



# House of Representatives

General Assembly

**File No. 152**

February Session, 2014

Substitute House Bill No. 5283

*House of Representatives, March 27, 2014*

The Committee on Labor and Public Employees reported through REP. TERCYAK of the 26th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING EXPANSION OF FAMILY AND MEDICAL LEAVE.***

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

1 Section 1. Section 31-51ll of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2014*):

3 (a) (1) Subject to section 31-51mm, as amended by this act, an  
4 eligible employee shall be entitled to a total of sixteen workweeks of  
5 leave during any twenty-four-month period, such twenty-four-month  
6 period to be determined utilizing any one of the following methods:  
7 (A) Consecutive calendar years; (B) any fixed twenty-four-month  
8 period, such as two consecutive fiscal years or a twenty-four-month  
9 period measured forward from an employee's first date of  
10 employment; (C) a twenty-four-month period measured forward from  
11 an employee's first day of leave taken under sections 31-51kk to 31-  
12 51qq, inclusive; or (D) a rolling twenty-four-month period measured  
13 backward from an employee's first day of leave taken under sections

14 31-51kk to 31-51qq, inclusive.

15 (2) Leave under this subsection may be taken for one or more of the  
16 following reasons:

17 (A) Upon the birth of a son or daughter of the employee;

18 (B) Upon the placement of a son or daughter with the employee for  
19 adoption or foster care;

20 (C) In order to care for the spouse, [or a] son, daughter, [or] parent,  
21 parent-in-law, sibling, grandparent or grandchild of the employee, if  
22 such [spouse, son, daughter or parent] individual has a serious health  
23 condition;

24 (D) Because of a serious health condition of the employee; or

25 (E) In order to serve as an organ or bone marrow donor.

26 (b) Entitlement to leave under subparagraph (A) or (B) of  
27 subdivision (2) of subsection (a) of this section may accrue prior to the  
28 birth or placement of a son or daughter when such leave is required  
29 because of such impending birth or placement.

30 (c) (1) Leave under subparagraph (A) or (B) of subdivision (2) of  
31 subsection (a) of this section for the birth or placement of a son or  
32 daughter may not be taken by an employee intermittently or on a  
33 reduced leave schedule unless the employee and the employer agree  
34 otherwise. Subject to subdivision (2) of this subsection concerning an  
35 alternative position, subdivision (2) of subsection (f) of this section  
36 concerning the duties of the employee and subdivision (5) of  
37 subsection (b) of section 31-51mm, as amended by this act, concerning  
38 sufficient certification, leave under subparagraph (C) or (D) of  
39 subdivision (2) of subsection (a) or under subsection (i) of this section  
40 for a serious health condition may be taken intermittently or on a  
41 reduced leave schedule when medically necessary. The taking of leave  
42 intermittently or on a reduced leave schedule pursuant to this  
43 subsection shall not result in a reduction of the total amount of leave to

44 which the employee is entitled under subsection (a) of this section  
45 beyond the amount of leave actually taken.

46 (2) If an employee requests intermittent leave or leave on a reduced  
47 leave schedule under subparagraph (C), (D) or (E) of subdivision (2) of  
48 subsection (a) or under subsection (i) of this section that is foreseeable  
49 based on planned medical treatment, the employer may require the  
50 employee to transfer temporarily to an available alternative position  
51 offered by the employer for which the employee is qualified and that  
52 (A) has equivalent pay and benefits, and (B) better accommodates  
53 recurring periods of leave than the regular employment position of the  
54 employee, provided the exercise of this authority shall not conflict  
55 with any provision of a collective bargaining agreement between such  
56 employer and a labor organization which is the collective bargaining  
57 representative of the unit of which the employee is a part.

58 (d) Except as provided in subsection (e) of this section, leave  
59 granted under subsection (a) of this section may consist of unpaid  
60 leave.

61 (e) (1) If an employer provides paid leave for fewer than sixteen  
62 workweeks, the additional weeks of leave necessary to attain the  
63 sixteen workweeks of leave required under sections 5-248a and 31-  
64 51kk to 31-51qq, inclusive, may be provided without compensation.

65 (2) (A) An eligible employee may elect, or an employer may require  
66 the employee, to substitute any of the accrued paid vacation leave,  
67 personal leave or family leave of the employee for leave provided  
68 under subparagraph (A), (B) or (C) of subdivision (2) of subsection (a)  
69 of this section for any part of the sixteen-week period of such leave  
70 under said subsection or under subsection (i) of this section for any  
71 part of the twenty-six-week period of such leave.

72 (B) An eligible employee may elect, or an employer may require the  
73 employee, to substitute any of the accrued paid vacation leave,  
74 personal leave, or medical or sick leave of the employee for leave  
75 provided under subparagraph (C), (D) or (E) of subdivision (2) of

76 subsection (a) of this section for any part of the sixteen-week period of  
77 such leave under said subsection or under subsection (i) of this section  
78 for any part of the twenty-six-week period of leave, except that  
79 nothing in section 5-248a or sections 31-51kk to 31-51qq, inclusive,  
80 shall require an employer to provide paid sick leave or paid medical  
81 leave in any situation in which such employer would not normally  
82 provide any such paid leave.

83 (f) (1) In any case in which the necessity for leave under  
84 subparagraph (A) or (B) of subdivision (2) of subsection (a) of this  
85 section is foreseeable based on an expected birth or placement of a son  
86 or daughter, the employee shall provide the employer with not less  
87 than thirty days' notice, before the date of the leave is to begin, of the  
88 employee's intention to take leave under said subparagraph (A) or (B),  
89 except that if the date of the birth or placement of a son or daughter  
90 requires leave to begin in less than thirty days, the employee shall  
91 provide such notice as is practicable.

92 (2) In any case in which the necessity for leave under subparagraph  
93 (C), (D) or (E) of subdivision (2) of subsection (a) or under subsection  
94 (i) of this section is foreseeable based on planned medical treatment,  
95 the employee (A) shall make a reasonable effort to schedule the  
96 treatment so as not to disrupt unduly the operations of the employer,  
97 subject to the approval of the health care provider of the employee or  
98 the health care provider of the [son, daughter, spouse or parent]  
99 spouse, son, daughter, parent, parent-in-law, sibling, grandparent or  
100 grandchild of the employee, as appropriate; and (B) shall provide the  
101 employer with not less than thirty days' notice, before the date the  
102 leave is to begin, of the employee's intention to take leave under said  
103 subparagraph (C), (D) or (E) or said subsection (i), except that if the  
104 date of the treatment requires leave to begin in less than thirty days,  
105 the employee shall provide such notice as is practicable.

106 (g) In any case in which a husband and wife entitled to leave under  
107 subsection (a) of this section are employed by the same employer, the  
108 aggregate number of workweeks of leave to which both may be

109 entitled may be limited to sixteen workweeks during any twenty-four-  
110 month period, if such leave is taken: (1) Under subparagraph (A) or (B)  
111 of subdivision (2) of subsection (a) of this section; or (2) to care for a  
112 sick parent or parent-in-law under subparagraph (C) of said  
113 subdivision. In any case in which a husband and wife entitled to leave  
114 under subsection (i) of this section are employed by the same  
115 employer, the aggregate number of workweeks of leave to which both  
116 may be entitled may be limited to twenty-six workweeks during any  
117 twelve-month period.

118 (h) Unpaid leave taken pursuant to sections 5-248a and 31-51kk to  
119 31-51qq, inclusive, shall not be construed to affect an employee's  
120 qualification for exemption under chapter 558.

121 (i) Subject to section 31-51mm, as amended by this act, an eligible  
122 employee who is the spouse, son, [or] daughter, parent, parent-in-law,  
123 sibling, grandparent, grandchild or next of kin of a current member of  
124 the armed forces, as defined in section 27-103, who is undergoing  
125 medical treatment, recuperation or therapy, is otherwise in outpatient  
126 status or is on the temporary disability retired list for a serious injury  
127 or illness incurred in the line of duty shall be entitled to a one-time  
128 benefit of twenty-six workweeks of leave during any twelve-month  
129 period for each armed forces member per serious injury or illness  
130 incurred in the line of duty. Such twelve-month period shall  
131 commence on an employee's first day of leave taken to care for a  
132 covered armed forces member and end on the date twelve months  
133 after such first day of leave. For the purposes of this subsection, (1)  
134 "next of kin" means the armed forces member's nearest blood relative,  
135 other than the covered armed forces member's spouse, [parent, son or  
136 daughter] son, daughter, parent, parent-in-law, sibling, grandparent or  
137 grandchild, in the following order of priority: Blood relatives who  
138 have been granted legal custody of the armed forces member by court  
139 decree or statutory provisions, [brothers and sisters, grandparents,]  
140 aunts and uncles, and first cousins, unless the covered armed forces  
141 member has specifically designated in writing another blood relative  
142 as his or her nearest blood relative for purposes of military caregiver

143 leave, in which case the designated individual shall be deemed to be  
144 the covered armed forces member's next of kin; and (2) "son or  
145 daughter" means a biological, adopted or foster child, stepchild, legal  
146 ward or child for whom the eligible employee or armed forces member  
147 stood in loco parentis and who is any age.

148 (j) Leave taken pursuant to sections 31-51kk to 31-51qq, inclusive,  
149 shall not run concurrently with the provisions of section 31-313.

150 (k) Notwithstanding the provisions of sections 5-248a and 31-51kk  
151 to 31-51qq, inclusive, all further rights granted by federal law shall  
152 remain in effect.

153 Sec. 2. Section 31-51mm of the general statutes is repealed and the  
154 following is substituted in lieu thereof (*Effective October 1, 2014*):

155 (a) An employer may require that request for leave based on a  
156 serious health condition in subparagraph (C) or (D) of subdivision (2)  
157 of subsection (a) of section 31-51ll, as amended by this act, or leave  
158 based on subsection (i) of section 31-51ll, as amended by this act, be  
159 supported by a certification issued by the health care provider of the  
160 eligible employee or of the [son, daughter, spouse, parent] spouse, son,  
161 daughter, parent, parent-in-law, sibling, grandparent, grandchild or  
162 next of kin of the employee, as appropriate. The employee shall  
163 provide, in a timely manner, a copy of such certification to the  
164 employer.

165 (b) Certification provided under subsection (a) of this section shall  
166 be sufficient if it states:

167 (1) The date on which the serious health condition commenced;

168 (2) The probable duration of the condition;

169 (3) The appropriate medical facts within the knowledge of the  
170 health care provider regarding the condition;

171 (4) (A) For purposes of leave under subparagraph (C) of subdivision

172 (2) of subsection (a) of section 31-51ll, as amended by this act, a  
173 statement that the eligible employee is needed to care for the [son,  
174 daughter, spouse or parent] spouse, son, daughter, parent, parent-in-  
175 law, sibling, grandparent or grandchild and an estimate of the amount  
176 of time that such employee needs to care for the [son, daughter, spouse  
177 or parent] spouse, son, daughter, parent, parent-in-law, sibling,  
178 grandparent or grandchild; and (B) for purposes of leave under  
179 subparagraph (D) of subdivision (2) of subsection (a) of section 31-51ll,  
180 as amended by this act, a statement that the employee is unable to  
181 perform the functions of the position of the employee;

182 (5) In the case of certification for intermittent leave or leave on a  
183 reduced leave schedule for planned medical treatment, the dates on  
184 which such treatment is expected to be given and the duration of such  
185 treatment;

186 (6) In the case of certification for intermittent leave or leave on a  
187 reduced leave schedule under subparagraph (D) of subdivision (2) of  
188 subsection (a) of section 31-51ll, as amended by this act, a statement of  
189 the medical necessity of the intermittent leave or leave on a reduced  
190 leave schedule, and the expected duration of the intermittent leave or  
191 reduced leave schedule;

192 (7) In the case of certification for intermittent leave or leave on a  
193 reduced leave schedule under subparagraph (C) of subdivision (2) of  
194 subsection (a) of section 31-51ll, as amended by this act, a statement  
195 that the employee's intermittent leave or leave on a reduced leave  
196 schedule is necessary for the care of the [son, daughter, parent or  
197 spouse] spouse, son, daughter, parent, parent-in-law, sibling,  
198 grandparent or grandchild who has a serious health condition, or will  
199 assist in their recovery, and the expected duration and schedule of the  
200 intermittent leave or reduced leave schedule; and

201 (8) In the case of certification for intermittent leave or leave on a  
202 reduced leave schedule under subsection (i) of section 31-51ll, as  
203 amended by this act, a statement that the employee's intermittent leave  
204 or leave on a reduced leave schedule is necessary for the care of the

205 spouse, son, [or] daughter, parent, parent-in-law, sibling, grandparent,  
206 grandchild or next of kin who is a current member of the armed forces,  
207 as defined in section 27-103, who is undergoing medical treatment,  
208 recuperation or therapy, is otherwise in outpatient status or is on the  
209 temporary disability retired list, for a serious injury or illness incurred  
210 in the line of duty, and the expected duration and schedule of the  
211 intermittent leave or reduced leave schedule. For the purposes of this  
212 subsection, "son or daughter" and "next of kin" shall have the same  
213 meaning as in subsection (i) of section 31-5111, as amended by this act.

214 (c) (1) In any case in which the employer has reason to doubt the  
215 validity of the certification provided under subsection (a) of this  
216 section for leave under subparagraph (C) or (D) of subdivision (2) of  
217 subsection (a) or under subsection (i) of section 31-5111, as amended by  
218 this act, the employer may require, at the expense of the employer, that  
219 the eligible employee obtain the opinion of a second health care  
220 provider designated or approved by the employer concerning any  
221 information certified under subsection (b) of this section for such leave.

222 (2) A health care provider designated or approved under  
223 subdivision (1) of this subsection shall not be employed on a regular  
224 basis by the employer.

225 (d) (1) In any case in which the second opinion described in  
226 subsection (c) of this section differs from the opinion in the original  
227 certification provided under subsection (a) of this section, the  
228 employer may require, at the expense of the employer, that the  
229 employee obtain the opinion of a third health care provider designated  
230 or approved jointly by the employer and the employee concerning the  
231 information certified under subsection (b) of this section.

232 (2) The opinion of the third health care provider concerning the  
233 information certified under subsection (b) of this section shall be  
234 considered to be final and shall be binding on the employer and the  
235 employee.

236 (e) The employer may require that the eligible employee obtain

237 subsequent recertifications on a reasonable basis, provided the  
 238 standards for determining what constitutes a reasonable basis for  
 239 recertification may be governed by a collective bargaining agreement  
 240 between such employer and a labor organization which is the  
 241 collective bargaining representative of the unit of which the worker is  
 242 a part if such a collective bargaining agreement is in effect. Unless  
 243 otherwise required by the employee's health care provider, the  
 244 employer may not require recertification more than once during a  
 245 thirty-day period and, in any case, may not unreasonably require  
 246 recertification. The employer shall pay for any recertification that is not  
 247 covered by the employee's health insurance.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2014	31-51ll
Sec. 2	October 1, 2014	31-51mm

**Statement of Legislative Commissioners:**

In section 1(c)(1), after 31-51mm, "as amended by this act" was added for clarity.

**LAB**      *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 15 \$	FY 16 \$
Labor Dept.	GF - Cost	56,250	75,000
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Cost	20,621	27,495

**Municipal Impact:** None

**Explanation**

The bill expands the family members to whom the state’s private-sector Family and Medical Leave Act (FMLA) provisions apply. This results in a cost to the Department of Labor (DOL) of \$76,871 in FY 15 and \$102,495 annually thereafter.

There are currently an average of 50 complaints of FMLA violations to DOL annually, all of which must be investigated by one of four attorneys within the agency. In addition to the investigation and possible prosecution, these complaints also result in an average of three appeals hearings annually. The bill is anticipated to result in an increase in the number of complaints, investigations, and hearings required under FMLA provisions. This results in an annualized cost of \$102,495 (\$75,000 for salary and \$27,495 for fringes) associated with the hiring of a Staff Attorney.

**The Out Years**

The annualized ongoing fiscal impact identified above would

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<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 36.66% of payroll in FY 15 and FY 16.

continue into the future subject to inflation.

**OLR Bill Analysis****sHB 5283*****AN ACT CONCERNING EXPANSION OF FAMILY AND MEDICAL LEAVE.*****SUMMARY:**

The state's Family and Medical Leave Act (FMLA) allows eligible employees to take unpaid leave from work to care for certain family members who (1) have a serious health condition or (2) are in the armed forces and being treated for a serious injury or illness incurred in the line of duty. This bill expands the family members for whom an employee can use the leave to include the employee's sibling, grandparent, and grandchild. The law already allows an employee to use the leave to care for his or her spouse, child, parent, or parent-in-law, subject to certain scheduling, notice, and certification requirements. Under the bill, these same requirements apply to leave used to care for siblings, grandparents, or grandchildren.

The state's FMLA applies to private-sector employers with at least 75 employees. To qualify for the leave, an employee must have been employed by his or her employer for at least 12 months and worked at least 1,000 hours during that time.

EFFECTIVE DATE: October 1, 2014

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable

Yea 8      Nay 4      (03/11/2014)