

State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-0678/1  
GMM:jld:ph

EN 1118  
5057

**2011 BILL**

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1 AN ACT *to repeal* 103.10 (1) (ar), 103.10 (3) (a) 2., 103.10 (3) (a) 3., 103.10 (3) (b)  
2 (intro.), 103.10 (3) (c), 103.10 (3) (d), 103.10 (4) (title), 103.10 (4) (b), 103.10 (4)  
3 (c), 103.10 (8) (c), 103.10 (12) (c), 103.10 (14) (b), 252.17 (3) (i) and 252.17 (4) (c);  
4 *to renumber and amend* 103.10 (1) (c), 103.10 (3) (a) 1., 103.10 (3) (b) 1.,  
5 103.10 (3) (b) 2., 103.10 (3) (b) 3., 103.10 (4) (a) and 103.10 (14) (a); *to amend*  
6 103.10 (title), 103.10 (1) (a) (intro.), 103.10 (1) (a) 2., 103.10 (1) (b), 103.10 (1)  
7 (d), 103.10 (1) (f), 103.10 (1) (g) (intro.), 103.10 (1) (g) 2., 103.10 (1) (h), 103.10  
8 (2) (a), 103.10 (2) (c), 103.10 (5) (a), 103.10 (5) (b), 103.10 (6) (a), 103.10 (6) (b)  
9 (intro.), 103.10 (6) (b) 1., 103.10 (6) (b) 2., 103.10 (7) (a), 103.10 (7) (b) 4., 103.10  
10 (7) (c), 103.10 (8) (a) (intro.), 103.10 (8) (a) 1., 103.10 (8) (a) 2., 103.10 (8) (b),  
11 103.10 (9) (a), 103.10 (9) (b), 103.10 (12) (b), 103.10 (12) (d), 103.10 (13) (a),  
12 111.322 (2m) (a), 111.322 (2m) (b), 111.91 (2) (f), 111.998 (2) (c), 230.35 (2m),  
13 252.17 (4) (a), 253.10 (3) (d) 1., 632.897 (6) and 893.96 (title); *to repeal and*  
14 *recreate* 103.10 (3) (title), 103.10 (9) (c), 103.10 (9) (d), 103.10 (10), 103.10 (11)

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1 (c) and 103.10 (13) (b) 2.; and **to create** 103.10 (1) (ap), 103.10 (1) (aq), 103.10  
 2 (1) (c) 2., 103.10 (1) (er), 103.10 (1) (et), 103.10 (1) (fm), 103.10 (1) (gd), 103.10  
 3 (1) (i), 103.10 (2) (am), 103.10 (3) (a) 5., 103.10 (3) (am), 103.10 (3) (cm), 103.10  
 4 (3) (dm), 103.10 (5) (c), 103.10 (5) (d), 103.10 (6) (c), 103.10 (7) (b) 3m., 103.10  
 5 (7) (b) 5., 103.10 (7) (b) 6., 103.10 (7) (b) 7., 103.10 (7) (d), 103.10 (7) (e), 103.10  
 6 (7) (f), 103.10 (8) (d), 103.10 (8) (e), 103.10 (8) (f), 103.10 (12) (e), 103.10 (12) (f),  
 7 103.10 (12) (g), 103.10 (13) (c), 103.10 (15) and 103.10 (16) of the statutes;  
 8 **relating to:** conforming the state family and medical leave law to the federal  
 9 family and medical leave law and granting rule-making authority.

***Analysis by the Legislative Reference Bureau***

***Introduction***

This bill makes various changes to the Wisconsin family and medical leave law to conform that law to the federal family and medical leave law.

***Leave requirement***

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

This bill requires an employer that employs at least 50 individuals for each working day for 20 or more weeks in the current or preceding year and the state or a political subdivision of the state, regardless of the number of employees employed, (employer) to permit an employee who has been employed by the employer for at least 12 months and who has worked at least 1,250 hours for that employer during the preceding 12-months (employee) to take 12 weeks of family or medical leave in a 12-month period. The bill, however, excludes from coverage under the family or medical leave law an employee who works at a worksite with fewer than 50 employees if the employer employs fewer than 50 employees within 75 miles of the worksite.

***Service member family leave.*** The bill requires an employer to permit an employee who is the spouse, child, parent, or next of kin of a member of the U.S.

*domestic partner*

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armed forces or veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness that was incurred or aggravated in the line of duty (covered service member) to take 26 weeks of leave in a single 12-month period to care for the covered service member (service member family leave).

**Family leave for active duty of family member.** The bill also requires an employer to permit an employee to take family leave because of any qualifying exigency, as determined by the Department of Workforce Development (DWD) by rule, arising out of the fact that the spouse, child, or parent of the employee is on deployment with the U.S. armed forces to a foreign country (covered active duty) or has been notified of an impending call or order to covered active duty (family leave for the active duty of a family member).

**Family leave for birth or placement of child.** Under current law, family leave for the birth or adoptive placement of a child must begin within 16 weeks after the birth or placement of the child. This bill eliminates the requirement as to when family leave for that purpose must begin and instead requires family leave for that purpose to end within 12 months after the birth or placement of a child. The bill also permits family leave for a foster care placement of a child and requires family leave for the birth of a child to be taken to care for the child.

**Family or medical leave for serious health condition.** This bill ~~eliminates family leave to care for a domestic partner or spouse's parent who has a serious health condition, but~~ permits family leave to care for an individual for whom the employee stands in the place of a parent or an individual who stood in the place of a parent of the employee when the employee was a child, without the employee having formally adopted or assumed guardianship of that individual or the individual having formally adopted or assumed guardianship of the employee. The bill also permits an employee to take medical leave when the employee has a serious health condition that makes the employee unable to perform the *functions* of his or her employment rather than the *duties* of that employment as under current law.

**Intermittent leave or leave on reduced schedule.** Under current law, an employee may take family leave as partial absence from employment, but must schedule that leave so that it does not unduly disrupt the employer's operations. This bill permits an employee to take family leave intermittently or on a reduced-leave schedule, that is, a schedule under which the employee's hours per day or per week are reduced, for the birth or adoptive placement of a child only if agreed to by the employer. The bill also permits an employee to take family, medical, or service member family leave intermittently or on a reduced-leave schedule when medically necessary due to a serious health condition of the employee or of a child, spouse, parent or due to a serious injury or illness of a covered service member. In addition, the bill permits an employee to take family leave for the active duty of a family member intermittently or on a reduced-leave schedule.

Under current law, an employee with a serious health condition and the employer may agree to alternative employment for the employee while that condition lasts. This bill permits an employer to require an employee who requests intermittent leave or leave on a reduced-leave schedule that is foreseeable for planned medical treatment for the employee or for a child, spouse, parent, or covered

✓  
or  
Spouse's  
parent  
domestic  
Partner,

✓ domestic partner,

spouse's parent, ✓

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service member to transfer temporarily to an alternative position that has equivalent pay and benefits and that better accommodates the employee's intermittent leave or leave on a reduced-leave schedule.

**Substitution of leave.** Under current law, an employee is not entitled to pay while on family or medical leave, but may substitute paid or unpaid leave of other types provided by the employer. This bill specifies that an employee may elect, or an employer may require the employee, to substitute leave of other types for family, medical, or service member family leave as follows:

1. For family leave for the birth or placement of a child or to care for a child, spouse, ~~or~~ parent who has a serious health condition and for family leave for the active duty of a family member, paid vacation, personal, or family leave provided by the employer that the employee has accrued.

2. For family leave to care for a child, spouse, ~~or~~ parent, who has a serious health condition or for medical leave, paid vacation, personal, or sick leave provided by the employer that the employee has accrued, except that the employer is not required to provide paid sick leave when the employer does not normally provide that leave.

3. For service member family leave, paid vacation, personal, family, or sick leave provided by the employer that the employee has accrued, except that the employer is not required to provide paid sick leave when the employer does not normally provide that leave.

**Notification and certification**

**Notice to employer.** Under current law, an employee who intends to take family or medical leave for the birth or placement of a child or for planned medical treatment must give the employer advance notice of the birth or placement or planned medical treatment in a manner that is reasonable and practicable. This bill requires an employee to give the employer notice of the employee's intent to take that leave not less than 30 days before the leave is to begin in those situations that are foreseeable, except that, if the date of the birth or placement or the planned medical treatment requires the leave to begin in less than 30 days, the employee must provide notice to the employer in a reasonable and practicable manner.

**Certification.** Under current law, if an employee requests leave due to a serious health condition of the employee, of a child, spouse, parent, or domestic partner of the employee, or of a parent of the spouse of the employee, the employer may require certification from a health care provider or a Christian Science practitioner stating that: 1) the child, spouse, parent, domestic partner, or employee has a serious health condition; 2) the date on which the serious health conditions commenced and its probable duration; 3) the medical facts regarding the serious health condition; and 4) if applicable, the extent to which the employee is unable to perform his or her employment duties. The employer may also require an employee to obtain a second opinion, at the employer's expense, concerning the certification provided by the employee's health care provider.

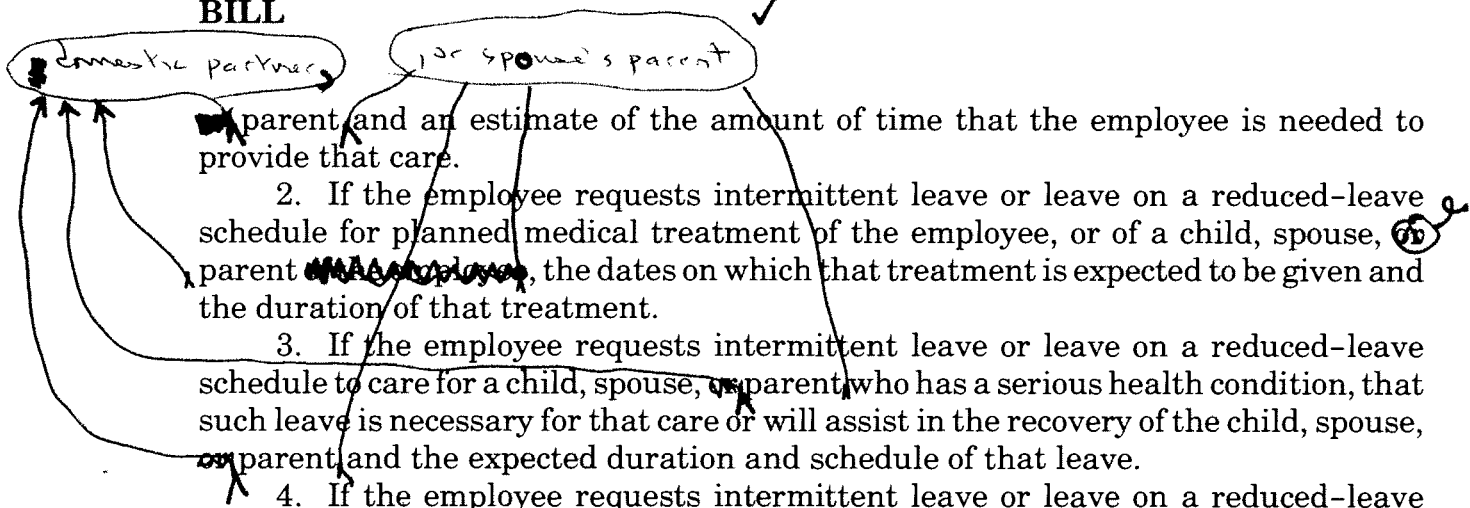
This bill permits a certification to state, in addition to the information permitted under current law, all of the following:

1. If the employee requests leave to care for a child, spouse, ~~or~~ parent, who has a serious health condition, that the employee is needed to care for the child, spouse,

or  
spouse's  
parent

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partner

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parent, and an estimate of the amount of time that the employee is needed to provide that care.

2. If the employee requests intermittent leave or leave on a reduced-leave schedule for planned medical treatment of the employee, or of a child, spouse, parent ~~and employee~~, the dates on which that treatment is expected to be given and the duration of that treatment.

3. If the employee requests intermittent leave or leave on a reduced-leave schedule to care for a child, spouse, ~~or~~ parent, who has a serious health condition, that such leave is necessary for that care or will assist in the recovery of the child, spouse, ~~or~~ parent and the expected duration and schedule of that leave.

4. If the employee requests intermittent leave or leave on a reduced-leave schedule for the employee's serious health condition, the medical necessity for that leave and the expected duration of that leave.

5. If the employee requests medical leave for the employee's serious health condition, that the employee is unable to perform the *functions* of the employee's position, rather than a statement of the extent to which the employee is unable to perform his or her employment *duties* as under current law.

The bill also specifies that a health care provider or Christian Science practitioner designated to provide a second opinion may not be employed on a regular basis by the employer. In addition, the bill permits the employer to require the employee to obtain the opinion of a third health care provider or Christian Science practitioner, designated or approved by the employee and employer jointly and paid for by the employer, if the original certification and second opinion differ, and to obtain recertifications on a reasonable basis. The employer and employee must accept the third opinion as binding upon them.

Finally, with respect to certification, the bill permits an employer to require an employee who requests family leave for the active duty of a family member to provide certification that the family member is on covered active duty at such time and in such manner as DWD may prescribe by rule.

***Employment and benefits protection***

***Position on return to employment.*** Under current law, when an employee returns from family or medical leave, the employer must place the employee in the position the employee 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 an employer to place a returning employee either in the employee's old position or in an equivalent position without regard to whether the old position is vacant. The bill specifies that to be reinstated, the employee must have actually taken the leave for the purpose for which it was intended. The bill also permits an employer to require an employee who is on leave to report to the employer periodically on the employee's status and intention of returning to work and to adopt a uniform policy requiring an employee who is returning from medical leave to obtain a certification from the employee's health care provider or Christian Science practitioner that the employee is able to return to work.

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

Under current law, an employer may require an employee 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 amount that the employer paid for that coverage if the employee does not return from leave. This bill eliminates the escrow requirement, but permits an employer to recover those premiums if an employee does not return to work for reasons other than the recurrence, onset, or continuation of a serious health condition of the employee or of a child, spouse, or parent of the employee, a serious injury or illness of a covered service member, or other circumstances beyond the employee's control.

***Enforcement***

***Administrative proceedings.*** Under current law, an employee who believes that his or her employer has denied any right provided under the family or medical leave law or has retaliated against the employee for opposing a practice prohibited under that law may file a complaint with DWD within 30 days after the employee knew or should have known of the violation, and an employee who believes that his or her employer has retaliated against the employee for initiating, testifying in, or assisting in a proceeding under that law may file a complaint with DWD within 300 days after the alleged retaliation occurred. This bill extends those time limits to two years after the date of the last event constituting the alleged violation or, if the violation was willful, to three years after that event.

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 employee, providing back pay accrued not more than two years before the complaint was filed, and paying reasonable actual attorney fees. This bill eliminates that two-year limit on back pay and includes among the remedies that DWD may order promotion of the employee and the provision of benefits to the employee.

Under current law, a determination by DWD on the issue of whether an employee has been denied any right provided under the family and medical leave law or has been retaliated against for opposing a practice prohibited under that law may be appealed directly to the circuit court (judicial review), while a determination by DWD on the issue of whether an employee has been retaliated against for initiating, testifying in, or assisting in a proceeding under that law must be appealed to the Labor and Industry Review Commission (LIRC) prior to judicial review. This bill permits a determination by DWD on the issue of whether an employee has been denied any right provided under the family and medical leave law or has been retaliated against for opposing a practice prohibited under that law to be appealed to LIRC in the same manner as an appeal of a determination by DWD on the issue

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of whether an employee has been retaliated against for initiating, testifying in, or assisting in a proceeding under the family and medical leave law.

**Civil action for damages.** Under current law, an employee 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 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 employee or DWD reasonably should have known that the violation occurred.

This bill permits an employee or DWD to bring an action for damages on behalf of the employee, or on behalf of the employee and other employees similarly situated. The bill also permits an action to be commenced within 60 days after the completion of administrative proceedings or within two years after the date of the last event constituting the alleged violation or, if the violation was willful, within three years after that event, whichever is later. Finally, the bill specifies that the circuit court may award damages, plus costs and reasonable attorney fees, for a violation in the following amounts:

1. An amount equal to the amount of compensation that the employee lost because of the violation or, if the employee 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 or, in a case involving service member family leave, 26 weeks of wages or salary.

2. As liquidated damages, an amount equal to the damages awarded for lost compensation or other monetary loss, except that the court may reduce the amount of damages to the amount awarded for lost compensation or other monetary loss 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 law.

**Special provisions**

Finally, the bill makes special provisions for certain classes of employees. Specifically:

1. If a husband and wife both work for the same employer, the employer may limit their combined family leave for the birth or placement of a child or to care for a child, spouse, or parent to 12 weeks in a 12-month period and their combined service member family leave to 26 weeks in a 12-month period.

2. If a teacher requests intermittent leave or leave on a reduce-leave schedule that is foreseeable for planned medical treatment and would be on leave for greater than 20 percent of the working days during the leave, the educational agency employing the teacher (educational agency) may require the teacher to take leave for period of a particular duration or to transfer temporarily to an alternative employment position. An educational agency may also require a teacher to continue taking leave until the end of the semester under certain circumstances, depending on the duration of the leave and how close to the end of the semester the leave ends.

3. If an employee is among the highest-paid 10 percent of the employer's employees, if denying reinstatement of the employee is necessary to prevent

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substantial and grievous economic injury to the employer, and if the employer so notifies the employee at the time the employer determines that the injury will occur, the employer may deny reinstatement of the employee following leave, except that, if the employee receives that notice during the leave, the employee must agree not to return to employment with the employer.

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:*

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

2           **103.10** (title) **Family ~~or~~, medical, or service member family leave.**

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

4           103.10 (1) (a) (intro.) “Child” means a ~~natural~~ biological, adopted, or foster  
5 child, a stepchild, or a legal ward, or an individual for whom an employee stands in  
6 the place of a parent, to whom any of the following applies:

7           **SECTION 3.** 103.10 (1) (a) 2. of the statutes is amended to read:

8           103.10 (1) (a) 2. The individual is 18 years of age or older and ~~cannot care for~~  
9 ~~himself or herself~~ is incapable of self-care because of a ~~serious health condition~~  
10 mental or physical disability.

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

12           103.10 (1) (ap) “Covered active duty” means any of the following:

13           1. In the case of a member of a regular component of the U.S. armed forces, duty  
14 during the deployment of the member with the U.S. armed forces to a foreign country.

15           2. In the case of a member of a reserve component of the U.S. armed forces, duty  
16 during the deployment of the member with the U.S. armed forces to a foreign country

17 under a call or order to active duty under a provision of law specified in 10 USC 101

18 (a) (13) (B).



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1 SECTION 5. 103.10 (1) (aq) of the statutes is created to read:

2 103.10 (1) (aq) "Covered service member" means any of the following:

3 1. A member of the U.S. armed forces, including a member of the national guard  
4 or a reserve component of the U.S. armed forces, who is undergoing medical  
5 treatment, recuperation, or therapy, who is otherwise in outpatient status, or who  
6 is otherwise on the temporary disability retired list maintained under 10 USC 1376,  
7 for a serious injury or illness.

8 2. A veteran who is undergoing medical treatment, recuperation, or therapy,  
9 for a serious injury or illness and who was a member of the U.S. armed forces,  
10 including a member of the national guard or a reserve component of the U.S. armed  
11 forces, at any time during the 5 years preceding the date on which the veteran  
12 undergoes that medical treatment, recuperation, or therapy.

13 ~~SECTION 6. 103.10 (1) (ar) of the statutes is repealed.~~

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

15 103.10 (1) (b) "Employee" means an individual employed, or suffered or  
16 permitted to work, in this state by an employer, except other than the employer's  
17 parent, spouse, domestic partner, <sup>(plain)</sup> or child or an individual described in 29 USC 203  
18 (e) (2) (C) (i) and (ii), (4), or (5), as amended to August 7, 1998.

19 SECTION 8. 103.10 (1) (c) of the statutes is renumbered 103.10 (1) (c) (intro.) and  
20 amended to read:

21 103.10 (1) (c) (intro.) ~~Except as provided in sub. (14) (b), "employer"~~ "Employer"  
22 means a person engaging in any activity, enterprise, or business in this state  
23 employing at least 50 individuals on a permanent basis for each working day during  
24 each of 20 or more calendar weeks in the current or preceding year. "Employer"  
25 includes any person who acts, directly or indirectly, in the interest of an employer

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1 with respect to an employee and any successor in interest of an employer. "Employer"  
2 also includes the, without regard to the number of employees employed by the  
3 employer, all of the following:

4 1. The state and any office, department, independent agency, authority,  
5 institution, association, society, or other body in state government created or  
6 authorized to be created by the constitution or any law, including the legislature and  
7 the courts.

8 **SECTION 9.** 103.10 (1) (c) 2. of the statutes is created to read:

9 103.10 (1) (c) 2. A political subdivision of this state, a special purpose district  
10 in this state, an instrumentality or corporation of such a political subdivision or  
11 special purpose district, a combination or subunit of any of the foregoing or an  
12 instrumentality of the state and any of the foregoing.

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

14 103.10 (1) (d) "Employment benefit" means ~~an insurance, leave or retirement~~  
15 a benefit which that an employer makes available to an employee, including group  
16 life insurance, health insurance, disability insurance, sick leave, annual leave,  
17 educational benefits, and pensions, regardless of whether those benefits are  
18 provided by a practice or policy of the employer or through an employee benefit plan.

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

20 103.10 (1) (er) "Next of kin" means the closest blood relative of an individual.

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

22 103.10 (1) (et) "Outpatient status" means the status of a covered service  
23 member who is a member of the U.S. armed forces being assigned to a military  
24 medical treatment facility as an outpatient or to a unit established for the purpose

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1 of providing command and control of members of the U.S. armed forces receiving  
2 medical care as outpatients.

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

4 103.10 (1) (f) "Parent" means a ~~natural~~ biological parent, foster parent,

5 adoptive parent, stepparent, or legal guardian of an employee or of an employee's

6 spouse or domestic partner a person who stood in the place of a parent of the  
7 employee when the employee was a child.

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

9 103.10 (1) (fm) "Reduced-leave schedule" means a leave schedule that reduces  
10 the usual number of hours that an employee works per day or per week.

11 **SECTION 15.** 103.10 (1) (g) (intro.) of the statutes is amended to read:

12 103.10 (1) (g) (intro.) "Serious health condition" means ~~a disabling physical or~~  
13 ~~mental~~ an illness, injury, impairment, or physical or mental condition involving any  
14 of the following:

15 **SECTION 16.** 103.10 (1) (g) 2. of the statutes is amended to read:

16 103.10 (1) (g) 2. ~~Outpatient care that requires continuing~~ Continuing  
17 ~~treatment or supervision~~ by a health care provider.

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

19 103.10 (1) (gd) "Serious injury or illness" means any of the following:

20 1. In the case of a member of the U.S. armed forces, including a member of the  
21 national guard or a reserve component of the U.S. armed forces, an injury or illness  
22 that was incurred by the member in the line of duty while on active duty in the U.S.  
23 armed forces, or that existed before the beginning of the member's active duty and  
24 was aggravated by service in the line of duty while on active duty in the U.S. armed

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1 forces, and that may render the member medically unfit to perform the duties of the  
2 member's office, grade, rank, or rating.

3 2. In the case of a veteran who was a member of the U.S. armed forces, including  
4 a member of the national guard or a reserve component of the U.S. armed forces, at  
5 any time during the 5 years preceding the date on which the veteran undergoes  
6 medical treatment, recuperation, or therapy for an injury or illness that was incurred  
7 by the veteran in the line of duty while on active duty in the U.S. armed forces, or  
8 that existed before the beginning of the veteran's active duty and was aggravated by  
9 service in the line of duty while on active duty in the U.S. armed forces, a qualifying  
10 illness or injury, as determined by the department, that was so incurred or  
11 aggravated, whether the illness or injury manifested itself before or after the end of  
12 the veteran's active duty.

13 **SECTION 18.** 103.10 (1) (h) of the statutes is amended to read:

14 103.10 (1) (h) "Spouse" means an employee's legal husband or wife.

15 **SECTION 19.** 103.10 (1) (i) of the statutes is created to read:

16 103.10 (1) (i) "Veteran" has the meaning given in 38 USC 101 (2).

17 **SECTION 20.** 103.10 (2) (a) of the statutes is amended to read:

18 103.10 (2) (a) Nothing in this section prohibits an employer from providing  
19 employees with rights to family leave or, medical leave ~~which, or service member~~  
20 family leave that are more generous to the employee than the rights provided under  
21 this section.

22 **SECTION 21.** 103.10 (2) (am) of the statutes is created to read:

23 103.10 (2) (am) 1. Nothing in this section diminishes the obligation of an  
24 employer to comply with a collective bargaining agreement or employee benefit  
25 program or plan under which the employer provides employees with rights to family

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1 leave, medical leave, or service member family leave that are more generous to the  
2 employee than the rights provided under this section.

3 2. A collective bargaining agreement or employee benefit program or plan may  
4 not limit or diminish any rights to family leave, medical leave, or service member  
5 family leave provided under this section.

6 **SECTION 22.** 103.10 (2) (c) of the statutes is amended to read:

7 103.10 (2) (c) This section only applies to an employee who has been employed  
8 for at least 12 months by the same employer for more than 52 consecutive weeks from  
9 which leave under sub. (3) is requested and who worked for ~~the~~ that employer for at  
10 least ~~1,000~~ 1,250 hours during the preceding ~~52-week~~ 12-month period. This section  
11 does not apply to an employee who is employed at a worksite at which the employer  
12 employs less than 50 employees if the total number of employees employed by the  
13 employer within 75 miles of that worksite is less than 50.

14 **SECTION 23.** 103.10 (3) (title) of the statutes is repealed and recreated to read:

15 103.10 (3) (title) LEAVE REQUIREMENT.

16 **SECTION 24.** 103.10 (3) (a) 1. of the statutes is renumbered 103.10 (3) (a) (intro.)

17 and amended to read:

18 103.10 (3) (a) (intro.) In a 12-month period ~~no~~ an employee may take ~~more than~~  
19 6 12 weeks of family leave under ~~par. (b) 1. and 2.~~ for any one or more of the following  
20 reasons:

21 **SECTION 25.** 103.10 (3) (a) 2. of the statutes is repealed.

22 **SECTION 26.** 103.10 (3) (a) 3. of the statutes is repealed.

23 **SECTION 27.** 103.10 (3) (a) 5. of the statutes is created to read:

24 103.10 (3) (a) 5. Because of any qualifying exigency, as determined by the  
25 department by rule, arising out of the fact that the spouse, child, or parent of the

domestic partner ✓

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1 employee is on covered active duty or has been notified of an impending call or order  
2 to covered active duty.

domestic partner, ✓

3 SECTION 28. 103.10 (3) (am) of the statutes is created to read:

4 103.10 (3) (am) In a 12-month period an employee who is the spouse, child,  
5 parent, or next of kin of a covered service member may take 26 weeks of leave to care  
6 for the covered service member. Leave under this paragraph may be taken only  
7 during a single 12-month period. In a 12-month period in which leave is taken  
8 under this paragraph, an employee may take a combined total of 26 weeks of leave  
9 under this paragraph and par. (a). This paragraph does not limit the amount of leave  
10 that an employee may take under par. (a) in any other 12-month period.

11 SECTION 29. 103.10 (3) (b) (intro.) of the statutes is repealed.

12 SECTION 30. 103.10 (3) (b) 1. of the statutes is renumbered 103.10 (3) (a) 1m.  
13 and amended to read:

14 103.10 (3) (a) 1m. The Because of the birth of the employee's natural biological  
15 child, if the leave begins is taken to care for the child and the leave ends within 16  
16 weeks of 12 months after the child's birth.

17 SECTION 31. 103.10 (3) (b) 2. of the statutes is renumbered 103.10 (3) (a) 2m.  
18 and amended to read:

19 103.10 (3) (a) 2m. The Because of the placement of a child with the employee  
20 for adoption or as a precondition to adoption under s. 48.90 (2), but not both, or for  
21 foster care, if the leave begins ends within 16 weeks of 12 months after the child's  
22 placement.

23 Fix component → SECTION 32. 103.10 (3) (b) 3. of the statutes is renumbered 103.10 (3) (a) 3m.

24 and amended to read

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1 ~~103.10 (3) (a) 3m. To care for the employee's child, spouse, domestic partner,~~  
2 ~~or parent, if the child, spouse, domestic partner, or parent has a serious health~~  
3 ~~condition.~~

4 **SECTION 33.** 103.10 (3) (c) of the statutes is repealed.

5 **SECTION 34.** 103.10 (3) (cm) of the statutes is created to read:

6 103.10 (3) (cm) 1. If a husband and wife are entitled to leave under par. (a) and  
7 are employed by the same employer, the employer may limit the aggregate number  
8 of weeks of leave that the husband and wife may take for the birth or placement of  
9 a child under par. (a) 1m. or 2m. or to care for a parent who has a serious health  
10 condition under par. (a) 3m. to 12 weeks during any 12-month period.

11 2. If a husband and wife are entitled to leave under par. (am) and are employed  
12 by the same employer, the employer may limit the aggregate number of weeks of  
13 leave that the husband and wife may take under par. (am), or under par. (am) and  
14 under par. (a) for the reasons specified in subd. 1. combined, to 26 weeks during the  
15 12-month period in which the leave under par. (am) is taken. If the leave taken by  
16 a husband and wife includes leave under par. (a) for the reasons specified in subd.  
17 1., the limitation under subd. 1. applies to that leave.

18 **SECTION 35.** 103.10 (3) (d) of the statutes is repealed.

19 **SECTION 36.** 103.10 (3) (dm) of the statutes is created to read:

20 103.10 (3) (dm) 1. An employee may not take leave under par. (a) 1m. or 2m.  
21 intermittently or on a reduced-leave schedule unless agreed to by the employer.  
22 Subject to subd. 2. and subs. (6) (b) and (7) (b) 5. or 7., whichever is applicable, an  
23 employee may take leave under par. (a) 3m. or 4. or (am) intermittently or on a  
24 reduced-leave schedule when medically necessary. Subject to sub. (6) (c) and (7) (f),  
25 an employee may take leave under par. (a) 5. intermittently or on a reduced-leave

**BILL**

1 schedule. If an employee takes leave intermittently or on a reduced-leave schedule,  
2 the employee's employer may not reduce the amount of leave under par. (a) to which  
3 the employee is entitled by an amount that is beyond the amount of leave actually  
4 taken.

5 2. If an employee requests intermittent leave or leave on a reduced-work  
6 schedule under par. (a) 3m. or 4. or (am) that is foreseeable for planned medical  
7 treatment, the employer may require the employee to transfer temporarily to an  
8 alternative position offered by the employer for which the employee is qualified if  
9 that alternative position has equivalent pay and employment benefits and if that  
10 alternative position accommodates intermittent periods of leave or leave on a  
11 reduced-leave schedule better than the employee's regular position does.

12 **SECTION 37.** 103.10 (4) (title) of the statutes is repealed.

13 **SECTION 38.** 103.10 (4) (a) of the statutes is renumbered 103.10 (3) (a) 4. and  
14 amended to read:

15 103.10 (3) (a) 4. ~~Subject to pars. (b) and (c), an employee who has~~ Because of  
16 a serious health condition ~~which~~ that makes the employee unable to perform ~~his or~~  
17 ~~her employment duties may take medical leave for the period during which he or she~~  
18 ~~is unable to perform those duties~~ the functions of the employee's position.

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

20 **SECTION 40.** 103.10 (4) (c) of the statutes is repealed.

21 **SECTION 41.** 103.10 (5) (a) of the statutes is amended to read:

22 103.10 (5) (a) ~~This~~ Except as provided in pars. (b) to (d), this section does not  
23 entitle an employee to receive wages or salary while taking ~~family leave or medical~~  
24 leave under sub. (3) (a) or (am).

25 **SECTION 42.** 103.10 (5) (b) of the statutes is amended to read:



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1           103.10 (5) (b) An employee may elect, or an employer may require an employee,  
2 to substitute, for portions of family leave or medical leave, paid or unpaid leave of any  
3 other type for any part of the leave provided under sub. (3) (a) 1m., 2m., 3m., or 5.,  
4 any paid vacation leave, paid personal leave, or paid family leave provided by the  
5 employer that the employee has accrued.

6           **SECTION 43.** 103.10 (5) (c) of the statutes is created to read:

7           103.10 (5) (c) An employee may elect, or an employer may require an employee,  
8 to substitute, for any part of the leave provided under sub. (3) (a) 3m. or 4., any paid  
9 vacation leave, paid personal leave, or paid sick leave provided by the employer that  
10 the employee has accrued, except that an employer is not required to provide paid  
11 sick leave in any situation in which the employer would not normally provide paid  
12 sick leave.

13           **SECTION 44.** 103.10 (5) (d) of the statutes is created to read:

14           103.10 (5) (d) An employee may elect, or an employer may require an employee,  
15 to substitute, for any part of the leave provided under sub. (3) (am), any paid vacation  
16 leave, paid personal leave, paid family leave, or paid sick leave provided by the  
17 employer that the employee has accrued, except that an employer is not required to  
18 provide paid sick leave in any situation in which the employer would not normally  
19 provide paid sick leave.

20           **SECTION 45.** 103.10 (6) (a) of the statutes is amended to read:

21           103.10 (6) (a) If an employee intends to take family leave ~~for the reasons in~~  
22 under sub. (3) (b) 1. or 2. (a) 1m. or 2m. that is foreseeable because of the expected  
23 birth or placement of a child, the employee shall, in a reasonable and practicable  
24 manner, give the employer advance notice of the expected birth or placement  
25 employee's intention to take that leave not less than 30 days before the date on which

## BILL

## SECTION 45

1 the leave is to begin, except that, if the date of the birth or placement requires the  
2 leave to begin in less than 30 days, the employee shall provide that notice to the  
3 employer in a reasonable and practicable manner.

4 **SECTION 46.** 103.10 (6) (b) (intro.) of the statutes is amended to read:

5 103.10 (6) (b) (intro.) If an employee intends to take family leave under sub.  
6 (3) (a) 3m. or 4. or (am) that is foreseeable because of the planned medical treatment  
7 or supervision of the employee or of a child, spouse, domestic partner, <sup>plam</sup> or parent, or  
8 intends to take medical leave because of the planned medical treatment or  
9 supervision covered service member of the employee, the employee shall do all of the  
10 following:

11 **SECTION 47.** 103.10 (6) (b) 1. of the statutes is amended to read:

12 103.10 (6) (b) 1. Make a reasonable effort to schedule the medical treatment  
13 or supervision so that it does not unduly disrupt the employer's operations, subject  
14 to the approval of the health care provider of the child, spouse, domestic partner, <sup>plam</sup>  
15 parent, covered service member, or employee.

16 **SECTION 48.** 103.10 (6) (b) 2. of the statutes is amended to read:

17 103.10 (6) (b) 2. Give the employer advance notice of the medical treatment or  
18 supervision employee's intention to take that leave not less than 30 days before the  
19 leave is to begin, except that, if the date of the treatment requires the leave to begin  
20 in less than 30 days, the employee shall provide that notice to the employer in a  
21 reasonable and practicable manner. ✓

22 **SECTION 49.** 103.10 (6) (c) of the statutes is created to read:

23 103.10 (6) (c) If the employee intends to take leave under sub. (3) (a) 5., that  
24 is foreseeable because the spouse, child, or parent of the employee is on covered active  
25 duty or has been notified of an impending call or order to covered active duty, the

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1 employee shall provide notice of that intention to the employer in a reasonable and  
2 practicable manner.

3 **SECTION 50.** 103.10 (7) (a) of the statutes is amended to read:

4 103.10 (7) (a) If an employee requests family leave for a reason described in  
5 under sub. (3) (b) 3. or requests medical leave (a) 3m. or 4. or (am), the employer may  
6 require the employee to provide certification, as described in par. (b), issued by the  
7 health care provider or Christian Science practitioner of the child, spouse, domestic  
8 partner, parent, covered service member, or employee, whichever is appropriate, and  
9 the employee shall provide a copy of that certification to the employer in a timely  
10 manner.

Plan (7) → (8) → domestic partner, ✓

11 **SECTION 51.** 103.10 (7) (b) 3m. of the statutes is created to read:

12 103.10 (7) (b) 3m. If the employee requests leave under sub. (3) (a) 3m., a  
13 statement that the employee is needed to care for a child, spouse, or parent who has  
14 a serious health condition and an estimate of the amount of time that the employee  
15 is needed to care for the child, spouse, or parent.

16 **SECTION 52.** 103.10 (7) (b) 4. of the statutes is amended to read:

17 103.10 (7) (b) 4. If the employee requests medical leave, ~~an explanation of the~~  
18 ~~extent to which~~ under sub. (3) (a) 4., a statement that the employee is unable to  
19 perform his or her employment duties the functions of the employee's position.

20 **SECTION 53.** 103.10 (7) (b) 5. of the statutes is created to read:

21 103.10 (7) (b) 5. If the employee requests intermittent leave or leave on a  
22 reduced-leave schedule under sub. (3) (a) 3m. or 4. for planned medical treatment,  
23 the dates on which that treatment is expected to be given and the duration of that  
24 treatment.

25 **SECTION 54.** 103.10 (7) (b) 6. of the statutes is created to read:

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domestic partner, ✓

1 103.10 (7) (b) 6. If the employee requests intermittent leave or leave on a  
 2 reduced-leave schedule under sub. (3) (a) 3m., a statement that the intermittent  
 3 leave or leave on a reduced-leave schedule is necessary for the care of a child, spouse,  
 4 or parent who has a serious health condition or will assist in the recovery of the child,  
 5 spouse, or parent, and the expected duration and schedule of the intermittent leave  
 6 or leave on a reduced-leave schedule.

**SECTION 55.** 103.10 (7) (b) 7. of the statutes is created to read:

8 103.10 (7) (b) 7. If the employee requests intermittent leave or leave on a  
 9 reduced-leave schedule under sub. (3) (a) 4., a statement of the medical necessity for  
 10 the intermittent leave or leave on a reduced-leave schedule, and the expected  
 11 duration of the intermittent leave or leave on a reduced-leave schedule.

**SECTION 56.** 103.10 (7) (c) of the statutes is amended to read:

13 103.10 (7) (c) The If the employer has reason to doubt the validity of a  
 14 certification provided under par. (a) for leave under sub. (3) (a) 3m. or 4., the employer  
 15 may require the employee to obtain the opinion of a 2nd health care provider, chosen  
 16 or Christian Science practitioner, designated or approved and paid for by the  
 17 employer, concerning any information certified under par. (b). A health care provider  
 18 or Christian Science practitioner designated or approved under this paragraph may  
 19 not be employed on a regular basis by the employer.

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

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

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1 employee shall accept the 3rd opinion obtained under this paragraph as final and  
2 binding upon them.

3 **SECTION 58.** 103.10 (7) (e) of the statutes is created to read:

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

6 **SECTION 59.** 103.10 (7) (f) of the statutes is created to read:

7 103.10 (7) (f) If an employee requests leave under sub. (3) (a) 5., the employer  
8 may require the employee to provide certification that the spouse, child, or parent  
9 of the employee is on covered active duty or has been notified of an impending call  
10 or order to covered active duty issued at such time and in such manner as the  
11 department may prescribe by rule, and the employee shall provide a copy of that  
12 certification to the employer in a timely manner.

13 **SECTION 60.** 103.10 (8) (a) (intro.) of the statutes is amended to read:

14 103.10 (8) (a) (intro.) ~~Subject to~~ Except as provided in par. (e) (e), when an  
15 employee returns from family leave or medical leave who takes leave under sub. (3)  
16 (a) or (am) for the purpose for which that leave is intended returns from that leave,  
17 his or her employer shall immediately place the employee in an employment position  
18 as follows:

19 **SECTION 61.** 103.10 (8) (a) 1. of the statutes is amended to read:

20 103.10 (8) (a) 1. ~~If~~ In the employment position ~~which~~ that the employee held  
21 ~~immediately before~~ when the family leave or medical leave began ~~is vacant when the~~  
22 ~~employee returns, in that position.~~

23 **SECTION 62.** 103.10 (8) (a) 2. of the statutes is amended to read:

24 103.10 (8) (a) 2. ~~If the employment position which the employee held~~  
25 ~~immediately before the family leave or medical leave began is not vacant when the~~

**BILL**

1 ~~employee returns, in~~ In an equivalent employment position having equivalent  
2 compensation, employment benefits, ~~working shift, hours of employment~~ and other  
3 terms and conditions of employment.

4 **SECTION 63.** 103.10 (8) (b) of the statutes is amended to read:

5 103.10 (8) (b) No employer may, because an employee received ~~family leave or~~  
6 ~~medical leave~~ under sub. (3) (a) or (am), reduce or deny an employment benefit ~~which~~  
7 ~~that~~ accrued to the employee before ~~his or her~~ the leave began ~~or, consistent with sub.~~  
8 ~~(9), accrued after his or her leave began.~~

9 **SECTION 64.** 103.10 (8) (c) of the statutes is repealed.

10 **SECTION 65.** 103.10 (8) (d) of the statutes is created to read:

11 103.10 (8) (d) An employer may require an employee who is on leave under sub.  
12 (3) (a) or (am) to report periodically to the employer on the employee's status and  
13 intention of returning to work.

14 **SECTION 66.** 103.10 (8) (e) of the statutes is created to read:

15 103.10 (8) (e) Subject to any collective bargaining agreement that governs the  
16 return to work of an employee who has taken leave under sub. (3) (a) 4., an employer  
17 may adopt a uniformly applied practice or policy that requires an employee who is  
18 returning from leave under sub. (3) (a) 4. to obtain a certification from the employee's  
19 health care provider or Christian Science practitioner that the employee is able to  
20 return to work.

21 **SECTION 67.** 103.10 (8) (f) of the statutes is created to read:

22 103.10 (8) (f) An employer may deny placement in an employment position  
23 described in par. (a) 1. and 2. to an employee who returns from leave under sub. (3)  
24 (a) or (am) if all of the following apply:

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1           1. The employee is a salaried employee who before the leave was among the  
2 highest-paid 10 percent of the employees employed by the employer within 75 miles  
3 of the worksite at which the employee is employed.

4           2. That denial is necessary to prevent substantial and grievous economic injury  
5 to the operations of the employer.

6           3. The employer notifies the employee of the employer's intent to deny that  
7 placement based on the conditions specified in subds. 1. and 2. at the time the  
8 employer determines that the injury described in subd. 2. would occur.

9           4. In the case of an employee who receives the notice under subd. 3. after the  
10 leave has begun, the employee elects not to return to employment with the employer.

11           **SECTION 68.** 103.10 (9) (a) of the statutes is amended to read:

12           103.10 (9) (a) Except as provided in par. (b), nothing in this section entitles ~~a~~  
13 ~~returning~~ an employee to a right, employment benefit, or employment position to  
14 which the employee would not have been entitled had he or she not taken family  
15 ~~leave or medical leave~~ under sub. (3) (a) or (am) or to the accrual of any seniority or  
16 employment benefit during a period of ~~family leave or medical~~ such leave.

17           **SECTION 69.** 103.10 (9) (b) of the statutes is amended to read:

18           103.10 (9) (b) Subject to par. (c), during a period that an employee takes family  
19 ~~leave or medical leave~~ under sub. (3) (a) or (am), his or her employer shall maintain  
20 group health insurance coverage at the level and under the conditions that ~~applied~~  
21 ~~immediately before the family leave or medical leave began.~~ If the employee  
22 ~~continues making any contribution required for participation in the group health~~  
23 ~~insurance plan, the employer shall continue making group health insurance~~  
24 ~~premium contributions as if the employee had not taken the family leave or medical~~

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1 the employer would have provided coverage if the employee had continued in  
2 employment continuously during that leave.

3 **SECTION 70.** 103.10 (9) (c) of the statutes is repealed and recreated to read:

4 103.10 (9) (c) An employer may recover from an employee the premium paid  
5 by the employer to maintain group health insurance coverage for the employee  
6 during a period of unpaid leave under sub. (3) (a) or (am) if the employee fails to  
7 return from that leave after the period of leave to which the employee is entitled has  
8 expired for a reason other than the continuation, recurrence, or onset of a serious  
9 health condition that entitles the employee to leave under sub. (3) (a) 3m. or 4. or of  
10 a serious injury or illness that entitles the employee to leave under sub. (3) (am) or  
11 other circumstances beyond the control of the employee.

12 **SECTION 71.** 103.10 (9) (d) of the statutes is repealed and recreated to read:

13 103.10 (9) (d) If an employee claims that he or she is unable to return to work  
14 because of the continuation, recurrence, or onset of a serious health condition or  
15 serious injury or illness as described in par. (c), the employer may require the  
16 employee to provide in a timely manner one of the following:

17 1. Certification issued by the health care provider or Christian Science  
18 practitioner of the child, spouse, or parent being cared for by the employee that the  
19 employee was needed to care for that child, spouse, or parent on the day on which the  
20 employee's leave under sub. (3) (a) 3m. expired.

21 2. Certification issued by the health care provider or Christian Science  
22 practitioner of the employee that a serious health condition prevented the employee  
23 from being able to perform the functions of the employee's position on the day on  
24 which the employee's leave under sub. (3) (a) 4. expired.

domestic partner, ✓



**BILL**

1           3. Certification issued by the health care provider or Christian Science  
2 practitioner of the covered service member being cared for by the employee that the  
3 employee was needed to care for that covered service member on the day on which  
4 the employee's leave under sub. (3) (am) expired.

5           **SECTION 72.** 103.10 (10) of the statutes is repealed and recreated to read:

6           103.10 (10) INSTRUCTIONAL EMPLOYEES. (a) In this subsection, "educational  
7 agency" means a local educational agency, as defined in 20 USC 7801 (26), or a  
8 private elementary or secondary school.

9           (b) If an employee who is employed principally in an instructional capacity by  
10 an educational agency requests intermittent leave or leave on a reduced-leave  
11 schedule under sub. (3) (a) 3m. or 4. or (am) that is foreseeable for planned medical  
12 treatment, complies with the requirements under sub. (6) (b) and would be on leave  
13 for greater than 20 percent of the total number of working days during the period in  
14 which the leave would extend, the educational agency may require that employee to  
15 elect to do one of the following:

16           1. To take leave for periods of a particular duration, not to exceed the duration  
17 of the planned medical treatment.

18           2. To transfer temporarily to an alternative employment position offered by the  
19 educational agency for which the employee is qualified if that alternative position  
20 has equivalent pay and employment benefits and if that alternative position  
21 accommodates intermittent periods of leave or leave on a reduced-leave schedule  
22 better than the employee's regular position does.

23           (c) 1. If an employee who is employed principally in an instructional capacity  
24 by an educational agency begins leave under sub. (3) (a) or (am) more than 5 weeks  
25 before the end of a semester, the educational agency may require the employee to

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1 continue taking leave until the end of the semester if the leave is for at least 3 weeks  
2 in duration and the return to employment would occur during the 3 weeks before the  
3 end of the semester.

4 2. Subject to subd. 3., if an employee who is employed principally in an  
5 instructional capacity by an educational agency begins leave under sub. (3) (a) 1m.,  
6 2m., or 3m. or (am) during the period that begins 5 weeks before the end of a semester,  
7 the educational agency may require the employee to continue taking leave until the  
8 end of the semester if the leave is for more than 2 weeks in duration and the return  
9 to employment would occur during the 2 weeks before the end of the semester.

10 3. If an employee who is employed principally in an instructional capacity by  
11 an educational agency begins leave under sub. (3) (a) 1m., 2m., or 3m. or (am) during  
12 the period that begins 3 weeks before the end of a semester and the leave is for more  
13 than 5 working days, the educational agency may require the employee to continue  
14 taking leave until the end of the semester.

15 (d) An educational agency shall determine what is an equivalent employment  
16 position under sub. (8) (a) 2. based on policies and practices established by the  
17 educational agency and on any applicable collective bargaining agreement to which  
18 the educational agency is a party.

19 **SECTION 73.** 103.10 (11) (c) of the statutes is repealed and recreated to read:

20 103.10 (11) (c) 1. No person may discharge or in any manner discriminate  
21 against any individual for filing a complaint or attempting to enforce any right under  
22 this section or for testifying or assisting in any action or proceeding to enforce any  
23 right under this section.

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

4           **SECTION 74.** 103.10 (12) (b) of the statutes is amended to read:

5           103.10 **(12)** (b) An employee who believes his or her employer has violated sub.  
6 (11) ~~(a) or (b)~~ may, ~~within 30 days after the violation occurs or the employee should~~  
7 ~~reasonably have known that the violation occurred, whichever is later,~~ on his or her  
8 own behalf and on behalf of other employees similarly situated, file a complaint with  
9 the department alleging the violation. A complaint under this paragraph may be  
10 filed no later than 2 years after the date of the last event constituting the alleged  
11 violation for which the complaint is brought, unless the violation is alleged to be  
12 willful, in which case the complaint may be filed no later than 3 years after the date  
13 of the last event constituting the alleged violation. Except as provided in s. 230.45  
14 (1m), the department shall investigate the complaint and shall attempt to resolve the  
15 complaint by conference, conciliation, or persuasion. If the complaint is not resolved  
16 and the department finds probable cause to believe a violation has occurred, the  
17 department shall proceed with notice and a hearing on the complaint as provided in  
18 ch. 227. The hearing shall be held within 60 days after the department receives the  
19 complaint.

20           **SECTION 75.** 103.10 (12) (c) of the statutes is repealed.

21           **SECTION 76.** 103.10 (12) (d) of the statutes is amended to read:

22           103.10 **(12)** (d) The department shall issue its decision and order within 30 days  
23 after the hearing. If the department finds that an employer violated sub. (11) ~~(a) or~~  
24 ~~(b)~~, it may order the employer to take action to remedy the violation, including  
25 providing the requested family leave or medical leave, reinstating an employee,

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1 ~~promoting an employee, providing back pay accrued not more than 2 years before the~~  
2 ~~complaint was filed~~ and paying reasonable actual attorney fees to the complainant.

3 **SECTION 77.** 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 78.** 103.10 (12) (f) of the statutes is created to read:

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

18 **SECTION 79.** 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.

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1           **SECTION 80.** 103.10 (13) (a) of the statutes is amended to read:

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

7           **SECTION 81.** 103.10 (13) (b) 2. of the statutes is repealed and recreated to read:

8           103.10 (13) (b) 2. Within 2 years after the date of the last event constituting  
9 the alleged violation, unless the violation is alleged to be willful, in which case the  
10 action must be brought no later than 3 years after the date of the last event  
11 constituting the alleged violation.

12           **SECTION 82.** 103.10 (13) (c) of the statutes is created to read:

13           103.10 (13) (c) If a circuit court finds that an employer has violated sub. (11),  
14 it may order the employer to pay to the affected employee all of the following:

15           1. Damages equal to the amount of any wages, salary, employment benefits, or  
16 other compensation that was denied to or lost by the employee because of the  
17 violation or, if the employee has not lost or been denied any wages, salary,  
18 employment benefits, or other compensation, any actual monetary losses sustained  
19 by the employee as a direct result of the violation up to a sum equal to 12 weeks or,  
20 in a case involving leave under sub. (3) (am), 26 weeks of wages or salary for the  
21 employee, plus interest on the amount of those damages.

22           2. As liquidated damages, an amount equal to the damages and interest  
23 described in subd. 1., except that the court may reduce the amount of damages and  
24 interest for which the employer is liable to the amount described in subd. 1. if the  
25 employer shows that the act or omission that was in violation of sub. (11) was in good

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1 faith and that the employer had reasonable grounds to believe that the act or  
2 omission was not a violation of sub. (11).

3 3. Costs and, notwithstanding s. 814.04 (1), reasonable actual attorney fees.

4 **SECTION 83.** 103.10 (14) (a) of the statutes is renumbered 103.10 (14) and  
5 amended to read:

6 103.10 (14) NOTICE POSTED. Each employer shall post, in ~~one or more~~  
7 conspicuous places on the employer's premises where notices to employees and  
8 applicants for employment are customarily posted, a notice in a form prepared or  
9 approved by the department setting forth employees' rights under this section  
10 excerpts from, or summaries of, the pertinent provisions of this section and  
11 information relating to the filing of a complaint under sub. (12). Any employer who  
12 willfully violates this subsection shall forfeit not more than \$100 for each offense.

13 **SECTION 84.** 103.10 (14) (b) of the statutes is repealed.

14 **SECTION 85.** 103.10 (15) of the statutes is created to read:

15 103.10 (15) LOCAL ORDINANCES. A county, city, village, or town may enact an  
16 ordinance that provides employees with rights to family, medical, or service member  
17 family leave that are more generous to the employee than the rights provided under  
18 this section.

19 **SECTION 86.** 103.10 (16) of the statutes is created to read:

20 103.10 (16) RULES. The department shall promulgate rules to implement this  
21 section. Those rules shall substantially conform to 29 CFR 825.

22 **SECTION 87.** 111.322 (2m) (a) of the statutes is amended to read:

23 111.322 (2m) (a) The individual files a complaint or attempts to enforce any  
24 right under s. 103.02, ~~103.10~~, 103.13, 103.28, 103.32, 103.34, 103.455, 103.50,

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1 104.12, 106.04, 109.03, 109.07, 109.075, or 146.997 or ss. 101.58 to 101.599 or 103.64  
2 to 103.82.

3 **SECTION 88.** 111.322 (2m) (b) of the statutes is amended to read:

4 111.322 (2m) (b) The individual testifies or assists in any action or proceeding  
5 held under or to enforce any right under s. 103.02, ~~103.10~~, 103.13, 103.28, 103.32,  
6 103.34, 103.455, 103.50, 104.12, 106.04, 109.03, 109.07, 109.075, or 146.997 or ss.  
7 101.58 to 101.599 or 103.64 to 103.82.

8 **SECTION 89.** 111.91 (2) (f) of the statutes is amended to read:

9 111.91 (2) (f) Family leave and, medical, and service member family leave  
10 rights below the minimum afforded under s. 103.10. Nothing in this paragraph  
11 prohibits the employer from bargaining on rights to family leave ~~or, medical, or~~  
12 service member family leave ~~which that~~ are more generous to the employee than the  
13 rights provided under s. 103.10.

14 **SECTION 90.** 111.998 (2) (c) of the statutes is amended to read:

15 111.998 (2) (c) Family leave and, medical, and service member family leave  
16 rights below the minimum afforded under s. 103.10. Nothing in this paragraph  
17 prohibits the board from bargaining on rights to family leave ~~or, medical, or service~~  
18 member family leave ~~which that~~ are more generous to the employee than the rights  
19 provided under s. 103.10.

20 **SECTION 91.** 230.35 (2m) of the statutes is amended to read:

21 230.35 (2m) An employee 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 employee. An employee shall  
24 be eligible for service member family leave under s. 103.10 upon the expiration,

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1 extension, or renewal of any collective bargaining agreement in effect on the effective  
2 date of this subsection .... [LRB inserts date].

3 **SECTION 92.** 252.17 (3) (i) of the statutes is repealed.

4 **SECTION 93.** 252.17 (4) (a) of the statutes is amended to read:

5 252.17 (4) (a) Except as provided in pars. (b), ~~(e)~~, and (d), if an individual  
6 satisfies sub. (3), the department shall pay the amount of each premium payment for  
7 coverage under the group health plan under sub. (3) (d) that is due from the  
8 individual on or after the date on which the individual becomes eligible for a subsidy  
9 under sub. (3). The department may not refuse to pay the full amount of the  
10 individual's contribution to each premium payment because the coverage that is  
11 provided to the individual who satisfies sub. (3) includes coverage of the individual's  
12 spouse or domestic partner under ch. 770 and dependents. Except as provided in par.  
13 (b), the department shall terminate the payments under this section when the  
14 individual's unpaid medical leave ends, when the individual no longer satisfies sub.  
15 (3) or upon the expiration of 29 months after the unpaid medical leave began,  
16 whichever occurs first.

17 **SECTION 94.** 252.17 (4) (c) of the statutes is repealed.

18 **SECTION 95.** 253.10 (3) (d) 1. of the statutes is amended to read:

19 253.10 (3) (d) 1. Geographically indexed materials that are designed to inform  
20 a woman about public and private agencies, including adoption agencies, and  
21 services that are available to provide information on family planning, as defined in  
22 s. 253.07 (1) (a), including natural family planning information, to provide  
23 ultrasound imaging services, to assist her if she has received a diagnosis that her  
24 unborn child has a disability or if her pregnancy is the result of sexual assault or  
25 incest and to assist her through pregnancy, upon childbirth and while the child is



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1 dependent. The materials shall include a comprehensive list of the agencies  
2 available, a description of the services that they offer and a description of the manner  
3 in which they may be contacted, including telephone numbers and addresses, or, at  
4 the option of the department, the materials shall include a toll-free, 24-hour  
5 telephone number that may be called to obtain an oral listing of available agencies  
6 and services in the locality of the caller and a description of the services that the  
7 agencies offer and the manner in which they may be contacted. The materials shall  
8 provide information on the availability of governmentally funded programs that  
9 serve pregnant women and children. Services identified for the woman shall include  
10 medical assistance for pregnant women and children under s. 49.47 (4) (am) and  
11 49.471, the availability of family ~~or~~, medical, or service member family leave under  
12 s. 103.10, the Wisconsin works program under ss. 49.141 to 49.161, child care  
13 services, child support laws and programs and the credit for expenses for household  
14 and dependent care and services necessary for gainful employment under section 21  
15 of the internal revenue code. The materials shall state that it is unlawful to perform  
16 an abortion for which consent has been coerced, that any physician who performs or  
17 induces an abortion without obtaining the woman's voluntary and informed consent  
18 is liable to her for damages in a civil action and is subject to a civil penalty, that the  
19 father of a child is liable for assistance in the support of the child, even in instances  
20 in which the father has offered to pay for an abortion, and that adoptive parents may  
21 pay the costs of prenatal care, childbirth and neonatal care. The materials shall  
22 include information, for a woman whose pregnancy is the result of sexual assault or  
23 incest, on legal protections available to the woman and her child if she wishes to  
24 oppose establishment of paternity or to terminate the father's parental rights. The  
25 materials shall state that fetal ultrasound imaging and auscultation of fetal heart

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1 tone services are obtainable by pregnant women who wish to use them and shall  
2 describe the services.

3 **SECTION 96.** 632.897 (6) of the statutes is amended to read:

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

10 **SECTION 97.** 893.96 (title) of the statutes is amended to read:

11 **893.96 (title) Family leave and, medical, and service member family**  
12 **leave; civil remedies.**

13 **SECTION 98. Initial applicability.**

14 (1) FAMILY, MEDICAL, AND SERVICE MEMBER FAMILY LEAVE. This act first applies to  
15 an employee who is affected by a collective bargaining agreement that contains  
16 provisions inconsistent with this act on the day on which the collective bargaining  
17 agreement expires or is extended, modified, or renewed, whichever occurs first.

18 **SECTION 99. Effective date.**

19 (1) FAMILY, MEDICAL, AND SERVICE MEMBER FAMILY LEAVE. This act takes effect on  
20 the first day of the 6th month beginning after publication.

21 (END)

**Basford, Sarah**

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**From:** Baxter, Tara  
**Sent:** Thursday, January 20, 2011 2:02 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 11-0678/2 Topic: Family and medical leave; federalize family and medical leave law

Please Jacket LRB 11-0678/2 for the SENATE.