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H.339

Introduced by Representatives Pearson of Burlington, Donovan of Burlington,  
Gonzalez of Winooski, Hooper of Montpelier, Kitzmiller of  
Montpelier, Krowinski of Burlington, Macaig of Williston,  
McCormack of Burlington, McCullough of Williston, McFaun  
of Barre Town, Morris of Bennington, O’Sullivan of  
Burlington, Poirier of Barre City, Stevens of Waterbury, Till of  
Jericho, Townsend of South Burlington, Woodward of Johnson,  
Yantachka of Charlotte, and Zagar of Barnard

Referred to Committee on

Date:

Subject: Labor; employment practices; paid family leave

Statement of purpose of bill as introduced: This bill proposes to provide for  
employee-funded paid family leave.

An act relating to paid family leave

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 21 V.S.A. § 472c is added to read:

§ 472c. EMPLOYEE-FUNDED PAID FAMILY LEAVE

(a) As used in this section:

1           (1) “Employee” means a person who, in consideration of direct or  
2           indirect gain or profit, has been employed in Vermont for a period of six  
3           months for an average of at least 20 hours per week while earning at least the  
4           minimum hourly wage, as set forth in section 384 of this title, and has paid into  
5           the Fund established under subsection (m) of this section for at least six  
6           months prior to the date of leave.

7           (2) “Employer” means an individual, organization, governmental body,  
8           partnership, association, corporation, legal representative, trustee, receiver,  
9           trustee in bankruptcy, and any common carrier by rail, motor, water, or air, or  
10           an express company doing business in or operating within this State.

11           (3) “Family leave” means a leave of absence from employment by an  
12           employee who works for an employer for one of the following reasons:

13           (A) the serious illness of the employee;

14           (B) the serious illness of the employee’s child, stepchild, ward who  
15           lives with the employee, foster child, parent, spouse, or parent of the  
16           employee’s spouse;

17           (C) the birth of the employee’s child; or

18           (D) the initial placement with the employee of a child 16 years of age  
19           or younger for the purpose of adoption.

20           (4) “Serious illness” means an accident, disease, or physical or mental  
21           condition that:

- 1           (A) poses imminent danger of death;  
2           (B) requires inpatient care in a hospital; or  
3           (C) requires continuing in-home care under the direction of  
4 a physician.

5           (b) During any 12-month period, an employee shall be entitled to take paid  
6 family leave for a total period not to exceed six weeks. After benefits begin,  
7 the six-week leave may be used intermittently or consecutively by the hour,  
8 day, or week during the 12-month period.

9           (c) An employee shall file an application for benefits under this section  
10 with the Commissioner on a form provided by the Commissioner at least five  
11 days before the arrival of a child and as soon as practicable for an  
12 unanticipated premature birth or a serious health condition of the employee or  
13 a member of the employee's immediate family. The Commissioner shall  
14 determine eligibility of the employee based on the following criteria:

- 15           (1) the purposes for which the claim is made are documented.  
16           (2) the employee provided the employer with reasonable advanced  
17 notice of the requested leave.

18           (d) An employee awarded benefits under this section shall receive the  
19 employee's average weekly wage. The highest possible amount any employee  
20 may receive under this section shall be capped at the amount equivalent to six

1 40-hour workweeks paid at a rate double that of the minimum hourly wage, as  
2 set forth in section 384 of this title.

3 (e) The employer shall continue employment benefits for the duration of  
4 the leave at the level and under the conditions that would be provided if the  
5 employee were employed continuously for the duration of the leave. The  
6 employer may require that the employee contribute to the cost of the benefits  
7 during the leave at the employee's existing rate of contribution.

8 (f) The employer shall post and maintain in a conspicuous place in and  
9 about each of his or her places of business printed notices of the provisions of  
10 this subchapter on forms provided by the Commissioner of Labor.

11 (g) An employee shall give reasonable written notice to the employer of  
12 intent to take leave under this subchapter. Notice shall include the date the  
13 leave is expected to commence and the estimated duration of the leave. In the  
14 case of the adoption or birth of a child, an employer shall not require that  
15 notice be given more than six weeks prior to the anticipated commencement of  
16 the leave. In the case of an unanticipated premature birth, or a serious illness  
17 of the employee or a member of the employee's family, the employee shall  
18 give notice as soon as practicable. In the case of serious illness of the  
19 employee or a member of the employee's family, an employer may require  
20 certification from a physician to verify the condition and the amount of and  
21 necessity for the leave requested. An employee may return from leave earlier

1 than estimated upon approval of the employer. An employee shall provide  
2 reasonable notice to the employer of his or her need to extend leave to the  
3 extent provided by this chapter.

4 (h) Upon return from leave taken under this subchapter, an employee shall  
5 be offered the same or comparable job at the same level of compensation,  
6 employment benefits, seniority, and any other term or condition of the  
7 employment existing on the day the leave began. This subchapter shall not  
8 apply if, prior to requesting leave, the employee had been given notice or had  
9 given notice that the employment would terminate. This subsection shall not  
10 apply if the employer can demonstrate by clear and convincing evidence that:

11 (1) during the period of leave, the employee's job would have been  
12 terminated or the employee laid off for reasons unrelated to the leave or the  
13 condition for which the leave was granted; or

14 (2) the employee performed unique services and hiring a permanent  
15 replacement during the leave, after giving reasonable notice to the employee of  
16 intent to do so, was the only alternative available to the employer to prevent  
17 substantial and grievous economic injury to the employer's operation.

18 (i) An employer may adopt a leave policy more generous than the leave  
19 policy provided by this subchapter. Nothing in this subchapter shall be  
20 construed to diminish an employer's obligation to comply with any collective  
21 bargaining agreement or any employment benefit program or plan which

1 provides greater leave rights than the rights provided by this subchapter. A  
2 collective bargaining agreement or employment benefit program or plan may  
3 not diminish rights provided by this subchapter. Notwithstanding the  
4 provisions of this subchapter, an employee may, at the time a need for parental  
5 or family leave arises, waive some or all the rights under this subchapter  
6 provided the waiver is informed and voluntary and any changes in conditions  
7 of employment related to any waiver shall be mutually agreed upon between  
8 the employer and the employee.

9 (j) Except for a serious illness of the employee, an employee who does not  
10 return to employment with the employer who provided the leave shall return to  
11 the employer the value of any compensation paid to or on behalf of the  
12 employee during the leave, except payments for accrued sick leave or  
13 vacation leave.

14 (k) If two employees from the same family request leave under this section,  
15 the employer may require that the employees take leave at separate times.

16 (l) The Commissioner of Labor shall make a determination of each claim  
17 no later than five days after the date the claim is filed, and benefits shall be  
18 paid from the fund created pursuant to subsection (m) of this section. An  
19 employee or employer aggrieved by a decision of the Commissioner under this  
20 chapter may file with the Commissioner a request for reconsideration within 30  
21 days after receipt of the Commissioner's decision. Thereafter, an applicant

1 denied reconsideration may file an appeal to the Civil Division of the Superior  
2 Court in the county where the employment is located.

3 (m) A Paid Parental Leave Special Fund is created pursuant to 32 V.S.A.  
4 chapter 7, subchapter 5 to be expended by the Commissioner for the benefits  
5 awarded and administration of the paid parental leave. The Fund shall consist  
6 of a 0.63 percent contribution to be deducted from employees' wages. The  
7 employer shall submit these taxes to the Commissioner in a form and at times  
8 determined by the Commissioner.

9 (n)(1) A person who willfully makes a false statement or representation for  
10 the purpose of obtaining any benefit or payment under the provisions of this  
11 section, either for herself or himself or for any other person, after notice and  
12 opportunity for hearing, may be assessed an administrative penalty of not more  
13 than \$20,000.00 and shall forfeit all or a portion of any right to compensation  
14 under the provisions of this section, as determined to be appropriate by the  
15 Commissioner after a determination by the Commissioner that the person has  
16 willfully made a false statement or representation of a material fact.

17 (2) An employer found to have violated this section is prohibited from  
18 contracting, directly or indirectly, with the State or any of its subdivisions for  
19 up to three years following the date the employer was found to have made a  
20 false statement or misrepresentation of a material fact, as determined by the  
21 Commissioner in consultation with the Commissioner of Buildings and

1 General Services or the Secretary of Transportation, as appropriate. Either the  
2 Commissioner or the Secretary, as appropriate, shall be consulted in any  
3 contest relating to the prohibition of the employer from contracting with the  
4 State or its subdivisions.

5 Sec. 2. 21 V.S.A. § 472a(a) is amended to read:

6 (a) In addition to the leave provided in ~~section 472~~ sections 472 and 472c  
7 of this title, an employee shall be entitled to take unpaid leave not to exceed  
8 four hours in any 30-day period and not to exceed 24 hours in any 12-month  
9 period. An employer may require that leave be taken in a minimum of  
10 two-hour segments and may be taken for any of the following purposes:

11 \* \* \*

12 Sec. 3. EFFECTIVE DATE

13 (a) This act shall take effect on January 1, 2017.

14 (b) Employers shall begin deducting taxes from employees' wages on  
15 July 1, 2017, and, beginning on January 1, 2018, employees may begin to  
16 receive benefits under this law.