General Assembly

February Session, 2002

Raised Bill No. 5058

LCO No. **495**

Referred to Committee on Labor and Public Employees

Introduced by:
(LAB)

AN ACT CONCERNING THE USE OF ACCUMULATED SICK LEAVE FOR FAMILY AND MEDICAL LEAVE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (a) of section 5-247 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2002*):

(a) Each appointing authority shall grant **[**, on account of illness or injury,**]** to each full-time employee in a permanent position in the state service who has furnished satisfactory proof of **[**such**]** (1) illness or injury to the employee or to a child, spouse or parent of the employee, or (2) the birth or adoption of a child of the employee, such sick leave with pay as has accrued to **[**his**]** the employee's credit at the rate of one and one-quarter working days for each completed calendar month of continuous full-time service which may be computed on an hourly basis. Hourly computation of sick leave shall not diminish benefit entitlement. **[**On or before October 1, 1980, the**]** The Commissioner of Administrative Services shall adopt regulations, in accordance with chapter 54, concerning the accrual, prorating and granting of sick leave with pay to other employees in the state service and extending sick

leave with pay or with part pay for longer periods to full-time permanent employees disabled through illness or injury. Such regulations shall specify that (A) such other employees are entitled to use any accumulated sick leave upon the birth or adoption of a child of such employee, or upon the illness or injury of a child, spouse or parent of such employee, and (B) the use of such leave shall not exceed the maximum number of weeks allowed for a leave of absence under section 5-248a. Each such employee who retires under the provisions of chapter 66 shall be compensated, effective as of the date of **[**his**]** retirement, at the rate of one-fourth of such employee's salary for sick leave accrued to **[**his**]** such employee's credit as of **[**his**]** such employee's last day on the active payroll up to a maximum payment equivalent to sixty days' pay. Such payment for accumulated sick leave shall not be included in computing retirement income and shall be charged by the State Comptroller to the department, agency or institution in which the employee worked.

Sec. 2. Subdivision (2) of subsection (e) of section 31-51ll of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2002*):

(2) (A) An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, medical or sick leave or family leave of the employee for leave provided under subdivision (1), (2) or (3) of subsection (a) of this section for any part of this sixteen-week period of such leave under said subsection.

(B) An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for leave provided under subdivision (3) or (4) of subsection (a) of this section for any part of the sixteen-week period of such leave under said subsection. **[**, except that nothing in section 5-248a or 31-51kk to 31-51qq, inclusive, shall require an employer to provide paid sick leave or

49 paid medical leave in any situation in which such employer would not
50 normally provide any such paid leave.**]**

51 Sec. 3. (NEW) (*Effective July 1, 2002*) (a) For purposes of this section:

52 (1) "Employee" means any person engaged in service to an employer
53 in the business of the employer;

54 (2) "Employer" means a person engaged in any activity, enterprise
55 or business who employs seventy-five or more employees, including
56 the state and any of its political subdivisions, and includes any person
57 who acts, directly or indirectly, in the interest of an employer to any of
58 the employees of such employer and any successor in interest of an
59 employer;

60 (3) "Child" means a biological, adopted or foster child, stepchild,
61 legal ward, or child of a person standing in loco parentis, who is (A)
62 under eighteen years of age; or (B) eighteen years of age or older and
63 incapable of self-care because of a mental or physical disability;

64 (4) "Parent" means a biological parent, foster parent, adoptive
65 parent, stepparent or legal guardian of an eligible employee or an
66 eligible employee's spouse, or an individual who stood in loco parentis
67 to an employee when the employee was a child; and

68 (5) "Sick leave" means accrued increments of compensated leave
69 provided by an employer to an employee as a benefit of the
70 employment for use by the employee during an absence from the
71 employment for any of the following reasons: (A) The employee is
72 physically or mentally unable to perform the employee's duties due to
73 illness, injury, or a medical condition of the employee; (B) the absence
74 is for the purpose of obtaining professional diagnosis or treatment for
75 a medical condition of the employee; or (C) the absence is for other
76 medical reasons of the employee, such as pregnancy or obtaining a
77 physical examination. "Sick leave" does not include any benefit
78 provided under an employee welfare benefit plan subject to the federal

79 Employee Retirement Income Security Act of 1974, P.L. 93-406, as from
80 time to time amended, and does not include any insurance benefit,
81 workers' compensation benefit, unemployment compensation benefit,
82 disability benefit, or any other benefit not payable from the employer's
83 general assets.

84 (b) No employer shall deny an employee the right to use sick leave
85 or discharge, threaten to discharge, demote, suspend, or in any manner
86 discriminate against an employee for using, or attempting to exercise
87 the right to use, sick leave to attend to an illness of a child, spouse or
88 parent of the employee, or for the birth or adoption of a child of the
89 employee.

90 (c) (1) Any employee aggrieved by a violation of this section may
91 file a complaint with the Labor Commissioner alleging violation of the
92 provisions of this section. Upon receipt of any such complaint, the
93 commissioner shall hold a hearing. After the hearing, the
94 commissioner shall send each party a written copy of the
95 commissioner's decision. The commissioner may award the employee
96 all appropriate relief including rehiring or reinstatement to the
97 employee's previous job, payment of back wages and reestablishment
98 of employee benefits to which the employee otherwise would have
99 been eligible if a violation of this section had not occurred. Any
100 employee who prevails in such a complaint shall be awarded
101 reasonable attorney's fees and costs. Any party aggrieved by the
102 decision of the commissioner may appeal the decision to the Superior
103 Court in accordance with the provisions of chapter 54 of the general
104 statutes.

105 (2) Alternatively, any employee aggrieved by a violation of this
106 section may bring a civil action for judicial enforcement of the
107 requirements of this section, in the superior court for the judicial
108 district where the violation is alleged to have occurred. If the employee
109 prevails, the court shall award reasonable attorney's fees and costs.

110 (d) The rights and remedies specified in this section are cumulative

111 and nonexclusive and are in addition to any other rights or remedies
112 afforded by contract or under other provisions of law.

This act shall take effect as follows:	
Section 1	*July 1, 2002*
Sec. 2	*July 1, 2002*
Sec. 3	*July 1, 2002*

Statement of Purpose:

To authorize both private and public sector employees to substitute accumulated paid sick leave for unpaid family and medical leave.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]