculated as beginning on the day that the employe began the
9 period of family leave ~~or~~, medical leave or school conference and activities leave.

10 **SECTION 21.** 103.10 (10) of the statutes is amended to read:

11 103.10 (10) ALTERNATIVE EMPLOYMENT. Nothing in this section prohibits an
12 employer and an employe with a serious health condition from mutually agreeing to
13 alternative employment for the employe while the serious health condition lasts. No
14 period of alternative employment, with the same employer, reduces the employe's
15 right to family leave ~~or~~, medical leave or school conference and activities leave.

16 **SECTION 22.** 103.10 (12) (d) of the statutes is amended to read:

17 103.10 (12) (d) The department shall issue its decision and order within 30 days
18 after the hearing. If the department finds that an employer violated sub. (11) (a) or
19 (b), it may order the employer to take action to remedy the violation, including
20 providing the requested family leave ~~or~~, medical leave or school conference and
21 activities leave, reinstating an employe, providing back pay accrued not more than
22 2 years before the complaint was filed and paying reasonable actual attorney fees to
23 the complainant.

24 **SECTION 23.** 103.10 (14) (b) of the statutes is amended to read:

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1 103.10 (14) (b) Any person employing at least 25 individuals shall post, in one
2 or more conspicuous places where notices to employes are customarily posted, a
3 notice describing the person's policy with respect to leave for the reasons described
4 in subs. (3) (b) ~~and~~, (4) (a) and (4m).

5 **SECTION 24.** 108.04 (1) (b) 3. (intro.) of the statutes is amended to read:

6 108.04 (1) (b) 3. (intro.) While the employe is on family or medical leave under
7 the federal family and medical leave act of 1993 (~~P.L. 103-3~~), 29 USC 2601 to 2654,
8 or s. 103.10 or school conference and activities leave under s. 103.10, until whichever
9 of the following occurs first:

10 **SECTION 25.** 111.91 (2) (f) of the statutes is amended to read:

11 111.91 (2) (f) Family leave and medical leave rights below the minimum
12 afforded under the federal family and medical leave act of 1993, 29 USC 2601 to 2654,
13 and s. 103.10 and school conference and activities leave rights below the minimum
14 afforded under s. 103.10. Nothing in this paragraph prohibits the employer from
15 bargaining on rights to family leave or medical leave which are more generous to the
16 employe than the rights provided under the federal family and medical leave act of
17 1993, 29 USC 2601 to 2654 and s. 103.10 and on rights to school conference and
18 activities leave which are more generous to the employe than the rights provided
19 under s. 103.10.

20 **SECTION 26.** 230.35 (2m) of the statutes is amended to read:

21 230.35 (2m) An employe shall be eligible for medical or family leave under s.
22 103.10 upon the expiration, extension or renewal of any collective bargaining
23 agreement in effect on April 26, 1988, which covers the employe. An employe shall
24 be eligible for school activities leave under s. 103.10 upon the expiration, extension

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1 or renewal of any collective bargaining agreement in effect on the effective date of
2 this subsection [revisor inserts date], which covers the employe.

3 **SECTION 27.** 230.45 (1) (k) of the statutes is amended to read:

4 230.45 (1) (k) Receive and process complaints of violations relating to family
5 ~~or~~, medical or school activities leave under s. 103.10 (12).

6 **SECTION 28.** 253.10 (3) (d) 1. of the statutes is amended to read:

7 253.10 (3) (d) 1. Geographically indexed materials that are designed to inform
8 a woman about public and private agencies, including adoption agencies, and
9 services that are available to provide information on family planning, as defined in
10 s. 253.07 (1) (a), including natural family planning information, to provide
11 ultrasound imaging services, to assist her if she has received a diagnosis that her
12 unborn child has a disability or if her pregnancy is the result of sexual assault or
13 incest and to assist her through pregnancy, upon childbirth and while the child is
14 dependent. The materials shall include a comprehensive list of the agencies
15 available, a description of the services that they offer and a description of the manner
16 in which they may be contacted, including telephone numbers and addresses, or, at
17 the option of the department, the materials shall include a toll-free, 24-hour
18 telephone number that may be called to obtain an oral listing of available agencies
19 and services in the locality of the caller and a description of the services that the
20 agencies offer and the manner in which they may be contacted. The materials shall
21 provide information on the availability of governmentally funded programs that
22 serve pregnant women and children. Services identified for the woman shall include
23 aid to families with dependent children under s. 49.19, medical assistance for
24 pregnant women and children under s. 49.47 (4) (am), the job opportunities and basic
25 skills program under s. 49.193, the availability of family ~~or~~, medical and school

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1 conference and activities leave under s. 103.10, child care services, child support
2 laws and programs and the credit for expenses for household and dependent care and
3 services necessary for gainful employment under section 21 of the internal revenue
4 code. The materials shall state that it is unlawful to perform an abortion for which
5 consent has been coerced, that any physician who performs or induces an abortion
6 without obtaining the woman's voluntary and informed consent is liable to her for
7 damages in a civil action and is subject to a civil penalty, that the father of a child
8 is liable for assistance in the support of the child, even in instances in which the
9 father has offered to pay for an abortion, and that adoptive parents may pay the costs
10 of prenatal care, childbirth and neonatal care. The materials shall include
11 information, for a woman whose pregnancy is the result of sexual assault or incest,
12 on legal protections available to the woman and her child if she wishes to oppose
13 establishment of paternity or to terminate the father's parental rights. The
14 materials shall state that fetal ultrasound imaging and auscultation of fetal heart
15 tone services are obtainable by pregnant women who wish to use them and shall
16 describe the services.

17 **SECTION 29.** 893.96 (title) of the statutes is repealed and recreated to read:

18 **893.96 (title) Family, medical and school conference and activities**
19 **leave; civil remedies.**

20 **SECTION 30. Initial applicability.**

21 (1) This act first applies to an employe, as defined in section 103.10 (1) (b) of
22 the statutes, who is affected by a collective bargaining agreement that contains
23 provisions inconsistent with this act on the day on which the collective bargaining
24 agreement expires or is extended, modified or renewed, whichever occurs first.

25 **SECTION 31. Effective date.**

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 09/15/1999

To: Representative Black

Relating to LRB drafting number: LRB-0851

Topic

Family, medical and school activities leave

Subject(s)

Employ Priv - family leave

1. **JACKET** the draft for introduction _____



in the **Senate** ____ or the **Assembly** ____ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Gordon M. Malaise, Senior Legislative Attorney
Telephone: (608) 266-9738