

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on General, Housing and Military Affairs to which was
3 referred House Bill No. 196 entitled “An act relating to paid family leave”
4 respectfully reports that it has considered the same and recommends that the
5 bill be amended by striking out all after the enacting clause and inserting in
6 lieu thereof the following:

7 Sec. 1. 21 V.S.A. § 471 is amended to read:

8 § 471. DEFINITIONS

9 As used in this subchapter:

10 (1) “Employer” means an individual, organization or governmental
11 body, partnership, association, corporation, legal representative, trustee,
12 receiver, trustee in bankruptcy, and any common carrier by rail, motor, water,
13 air or express company doing business in or operating within this State ~~which~~
14 ~~for the purposes of parental leave, employs 10 or more individuals who are~~
15 ~~employed for an average of at least 30 hours per week during a year and for the~~
16 ~~purposes of family leave, employs 15 or more individuals for an average of at~~
17 ~~least 30 hours per week during a year.~~

18 (2) “Employee” means a person who, in consideration of direct or
19 indirect gain or profit, ~~has been continuously employed by the same employer~~
20 ~~for a period of one year for an average of at least 30 hours per week~~ is

1 employed by an employer and has been employed in Vermont for at least six
2 of the previous 12 months.

3 (3) “Family leave” means a leave of absence from employment by an
4 employee ~~who works for an employer which employs 15 or more individuals~~
5 ~~who are employed for an average of at least 30 hours per week during the year~~
6 for one of the following reasons:

7 (A) the serious illness of the employee; ~~or~~

8 (B) the serious illness of the employee’s child, stepchild or ward who
9 lives with the employee, foster child, parent, grandparent, sibling, spouse, or
10 parent of the employee’s spouse;

11 ~~(4) “Parental leave” means a leave of absence from employment by an~~
12 ~~employee who works for an employer which employs 10 or more individuals~~
13 ~~who are employed for an average of at least 30 hours per week during the year~~
14 ~~for one of the following reasons:~~

15 (C) the employee’s pregnancy;

16 (D) the birth of the employee’s child; or

17 ~~(B)~~(E) the initial placement of a child 16 years of age or younger
18 with the employee for the purpose of adoption or foster care.

19 ~~(5)~~(4) “Serious illness” means an accident, disease, or physical or
20 mental condition that:

21 (A) poses imminent danger of death;

1 (B) requires inpatient care in a hospital; or

2 (C) requires continuing in-home care under the direction of a
3 physician.

4 (5) “Commissioner” means the Commissioner of Labor.

5 (6) “Worker” means a person who, in consideration of direct or indirect
6 gain or profit, performs services for an employer, where the employer is unable
7 to show that:

8 (A) the person has been and will continue to be free from control or
9 direction over the performance of the services, both under the contract of
10 service and in fact;

11 (B) the service is either outside the usual course of business for the
12 employer for whom the service is performed, or outside all the places of
13 business of the employer for whom the service is performed; and

14 (C) the person is customarily engaged in an independently
15 established trade, occupation, profession, or business.

16 Sec. 2. 21 V.S.A. § 472 is amended to read:

17 § 472. FAMILY LEAVE

18 (a) During any 12-month period, an employee shall be entitled to take
19 ~~unpaid leave for a period not to exceed 12 weeks~~ up to 12 weeks of paid family
20 leave using Family Leave Insurance benefits pursuant to section 472c of this
21 subchapter for the following reasons:

- 1 (1) ~~for parental leave, during~~ the employee's pregnancy ~~and~~;
2 (2) ~~following~~ the birth of ~~an~~ the employee's child ~~or~~;
3 (3) ~~within a year following~~ the initial placement of a child 16 years of
4 age or younger with the employee for the purpose of adoption ~~or foster care~~;
5 (2)(4) ~~for family leave, for~~ the serious illness of the employee; or
6 (5) the serious illness of the employee's child, stepchild or ward of the
7 employee who lives with the employee, foster child, parent, grandparent,
8 sibling, spouse, or parent of the employee's spouse.

9 (b) During the leave, at the employee's option, the employee may use
10 accrued sick leave or vacation leave or any other accrued paid leave, ~~not to~~
11 ~~exceed six weeks.~~ Utilization Use of accrued paid leave shall not extend the
12 leave provided ~~herein~~ by this section.

13 (c) The employer shall continue employment benefits for the duration of
14 the family leave at the level and under the conditions coverage would be
15 provided if the employee continued in employment continuously for the
16 duration of the leave. The employer may require that the employee contribute
17 to the cost of the benefits during the leave at the employee's existing rate of
18 employee contribution.

19 (d) The employer shall post and maintain in a conspicuous place in and
20 about each of ~~his or her~~ its places of business printed notices of the provisions
21 of this subchapter on forms provided by the Commissioner of Labor.

1 (e)(1) An employee shall give his or her employer reasonable written
2 notice of intent to take family leave under this subchapter. Notice shall include
3 the date the leave is expected to commence and the estimated duration of the
4 leave.

5 (2) In the case of the adoption or birth of a child, an employer shall not
6 require that notice be given more than six weeks prior to the anticipated
7 commencement of the leave.

8 (3) In the case of an unanticipated serious illness or premature birth, the
9 employee shall give the employer notice of the commencement of the leave as
10 soon as practicable.

11 (4) In the case of serious illness of the employee or a member of the
12 employee's family, an employer may require certification from a physician to
13 verify the condition and the amount and necessity for the leave requested.

14 (5) An employee may return from leave earlier than estimated upon
15 approval of the employer.

16 (6) An employee shall provide reasonable notice to the employer of his
17 or her need to extend the leave to the extent provided by this chapter.

18 (f) ~~Upon return from leave taken under this subchapter, an employee shall~~
19 ~~be offered~~ An employer shall offer an employee who has been employed by
20 the employer for at least 12 months and is returning from family leave taken
21 under this subchapter the same or a comparable job at the same level of

1 compensation, employment benefits, seniority, or any other term or condition
2 of the employment existing on the day the family leave began. This
3 subchapter shall not apply if, prior to requesting leave, the employee had been
4 given notice or had given notice that the employment would terminate. This
5 subsection shall not apply if the employer can demonstrate by clear and
6 convincing evidence that:

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

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

14 (g) An employer may adopt a leave policy more generous than the leave
15 policy provided by this subchapter. Nothing in this subchapter shall be
16 construed to diminish an employer's obligation to comply with any collective
17 bargaining agreement or any employment benefit program or plan which
18 provides greater leave rights than the rights provided by this subchapter. A
19 collective bargaining agreement or employment benefit program or plan may
20 not diminish rights provided by this subchapter. Notwithstanding the
21 provisions of this subchapter, an employee may, at the time a need for ~~parental~~

1 ~~or~~ family leave arises, waive some or all the rights under this subchapter
2 provided the waiver is informed and voluntary and any changes in conditions
3 of employment related to any waiver shall be mutually agreed upon between
4 employer and employee.

5 (h) Except for serious illness of the employee, an employee who does not
6 return to employment with the employer who provided the family leave shall
7 return to the employer the value of any compensation paid to or on behalf of
8 the employee during the leave, except payments of Family Leave Insurance
9 benefits and payments for accrued sick leave or vacation leave. An employer
10 may elect to waive the rights provided pursuant to this subsection.

11 Sec. 3. 21 V.S.A. § 472c is added to read:

12 § 472c. FAMILY LEAVE INSURANCE; SPECIAL FUND;

13 ADMINISTRATION

14 (a) The Family Leave Insurance Program is established in the Department
15 of Labor for the provision of Family Leave Insurance benefits to eligible
16 employees pursuant to this section.

17 (b) The Family Leave Insurance Special Fund is created pursuant to
18 32 V.S.A. chapter 7, subchapter 5. The Fund may be expended by the
19 Commissioner for the administration of the Family Leave Insurance Program
20 and payment of Family Leave Insurance benefits provided pursuant to this
21 section.

1 (c)(1) The Fund shall consist of contributions equal to 0.93 percent of each
2 worker's wages, of which one-half shall be deducted from a worker's wages
3 and one-half shall be paid by the worker's employer.

4 (2)(A) Notwithstanding subdivision (1) of this subsection, the General
5 Assembly shall annually establish the rate of contribution for the next fiscal
6 year. The rate shall equal the amount necessary to provide Family Leave
7 Insurance benefits pursuant to subsection (f) of this section and to administer
8 the Family Leave Insurance Program during the next fiscal year, adjusted by
9 any balance in the fund from the prior fiscal year.

10 (B)(i) On or before February 1 of each year, the Commissioner shall
11 report to the General Assembly the rate of contribution necessary to provide
12 Family Leave Insurance benefits pursuant to subsection (f) of this section and
13 to administer the Program during the next fiscal year, adjusted by any balance
14 in the fund from the prior fiscal year.

15 (ii) The proposed rate of contribution determined by the
16 Commissioner shall not exceed one percent of each worker's wages. If that
17 amount is insufficient to fund Family Leave Insurance benefits at the rate set
18 forth in subsection (f) of this section, the Commissioner's report shall include a
19 recommendation of the amount by which to reduce Family Leave Insurance
20 benefits in order to maintain the solvency of the Fund without increasing the
21 proposed rate of contribution above one percent.

1 (d) The employer shall submit these contributions to the Commissioner in a
2 form and at times determined by the Commissioner.

3 (e) An employee shall file an application for Family Leave Insurance
4 benefits with the Commissioner under this section on a form provided by the
5 Commissioner. The Commissioner shall determine eligibility of the employee
6 based on the following criteria:

7 (1) The purposes for which the claim is made are documented.

8 (2) The employee satisfies the eligibility requirements for the requested
9 leave.

10 (f)(1) Except as otherwise provided pursuant to subsection (c) of this
11 section, an employee awarded Family Leave Insurance benefits under this
12 section shall receive the employee's average weekly wage or an amount equal
13 to a 40-hour workweek paid at a rate double that of the livable wage, as
14 determined by the Joint Fiscal Office pursuant to 2 V.S.A. § 505, whichever is
15 less.

16 (2) An employee shall be entitled to no more than 12 weeks of Family
17 Leave Insurance benefits in a 12-month period.

18 (g) The Commissioner of Labor shall make a determination of each claim
19 no later than five days after the date the claim is filed, and Family Leave
20 Insurance benefits shall be paid from the Fund created pursuant to this section.
21 An employee or employer aggrieved by a decision of the Commissioner under

1 this subsection may file with the Commissioner a request for reconsideration
2 within 30 days after receipt of the Commissioner’s decision. Thereafter, an
3 applicant denied reconsideration may file an appeal to the Civil Division of the
4 Superior Court in the county where the employment is located.

5 (h)(1) A self-employed person, including a sole proprietor or partner owner
6 of an unincorporated business, may elect to obtain coverage under the Family
7 Leave Insurance Program pursuant to this section for a period of three years by
8 filing a notice of his or her election with the Commissioner on a form provided
9 by the Commissioner.

10 (2) A person who elects coverage pursuant to this subsection may file a
11 claim for and receive Family Leave Insurance benefits pursuant to this section
12 after making six months of contributions to the Fund.

13 (3) A person who elects to obtain coverage pursuant to this subsection
14 shall:

15 (A) contribute a portion of his or her work income equal to the
16 amount established pursuant to subsection (c) of this section at times
17 determined by the Commissioner; and

18 (B) provide to the Commissioner any documentation of his or her
19 income or related information that the Commissioner determines is necessary.

20 (4)(A) A person who elects coverage pursuant to this subsection may
21 terminate that coverage at the end of the three-year period by providing the

1 Commissioner with written notice of the termination at least 30 days before the
2 end of the period.

3 (B) If a person who elects coverage pursuant to this subsection does
4 not terminate it at the end of the initial three-year period, he or she may
5 terminate the coverage at the end of any succeeding annual period by
6 providing the Commissioner with written notice of the termination at least 30
7 days before the end of the period.

8 (C) Notwithstanding subdivisions (A) and (B) of this subdivision
9 (h)(4), a person who, after electing to obtain coverage pursuant to this
10 subsection, becomes a worker or stops working in Vermont, may elect to
11 terminate the coverage pursuant to this subsection by providing the
12 Commissioner with 30 days' written notice in accordance with rules adopted
13 by the Commissioner.

14 (D) Nothing in this subsection shall be construed to prevent an
15 individual who is both a worker and self-employed from electing to obtain
16 coverage pursuant to this subsection.

17 (i) A person who willfully makes a false statement or representation for the
18 purpose of obtaining any benefit or payment or to avoid payment of any
19 required contributions under the provisions of this section, either for himself or
20 herself or for any other person, after notice and opportunity for hearing, may
21 be assessed an administrative penalty of not more than \$20,000.00 and shall

1 forfeit all or a portion of any right to compensation under the provisions of this
2 section, as determined to be appropriate by the Commissioner after a
3 determination by the Commissioner that the person has willfully made a false
4 statement or representation of a material fact.

5 (j)(1) An individual filing a claim for benefits pursuant to this section shall,
6 at the time of filing, be advised that:

7 (A) Family Leave Insurance benefits may be subject to income tax;

8 (B) requirements exist pertaining to estimated tax payments;

9 (C) the individual may elect to have income tax deducted and
10 withheld from the individual's benefits payment; and

11 (D) the individual may change a previously elected withholding
12 status.

13 (2) Amounts deducted and withheld from Family Leave Insurance
14 benefits shall remain in the Family Leave Insurance Special Fund until
15 transferred to the appropriate taxing authority as a payment of income tax.

16 (3) The Commissioner shall follow all procedures specified by the
17 federal Internal Revenue Service pertaining to the deducting and withholding
18 of income tax.

19 (k) The Commissioner may adopt rules as necessary to implement this
20 section.

1 Sec. 4. RULEMAKING

2 On or before January 1, 2018, the Commissioner of Labor shall adopt rules
3 necessary to implement the Paid Family Leave Program, including rules
4 governing the process by which a person who has elected to obtain coverage
5 under the Family Leave Insurance Program pursuant to 21 V.S.A. § 472c(h)
6 and subsequently becomes a worker or stops working in Vermont may
7 terminate that coverage.

8 Sec. 5. EDUCATION AND OUTREACH

9 On or before January 1, 2018, the Commissioner of Labor shall develop and
10 make available on the Department of Labor’s website information and
11 materials to educate and inform employers and employees about the Family
12 Leave Insurance Program established pursuant to 21 V.S.A. § 472c.

13 Sec. 6. EFFECTIVE DATES

14 (a) This section and Secs. 3, 4, and 5 shall take effect on July 1, 2017.

15 (b) In Sec. 1, 21 V.S.A. 471, subdivision (6) shall take effect on July 1,
16 2017. The remaining provisions of Sec. 1 shall take effect on July 1, 2019.

17 (c) Sec. 2 shall take effect on July 1, 2019.

18 (d) Contributions from employers and employees shall begin being paid
19 pursuant to 21 V.S.A. § 472c(c) and (d) on July 1, 2018, and, beginning on
20 July 1, 2019, employees and self-employed persons may begin to receive
21 benefits pursuant to 21 V.S.A. § 472c.

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(Committee vote: _____)

Representative _____

FOR THE COMMITTEE

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