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HOUSE OF REPRESENTATIVES  
149th GENERAL ASSEMBLY

HOUSE BILL NO. 255

AN ACT TO AMEND TITLES 14 AND 29 OF THE DELAWARE CODE RELATING TO DONATED LEAVE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Section 1318A, Title 14 of the Delaware Code by making deletions as shown by strike through  
2 and insertions as shown by underline as follows

3 § 1318A. Donated leave program.

4 (a) "Donated leave program" means a program:

5 (1) In which 1 or more employees of a public school district may transfer accrued, unused sick leave days to 1  
6 or more other employees of the same public school district;

7 (2) Is established by the public school district as a local Board of Education policy and/or pursuant to the  
8 terms of a collective bargaining agreement negotiated under the terms of Chapter 40 of Title 14; and

9 (3) Is consistent with the provisions set forth in subsection (b) of this section. No donated leave program shall  
10 prohibit participation by employees based on inclusion in or exclusion from a certified bargaining unit.

11 (b) Any donated leave shall be required to comply with the following requirements:

12 (1) Employees wishing to donate accrued sick leave must donate in increments of whole days. For every 2  
13 days donated, 1 day will be made available to a recipient.

14 (2) Donated days shall be made available only for recipients within the school district for use in connection  
15 with either of the following:

16 a. A catastrophic illness of a recipient or of a member of a recipient's family. For this section,  
17 "catastrophic illness" shall mean any illness or injury to an employee or to a member of an employee's family  
18 which is diagnosed by a physician and certified by the physician as rendering the employee or a member of the  
19 employee's family unable to work, or, in the case of a family member who does not work, the medical equivalent  
20 of "unable to work", to work for a period greater than 5 calendar weeks. Separate periods of disability lasting 7  
21 consecutive work days or more each, and totaling more than 5 calendar weeks, resulting from the same or a related  
22 medical condition and occurring within any 12-month consecutive period, shall be considered the same period of

23 disability. For this section, "family member" or "member of an employee's family" means an employee's spouse,  
24 son, daughter or parent who resides with the employee and who requires the personal attendance of the employee  
25 during the family member's catastrophic illness. Donated leave may be used by the recipient for subsequent  
26 absence because of personal medical treatments or personal illness directly related to the employee's "catastrophic  
27 illness" as certified by the physician. This provision is limited to an absence that occurs because of an employee's  
28 "catastrophic illness" not a family member's "catastrophic illness."

29 b. Parental leave. An employee of a school district otherwise eligible under paragraphs (b) (4) and (5) of  
30 this section to receive donated leave shall become eligible to receive such leave upon the birth of a child of the  
31 employee or the employee's spouse, or upon the adoption by the employee of a child who is 6 years of age or  
32 younger. Such eligibility shall expire at the end of the 6-month period beginning on the date of such birth or  
33 adoption. Donated leave may be used by the recipient for subsequent absence related to maternal or pediatric  
34 medical care for a period of 1 year following the birth or adoption.

35 (3) The local school district shall convert the donated leave available for use by a recipient into cash value at  
36 the donor's rate of pay, shall re-convert the cash value to hours of leave at the recipient's rate of pay, and shall then  
37 credit the recipient's account.

38 (4) The recipient of the donated leave shall have been an employee with the local school district for at least 6  
39 months before that employee is eligible for donated leave time.

40 (5) The recipient of donated leave in connection with parental leave or the recipient's own catastrophic illness  
41 shall have used all of that recipient's own sick days and personal days and half of that recipient's annual leave, where  
42 applicable. For those employees not eligible for annual leave the recipient shall have used all of that recipient's  
43 personal days and all but 3 sick days. However, when A recipient of donated leave is for the catastrophic illness of a  
44 family member, the employee must have used all of that employee's sick days, personal days and annual leave.

45 (6) The recipient shall have established medical justification for such receipt, which must be renewed every  
46 30 days during any absence.

47 (7) No potential donor nor any other person shall sell any accrued leave which might otherwise be donated  
48 under this section.

49 (8) The liability of the State under this program shall be limited to paying the state share of salary, benefits  
50 and other employment costs paid to employees for sick leave properly utilized pursuant to a donated leave program  
51 established pursuant to and in compliance with this section and § 4002 of this title, if applicable.

52 (9) Any recipient of this program is subject to a 1-work-year cap with the number of days equal to 188 days  
53 for a 10-month employee; 207 days for 11-month employees; and 222 days for a 12-month employee.

54 (10) If a long-term disability program is available to employees, a period of disability defined herein shall be  
55 limited to the waiting or elimination period defined in the policy.

56 (c) The Department of Education is authorized to operate a donated leave program. Such donated leave program  
57 shall conform, to the extent practicable, to the provisions of § 5956 of Title 29.

58 (d) The leave described in this section is intended to run concurrently with any leave available under the Family  
59 Medical Leave Act, 29 U.S.C. 2601, et seq.

60 Section 2. Amend Section 5956, Title 29 of the Delaware Code by making deletions as shown by strike through  
61 and insertions as shown by underline as follows:

62 § 5956. Donated leave program.

63 (a) An officer or employee of this State, with the approval of his or her immediate supervisor or the Director of the  
64 Division in which he or she is employed, may donate accrued sick leave and annual leave in equal amounts to a Leave Bank  
65 established by the Director of the Office of Management and Budget for all officers or employees of this State or to another  
66 officer or employee of this State.

67 (b) A person wishing to donate leave time under this section may request the Director of the Office of  
68 Management and Budget to debit the donor's sick leave and annual leave accounts.

69 (c) Sick leave and annual leave accrued in the Leave Bank or directly donated to an employee may be used by a  
70 recipient ~~only~~ for either of the following:

71 (1) a~~A~~ catastrophic illness of the recipient or of a family member of the recipient. For purposes of this  
72 section, the term "catastrophic illness" means an illness or injury to an employee or to a member of an employee's  
73 family which is diagnosed by a physician and certified by the physician as rendering the employee or a member of the  
74 employee's family unable to work, or in the case of a family member who does not work, the medical equivalent of  
75 "unable to work," for a period greater than 5 calendar weeks. Separate periods of disability lasting 7 calendar days or  
76 more each, resulting from the same or a related medical condition and occurring within any 12-consecutive-month  
77 period, shall be considered the same period of disability. For purposes of this section, "family member" or "member of  
78 an employee's family" means an employee's spouse, son, daughter or parent who resides with the employee and who  
79 requires the personal attendance of the employee during the family member's catastrophic illness.

80 (2) Parental leave. An employee otherwise eligible to receive donated leave under subsection (e) of this  
81 section shall become eligible to receive donated leave upon the birth of a child of the employee or the employee's

82 spouse, or upon the adoption by the employee of a child who is 6 years of age or younger. Such eligibility shall expire  
83 at the end of the 6-month period beginning on the date of such birth or adoption. Donated leave may be used by the  
84 recipient for subsequent absence related to maternal or pediatric medical care for a period of 1 year following the birth  
85 or adoption.

86 (d) The Director of the Office of Management and Budget shall convert the donated leave into cash value at the  
87 donor's rate of pay, shall re-convert the cash value to hours of leave at the recipient's rate of pay, and shall then credit the  
88 recipient's account.

89 (e) Before receiving donated leave time under this section, the recipient of the leave time shall:

90 (1) Have been an officer or employee of this State for at least 6 months before he or she is eligible for donated  
91 leave time;

92 (2) Have used all of his or her sick days and 1/2 of his or her annual leave; however, when the donated leave  
93 time is for the catastrophic illness of a family member, the employee must have used all of his or her sick days and  
94 annual leave; and

95 (3) Have established medical justification for such receipt, which must be renewed every 30 days for leave in  
96 connection with a catastrophic illness.

97 (f) An employee who is covered by a collective bargaining agreement may donate leave to, or receive donations of  
98 leave from, an employee or officer who is not covered by a collective bargaining agreement.

99 (g) The Director of the Office of Management and Budget shall have the authority to carry out the mandates of this  
100 section.

101 (h) The agency employing the recipient of a grant of donated leave shall pay all cost of the use of that donated  
102 leave. No funds shall be attached to any hours of donated leave.

103 (i) The State's liability under this program shall not exceed the number of hours donated by employees.

104 (j) The provisions of this section related to a direct donation of hours from one officer or employee of this State to  
105 another officer or employee shall become effective February 2, 1996. The provisions of this section related to donation of  
106 hours to the Leave Bank shall become effective upon the establishment of the Bank or May 2, 1996, whichever occurs first.

107 (k) The leave described in this section is intended to run concurrently with any leave available under the Family  
108 Medical Leave Act, 29 U.S.C. 2601, et seq.

109 Section 3. This Act shall take effect on January 1 following its enactment into law.

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## SYNOPSIS

This Act establishes the ability of state and school district employees to use the “donated leave” program to donate and accept annual leave and sick time for use by employees in connection with the birth or adoption of a child under the age of 6 years. An employee becomes eligible to receive such leave upon the birth of a child to the employee or employee’s spouse or upon adoption of a child younger than 6. Such an employee remains eligible for 6 months after such birth or adoption. The recipient may also use donated leave for a period of 1 year following the birth or adoption for absence related to maternal or pediatric medical appointments. Provided, however, that a recipient of donated leave must first use all of his or her accrued sick time and half of his or her annual leave. Where the recipient does not accrue annual leave, the recipient must have used all but 3 of that employee’s sick days prior to utilizing donated leave. All other established terms and conditions for donated leave remain the same.