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H.196

Representative Wright of Burlington moves that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

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

§ 471. DEFINITIONS

As used in this subchapter:

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

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

(3) “Family leave” means a leave of absence from employment by an employee who works for an employer ~~which~~ that employs 15 or more

1 individuals who are employed for an average of at least 30 hours per week  
2 during the year for one of the following reasons:

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

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

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

11 (A) the employee’s pregnancy;

12 (B) the birth of the employee’s child; or

13 ~~(B)~~(C) the initial placement of a child 16 years of age or younger  
14 with the employee for the purpose of adoption or foster care.

15 (5) “Serious illness” means an accident, disease, or physical or mental  
16 condition that:

17 (A) poses imminent danger of death;

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

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

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

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

2 § 472. LEAVE

3 (a) During any 12-month period, an employee shall be entitled to take  
4 unpaid leave for a period not to exceed 12 weeks:

5 (1) for parental leave;

6 (A) during the employee's pregnancy ~~and;~~

7 (B) following the birth of ~~an~~ the employee's child; or

8 (C) within a year following the initial placement of a child 16 years

9 of age or younger with the employee for the purpose of adoption; or foster  
10 care.

11 (2) for family leave;

12 (A) for the serious illness of the employee; or

13 (B) for the serious illness of the employee's child, stepchild or ward  
14 of the employee who lives with the employee, foster child, parent, grandparent,  
15 sibling, spouse, or parent of the employee's spouse.

16 (b) During the leave, at the employee's option, the employee may use

17 benefits provided pursuant to the Parental and Family Leave Insurance

18 Program or an approved employer parental and family leave insurance plan,

19 accrued sick leave ~~or,~~ vacation leave, or any other accrued paid leave, ~~not to~~

20 exceed six weeks. ~~Utilization~~ Use of benefits provided pursuant to the Parental

21 and Family Leave Insurance Program, an approved employer parental and

1 family leave insurance plan, or accrued paid leave shall not extend the leave  
2 provided ~~herein~~ by this section.

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

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

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

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

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

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

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

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

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

15                 (1) during the period of leave, the employee’s job would have been  
16                 terminated or the employee laid off for reasons unrelated to the leave or the  
17                 condition for which the leave was granted; or

18                 (2) the employee performed unique services, and hiring a permanent  
19                 replacement during the leave, after giving reasonable notice to the employee of  
20                 intent to do so, was the only alternative available to the employer to prevent  
21                 substantial and grievous economic injury to the employer’s operation.

1 (g) An employer may adopt a leave policy more generous than the leave  
2 ~~policy~~ provided by this subchapter. Nothing in this subchapter shall be  
3 construed to diminish an employer's obligation to comply with any collective  
4 bargaining agreement or any employment benefit program or plan ~~which~~ that  
5 provides greater leave rights than the rights provided by this subchapter. A  
6 collective bargaining agreement or employment benefit program or plan may  
7 not diminish rights provided by this subchapter. Notwithstanding the  
8 provisions of this subchapter, an employee may, at the time a need for parental  
9 or family leave arises, waive some or all the rights under this subchapter,  
10 provided the waiver is informed and voluntary, and any changes in conditions  
11 of employment related to any waiver shall be mutually agreed upon between  
12 employer and employee.

13 (h) Except for serious illness of the employee, an employee who does not  
14 return to employment with the employer who provided the leave shall return to  
15 the employer the value of any compensation paid to or on behalf of the  
16 employee during the leave, except payments of family leave insurance benefits  
17 pursuant to section 472c or 472d of this subchapter and payments for accrued  
18 sick leave or vacation leave. An employer may elect to waive the rights  
19 provided pursuant to this subsection.

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

2 § 472c. FAMILY LEAVE INSURANCE; SPECIAL FUND;

3 ADMINISTRATION

4 (a) As used in this section:

5 (1) “Covered employer” means an employer that employs 10 or more  
6 employees who are employed for an average of at least 30 hours per week  
7 during a year.

8 (2) “Employee” means an individual who performs services in  
9 employment.

10 (3) “Employment” has the same meaning as in subdivision 1301(6) of  
11 this chapter.

12 (4) “Private plan” means an approved private plan adopted by a covered  
13 employer to provide its employees with family leave insurance benefits  
14 pursuant to section 472d of this subchapter.

15 (5) “Qualified employee” means an employee who:

16 (A) is employed by a covered employer; and

17 (B) is not covered by an approved private plan.

18 (b) The Family Leave Insurance Program is established in the Department  
19 of Labor for the provision of Family Leave Insurance benefits to qualified  
20 employees pursuant to this section.

1        (c) The Family Leave Insurance Special Fund is created pursuant to  
2        32 V.S.A. chapter 7, subchapter 5. The Fund may be expended by the  
3        Commissioner for the administration of the Family Leave Insurance Program  
4        and payment of Family Leave Insurance benefits provided pursuant to this  
5        section.

6        (d)(1)(A) The Fund shall consist of contributions equal to 0.55 percent of  
7        the wages of each qualified employee that elects to enroll in the Family Leave  
8        Insurance Benefits Program.

9                (B) A covered employer shall deduct and withhold the required  
10        contributions from each of its enrolled employee's wages.

11               (C) In lieu of deducting and withholding the full amount of the  
12        contribution pursuant to subdivision (1)(A) of this subsection, a covered  
13        employer may elect to pay all or a portion of the contributions due from the  
14        enrolled employee's wages.

15               (D) An employer shall submit the contributions to the Commissioner  
16        in a form and at times determined by the Commissioner.

17               (2)(A) Notwithstanding subdivision (1) of this subsection (d), the  
18        General Assembly shall annually establish the rate of contribution for the next  
19        fiscal year. The rate shall equal the amount necessary to provide Family Leave  
20        Insurance benefits pursuant to subsection (g) of this section and to administer

1 the Family Leave Insurance Program during the next fiscal year, adjusted by  
2 any balance in the Fund from the prior fiscal year.

3 (B)(i) On or before February 1 of each year, the Commissioner shall  
4 report to the General Assembly the rate of contribution necessary to provide  
5 Family Leave Insurance benefits pursuant to subsection (g) of this section and  
6 to administer the Program during the next fiscal year, adjusted by any balance  
7 in the Fund from the prior fiscal year.

8 (ii) The proposed rate of contribution determined by the  
9 Commissioner shall not exceed 0.75 percent of each enrolled employee's  
10 wages. If that amount is insufficient to fund Family Leave Insurance benefits  
11 at the rate set forth in subsection (g) of this section, the Commissioner's report  
12 shall include a recommendation of the amount by which to reduce Family  
13 Leave Insurance benefits in order to maintain the solvency of the Fund without  
14 increasing the proposed rate of contribution above 0.75 percent.

15 (e)(1) A qualified employee may elect to enroll in the Family Leave  
16 Insurance Program by submitting an application on a form provided by the  
17 Commissioner to his or her employer and the Commissioner. Not more than  
18 five days after the application is received, the Commissioner shall notify the  
19 qualified employee's employer of the application.

1           (2) Upon approval of the application, the Commissioner shall provide  
2           written notice to the employer and employee that the application has been  
3           approved and the date by which the payment of contributions must commence.

4           (f) An enrolled employee shall file an application for Family Leave  
5           Insurance benefits with the Commissioner under this section on a form  
6           provided by the Commissioner. The Commissioner shall determine whether  
7           the enrolled employee is eligible to receive Family Leave Insurance benefits  
8           based on the following criteria:

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

10                   (2) The employee is taking leave pursuant to 21 V.S.A. § 472 or the  
11                   federal Family and Medical Leave Act, 29 U.S.C. chapter 28.

12                   (3) The employee has paid contributions to the Fund for not less than  
13                   780 hours of work.

14           (f)(1) Except as otherwise provided pursuant to subsection (d) of this  
15           section, a qualified employee awarded Family Leave Insurance benefits under  
16           this section shall receive 80 percent of his or her average weekly wage or an  
17           amount equal to a 40-hour workweek paid at a rate double that of the livable  
18           wage, as determined by the Joint Fiscal Office pursuant to 2 V.S.A. § 505,  
19           whichever is less.

20                   (2) A qualified employee shall be entitled to not more than six weeks of  
21           Family Leave Insurance benefits in a 12-month period.

1           (3) A qualified employee shall only be permitted to use Family Leave  
2           Insurance benefits for a leave taken pursuant to 21 V.S.A. § 472 and the  
3           federal Family and Medical Leave Act, 29 U.S.C. chapter 28.

4           (g) The Commissioner of Labor shall make a determination of each claim  
5           not later than five days after the date the application is filed, and Family Leave  
6           Insurance benefits shall be paid from the Fund created pursuant to this section.  
7           A person aggrieved by a decision of the Commissioner under this subsection  
8           may file with the Commissioner a request for reconsideration not more than 30  
9           days after receipt of the Commissioner’s decision. Thereafter, an applicant  
10           denied reconsideration may file an appeal to the Civil Division of the Superior  
11           Court in the county where the employment is located.

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

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

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

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

5                (C) the individual may elect to have income tax deducted and  
6        withheld from the individual’s benefits payment; and

7                (D) the individual may change a previously elected withholding  
8        status.

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

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

15                (j) The Commissioner may adopt rules as necessary to implement this  
16        section.

17        **Sec. 4. 21 V.S.A. 472d is added to read:**

18        **§ 472d. VOLUNTARY FAMILY LEAVE INSURANCE; COVERED**

19        **EMPLOYERS**

20                **(a)(1) A covered employer, as defined in section 472c of this subchapter,**  
21        **may, with the approval of the Commissioner, establish a private plan to**

1 provide family leave insurance benefits to its employees in lieu of the benefits  
2 offered pursuant to the Family Leave Insurance Program established pursuant  
3 to section 472c of this subchapter.

4 (2) The Commissioner shall approve a private plan to provide family  
5 leave insurance benefits if it satisfies all requirements of subsection (b) of this  
6 section.

7 (b) A private plan established pursuant to this section shall:

8 (1) cover all of the employer's employees;

9 (2) provide, at a minimum, benefits that may be used for leave taken  
10 pursuant to 21 V.S.A. § 472 and the federal Family and Medical Leave Act,  
11 29 U.S.C. chapter 28;

12 (3) provide weekly benefits in an amount that is not less than the amount  
13 of the weekly benefits provided pursuant to section 472c of this subchapter;

14 (4) not require the employer's employees to pay any amount towards the  
15 cost of the benefits that exceeds the contribution rate established pursuant to  
16 subsection 472c(d) of this subchapter; and

17 (5) provide security for the benefits through:

18 (A) a contract of insurance with an insurer authorized to do business  
19 in this State; or

1           (B) with the approval of the Commissioner, the establishment and  
2           maintenance of a bond or other surety sufficient to secure payment by the  
3           employer of the benefits required pursuant to this section.

4           (c)(1) An employer may terminate a private plan established pursuant to  
5           this section upon not less than 30 days' written notice to the Commissioner and  
6           all employees that are covered by the plan.

7           (2) The termination of a private plan pursuant to this subsection shall  
8           not affect the payment of benefits to an employee whose leave commenced  
9           prior to the termination date.

10           (3) Upon termination of a private plan pursuant to this subsection, an  
11           employer's employees shall be eligible to enroll in the Family Leave Insurance  
12           Program established pursuant to section 472c of this subchapter.

13           (d) Nothing in this section shall be construed to prevent an employer from  
14           establishing a plan that offers benefits that are more generous than the benefits  
15           provided pursuant to section 472c of this subchapter.

16       Sec. 5. RULEMAKING

17           On or before January 1, 2018, the Commissioner of Labor shall adopt rules  
18           necessary to implement the Paid Family Leave Program.

19       Sec. 6. EDUCATION AND OUTREACH

20           On or before January 1, 2018, the Commissioner of Labor shall develop and  
21           make available on the Department of Labor's website information and

1 materials to educate and inform employers and employees about the Family  
2 Leave Insurance Program established pursuant to 21 V.S.A. § 472c.

3 Sec. 7. EFFECTIVE DATES

4 (a) This section and Secs. 3, 5, and 6 shall take effect on July 1, 2017.

5 (b) Sec. 4 shall take effect on July 1, 2018.

6 (c) Secs. 1 and 2 shall take effect on July 1, 2019.

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