

Summary of H.66 (Paid Family and Medical Leave Insurance):

as Passed by House
Prepared on April 4, 2023

This summary is provided for the convenience of the public and members of the General Assembly. It is intended to provide a general summary of the bill and is not exhaustive. It has been prepared without input from members of the General Assembly and is not intended to serve as a source of legislative intent.

Sec. 1. Amends 21 V.S.A. § 471 (Eff. July 1, 2023)

- Adds definition of bereavement leave
- Amends definition of employer to provide coverage for bereavement leave, safe leave, and qualifying exigency leave for employers with 10 or more employees that work an average of 30hrs/wk
- Adds definition of family member
- Adds definition of safe leave
 - Makes related amendments to the definition of employee (employed for 6 months and working 20 hours/week)
- Clarifies that parental leave includes leave to recover from childbirth or miscarriage and must occur within one year after birth/adoption
- Replaces definition of “serious illness” with “serious health condition,” which clarifies coverage for:
 - Injuries
 - Inpatient care in hospice and residential treatment facilities
 - Continuing treatment by a healthcare provider (rather than just a physician)
 - Rehabilitation from an injury or illness (including substance use disorder treatment)
- Define health care providers to include licensed health care providers, a health care provider authorized to practice in a foreign country the employee is visiting or where their family member is visiting or resides, and Christian Science practitioners
 - Essentially identical to the requirements under the federal Family and Medical Leave Act
- Adds cross-references to existing definitions of domestic partner, domestic violence, sexual assault, and stalking
- Adds definition of qualifying exigency leave

Sec. 2. Amends 21 V.S.A. § 472 (Eff. July 1, 2023)

- Permits employees to take leave for a qualifying exigency (max 12 wks) or bereavement (max 2 wks) as part of existing parental and family leave (Total combined leave cannot exceed 12wks/yr)
- Permits employees to take up to an additional 12 weeks in a 12-month period for safe leave
- Permits employees to elect to use up to 12 weeks of accrued paid leave (increased from 6) or private insurance benefits
- Clarifies notice requirements in the event of an unanticipated need for leave
- Establishes documentation that may be provided for safe leave, bereavement leave, and qualifying exigency leave
- Eliminates language permitting employee to waive leave rights

Summary of H.66 (Paid Family and Medical Leave Insurance):

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Sec. 3. Amends 21 V.S.A. § 472c (Eff. July 1, 2023)

- Repeals language providing leave to attend hearing against stalking or sexual assault because that language is now covered under safe leave definition added in Sec. 1

Sec. 4. Amends 21 V.S.A. § 471 (Eff. July 1, 2026)

- Amends definition of employer to extend coverage of job protected leave law to all Vermont employers
- Amends definition of employee to entitle employees receiving Paid Family and Medical Leave Insurance benefits to job-protected leave
- Combines definitions of family leave and parental leave into a single definition of “family leave”

Sec. 5. Amends 21 V.S.A. § 473 (Eff. October 1, 2026)

- Reflects combination of definitions of “family” and “parental” leaves
- Permits employees to elect to use Family and Medical Leave Insurance benefits as wage replacement during the leave

Sec. 6. Creates 21 V.S.A. ch. 26: Family and Medical Leave Insurance

21 V.S.A. § 2051. Division of Family and Medical Leave; Director

- Creates Division of Family and Medical Leave in the Office of the Treasurer
- Establishes that Office will be run by a director that is appointed by and serves at the pleasure of the Treasurer

21 V.S.A. § 2052. Family and Medical Leave Insurance Program; Special Fund

- Creates Family and Medical Leave Insurance Program in the Division
- Creates a Special Fund for the Program
 - Fund consists of contributions collected plus any appropriations
 - Fund can be spent on benefits and cost of administering the Program

21 V.S.A. § 2053. Contributions; Rate; Collection

- Establishes initial rate of contributions as 0.55% for period from 7/1/25-12/31/25
 - 50-50 employer/employee split, employees cannot be required to pay more than 1/2 or 0.275%
 - Self-employed individuals must pay full 0.55% rate if they choose to participate
 - Contribution language clarified by HW&M
- Rate is updated annually by the Division
 - Determined based on projected benefits and administration costs plus 50% reserve
- Contributions are paid to the Department of Taxes in the same manner as income tax withholding on wages or quarterly payments on self-employment income
- Employers may opt out of withholding/paying contributions by establishing an approved private plan pursuant to 21 V.S.A. § 2059

21 V.S.A. § 2054. Benefits

- Become available on 7/1/26

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- Up to 12 weeks total in a 12-month period
 - May use up to 12 weeks for family or safe leave
 - May use up to 2 out of the 12 weeks for bereavement leave
- Wage replacement is 90% up to State average weekly wage (Currently ~\$1,135/week)
- Benefits can be paid in increments of one day
- Benefits may be used as wage replacement for job-protected leave from work

21 V.S.A. § 2055. Eligibility

- Must be an employee or a self-enrolled individual who:
 - Is taking a leave that begins on or after 7/1/26
 - Made contributions in 2 quarters of last calendar year or, if insufficient contributions in last calendar year, in 2 of last 4 calendar quarters
 - Is unable to work due to:
 - Serious health condition
 - Caring for family member with serious health condition
 - Pregnancy
 - Recovery from childbirth or miscarriage
 - Caring for newborn, newly adopted child, or newly placed foster child within 1 year after birth/adoption/placement
 - Safe leave
 - Bereavement leave
 - Qualifying exigency leave (inadvertently omitted from House General version)
 - Is not receiving disqualifying income pursuant to 21 V.S.A. § 2065

21 V.S.A. § 2056. Application for Benefits

- Requires application and, to the extent possible, necessary documentation
 - Can be submitted by employee, enrolled self-employed individual, or employee/individual's agent
- Applications must be reviewed within 10 business days
 - Director can extend time by additional 30 business days if further documentation is required to approve leave
- Applications can be submitted up to 60 days before or up to 60 days after the leave begins
- If application denied due to insufficient information/documentation, individual may reapply with additional information/documentation within time period for filing application

21 V.S.A. § 2057. Payment of Benefits; Tax Withholding

- Benefits are payable for full period of leave
- Benefit payments begin within 14 days after start of leave or approval of application, whichever is later
- Benefits cannot be garnished, except for child support, unpaid State taxes, or to recover overpaid benefits from a prior claim
- Benefits are subject to income tax withholding

Summary of H.66 (Paid Family and Medical Leave Insurance):

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21 V.S.A. § 2058. Elective Coverage

- Permits self-employed individuals to enroll in the Program
- Initial enrollment is three years and year-to-year after that
- Eligible for benefits after paying contributions in 2 calendar quarters in a 4-calendar-quarter period
- Must agree to provide documentation of income to the Program
- Can be covered by Program as both an employee and self-employed individual (benefits based on combined wages and self-employment income)

21 V.S.A. § 2059. Employer Option; Private Plan

- Employers may opt-out of Program by providing private coverage to their employees
- Coverage can be provided through an insurance policy or self-insurance
- Must be approved by the Director
- Must provide:
 - Same or better
 - length and types of leave
 - Coverage for employees
 - Cost to employees
 - Wage replacement
 - Cannot impose any additional restrictions on use of leave
- Employer may opt-in or opt-out at the beginning of each calendar year
- Disputes regarding coverage under a private plan are appealable to the Division
- Private plan approval can be terminated if it fails to comply with requirements
- Employees who cease to be covered by private plan because of (1) layoff/end of seasonal employment; (2) termination of plan by employer or Division; or (3) employer's bankruptcy are eligible for coverage under State Program

21 V.S.A. § 2060. Appeals

- Decisions relating to benefits or contributions may be appealed within 30 calendar days
- Director's decision on appeal may be appealed to VT Supreme Court within 30 calendar days

21 V.S.A. § 2061. False Statement or Representation; Penalty

- Any person who makes an intentional false statement to obtain benefits or avoid paying contributions can be barred from receiving benefits for 1-3 years
- Employer that makes an intentional false statement to avoid payment of contributions can be fined up to \$5,000 in addition to being required to pay unpaid amounts

21 V.S.A. § 2062. Overpayment of Benefits; Collection

- Individuals are liable to repay any overpaid benefits they receive
 - Repayment is waived if (1) overpayment was caused by Division's mistake or unintentional error by a third-party **and** (2) requiring repayment would be "against equity and good conscience"
- Individual has right to appeal the determination of an overpayment

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- Director may, upon request of the individual, reduce or waive overpayment for good cause

21 V.S.A. § 2063. Rulemaking

- Provides rulemaking authority to Director of Division of Family and Medical Leave Insurance and to Commissioner of Taxes

21 V.S.A. § 2064. Confidentiality of Information

- Any information that might reveal an individual or employer's identity is confidential and is not subject to the Public Records Act
- Individuals and employers may be provided with information as necessary to allow them to exercise their rights in relation to the Program

21 V.S.A. § 2065. Disqualifications; Limitations

- An individual is disqualified from receiving benefits in any week that they are receiving:
 - Workers' compensation benefits for a temporary total disability
 - Workers' compensation benefits for a temporary partial disability related to the serious health condition for which the individual is seeking Family and Medical Leave Insurance benefits
 - Unemployment Insurance benefits
- An individual cannot receive benefits and remuneration from employer if it would result in the individual receiving more than (1) average daily wage on any single day, or (2) average weekly wage in any calendar week

21 V.S.A. § 2066. Protection from Retaliation or Interference

- Prohibits retaliation against any employee who exercises or attempts to exercise their right to seek Program benefits
- Prohibits interference with the right to seek benefits
- Prohibits employers from disciplining employees for taking leave that they receive benefits for
- Creates a private right of action for employees who are retaliated against or whose rights are interfered with

21 V.S.A. § 2067. Notice

- Requires employers to post notice of the provisions of the chapter and to provide a copy of the notice to new employees

21 V.S.A. § 2068. Employer Obligations; Employee Rights

- Employers must comply with collective bargaining agreements, policies, and employment contracts that provide more generous benefits
- Collective bargaining agreements, employer policies, and employment contracts cannot limit any rights under the Program
- Employees are entitled to job protection under Vermont law (sections 1, 2, 4, and 5 of the bill) and the federal Family and Medical Leave Act

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21 V.S.A. § 2069. Annual Report

- Requires Director to annually publish a report on usage of Program and claimant demographics

21 V.S.A. § 2070 Definitions

- In addition to highlighted definitions and changes from section 1
 - Average weekly earnings is sum of earnings from prior calendar year divided by 52, or if no earnings in prior calendar year, two highest earning quarters in last 4 completed quarters, divided by 26
 - Excludes U.S. Government from definition of employer
 - “Net earnings from self-employment” means same thing as in Internal Revenue Code
 - Wages defined broadly to encompass all remuneration from employer except for insurance and retirement benefits

Sec. 7. Amends 32 V.S.A. § 3102(e)

- Provides authority for Commissioner of Taxes to share tax information with Division of Family and Medical Leave Insurance

Sec. 8. Adoption of Rules

- Requires rules to be adopted by April 1, 2025

Sec. 9. Education and Outreach

- Requires Division to develop and make available educational and outreach materials for employees and employers by June 1, 2025
- Requires monthly informational sessions for employers, employees, and self-employed individuals (in-person and online) from 6/1/25 through 5/31/26

Sec. 10. Establishment of Program; Report

- Requires Director and Commissioner of Taxes to provide updates on Program development on 12/15 of 2023, 2024, and 2025

Sec. 11. Adequacy of Reserves; Report

- Requires annual reports on the adequacy of the Program’s reserves in December of 2025, 2026, 2027, and 2028

Sec. 12. Private Plans; Initial Approval

- Allows employers to have a private plan approved for the 2026 calendar year
- Employers with an approved plan will:
 - Be exempt from paying contributions in 2026
 - Required to begin providing benefits on or before July 1, 2026
 - Refunded any contributions paid in 2025

Sec. 13. Appropriations

- Appropriates funding for FY 24, 25, and 26 for establishment of Program and reserve
 - \$37,000,000.00 for Division of Family and Medical Leave

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Sec. 14. [Deleted.]

Sec. 15. Division of Family and Medical Leave; Positions

Sec. 16. Department of Buildings and General Services; Space Allocation

- Requires BGS to allocate space for the new Division

Sec. 17. Family and Medical Leave Contribution Credit

- Creates a tax credit for individuals earning less than \$25,000 in wages and self-employment income per year
 - \$40 if \$15,000 or less and \$70 if \$15,001 to \$25,000

Sec. 18. Amends 32 V.S.A. § 5813

- Establishes statutory purpose for tax credit

Sec. 19. Effective Dates

- Contributions begin being paid on July 1, 2025 and benefits become available on July 1, 2026