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

3301--A

2015-2016 Regular Sessions

I N S E N A T E

February 4, 2015

Introduced by Sens. KLEIN, AVELLA, CARLUCCI, SAVINO, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the workers' compensation law and the insurance law, in relation to establishing family care benefits

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 a new paragraph C to read as follows:

C. "DISABILITY" ALSO INCLUDES 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, and nine new subdivisions 15, 16, 17, 18, 19, 20, 21, 22 and 23 are added 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 WHICH THE EMPLOYEE USES FOR FAMILY CARE, and for which [he] THE EMPLOYEE has not received his OR HER regular remuneration.

15. "FAMILY CARE" MEANS ANY LEAVE TAKEN BY AN EMPLOYEE FROM PERFORMING WORK:

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 THE EMPLOYEE'S 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 STEP-CHILD, A LEGAL WARD OR A CHILD OF A PERSON WHO STANDS IN PARENTAL RELATIONSHIP TO THE CHILD WHO IS:

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

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A. LESS THAN 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 SAME MEANING SET FORTH IN SUBDIVISION ONE OF 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 A BIOLOGICAL OR ADOPTIVE PARENT OR STEP-PARENT OF AN EMPLOYEE, OR A PERSON WHO STOOD IN PARENTAL RELATIONSHIP TO AN EMPLOYEE WHEN THE EMPLOYEE WAS:

A. LESS THAN EIGHTEEN YEARS OF AGE; OR

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

20. "FAMILY MEMBER" MEANS A CHILD, SPOUSE, DOMESTIC PARTNER, PARENT, GRANDCHILD, GRANDPARENT, OR MOTHER OR FATHER OF A DOMESTIC PARTNER.

21. "PERSONS WHO STAND IN PARENTAL RELATIONSHIP TO A CHILD" INCLUDE THOSE WITH DAY-TO-DAY RESPONSIBILITIES TO CARE FOR AND PROVIDE FINANCIAL SUPPORT OF 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 SHALL NOT BE NECESSARY.

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

23. "HEALTH CARE PROVIDER" MEANS A HEALTH CARE PRACTITIONER WHO IS LICENSED UNDER THE RELEVANT FEDERAL OR STATE LAWS TO PROVIDE MEDICAL, EMERGENCY OR HEALTH SERVICES, AND IS TREATING AN EMPLOYEE OR A FAMILY MEMBER FOR A SERIOUS HEALTH CONDITION.

S 3. Section 203 of the workers' compensation law, as amended by chapter 436 of the laws of 1986, is amended to read as follows:

S 203. Employees eligible for benefits under section two hundred four OF THIS ARTICLE. Employees in employment of a covered employer for four or more consecutive weeks and employees in employment during the work period usual to and available during such four or more consecutive weeks in any trade or business in which they are regularly employed and in which hiring from day to day of such employees is the usual employment practice shall be eligible for disability AND FAMILY LEAVE benefits as provided in section two hundred four OF THIS ARTICLE. EVERY SUCH EMPLOYEE SHALL CONTINUE TO BE ELIGIBLE FOR FAMILY LEAVE BENEFITS ONLY DURING EMPLOYMENT WITH A COVERED EMPLOYER. Every such employee shall continue to be eligible FOR DISABILITY BENEFITS during such employment and for a period of four weeks after such employment terminates regardless of whether the employee performs any work for remuneration or profit in non-covered employment. If during such four week period the employee performs any work for remuneration or profit for another covered employer the employee shall become eligible for DISABILITY benefits immediately with respect to that employment. In addition every such employee who HAS PREVIOUSLY COMPLETED FOUR OR MORE CONSECUTIVE WEEKS IN EMPLOYMENT WITH THE COVERED EMPLOYER AND returns to work with the same employer after an agreed and specified unpaid leave of absence or vacation without pay shall become eligible for DISABILITY AND FAMILY LEAVE benefits immediately with respect to such employment. An employee who during a period in which he or she is eligible to receive benefits under subdivision two of section two hundred seven OF THIS ARTICLE returns to employment with a covered employer and an employee who is currently receiving unemployment insurance benefits or benefits under section two

hundred seven OF THIS ARTICLE and who returns to employment with a covered employer shall become eligible for DISABILITY benefits immediately with respect to such employment. An employee regularly in the employment of a single employer on a work schedule less than the employer's normal work week shall become eligible for DISABILITY AND FAMILY LEAVE benefits on the twenty-fifth day of such regular employment. An employee who [becomes disabled while] IS eligible for DISABILITY AND FAMILY LEAVE benefits in the employment of a covered employer shall not be deemed, for the purposes of this article, to have such employment terminated during any period he or she is eligible to receive benefits under section two hundred four OF THIS ARTICLE with respect to such employment.

S 4. The workers' compensation law is amended by adding two new sections 203-a and 203-b 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 IF FULLY 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 203-B. FAMILY CARE LEAVE. ANY ELIGIBLE EMPLOYEE OF A COVERED EMPLOYER WHO TAKES FAMILY CARE LEAVE ON OR AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN UNDER THIS SECTION SHALL BE ENTITLED, ON RETURN FROM SUCH LEAVE, TO BE RESTORED BY HIS OR HER 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 SUCH 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 IF FULLY SET FORTH IN THIS SECTION.

S 5. Subdivision 2 of section 204 of the workers' compensation law, as amended by chapter 38 of the laws of 1989, is amended and a new subdivision 3 is added to read as follows:

2. [The] FOR PURPOSES OF A DISABILITY DEFINED IN PARAGRAPH A OR B OF SUBDIVISION NINE OF SECTION TWO HUNDRED ONE OF THIS ARTICLE, THE weekly benefit which the disabled employee is entitled to receive for disability commencing on or after May first, nineteen hundred eighty-nine shall be one-half of the employee's weekly wage, but in no case shall such benefit exceed one hundred seventy dollars; except that if the employee's average weekly wage is less than twenty dollars, the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred eighty-four shall be one-half of the employee's weekly wage, but in no case shall such benefit exceed one hundred forty-five dollars; except that if the employee's average weekly

wage is less than twenty dollars, the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred eighty-three and prior to July first, nineteen hundred eighty-four shall be one-half of the employee's average weekly wage, but in no case shall such benefit exceed one hundred thirty-five dollars nor be less than twenty dollars; except that if the employee's average weekly wage is less than twenty dollars the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred seventy-four, and prior to July first, nineteen hundred eighty-three, shall be one-half of the employee's average weekly wage, but in no case shall such benefit exceed ninety-five dollars nor be less than twenty dollars; except that if the employee's average weekly wage is less than twenty dollars, the benefit shall be such average weekly wage. The weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred seventy and prior to July first, nineteen hundred seventy-four shall be one-half of the employee's average weekly wage, but in no case shall such benefit exceed seventy-five dollars nor be less than twenty dollars; except that if the employee's average weekly wage is less than twenty dollars the benefit shall be such average weekly wage. For any period of disability less than a full week, the benefits payable shall be calculated by dividing the weekly benefit by the number of the employee's normal work days per week and multiplying the quotient by the number of normal work days in such period of disability. The weekly benefit for a disabled employee who is concurrently eligible for benefits in the employment of more than one covered employer shall, within the maximum and minimum herein provided, be one-half of the total of the employee's average weekly wages received from all such covered employers, and shall be allocated in the proportion of their respective average weekly wage payments.

3. FOR PURPOSES OF A DISABILITY DEFINED IN PARAGRAPH C OF SUBDIVISION NINE OF SECTION TWO HUNDRED ONE OF THIS ARTICLE, THE WEEKLY BENEFIT ON WHICH AN EMPLOYEE ON FAMILY CARE LEAVE IS ENTITLED TO RECEIVE FOR DISABILITY COMMENCING ON OR AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN SHALL BE TWO-THIRDS 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 DEPARTMENT 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 EIGHTEEN SHALL BE SEVENTY 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 DEPARTMENT 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 NINETEEN SHALL BE SEVENTY-FIVE 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 DEPARTMENT 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 TWENTY AND SUBSEQUENTLY SHALL BE EIGHTY 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 DEPARTMENT PURSUANT TO SUBDIVISION SIXTEEN OF SECTION TWO OF THIS CHAPTER.

S 6. Section 205 of the workers' compensation law, as added by chapter 600 of the laws of 1949, subdivision 1 as amended by chapter 651 of the laws of 1958, subdivision 2 as amended by chapter 270 of the laws of 1990, subdivision 5 as amended by chapter 288 of the laws of 1970, and subdivisions 3, 4, 5, 6, 7 and 8 as renumbered by chapter 352 of the laws of 1981, is amended to read as follows:

S 205. Disabilities, FAMILY LEAVE and [disability] periods for which benefits are not payable. 1. No employee shall be entitled to DISABILITY benefits under this article:

[1. For] (A) FOR more than twenty-six weeks during a period of fifty-two consecutive calendar weeks or during any one period of disability, OR FOR MORE THAN TWENTY-SIX WEEKS MINUS ANY DAYS TAKEN FOR FAMILY LEAVE DURING ANY FIFTY-TWO CONSECUTIVE CALENDAR WEEKS;

[2.] (B) for any period of disability 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,] HEALTH CARE PROVIDER; AND 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.

2. NO EMPLOYEE SHALL BE ENTITLED TO FAMILY LEAVE BENEFITS UNDER THIS ARTICLE:

(A) FOR MORE THAN TWELVE WEEKS DURING A PERIOD OF FIFTY-TWO CONSECUTIVE CALENDAR WEEKS, OR WHEN AN EMPLOYEE HAS ALREADY RECEIVED TWENTY-SIX WEEKS OF DISABILITY BENEFITS, OR FOR ANY PERIOD IN WHICH THE FAMILY LEAVE COMBINED WITH THE DISABILITY BENEFITS PREVIOUSLY PAID EXCEEDS TWENTY-SIX WEEKS DURING THE SAME FIFTY-TWO CONSECUTIVE CALENDAR WEEKS;

(B) FOR ANY PERIOD OF FAMILY LEAVE WHEREIN THE NOTICE AND MEDICAL CERTIFICATION AS PRESCRIBED BY THE CHAIR HAS NOT BEEN FILED. AT THE DISCRETION OF THE CHAIR OR CHAIR'S DESIGNEE, THE FAMILY MEMBER WHO IS THE RECIPIENT OF CARE MAY BE REQUIRED TO SUBMIT TO A PHYSICAL EXAMINATION BY A QUALIFIED HEALTH CARE PROVIDER. SUCH EXAMINATION SHALL BE PAID FOR BY THE CARRIER.

(C) AS A CONDITION OF AN EMPLOYEE'S INITIAL RECEIPT OF FAMILY LEAVE BENEFITS DURING ANY TWELVE-MONTH PERIOD IN WHICH AN EMPLOYEE IS ELIGIBLE FOR THESE BENEFITS, AN EMPLOYER MAY REQUIRE AN EMPLOYEE WHO HAS ACCRUED BUT UNUSED VACATION TIME OR PERSONAL LEAVE AVAILABLE AT THE TIME OF USE

OF AVAILABLE FAMILY LEAVE TO CHOOSE WHETHER TO CHARGE TIME TO ACCRUED BUT UNUSED VACATION OR PERSONAL LEAVE, AND RECEIVE FULL SALARY, OR TO NOT CHARGE TIME TO ACCRUED BUT UNUSED VACATION OR PERSONAL LEAVE, AND RECEIVE THE BENEFIT AS SET FORTH IN SECTION TWO HUNDRED FOUR OF THIS ARTICLE. WITH THE ELECTION OF EITHER OPTION, THE EMPLOYEE SHALL RECEIVE THE FULL PROTECTION OF THE REINSTATEMENT PROVISION SET FORTH IN SECTION TWO HUNDRED THREE-B OF THIS ARTICLE, AND SHALL CONCURRENTLY USE AVAILABLE FAMILY MEDICAL LEAVE ACT AND PAID FAMILY LEAVE CREDITS. IN NO EVENT CAN AN EMPLOYEE UTILIZE FAMILY LEAVE BEYOND THE TWELVE WEEKS PER ANY FIFTY-TWO WEEK PERIOD SET FORTH IN THIS ARTICLE. THIS PARAGRAPH MAY NOT BE CONSTRUED IN A MANNER THAT RELIEVES AN EMPLOYER OF ANY DUTY OF COLLECTIVE BARGAINING THE EMPLOYER MAY HAVE WITH RESPECT TO THE SUBJECT MATTER OF THIS PARAGRAPH.

3. NO EMPLOYEE SHALL BE ENTITLED TO DISABILITY OR FAMILY LEAVE BENEFITS UNDER THIS ARTICLE:

(A) for any disability 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.] (B) for any day of disability OR FAMILY LEAVE during which the employee performed work for remuneration or profit;

[5.] (C) for any day of disability OR FAMILY LEAVE for which the employee is entitled to receive from his OR HER employer, or from a fund to which the employer has contributed, remuneration or maintenance in an amount equal to or greater than that to which he OR SHE would be entitled under this article; but any voluntary contribution or aid which an employer may make to an employee or any supplementary benefit paid to an employee pursuant to the provisions of a collective bargaining agreement or from a trust fund to which contributions are made pursuant to the provisions of a collective bargaining agreement shall not be considered as continued remuneration or maintenance for this purpose;

[6.] (D) for any period in respect to which such employee is subject to suspension or disqualification of the accumulation of unemployment insurance benefit rights, or would be subject if he OR SHE were eligible for such benefit rights, except for ineligibility resulting from the employee's disability;

[7.] (E) for any disability due to any act of war, declared or undeclared[, if such act shall occur after June thirtieth, nineteen hundred fifty];

[8.] (F) for any disability OR FAMILY LEAVE 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] UNDER THIS SECTION.

4. AN EMPLOYEE WHO HAS GIVEN BIRTH SHALL SELECT WHETHER SHE WILL SEEK BENEFITS PURSUANT TO SUBDIVISION ONE OR TWO OF THIS SECTION. AN EMPLOYEE MAY NOT SEEK BENEFITS CONCURRENTLY UNDER BOTH SUBDIVISIONS ONE AND TWO OF THIS SECTION FOLLOWING CHILDBIRTH.

S 7. Section 209 of the workers' compensation law, as added by chapter 600 of the laws of 1949, subdivision 3 as amended by chapter 415 of the laws of 1983 and subdivision 4 as amended by chapter 134 of the laws of 1952, is amended to read as follows:

S 209. Contribution of employees for disability AND FAMILY LEAVE benefits. 1. Every employee in the employment of a covered employer shall[, on and after January first, nineteen hundred fifty,] contribute to the cost of providing disability AND AFTER JANUARY FIRST, TWO THOUSAND

SEVENTEEN, FAMILY LEAVE benefits under this article, to the extent and in the manner herein provided.

2. The special contribution of each such employee to the accumulation of funds to provide benefits for disabled unemployed shall be as provided in subdivision one of section two hundred fourteen OF THIS ARTICLE.

3. (A) DISABILITY BENEFITS. 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 OR HER on and after July first, nineteen hundred fifty, but not in excess of sixty cents per week.

(B) FAMILY LEAVE BENEFITS. ON SEPTEMBER FIRST, TWO THOUSAND SIXTEEN AND ANNUALLY THEREAFTER THE SUPERINTENDENT OF FINANCIAL SERVICES SHALL SET THE MAXIMUM EMPLOYEE CONTRIBUTION, USING THE REPORTS PROVIDED IN SECTION TWO HUNDRED EIGHT OF THIS ARTICLE, AND CONSISTENT WITH THE PRINCIPLE THAT THE COSTS OF FAMILY LEAVE SHOULD BE FUNDED ONE HUNDRED PERCENT BY EMPLOYEE PAYROLL CONTRIBUTION.

4. Notwithstanding any other provision of law, the employer is authorized to collect from his employees, except as otherwise provided in any plan or agreement under the provisions of subdivisions four or five of section two hundred eleven, the contribution provided under subdivisions two and three, through payroll deductions. If the employer shall not make deduction for any payroll period he may thereafter, but not later than one month after payment of wages, collect such contribution through payroll deduction.

5. In collecting employee contributions through payroll deductions, the employer shall act as the agent of his employees and shall use the contributions only to provide disability benefits as required by this article. After June thirtieth, nineteen hundred fifty, if the employer is not providing, or to the extent that he is not then providing, for the payment of disability benefits to his employees by insuring with the state fund or with another insurance carrier, he shall keep the contributions of his employees as trust funds separate and apart from all other funds of the employer. The payment of such contributions by the employer to a carrier providing for the payment of such benefits shall discharge the employer from responsibility with respect to such contributions.

S 8. 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, 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 9. The workers' compensation law is amended by adding a new section 211-a to read as follows:

S 211-A. PUBLIC EMPLOYEES; EMPLOYEE OPTION. 1. FOR PURPOSES OF THIS SECTION:

(A) "PUBLIC EMPLOYEE" MEANS ANY EMPLOYEE OF THE STATE, ANY POLITICAL SUBDIVISION OF THE STATE, A PUBLIC AUTHORITY, OR ANY OTHER GOVERNMENTAL AGENCY OR INSTRUMENTALITY.

(B) "PUBLIC EMPLOYER" MEANS THE STATE, ANY POLITICAL SUBDIVISION OF THE STATE, A PUBLIC AUTHORITY, OR ANY OTHER GOVERNMENTAL AGENCY OR INSTRUMENTALITY THEREOF.

(C) "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 PUBLIC EMPLOYEES ELECTS TO HAVE FAMILY CARE BENEFITS PROVIDED IN ACCORDANCE WITH THE PROCEDURES AND TERMS SET FORTH IN SUBDIVISION THREE OF THIS SECTION.

3. AN EMPLOYEE ORGANIZATION MAY ELECT TO HAVE FAMILY CARE BENEFITS PROVIDED ON BEHALF OF THE PUBLIC EMPLOYEES IT REPRESENTS:

(A) AT ANY TIME UPON NINETY DAYS NOTICE TO ANY PUBLIC EMPLOYER WHICH IS NOT PROVIDING DISABILITY BENEFITS FOR INJURY, SICKNESS OR PREGNANCY OF A PUBLIC EMPLOYEE UNDER SECTION TWO HUNDRED TWELVE OF THIS ARTICLE, OR WHICH IS SELF-INSURED FOR SUCH BENEFITS;

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

(C) AT ANY TIME AS IS MUTUALLY AGREED UPON BETWEEN THE EMPLOYEE ORGANIZATION AND ANY PUBLIC EMPLOYER. AN EMPLOYEE ORGANIZATION THAT HAS ELECTED TO HAVE THE FAMILY CARE BENEFIT PROVIDED 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 THE FAMILY CARE COST AS SET FORTH IN SECTION TWO HUNDRED NINE OF THIS ARTICLE.

S 10. 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. (A) 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:

(I) IN THE CASE OF DISABILITY RESULTING FROM INJURY, SICKNESS 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; AND

(II) 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.

(B) Failure to furnish notice or proof within the time and in the manner [above] provided IN PARAGRAPH (A) OF THIS SUBDIVISION 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 THE EMPLOYEE'S INJURY, SICKNESS OR PREGNANCY 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 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, SICKNESS OR PREGNANCY 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 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 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. (A) 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] CHAIR. 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.

(B) 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 THIS PARAGRAPH. EACH COVERED EMPLOYER SHALL PROVIDE SUCH NOTICE TO ALL NEW EMPLOYEES WITHIN THIRTY DAYS OF THEIR FIRST DAY OF WORK.

S 12. 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 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 SUCH ARTICLE FOR FAMILY CARE BENEFITS, AND/OR DISABILITY BENEFITS RESULTING FROM INJURY, SICKNESS OR PREGNANCY OF AN EMPLOYEE, 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.