S T A T E O F N E W Y O R K

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Introduced by M. of A. SILVER, JOHN, NOLAN -- Multi-Sponsored by -- M. of A. BENEDETTO, BING, BOYLAND, DESTITO, DINOWITZ, FARRELL, GLICK, JACOBS, LANCMAN, LENTOL, MARKEY, O'DONNELL, PEOPLES, PHEFFER, ROBINSON, ROSENTHAL, SWEENEY, TOWNS, WEINSTEIN, WEISENBERG -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law and the insurance law, in relation to providing benefits for injury or sickness, pregnancy or family leave

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 9 of section 201 of the workers' compensation law is amended by adding two new paragraphs C and D to read as follows:

C. "DISABILITY" ALSO INCLUDES FAMILY CARE, AS DEFINED IN SUBDIVISION FIFTEEN OF THIS SECTION.

D. UNLESS OTHERWISE SET FORTH IN THIS ARTICLE, ALL PROVISIONS OF THIS ARTICLE APPLICABLE TO "DISABILITY" SHALL APPLY TO (I) DISABILITY ARISING FROM INJURY OR SICKNESS; (II) DISABILITY CAUSED BY OR IN CONNECTION WITH PREGNANCY; AND (III) FOR FAMILY CARE.

S 2. Subdivision 14 of section 201 of the workers' compensation law, as added by chapter 600 of the laws of 1949 and as renumbered by chapter 438 of the laws of 1964, is amended to read as follows:

14. "A day of disability" means any day on which the employee was prevented from performing work because of disability, INCLUDING ANY DAY ON WHICH THE EMPLOYEE TOOK OFF FOR FAMILY CARE, and for which [he] THE EMPLOYEE has not received his OR HER regular remuneration.

S 3. Section 201 of the workers' compensation law is amended by adding ten new subdivisions 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 to read as follows:

15. "FAMILY CARE" SHALL MEAN ANY LEAVE TAKEN BY AN EMPLOYEE FROM WORK:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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A. TO PARTICIPATE IN PROVIDING CARE, INCLUDING PHYSICAL OR PSYCHOLOGICAL CARE, FOR A FAMILY MEMBER OF THE EMPLOYEE MADE NECESSARY BY A SERIOUS HEALTH CONDITION OF THE FAMILY MEMBER; OR

B. TO BOND WITH HIS OR HER CHILD DURING THE FIRST TWELVE MONTHS AFTER THE CHILD'S BIRTH, OR THE FIRST TWELVE MONTHS AFTER THE PLACEMENT OF THE CHILD FOR ADOPTION OR FOSTER CARE WITH THE EMPLOYEE.

16. "CHILD" MEANS A BIOLOGICAL, ADOPTED, OR FOSTER CHILD, A STEPCHILD, A LEGAL WARD, OR A CHILD OF A PERSON STANDING IN LOCO PARENTIS, WHO IS:

A. UNDER EIGHTEEN YEARS OF AGE; OR

B. EIGHTEEN YEARS OF AGE OR OLDER AND INCAPABLE OF SELF-CARE BECAUSE OF A MENTAL OR PHYSICAL DISABILITY.

17. "DOMESTIC PARTNER" HAS THE MEANING SET FORTH IN SECTION FOUR OF THIS CHAPTER.

18. "SERIOUS HEALTH CONDITION" MEANS AN ILLNESS, INJURY, IMPAIRMENT, OR PHYSICAL OR MENTAL CONDITION THAT:

A. REQUIRES INPATIENT CARE IN A HOSPITAL, HOSPICE OR RESIDENTIAL HEALTH CARE FACILITY; OR

B. REQUIRES CONTINUING TREATMENT BY A HEALTH CARE PROVIDER.

19. "PARENT" MEANS THE BIOLOGICAL, ADOPTIVE, OR FOSTER PARENT OF AN EMPLOYEE OR INDIVIDUAL WHO STOOD IN LOCO PARENTIS TO AN EMPLOYEE WHEN THE EMPLOYEE WAS A SON OR DAUGHTER.

20. "FAMILY MEMBER" MEANS A CHILD, SPOUSE, DOMESTIC PARTNER, PARENT, GRANDCHILD, GRANDPARENT, MOTHER-IN-LAW, FATHER-IN-LAW OR MOTHER AND/OR FATHER OF DOMESTIC PARTNER.

21. PERSONS WHO ARE "IN LOCO PARENTIS" INCLUDE THOSE WITH DAY-TO-DAY RESPONSIBILITIES TO CARE FOR AND FINANCIALLY SUPPORT A CHILD OR, IN THE CASE OF AN EMPLOYEE, WHO HAD SUCH RESPONSIBILITY FOR THE EMPLOYEE WHEN THE EMPLOYEE WAS A CHILD. A BIOLOGICAL OR LEGAL RELATIONSHIP IS NOT NECESSARY.

22. "GRANDCHILD" MEANS THE CHILD OF A CHILD.

23. "HEALTH CARE PROVIDER" MEANS ANY PROVIDER TREATING AN EMPLOYEE'S INJURY OR SICKNESS, OR A FAMILY MEMBER'S SERIOUS HEALTH CONDITION, INCLUDING A PHYSICIAN, PODIATRIST, CHIROPRACTOR, DENTIST, PSYCHOLOGIST, CERTIFIED NURSE MIDWIFE, OR IN THE CASE OF A FAMILY MEMBER WHO ADHERES TO THE FAITH OR TEACHINGS OF ANY CHURCH OR DENOMINATION, AND WHO IN ACCORDANCE WITH ITS CREED, TENETS OR PRINCIPLES DEPENDS FOR HEALING UPON PRAYER THROUGH SPIRITUAL MEANS ALONE IN THE PRACTICE OF RELIGION, BY AN ACCREDITED PRACTITIONER, CONTAINING FACTS AND OPINIONS AS TO SUCH HEALTH CONDITION IN COMPLIANCE WITH REGULATIONS OF THE CHAIR.

24. "FAMILY CARE COST" SHALL MEAN:

A. PRIOR TO JULY FIRST, TWO THOUSAND ELEVEN, FORTY-FIVE CENTS PER WEEK; AND

B. DURING EVERY SUBSEQUENT YEAR COMMENCING ON JULY FIRST SUCH AMOUNT AS SHALL BE SET BY REGULATION OF THE SUPERINTENDENT OF INSURANCE FOLLOWING CONSULTATION WITH THE FAMILY CARE ADVISORY COUNCIL BY APRIL FIRST OF THE SAME YEAR BASED ON HIS OR HER ACTUARIALLY SOUND ESTIMATION OF THE COST PER EMPLOYEE OF PROVIDING FAMILY CARE BENEFITS, BUT IN NO EVENT MORE THAN ONE HUNDRED FIFTEEN PERCENT OF HIS OR HER ESTIMATION OF THE COST PER EMPLOYEE OF PROVIDING FAMILY CARE BENEFITS THROUGH THE STATE INSURANCE FUND.

S 3-a. The workers' compensation law is amended by adding a new section 203-a to read as follows:

S 203-A. RETALIATORY ACTION PROHIBITED. 1. THE PROVISIONS OF SECTION ONE HUNDRED TWENTY OF THIS CHAPTER AND SECTION TWO HUNDRED FORTY-ONE OF THIS ARTICLE SHALL BE APPLICABLE TO FAMILY CARE LEAVE AS FULLY AS IF SET FORTH IN THIS SECTION.

2. NOTHING IN THIS SECTION SHALL BE DEEMED TO DIMINISH THE RIGHTS, PRIVILEGES, OR REMEDIES OF ANY EMPLOYEE UNDER ANY COLLECTIVE BARGAINING AGREEMENT OR EMPLOYMENT CONTRACT; EXCEPT THAT THE INSTITUTION OF AN ACTION IN ACCORDANCE WITH THIS SECTION SHALL BE DEEMED A WAIVER OF THE RIGHTS AND REMEDIES AVAILABLE UNDER ANY OTHER CONTRACT OR COLLECTIVE BARGAINING AGREEMENT.

S 3-b. The workers' compensation law is amended by adding a new section 203-b to read as follows:

S 203-B. FAMILY CARE LEAVE. ANY ELIGIBLE EMPLOYEE OF A COVERED EMPLOYER WHO HAS IN EMPLOYMENT AFTER JANUARY FIRST, TWO THOUSAND TEN TWENTY-FIVE OR MORE EMPLOYEES ON EACH OF AT LEAST THIRTY DAYS IN ANY CALENDAR YEAR WHO TAKES LEAVE UNDER THIS SECTION SHALL BE ENTITLED, ON RETURN FROM SUCH LEAVE, TO BE RESTORED BY THE EMPLOYER TO THE POSITION OF EMPLOYMENT HELD BY THE EMPLOYEE WHEN THE LEAVE COMMENCED, OR TO BE RESTORED TO A COMPARABLE POSITION WITH COMPARABLE EMPLOYMENT BENEFITS, PAY AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT. THE TAKING OF LEAVE FOR THE PURPOSE OF FAMILY CARE SHALL NOT RESULT IN THE LOSS OF ANY EMPLOYMENT BENEFIT ACCRUED PRIOR TO THE DATE ON WHICH THE LEAVE COMMENCED. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ENTITLE ANY RESTORED EMPLOYEE TO THE ACCRUAL OF ANY SENIORITY OR EMPLOYMENT BENEFITS DURING ANY PERIOD OF LEAVE, OR ANY RIGHT, BENEFIT OR POSITION TO WHICH THE EMPLOYEE WOULD HAVE BEEN ENTITLED HAD THE EMPLOYEE NOT TAKEN THE LEAVE. A VIOLATION OF THIS SECTION SHALL BE A VIOLATION OF SECTION ONE HUNDRED TWENTY OF THIS CHAPTER AND ALL REMEDIES AND PENALTIES AVAILABLE UNDER SECTION ONE HUNDRED TWENTY OF THIS CHAPTER SHALL BE AVAILABLE FOR VIOLATIONS OF THIS SECTION AS FULLY AS IF SET FORTH IN THIS SECTION.

S 3-c. The section heading and the first undesignated paragraph of section 120 of the workers' compensation law, as amended by chapter 61 of the laws of 1989, are amended to read as follows:

Discrimination against employees [who bring proceedings]. It shall be unlawful for any employer or his or her duly authorized agent to discharge or in any other manner discriminate against an employee as to his or her employment because such employee has claimed or attempted to claim compensation from such employer, OR CLAIMED OR ATTEMPTED TO CLAIM ANY BENEFITS PROVIDED UNDER THIS CHAPTER, or because he or she has testified or is about to testify in a proceeding under this chapter and no other valid reason is shown to exist for such action by the employer.

S 4. Subdivision 1 of section 204 of the workers' compensation law, as added by chapter 600 of the laws of 1949, is amended and a new subdivision 3 is added to read as follows:

1. Disability benefits shall be payable to an eligible employee for disabilities commencing after June thirtieth, nineteen hundred fifty, beginning with the eighth consecutive day of disability and thereafter during the continuance of disability, subject to the limitations as to maximum and minimum amounts and duration and other conditions and limitations in this section and in sections two hundred five and two hundred six OF THIS ARTICLE. Successive periods of disability caused by the same or related injury or sickness OR REASON FOR FAMILY CARE shall be deemed a single period of disability only if separated by less than three months.

3. THE WEEKLY BENEFIT WHICH THE DISABLED EMPLOYEE IS ENTITLED TO RECEIVE FOR DISABILITY COMMENCING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN SHALL BE FIFTY PERCENT OF THE EMPLOYEE'S AVERAGE WEEKLY WAGE, BUT IN NO CASE SHALL SUCH BENEFIT EXCEED THIRTY-FIVE PERCENT OF THE STATEWIDE AVERAGE WEEKLY WAGE AS DETERMINED BY THE STATE DEPARTMENT OF LABOR PURSUANT TO SUBDIVISION SIXTEEN OF SECTION TWO OF THIS CHAPTER.

THE WEEKLY BENEFIT WHICH THE DISABLED EMPLOYEE IS ENTITLED TO RECEIVE FOR DISABILITY COMMENCING ON OR AFTER APRIL FIRST, TWO THOUSAND ELEVEN SHALL BE FIFTY PERCENT OF THE EMPLOYEE'S AVERAGE WEEKLY WAGE, BUT IN NO CASE SHALL SUCH BENEFIT EXCEED FORTY PERCENT OF THE STATEWIDE AVERAGE WEEKLY WAGE AS DETERMINED BY THE STATE DEPARTMENT OF LABOR PURSUANT TO SUBDIVISION SIXTEEN OF SECTION TWO OF THIS CHAPTER. THE WEEKLY BENEFIT WHICH THE DISABLED EMPLOYEE IS ENTITLED TO RECEIVE FOR DISABILITY COMMENCING ON OR AFTER APRIL FIRST, TWO THOUSAND TWELVE SHALL BE FIFTY PERCENT OF THE EMPLOYEE'S AVERAGE WEEKLY WAGE BUT IN NO CASE SHALL SUCH BENEFIT EXCEED FORTY-FIVE PERCENT OF THE STATEWIDE AVERAGE WEEKLY WAGE AS DETERMINED BY THE STATE DEPARTMENT OF LABOR PURSUANT TO SUBDIVISION SIXTEEN OF SECTION TWO OF THIS CHAPTER. THE WEEKLY BENEFIT WHICH THE DISABLED EMPLOYEE IS ENTITLED TO RECEIVE FOR DISABILITY COMMENCING ON OR AFTER APRIL FIRST, TWO THOUSAND THIRTEEN AND SUBSEQUENTLY SHALL BE FIFTY PERCENT OF THE EMPLOYEE'S AVERAGE WEEKLY WAGE BUT IN NO CASE SHALL SUCH BENEFIT EXCEED FIFTY PERCENT OF THE STATEWIDE AVERAGE WEEKLY WAGE AS DETERMINED BY THE STATE DEPARTMENT OF LABOR PURSUANT TO SUBDIVISION SIXTEEN OF SECTION TWO OF THIS CHAPTER.

S 5. Subdivisions 1, 2, 3, 4, 7 and 8 of section 205 of the workers' compensation law, subdivision 1 as amended by chapter 651 of the laws of 1958, subdivision 2 as amended by chapter 270 of the laws of 1990 and subdivisions 3, 4, 7 and 8 as added by chapter 600 of the laws of 1949 and as renumbered by chapter 352 of the laws of 1981, are amended and a new subdivision 9 is added to read as follows:

1. (A) For DISABILITY RESULTING FROM INJURY OR SICKNESS OR PREGNANCY OF AN EMPLOYEE, FOR more than twenty-six weeks during a period of fifty-two consecutive calendar weeks or during any one period of disability; OR

(B) FOR FAMILY CARE, FOR MORE THAN TWELVE WEEKS DURING A PERIOD OF FIFTY-TWO CONSECUTIVE CALENDAR WEEKS OR DURING ANY ONE PERIOD OF FAMILY CARE;

2. for any period of disability RESULTING FROM THE INJURY OR SICKNESS OR PREGNANCY OF AN EMPLOYEE during which an employee is not under the care of a duly licensed physician or with respect to disability resulting from a condition of the foot which may lawfully be treated by a duly registered and licensed podiatrist of the state of New York or with respect to a disability resulting from a condition which may lawfully be treated by a duly registered and licensed chiropractor of the state of New York or with respect to a disability resulting from a condition which may lawfully be treated by a duly licensed dentist of the state of New York or with respect to a disability resulting from a condition which may lawfully be treated by a duly registered and licensed psychologist of the state of New York or with respect to a disability resulting from a condition which may lawfully be treated by a duly certified nurse midwife, for any period of such disability during which an employee is neither under the care of a physician nor a podiatrist, nor a chiropractor, nor a dentist, nor a psychologist, nor a certified nurse midwife; and for any period of disability during which an employee who adheres to the faith or teachings of any church or denomination and who in accordance with its creed, tenets or principles depends for healing upon prayer through spiritual means alone in the practice of religion, is not under the care of a practitioner duly accredited by the church or denomination, and provided such employee shall submit to all physical examinations as required by this chapter[.];

3. for any disability RESULTING FROM INJURY OR SICKNESS OF AN EMPLOYEE occasioned by the wilful intention of the employee to bring about injury

to or the sickness of himself or another, or resulting from any injury or sickness sustained in the perpetration by the employee of an illegal act;

4. for any day of disability during which the employee performed work for remuneration or profit; BUT NOT INCLUDING ANY REMUNERATION RECEIVED FOR CARING FOR A FOSTER OR ADOPTED CHILD OR OTHER INDIVIDUAL RESIDING IN THE EMPLOYEE'S PLACE OF RESIDENCE;

7. for any disability due to any act of war, declared or undeclared, if such act shall occur after June thirtieth, nineteen hundred fifty, EXCEPT THAT NOTHING IN THIS SUBDIVISION SHALL BAR AN EMPLOYEE FROM RECEIVING BENEFITS UNDER THIS ARTICLE FOR CARE OF A FAMILY MEMBER DISABLED DUE TO AN ACT OF WAR;

8. for any disability RESULTING FROM AN INJURY OR SICKNESS TO OR PREGNANCY OF THE EMPLOYEE commencing before the employee becomes eligible to benefits hereunder [or commencing prior to July first, nineteen hundred fifty, but this shall not preclude benefits for recurrence after July first, nineteen hundred fifty, of a disability commencing prior thereto.];

9. FOR ANY DAY OF ABSENCE FROM WORK REQUIRED PURSUANT TO ANY DISCIPLINARY PROCESS; OR, IN REGARD TO FAMILY CARE BENEFITS, ANY DAY OF ABSENCE FROM WORK RESULTING FROM INJURY OR SICKNESS TO OR PREGNANCY OF THE EMPLOYEE, INCLUDING ANY LEAVE TAKEN UNDER SECTION SEVENTY-ONE OR SEVENTY-THREE OF THE CIVIL SERVICE LAW.

S 6. The workers' compensation law is amended by adding a new section 205-a to read as follows:

S 205-A. RELATIONSHIP BETWEEN DISABILITY BENEFITS FOR FAMILY CARE AND FOR THE EMPLOYEE'S OWN INJURY OR SICKNESS OR PREGNANCY. THE RECEIPT OF BENEFITS FOR DISABILITY RESULTING FROM INJURY OR SICKNESS TO THE EMPLOYEE, OR PREGNANCY OF THE EMPLOYEE, SHALL NOT COUNT TOWARD ANY TIME LIMITATION UNDER SUBDIVISION ONE OF SECTION TWO HUNDRED FIVE OF THIS ARTICLE ON THE RECEIPT OF BENEFITS FOR FAMILY CARE, AND THE RECEIPT OF BENEFITS FOR FAMILY CARE SHALL NOT COUNT TOWARD ANY TIME LIMITATION UNDER SUBDIVISION ONE OF SECTION TWO HUNDRED FIVE OF THIS ARTICLE ON THE RECEIPT OF BENEFITS FOR DISABILITY RESULTING FROM INJURY OR SICKNESS OR PREGNANCY TO THE EMPLOYEE, EXCEPT THAT AN EMPLOYEE MAY RECEIVE DISABILITY BENEFITS ON ONLY ONE CLAIM AT ANY TIME.

S 7. Subdivision 3 of section 209 of the workers' compensation law, as amended by chapter 415 of the laws of 1983, is amended to read as follows:

3. The contribution of each such employee to the cost of disability benefits provided by this article shall be one-half of one per centum of the employee's wages paid to him on and after July first, nineteen hundred fifty, but not in excess of sixty cents per week FOR THE COST OF DISABILITY BENEFITS FOR INJURY OR SICKNESS TO, OR PREGNANCY OF THE EMPLOYEE PLUS THE FAMILY CARE COST, AS DEFINED IN SUBDIVISION TWENTY-FOUR OF SECTION TWO HUNDRED ONE OF THIS ARTICLE.

S 7-a. Section 211 of the workers' compensation law is amended by adding two new subdivisions 7 and 8 to read as follows:

7. SUCH FAMILY CARE BENEFITS AS ARE PROVIDED FOR IN THIS ARTICLE SHALL BE IN ADDITION TO, AND SHALL NOT AMEND, REPEAL OR REPLACE, THE TERMS OF ANY AGREEMENT THAT IS COLLECTIVELY NEGOTIATED BETWEEN AN EMPLOYER AND AN EMPLOYEE ORGANIZATION, INCLUDING AGREEMENT OR INTEREST ARBITRATION AWARDS MADE PURSUANT TO ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW.

8. NOTHING IN THIS ARTICLE SHALL REQUIRE AN EMPLOYER TO USE THE SAME CARRIER TO PROVIDE BENEFITS REQUIRED BY OR PERMISSIBLE UNDER THIS ARTICLE FOR DISABILITY RESULTING FROM INJURY OR SICKNESS TO OR PREGNANCY OF

THE EMPLOYEE AS IT USES TO PROVIDE BENEFITS REQUIRED BY OR PERMISSIBLE UNDER THIS ARTICLE FOR FAMILY CARE. AN EMPLOYER MAY USE A DIFFERENT MEANS, AMONG THOSE SET FORTH IN SUBDIVISIONS ONE THROUGH FIVE OF THIS SECTION, TO PROVIDE BENEFITS REQUIRED BY THIS ARTICLE FOR DISABILITY RESULTING FROM INJURY OR SICKNESS TO OR PREGNANCY OF THE EMPLOYEE, FROM THE MEANS USED TO PROVIDE BENEFITS REQUIRED BY THIS ARTICLE FOR FAMILY CARE.

S 7-b. The workers' compensation law is amended by adding a new section 211-a to read as follows:

S 211-A. PUBLIC EMPLOYEES; EMPLOYEE OPT IN. 1. FOR PURPOSES OF THIS SECTION, "PUBLIC EMPLOYEE" MEANS ANY EMPLOYEE OF THE STATE, ANY POLITICAL SUBDIVISION OF THE STATE, A PUBLIC AUTHORITY OR ANY OTHER GOVERNMENTAL AGENCY OR INSTRUMENTALITY. "PUBLIC EMPLOYER" MEANS THE STATE, ANY POLITICAL SUBDIVISION OF THE STATE, A PUBLIC AUTHORITY OR ANY OTHER GOVERNMENTAL AGENCY OR INSTRUMENTALITY THEREOF. "EMPLOYEE ORGANIZATION" SHALL HAVE THE MEANING SET FORTH IN SECTION TWO HUNDRED ONE OF THE CIVIL SERVICE LAW.

2. PUBLIC EMPLOYERS SHALL PROVIDE BENEFITS FOR FAMILY CARE TO PUBLIC EMPLOYEES WHERE AN EMPLOYEE ORGANIZATION THAT REPRESENTS THOSE EMPLOYEES OPTS IN TO FAMILY CARE IN ACCORDANCE WITH THE PROCEDURES AND TERMS SET FORTH IN SUBDIVISION THREE OF THIS SECTION.

3. AN EMPLOYEE ORGANIZATION MAY OPT IN TO THE FAMILY CARE BENEFIT ON BEHALF OF THOSE EMPLOYEES IT REPRESENTS:

A. UPON NOTICE GIVEN PRIOR TO APRIL FIRST, TWO THOUSAND TEN, WHICH OPT IN SHALL BECOME EFFECTIVE ONLY ON JULY FIRST, TWO THOUSAND TEN;

B. AT ANY TIME UPON NINETY DAYS NOTICE FOR ANY EMPLOYER WHO IS NOT PROVIDING DISABILITY BENEFITS FOR INJURY OR SICKNESS TO OR PREGNANCY OF AN EMPLOYEE UNDER SECTION TWO HUNDRED TWELVE OF THIS ARTICLE, OR WHO IS SELF-INSURED FOR SUCH BENEFITS;

C. FOR ANY EMPLOYER WHO IS PROVIDING DISABILITY BENEFITS FOR INJURY OR SICKNESS TO OR PREGNANCY OF AN EMPLOYEE UNDER SECTION TWO HUNDRED TWELVE OF THIS ARTICLE, UPON NOTICE AT LEAST NINETY DAYS PRIOR TO THE EXPIRATION OF THE EMPLOYER'S INSURANCE POLICY FOR SUCH BENEFITS, WHICH OPT IN SHALL BE EFFECTIVE ONLY FOR THE TIME PERIOD COVERED BY ANY SUBSEQUENT POLICY OR RENEWAL; OR

D. AT ANY TIME AS IS MUTUALLY AGREED UPON BETWEEN THE EMPLOYEE ORGANIZATION AND ANY PUBLIC EMPLOYER.

AN EMPLOYEE ORGANIZATION THAT HAS OPTED IN TO THE FAMILY CARE BENEFIT MAY OPT OUT OF IT WITHIN THE TIME PERIODS, AND EFFECTIVE UPON THE SAME DATES, SET FORTH IN THIS PARAGRAPH.

4. IN THE ABSENCE OF ANY CONTRARY STATEMENT IN A COLLECTIVELY NEGOTIATED AGREEMENT UNDER ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW, A PUBLIC EMPLOYER MAY REQUIRE PUBLIC EMPLOYEES WHO OPT IN UNDER THIS SECTION TO CONTRIBUTE UP TO THE FAMILY CARE COST, AS DEFINED IN SUBDIVISION TWENTY-FOUR OF SECTION TWO HUNDRED ONE OF THIS ARTICLE, PER WEEK IN ACCORDANCE WITH THE PROCEDURE SET FORTH IN SECTION TWO HUNDRED NINE OF THIS ARTICLE.

S 8. Subdivisions 1 and 2 of section 212 of the workers' compensation law, subdivision 1 as amended by chapter 740 of the laws of 1960 and subdivision 2 as amended by chapter 120 of the laws of 1969, are amended to read as follows:

1. Any employer not required by this article to provide for the payment of disability benefits to his employees, or to any class or classes thereof, may become a covered employer or bring within the provisions of this article such employees or class or classes thereof by voluntarily electing to provide for payment of [such] benefits FOR DISA-

BILITY RESULTING FROM INJURY OR SICKNESS TO OR PREGNANCY OF AN EMPLOYEE OR FOR FAMILY CARE, OR BOTH, in one or more of the ways set forth in section two hundred eleven OF THIS ARTICLE; but such election shall be subject to the approval of the chairman, and if the employees are required to contribute to the cost of such benefits the assent within thirty days before such approval is granted, of more than one-half of such employees shall be evidenced to the satisfaction of the chairman. On approval by the chairman of such election to provide benefits, all the provisions of this article shall become and continue applicable as if the employer were a covered employer as defined in this article. The obligation to continue as a covered employer with respect to employees for whom provision of benefits is not required under this article, may be discontinued by such employer on ninety days notice to the chairman in writing and to his employees, after he has provided for payment of benefits for not less than one year and with such provision for payment of obligations incurred on and prior to the termination date as the chairman may approve. ANY ELECTION BY A PUBLIC EMPLOYER TO PROVIDE FAMILY CARE BENEFITS MADE PRIOR TO JULY FIRST, TWO THOUSAND TEN SHALL BE EFFECTIVE ON THAT DATE.

2. Notwithstanding the definition of "employer" and "employment" in section two hundred one of this article, THE STATE OR ANY AGENCY THEREOF, a public authority, a municipal corporation or a fire district or other political subdivision may become a covered employer under this article by complying with the provisions of subdivision one of this section and may discontinue such status only as provided in that subdivision.

S 8-a. Subdivision 2 of section 76 of the workers' compensation law, as added by chapter 600 of the laws of 1949, is amended to read as follows:

2. The purposes of the state insurance fund herein created are hereby enlarged to provide [for the] insurance [by the state insurance fund of] FOR the payment of the benefits required by section two hundred four of this chapter, INCLUDING BENEFITS FOR FAMILY CARE PROVIDED EITHER IN THE SAME POLICY WITH OR IN A SEPARATE POLICY FROM BENEFITS FOR DISABILITY RESULTING FROM INJURY OR SICKNESS TO OR PREGNANCY OF AN EMPLOYEE, AND AS PROVIDED PURSUANT TO SECTION TWO HUNDRED ELEVEN-A OF THIS CHAPTER. A separate fund is hereby created within the state insurance fund, which shall be known as the "disability benefits fund", and which shall consist of all premiums received and paid into said fund on account of such insurance, all securities acquired by and through the use of moneys belonging to said fund and of interest earned upon moneys belonging to said fund and deposited or invested as herein provided. Said disability benefits fund shall be applicable to the payment of benefits, expenses and assessments on account of insurance written pursuant to article nine of this chapter.

S 9. Subdivisions 1, 2, 3 and 4 of section 217 of the workers' compensation law, subdivision 1 as amended by chapter 167 of the laws of 1999, subdivisions 2 and 3 as amended by chapter 270 of the laws of 1990 and subdivision 4 as added by chapter 600 of the laws of 1949, are amended to read as follows:

1. Written notice and proof of disability shall be furnished to the employer by or on behalf of the employee claiming benefits or, in the case of a claimant under section two hundred seven of this article, to the chair, within thirty days after commencement of the period of disability. Additional proof shall be furnished thereafter from time to time

as the employer or carrier or chair may require but not more often than once each week. Such proof shall include:

(A) IN THE CASE OF DISABILITY RESULTING FROM INJURY OR SICKNESS TO OR PREGNANCY OF THE EMPLOYEE, a statement of disability by the employee's attending [physician or attending podiatrist or attending chiropractor or attending dentist or attending psychologist or attending certified nurse midwife, or in the case of an employee who adheres to the faith or teachings of any church or denomination, and who in accordance with its creed, tenets or principles depends for healing upon prayer through spiritual means alone in the practice of religion, by an accredited practitioner, containing facts and opinions as to such disability in compliance with regulations of the chair.] HEALTH CARE PROVIDER;

(B) IN THE CASE OF FAMILY CARE FOR BONDING WITH A NEW CHILD, A BIRTH CERTIFICATE, CERTIFICATE OF ADOPTION, OR OTHER COMPETENT EVIDENCE SHOWING THAT THE EMPLOYEE IS THE PARENT OF A CHILD WITHIN TWELVE MONTHS OF THAT CHILD'S BIRTH OR PLACEMENT FOR ADOPTION OR FOSTER CARE WITH THE EMPLOYEE;

(C) IN THE CASE OF BENEFITS FOR CARE OF A FAMILY MEMBER WITH A SERIOUS HEALTH CONDITION:

(I) A STATEMENT BY THE FAMILY MEMBER'S HEALTH CARE PROVIDER, CONTAINING FACTS AND OPINIONS AS TO SUCH HEALTH CONDITION IN COMPLIANCE WITH REGULATIONS OF THE CHAIR; AND

(II) A STATEMENT SUBSCRIBED BY THE EMPLOYEE AND AFFIRMED BY HIM OR HER AS TRUE UNDER PENALTIES OF PERJURY, OR OTHER EQUIVALENT DOCUMENTARY PROOF, THAT THE EMPLOYEE IS A PRIMARY CARE GIVER FOR THE FAMILY MEMBER DURING THE TIME OF DISABILITY.

Failure to furnish notice or proof within the time and in the manner above provided shall not invalidate the claim but no benefits shall be required to be paid for any period more than two weeks prior to the date on which the required proof is furnished unless it shall be shown to the satisfaction of the chair not to have been reasonably possible to furnish such notice or proof and that such notice or proof was furnished as soon as possible; provided, however, that no benefits shall be paid unless the required proof of disability is furnished within twenty-six weeks after commencement of the period of disability. No limitation of time provided in this section shall run as against any person who is mentally incompetent, or physically incapable of providing such notice as a result of a serious medical condition, or a minor so long as such person has no guardian of the person and/or property.

2. An employee claiming benefits FOR HIS OR HER INJURY OR SICKNESS OR PREGNANCY, OR THE FAMILY MEMBER OF SUCH EMPLOYEE IN ANY CASE WHERE THE EMPLOYEE CLAIMS FAMILY CARE BENEFITS FOR PROVIDING CARE TO THAT FAMILY MEMBER shall, as requested by the employer or carrier, submit himself or herself at intervals, but not more than once a week, for examination by a [physician or podiatrist or chiropractor or dentist or psychologist or certified nurse midwife] RELEVANT HEALTH CARE PROVIDER designated by the employer or carrier. All such examinations shall be without cost to the employee OR FAMILY MEMBER and shall be held at a reasonable time and place.

3. The chair may direct the claimant WHO SEEKS DISABILITY BENEFITS FOR HIS OR HER INJURY OR SICKNESS OR PREGNANCY, OR THE CLAIMANTS' FAMILY MEMBER WHERE THE CLAIMANT SEEKS DISABILITY BENEFITS FOR FAMILY LEAVE TO PROVIDE CARE TO THAT FAMILY MEMBER to submit to examination by a [physician or podiatrist or chiropractor or dentist or psychologist] RELEVANT HEALTH CARE PROVIDER designated by him or her in any case in which the claim to disability benefits is contested and in claims arising under

section two hundred seven OF THIS ARTICLE, and in other cases as the chair or board may require.

4. Refusal of the claimant OR FAMILY MEMBER without good cause to submit to any such examination shall disqualify [him] THE CLAIMANT from all benefits hereunder for the period of such refusal, except as to benefits already paid.

S 9-a. Section 217 of the workers' compensation law is amended by adding a new subdivision 7 to read as follows:

7. THE COMMISSIONER OF LABOR, IN CONSULTATION WITH THE COMMISSIONER OF HEALTH AND THE DIRECTOR OF THE OFFICE FOR THE AGING, SHALL DEVELOP AND IMPLEMENT AN OUTREACH PROGRAM TO ENSURE THAT INDIVIDUALS WHO MAY BE ELIGIBLE TO RECEIVE TEMPORARY DISABILITY INSURANCE AND FAMILY CARE BENEFITS UNDER THIS CHAPTER ARE MADE AWARE OF THESE BENEFITS. THE OUTREACH PROGRAM SHALL PROVIDE ADEQUATE INFORMATION ON ELIGIBILITY REQUIREMENTS, THE CLAIMS PROCESS, BENEFIT AMOUNTS, REINSTATEMENT AND NONDISCRIMINATION RIGHTS, CONFIDENTIALITY AND COORDINATION OF LEAVE UNDER THIS CHAPTER AND OTHER SECTIONS. THE COMMISSIONER SHALL PROVIDE SUCH OUTREACH INFORMATION IN AS MANY LANGUAGES AND AS FREQUENTLY AS THE COMMISSIONER DEEMS NECESSARY TO PROVIDE ADEQUATE NOTICE.

S 10. Section 221 of the workers' compensation law, as separately amended by chapters 425 and 500 of the laws of 1985, is amended to read as follows:

S 221. Determination of contested claims for disability benefits. Within twenty-six weeks of written notice of rejection of claim, DENIAL OF RIGHTS UNDER SECTION TWO HUNDRED THREE-A OR TWO HUNDRED THREE-B OF THIS ARTICLE, the employee may file with the chairman a notice that his or her claim for disability benefits has not been paid, [and] OR THAT THE EMPLOYEE HAS BEEN DENIED RIGHTS GUARANTEED BY SECTION TWO HUNDRED THREE-A OR TWO HUNDRED THREE-B OF THIS ARTICLE. IN CASES OF DENIAL OF BENEFITS, the employee shall submit proof of disability OR ELIGIBILITY FOR FAMILY CARE and of his or her employment, wages and other facts reasonably necessary for determination of the employee's right to such benefits OR PROOF OF DENIAL OF RIGHTS UNDER SECTION TWO HUNDRED THREE-A OR TWO HUNDRED THREE-B OF THIS ARTICLE OR OF RETALIATION. Failure to file such notice within the time provided, may be excused by the chairman if it can be shown to the satisfaction of the chairman not to have been reasonably possible to furnish such notice and that such notice was furnished as soon as possible. On demand of the chairman the employer or carrier shall forthwith deliver to the chairman PROOF OF DISABILITY, INCLUDING IF RELEVANT the original or a true copy of the attending physician's or attending podiatrist's or accredited practitioner's statement, wage and employment data and all other papers in the possession of the employer or carrier with respect to such claim OR COMPLAINT.

The board shall have full power and authority to determine all issues in relation to every such claim for disability OR FAMILY CARE benefits required or provided under this article, OR WITH RESPECT TO DENIAL OF RIGHTS UNDER SECTION TWO HUNDRED THREE-A OR TWO HUNDRED THREE-B OF THIS ARTICLE OR INCLUDING ORDERING PAYMENT OF BENEFITS, DAMAGES AND REINSTATEMENT and shall file its decision in the office of the chairman. Upon such filing, the chairman shall send to the parties a copy of the decision. Either party may present evidence and be represented by counsel at any hearing on such claim. The decision of the board shall be final as to all questions of fact and, except as provided in section twenty-three of this chapter, as to all questions of law. Every decision of the board shall be complied with in accordance with its terms within

ten days thereafter except in case of appeal, and any payments due under such decision shall draw simple interest from thirty days after the making thereof at the rate provided in section five thousand four of the civil practice law and rules.

S 11. Subdivision 2 of section 229 of the workers' compensation law, as added by chapter 271 of the laws of 1985, is amended to read as follows:

2. Whenever an employee of a covered employer who is eligible for benefits under section two hundred four of this article shall be absent from work due to a disability as defined in subdivision nine of section two hundred one of this article for more than seven consecutive days, the employer shall provide the employee with a written statement of the employee's rights under this article in a form prescribed by the chairman. The statement shall be provided to the employee within five business days after the employee's seventh consecutive day of absence due to disability or within five business days after the employer knows or should know that the employee's absence is due to disability, whichever is later. EACH COVERED EMPLOYER SHALL PROVIDE EACH EMPLOYEE WITH A TYPEWRITTEN, PRINTED OR ELECTRONIC NOTICE IN A FORM PRESCRIBED BY THE CHAIR, STATING THAT THE EMPLOYER HAS PROVIDED FOR THE PAYMENT OF DISABILITY BENEFITS AS REQUIRED BY THIS ARTICLE WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE WHICH AMENDED THIS SUBDIVISION. EACH COVERED EMPLOYER SHALL PROVIDE SUCH NOTICE TO ALL NEW EMPLOYEES WITHIN THIRTY DAYS OF THEIR FIRST DAY OF WORK.

S 12. The workers' compensation law is amended by adding a new section 239-a to read as follows:

S 239-A. FAMILY CARE STUDY AND MONITORING. 1. THE DEPARTMENT OF INSURANCE SHALL STUDY, AND REPORT TO THE GOVERNOR AND BOTH HOUSES OF THE LEGISLATURE BY APRIL FIRST, TWO THOUSAND TEN, ON THE FEASIBILITY AND IMPACT OF COMMUNITY RATING DISABILITY INSURANCE OR ANY ASPECT THEREOF.

2. THERE SHALL BE CREATED THE FAMILY CARE ADVISORY COUNCIL, WHICH SHALL CONSIST OF FIFTEEN MEMBERS TO BE APPOINTED BY THE GOVERNOR AS FOLLOWS: TWO ON RECOMMENDATION BY THE NEW YORK STATE AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS, ONE OF WHOM SHALL BE REPRESENTATIVE OF PUBLIC EMPLOYEE ORGANIZATIONS CERTIFIED UNDER ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW, PARTICIPATING IN THE PAID FAMILY CARE PLAN, ONE OF WHOM IS REPRESENTATIVE OF UNIONS REPRESENTING WORKERS EMPLOYED IN THE PRIVATE SECTOR; TWO WHO ARE REPRESENTATIVES OF ORGANIZATIONS THAT REPRESENT EITHER COVERED BUSINESS OR PUBLIC EMPLOYERS IN NEW YORK STATE PARTICIPATING IN THE PAID FAMILY LEAVE PLAN; TWO ON NOMINATION OF THE SPEAKER OF THE ASSEMBLY; ONE ON NOMINATION BY THE MINORITY LEADER OF THE ASSEMBLY; TWO ON NOMINATION BY THE TEMPORARY PRESIDENT OF THE SENATE; ONE ON NOMINATION BY THE MINORITY LEADER OF THE SENATE; AND THE SUPERINTENDENT OF INSURANCE, COMMISSIONER OF LABOR AND CHAIR OF THE WORKERS' COMPENSATION BOARD, WHO SHALL SERVE AS MEMBERS EX OFFICIO. THE COMMISSIONER OF LABOR SHALL SERVE AS CHAIR OF THE COUNCIL. THE SUPERINTENDENT OF INSURANCE AND CHAIR OF THE WORKERS' COMPENSATION BOARD SHALL CONSULT REGULARLY WITH THE COUNCIL ON THE IMPLEMENTATION OF THE FAMILY CARE BENEFIT. THE DEPARTMENT OF LABOR, THE INSURANCE DEPARTMENT AND THE WORKERS' COMPENSATION BOARD SHALL PROVIDE ALL NECESSARY PERSONNEL AND LOGISTICAL SUPPORT AS MAY BE NECESSARY TO COMPLETE THE DUTIES OF THE ADVISORY COUNCIL. THE COUNCIL OR ANY OF ITS MEMBERS MAY ISSUE SUCH RECOMMENDATIONS OR REPORTS AS THEY DEEM WARRANTED ON THE FAMILY CARE BENEFIT, INCLUDING ON THE SCOPE OF THE BENEFIT, PROBLEMS WITH THE BENEFIT; FUNDING OF THE BENEFIT INCLUDING PASS-THROUGH COSTS; POSSIBLE STATUTORY AMENDMENTS AND REGULATORY CHANGES; USAGE RATES; OUTREACH; AND

COMMUNITY RATING. ANY SUCH RECOMMENDATIONS OR REPORTS SHALL BE PROVIDED TO THE GOVERNOR, SUPERINTENDENT OF INSURANCE, SPEAKER OF THE ASSEMBLY, TEMPORARY PRESIDENT OF THE SENATE AND MINORITY LEADERS OF THE SENATE AND ASSEMBLY. EACH MEMBER OF THE COMMISSION SHALL SERVE A TERM OF THREE YEARS. AN APPOINTMENT TO FILL A VACANCY SHALL BE MADE FOR THE REMAINDER OF THE AFFECTED TERM. MEMBERS SHALL RECEIVE NO COMPENSATION.

S 13. Paragraph 3 of subsection (a) of section 1113 of the insurance law is amended to read as follows:

(3) "Accident and health insurance," means (i) insurance against death or personal injury by accident or by any specified kind or kinds of accident and insurance against sickness, ailment or bodily injury, including insurance providing disability benefits pursuant to article nine of the workers' compensation law, INCLUDING ANY INSURANCE UNDER THAT ARTICLE FOR FAMILY CARE BENEFITS, DISABILITY BENEFITS RESULTING FROM INJURY OR SICKNESS TO OR PREGNANCY OF AN EMPLOYEE, OR ALL, except as specified in item (ii) [hereof] OF THIS PARAGRAPH; and (ii) non-cancellable disability insurance, meaning insurance against disability resulting from sickness, ailment or bodily injury (but excluding insurance solely against accidental injury) under any contract which does not give the insurer the option to cancel or otherwise terminate the contract at or after one year from its effective date or renewal date.

S 14. This act shall take effect immediately; provided, however, that:

(a) Sections one, two, three, three-a, three-b, three-c, four, five, six, seven, seven-a, seven-b, eight, nine, nine-a, ten, eleven and thirteen of this act shall take effect January 1, 2010.

(b) Paragraph a of subdivision 3 of section 211-a of the workers' compensation law, as added by section seven-b of this act allowing public employees to opt in to family care benefits prior to July 1, 2010 and subdivision 1 of section 212 of the workers' compensation law as amended by section eight of this act allowing public employers to opt in to family care benefits prior to July 1, 2010, shall take effect immediately.

(c) Effective immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.