

1.1 **Senator Champion from the Committee on Jobs and Economic Development, to**
 1.2 **which was re-referred**

1.3 **S.F. No. 2:** A bill for an act relating to employment; providing for paid family, pregnancy,
 1.4 bonding, and applicant's serious medical condition benefits; regulating and requiring certain
 1.5 employment leaves; classifying certain data; authorizing rulemaking; requiring an actuarial
 1.6 report; increasing direct care provider rates; appropriating money; amending Minnesota
 1.7 Statutes 2022, sections 13.719, by adding a subdivision; 177.27, subdivision 4; 181.032;
 1.8 256B.057, subdivision 9; 256J.561, by adding a subdivision; 256J.95, subdivisions 3, 11;
 1.9 256P.01, subdivision 3; 268.19, subdivision 1; proposing coding for new law as Minnesota
 1.10 Statutes, chapter 268B.

1.11 Reports the same back with the recommendation that the bill be amended as follows:

1.12 Page 1, line 17, after "members," insert "incapacitated persons,"

1.13 Page 1, line 22, after "Industry" insert "and the Department of Commerce"

1.14 Page 1, line 24, before the period, insert ", or to the extent necessary for the Department
 1.15 of Commerce to review or verify compliance for a private plan under section 268A.10"

1.16 Page 8, after line 18, insert:

1.17 "(e) For an applicant under a private plan as provided in section 268.10, the base period
 1.18 shall be those most recent four quarters or fewer, as applicable, in which wage credits were
 1.19 earned with the current employer as provided by the current employer. If an employer does
 1.20 not have complete base period wage detail information, the employer may accept an
 1.21 employee's certification of wage credits, based on the employee's records."

1.22 Page 8, line 20, delete "pregnancy"

1.23 Page 9, line 4, delete "46" and insert "47"

1.24 Page 9, after line 4, insert:

1.25 "Subd. 12. **Construction industry.** "Construction industry" means any construction,
 1.26 reconstruction, building erection, alteration, remodeling, repairing, renovation, rehabilitation,
 1.27 excavation, or demolition of any building, structure, facility utility, power plant, sewer,
 1.28 dam, highway, road, street, airport, bridge, or other improvement."

1.29 Page 9, after line 30, insert:

1.30 "(c) Employee does not include seasonal employees who are employed for no more than
 1.31 150 days during any consecutive 52-week period. A seasonal employee whose employment
 1.32 extends beyond 150 days during any consecutive 52-week period shall be considered an
 1.33 employee for the purposes of this chapter retroactively to the first day of employment."

1.34 Page 10, delete subdivision 19

- 2.1 Page 10, line 6, delete the second "and"
- 2.2 Page 10, line 10, after "authority" insert ", board or comission"
- 2.3 Page 10, line 12, delete the second period and insert "; and"
- 2.4 Page 10, after line 12, insert:
- 2.5 "(4) the taxpaying employer as described in section 286.046, subdivision 1."
- 2.6 Page 10, line 18, delete "average" and delete "two"
- 2.7 Page 10, line 19, delete "years" and insert "year" and delete everything after the period
- 2.8 Page 10, delete lines 20 to 22
- 2.9 Page 11, line 2, delete "or" and insert a comma
- 2.10 Page 11, line 3, before the period, insert ", or caring for a family member who is taking
- 2.11 safety leave"
- 2.12 Page 11, delete lines 11 to 16 and insert:
- 2.13 "(6) an individual selected by the incapacitated person."
- 2.14 Page 11, line 29, after "assistant" insert ", podiatrist"
- 2.15 Page 11, line 30, delete the first "or" and after "nurse" insert ", an alcohol and drug
- 2.16 counselor as defined in section 148F.01, subdivision 5, or a mental health professional as
- 2.17 defined in section 245I.02, subdivision 27"
- 2.18 Page 12, line 6, delete ", attend"
- 2.19 Page 12, line 7, delete everything before "due"
- 2.20 Page 12, after line 8, insert:
- 2.21 "Subd. 27. **Incapacitated person.** "Incapacitated person" means the individual who
- 2.22 needs leave or is the reason for another individual to need leave due to their incapacity,
- 2.23 domestic abuse, sexual assault, stalking, or qualifying exigency."
- 2.24 Page 12, line 22, delete "or pregnancy"
- 2.25 Page 13, line 20, after "self-employment" insert a period
- 2.26 Page 13, delete line 21
- 2.27 Page 14, line 1, delete "at-home care or"

3.1 Page 14, line 7, after "times" insert ", within 30 days of the first day of incapacity, unless
3.2 extenuating circumstances beyond the employee's control prevent a follow-up visit from
3.3 occurring as planned,"

3.4 Page 15, after line 17, insert:

3.5 "(d) At no time shall a supplemental benefit payment combined with any leave benefit
3.6 received under this chapter exceed the regular wage or salary of the applicant."

3.7 Page 15, line 25, delete "hours" and delete "hours"

3.8 Page 16, delete subdivision 45 and insert:

3.9 "Subd. 45. **Wages.** "Wages" has the meaning given in section 268.035, subdivision 29."

3.10 Page 19, line 28, after the first period, insert "Employees of the division shall serve in
3.11 the classified civil service of the state."

3.12 Page 20, after line 9, insert:

3.13 "Subd. 6. **Procurement.** For purposes of administering this chapter, until July 1, 2025,
3.14 the department is exempt from the requirements of sections 16A.15, subdivision 3; 16B.97;
3.15 and 16B.98, subdivisions 5, 7, and 8; chapter 16C; and any other state procurement laws
3.16 and procedures."

3.17 Page 20, delete section 7 and insert:

3.18 "Sec. 7. **[268B.03] PAYMENT OF BENEFITS.**

3.19 The commissioner must pay benefits from the family and medical benefit insurance
3.20 account as provided under this chapter to an applicant who has met each of the following
3.21 requirements:

3.22 (1) the applicant has filed an application for benefits and established a benefit account
3.23 in accordance with section 268B.04;

3.24 (2) the applicant has met all of the ongoing eligibility requirements under section
3.25 268B.06;

3.26 (3) the applicant does not have an outstanding overpayment of family or medical leave
3.27 benefits, including any penalties or interest;

3.28 (4) the applicant has not been held ineligible for benefits under section 268.07, subdivision
3.29 2; and

4.1 (5) the applicant is not employed exclusively by a private plan employer and has wage
4.2 credits during the base year attributable to employers covered under the state family and
4.3 medical leave program.

4.4 **EFFECTIVE DATE.** Except as provided in section 39, this section is effective July 1,
4.5 2025."

4.6 Page 21, line 8, after "filed" insert "up to 60 days before leave taken under section
4.7 268B.085"

4.8 Page 21, line 10, delete "at the time"

4.9 Page 21, line 11, delete "the application is filed"

4.10 Page 21, line 12, delete "does not meet eligibility at the time of the application or"

4.11 Page 21, line 27, delete "24" and insert "12"

4.12 Page 23, line 3, delete "37" and insert "39"

4.13 Page 23, delete subdivision 5 and insert:

4.14 "Subd. 5. **Maximum length of benefits.** (a) The total number of weeks that an applicant
4.15 may take benefits in a single benefit year for a serious health condition is the lesser of 12
4.16 weeks, or 12 weeks minus the number of weeks within the same benefit year that the
4.17 applicant received benefits for bonding, safety leave, or family care plus 8 weeks.

4.18 (b) The total number of weeks that an applicant may take benefits in a single benefit
4.19 year for bonding, safety leave, or family care is the lesser of 12 weeks, or 12 weeks minus
4.20 the number of weeks within the same benefit year that the applicant received benefits for a
4.21 serious health condition plus 8 weeks."

4.22 Page 23, line 14, delete everything after the period and insert "The minimum duration
4.23 to receive benefits under this chapter is one work day in a work week."

4.24 Page 23, delete lines 15 and 16

4.25 Page 24, line 23, after "care," insert "or" and delete everything after "bonding"

4.26 Page 24, line 24, delete everything before the period

4.27 Page 25, line 3, delete "(4)" and insert "(3)"

4.28 Page 25, line 6, delete "recovery from pregnancy,"

4.29 Page 25, line 7, delete "not" and insert "to" and before the second period, insert "unless
4.30 the leave is intermittent"

5.1 Page 25, line 16, after the period, insert "The health care provider must also certify that
5.2 the applicant is incapacitated as defined in section 268B.01, subdivision 26, due to their
5.3 serious health condition. If the applicant requests intermittent leave, the certification must
5.4 include the health care provider's reasonable estimate of the frequency and duration and
5.5 estimated treatment schedule, if applicable."

5.6 Page 25, delete lines 23 to 25

5.7 Page 25, line 26, delete "(d)" and insert "(c)"

5.8 Page 25, line 29, before the period, insert "or estimated due date"

5.9 Page 25, line 30, delete "(e)" and insert "(d)"

5.10 Page 26, line 5, delete "(f)" and insert "(e)"

5.11 Page 26, line 10, delete "(g)" and insert "(f)"

5.12 Page 26, line 11, delete "a volunteer or" and insert "an"

5.13 Page 26, delete lines 15 and 16

5.14 Page 26, line 17, delete "(i)" and insert "(g)" and delete "or reduced-schedule"

5.15 Page 26, line 27, delete "supplemental benefit payments" and insert "disability insurance
5.16 benefits" and delete "(a) An applicant" and insert "An employee may use vacation pay, sick
5.17 pay, paid time off pay, or disability insurance payments, in lieu of family or medical leave
5.18 program benefits under this chapter, provided the employee is concurrently eligible. Subject
5.19 to the limitations of section 268B.09, subdivision 1, an employee is entitled to the
5.20 employment protections under section 268B.09 for those workdays during which this option
5.21 is exercised. This subdivision applies to private plans under section 268B.10."

5.22 Page 26, delete lines 28 to 31

5.23 Page 27, delete lines 1 to 9

5.24 Page 27, line 10, delete "and disability insurance"

5.25 Page 27, line 14, after the semicolon, insert "or"

5.26 Page 27, line 15, delete "; or" and insert a period

5.27 Page 27, delete line 16

5.28 Page 29, line 10, delete the period and insert ", unless the application is incomplete due
5.29 to outstanding requests for information including clerical or other errors. Nothing shall
5.30 prohibit the commissioner from requesting additional information or the applicant from

6.1 supplementing their initial application before a determination of eligibility. The commissioner
6.2 may extend the deadline for a determination under this subdivision due to extenuating
6.3 circumstances."

6.4 Page 29, after line 24, insert "(g) The commissioner must ensure a limit of one family
6.5 member taking leave under this chapter for an incapacitated person at a time, except when
6.6 family care is taken by parents for an incapacitated person under the age of 18."

6.7 Page 31, delete subdivision 1

6.8 Page 31, line 8, delete "LEAVE" and insert "NOTICE TO EMPLOYER; SCHEDULES"

6.9 Page 31, line 17, delete "or on a reduced-schedule basis"

6.10 Page 31, delete lines 30 to 32 and insert:

6.11 "(c) an employer may require that an employee taking leave under this chapter provide
6.12 a copy of the certification under section 268B.06, subdivision 3. Upon written request from
6.13 the employer, the employee shall provide a copy of the certification as soon as practicable
6.14 and possible given all of the facts and circumstances in the individual case. Providing
6.15 certification at or around the time the employee provides a certification to the department
6.16 shall be considered practicable.

6.17 "(d) In addition to any other prohibition imposed under this chapter, an employer must
6.18 not discharge, discipline, penalize, interfere with, threaten, restrain, coerce, or otherwise
6.19 retaliate or discriminate against an employee for providing this certification."

6.20 Page 32, line 1, delete "(d)" and insert "(e)"

6.21 Page 32, line 7, delete "(e)" and insert "(f)"

6.22 Page 32, line 14, after the period, insert "Employees may also use bonding leave before
6.23 the actual placement or adoption of a child in situations that include but are not limited to
6.24 where the employee may be required to:"

6.25 Page 32, after line 14, insert:

6.26 "(1) attend counseling sessions;

6.27 (2) appear in court;

6.28 (3) consult with the attorney or doctors representing the birth parent;

6.29 (4) submit to a physical examination; or

6.30 (5) travel to another country to complete an adoption."

- 7.1 Page 32, line 15, delete "or reduced-leave"
- 7.2 Page 32, line 16, delete everything after "intermittently"
- 7.3 Page 32, line 19, delete everything before the period
- 7.4 Page 32, line 20, delete everything after the period
- 7.5 Page 32, delete lines 21 and 22 and insert:
- 7.6 "(b) For an applicant who takes leave on an intermittent schedule, the weekly benefit
- 7.7 amount shall be prorated.
- 7.8 (c) An employee requesting leave taken intermittently shall provide the employer with
- 7.9 a schedule of needed workdays off as soon as practicable."
- 7.10 Page 32, line 23, delete "(b)" and insert "(d)" and delete "or on a reduced-schedule basis"
- 7.11 Page 33, line 15, before the period, insert ", except as provided in section 268B.10 for
- 7.12 payment of an employee"
- 7.13 Page 33, line 17, before "During" insert "(a)"
- 7.14 Page 33, line 18, after "benefits" insert "or leave"
- 7.15 Page 33, after line 21, insert:
- 7.16 "(b) This subdivision may be waived for employees who are working in the construction
- 7.17 industry under a bona fide collective bargaining agreement that requires employer
- 7.18 contributions to a multi-employer health plan pursuant to United States Code, title 29,
- 7.19 section 186, paragraph (c), clause (5), but only if the waiver is set forth in clear and
- 7.20 unambiguous terms in the collective bargaining agreement and explicitly cites this
- 7.21 subdivision."
- 7.22 Page 35, line 19, before the period, insert "excluding any bonus paid to another employee
- 7.23 or employees for covering the work of the employee while the employee was on leave"
- 7.24 Page 35, after line 27, insert:
- 7.25 "(g) Ninety calendar days from the date of hire, an employee has a right and is entitled
- 7.26 to reinstatement as provided under this subdivision for any day for which the employee has
- 7.27 been deemed eligible for benefits under this chapter.
- 7.28 (h) This subdivision and subdivision 7 may be waived for employees who are working
- 7.29 in the construction industry under a bona fide collective bargaining agreement with a
- 7.30 construction trade union that maintains a referral-to-work procedure for employees to obtain
- 7.31 employment with multiple signatory employers, but only if the waiver is set forth in clear

8.1 and unambiguous terms in the collective bargaining agreement and explicitly cites this
8.2 subdivision and subdivision 7.

8.3 (i) Nothing in this section shall be deemed to affect the Americans with Disabilities Act,
8.4 United States Code, title 42, chapter 126."

8.5 Page 37, line 20, after the period, insert "Employers may apply for approval of private
8.6 plans that exceed the benefits provided to employees under this chapter."

8.7 Page 37, after line 21, insert:

8.8 "Subd. 2. **Private plan requirements; weekly benefit determination.** For purposes of
8.9 determining the family and medical benefit amount and duration under a private plan, the
8.10 weekly benefit amount and duration shall be based on the employee's typical work week
8.11 and wages earned with the employer at the time of an application for benefits. If an employer
8.12 does not have complete base period wage detail information, the employer may accept an
8.13 employee's certification of wage credits, based on the employee's records.

8.14 Subd. 3. **Private plan requirements; timing of payment.** Private plan benefits may be
8.15 paid to align with the employer's payroll cycle or according to the terms of the approved
8.16 private plan.

8.17 Subd. 4. **Surety bond requirement.** If the private plan is in the form of self-insurance,
8.18 the employer shall file with its application for private provision of the medical benefit or
8.19 family benefit program a surety bond in an amount equal to the employer's annual premium
8.20 that it would otherwise be required to pay to the family and medical benefit insurance
8.21 account. The surety bond shall be in a form approved by the commissioner and issued by
8.22 a surety company authorized to transact business in Minnesota."

8.23 Page 37, line 22, after "commissioner" insert ", in consultation with the commissioner
8.24 of commerce,"

8.25 Page 38, line 18, after "commissioner" insert "", in consultation with the commissioner
8.26 of commerce,"

8.27 Page 38, line 26, delete ", taking into consideration any coverage" and insert a semicolon

8.28 Page 38, delete line 27

8.29 Page 39, line 10, delete "medical" and insert "family" and delete "medical" and insert
8.30 "family"

8.31 Page 39, after line 13, insert:

9.1 "Subd. 7. **Employer reimbursement.** If an employer has made advance payments of
 9.2 benefits due under this chapter or has made payments to an employee in like manner as
 9.3 wages during any period of family or medical leave for which the employee is entitled to
 9.4 the benefits provided by this chapter, the employer shall be entitled reimbursement by the
 9.5 carrier or third-party administrator out of any benefits due or to become due for the family
 9.6 or medical leave, if the claim for reimbursement is filed with the carrier prior to payment
 9.7 of the benefit of the carrier."

9.8 Page 39, line 17, delete everything after "must" and insert "be approved by the
 9.9 commissioner of commerce and be issued by an insurance company authorized to transact
 9.10 insurance in this state."

9.11 Page 39, line 33, delete "amended to conform" and insert "administered"

9.12 Page 40, line 2, delete "private plan to the commissioner" and insert "application for
 9.13 private provision of the medical benefit or family benefit program"

9.14 Page 40, line 4, after the period, insert "An employee covered under a private plan has
 9.15 the right to request reconsideration of a decision under a private plan made by an insurer,
 9.16 private plan administrator, or employer prior to exercising the appeal rights in section
 9.17 268B.04."

9.18 Page 40, line 15, after "amendment" insert ", other than those required by legislative
 9.19 amendments to chapter 268B,"

9.20 Page 43, line 2, delete "equal to one-half the percentage" and insert "as provided"

9.21 Page 46, line 8, delete everything after "employers" and insert "must pay a minimum of
 9.22 50 percent "

9.23 Page 46, line 9, after "of" insert "the " and delete "from employee wages" and after the
 9.24 period, insert "Employees, through a deduction in their wages to the employer must pay the
 9.25 remaining portion, if any, of the premium not paid by the employer."

9.26 Page 46, line 15, delete "contract,"

9.27 Page 47, after line 3, insert:

9.28 "Subd. 5. **Small business wage exclusion.** (a) For employers with fewer than 30
 9.29 employees, the amount of wages upon which quarterly employer premium is required is
 9.30 reduced by the premium rate to be paid by the employer multiplied by the lessor of:

9.31 (1) \$12,500 multiplied by the number of employees; or

9.32 (2) \$120,000.

- 10.1 (b) For each employee over 20 employees, the exclusion is reduced by \$12,000.
- 10.2 (c) The premium paid by the employer as a result of the reduction allowed under this
10.3 subdivision must not be less than zero.
- 10.4 (d) The reduction in premiums paid by the employer is for the sole benefit of the employer
10.5 and does not relieve the employer from deducting the employee portion of the premium."
- 10.6 Page 47, line 11, after "and" insert "by July 31 of"
- 10.7 Page 53, delete subdivision 3
- 10.8 Page 53, line 4, delete "without" and insert "or"
- 10.9 Page 53, line 25, delete "enforcement"
- 10.10 Page 63, delete lines 13 to 18
- 10.11 Page 63 line 19, delete "(d)" and insert "(c)"
- 10.12 Page 63, line 20, delete everything after "employee"
- 10.13 Page 63, line 21, delete "contracted" and delete "or"
- 10.14 Page 63, line 22, delete everything before the period
- 10.15 Page 63, line 24, delete "(e)" and insert "(d)"
- 10.16 Page 64, line 9, delete "except as provided under section 268B.01, subdivision 37,"
- 10.17 Page 64, line 11, delete "under this chapter" and after "chapter" insert ", including through
10.18 supplemental payments under section 268B.01, subdivision 39"
- 10.19 Page 64, delete lines 30 and 31 and insert:
- 10.20 "(a) Employers are eligible for a business assistance grant when more than 15 percent
10.21 of their employees are receiving benefits in any given week under this chapter. A grant shall
10.22 be equal to the lesser of:
- 10.23 (1) 25 percent of the wages earned by the employees on leave in the most recent
10.24 completed quarter divided by 13; or
- 10.25 (2) \$300 per week per employee on leave.
- 10.26 (b) Grants must be used to hire temporary workers or to increase wages for current
10.27 employees. The grant shall be paid weekly until the percentage of employees using benefits
10.28 under this chapter is 15 percent or less for the applicable employer."
- 10.29 Page 65, delete lines 1 to 10

11.1 Page 65, line 11, delete "(e)" and insert "(c)"

11.2 Page 65, line 13, delete "(f)" and insert "(d)"

11.3 Page 65, line 16, delete "(g)" and insert "(e)"

11.4 Page 65, line 18, delete "(h)" and insert "(f)"

11.5 Page 66, after line 8, insert:

11.6 "Sec. 38. **ACTUARIAL STUDY.**

11.7 (a) The commissioner of employment and economic development must contract with a
 11.8 qualified independent actuarial consultant to conduct an actuarial study of the family and
 11.9 medical leave premium rate, premium rate structure, weekly benefit formula, duration of
 11.10 benefits, fund reserve, and other components as necessary to determine an actuarially sound
 11.11 rate and future rate setting mechanism of the family and medical benefit insurance program
 11.12 created in this act. A qualified independent actuarial consultant is one who is a Fellow of
 11.13 the Society of Actuaries, Member of the American Academy of Actuaries (FSA MAAA),
 11.14 and who has experience directly relevant to the analysis required under this paragraph. The
 11.15 commissioner must issue a request for proposal to satisfy the requirements of this section
 11.16 no later than 30 days following enactment.

11.17 (b) If the actuarial study indicates that the premium rate in Minnesota Statutes, section
 11.18 268B.14, subdivision 5, is not actuarially sound, the commissioner must present options to
 11.19 the legislature to adjust the program to make the program actuarially sound.

11.20 (c) A copy of the actuarial study and the commissioner's recommendations based on
 11.21 that study must be provided to the majority and minority leaders in the senate and the house
 11.22 of representatives no later than October 31, 2023. The actuarial study and the commissioner's
 11.23 recommendations must also be filed with the Legislative Reference Library in compliance
 11.24 with Minnesota Statutes, section 3.195.

11.25 **EFFECTIVE DATE.** This section is effective the day following final enactment."

11.26 Page 72, delete article 3

11.27 Renumber the subdivisions and sections in sequence

11.28 Amend the title as follows:

11.29 Page 1, line 2, delete "pregnancy,"

11.30 And when so amended the bill do pass and be re-referred to the Committee on Finance.

11.31 Amendments adopted. Report adopted.

12.1

12.2

Bigley
.....
(Committee Chair)

12.3

12.4

March 24, 2023.....
(Date of Committee recommendation)