

1 TO THE HONORABLE SENATE:

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

19 (3) “Family leave” means a leave of absence from employment by an
20 employee who works for an employer ~~which~~ that employs ~~15~~ 10 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, spouse, or parent of the
6 employee’s spouse;

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

11 (C) the employee’s pregnancy;

12 ~~(A)~~(D) the birth of the employee’s child; or

13 ~~(B)~~(E) 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)~~(4) “Serious illness” means an accident, disease, or physical or
16 mental condition that:

17 * * *

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

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

2 § 472. FAMILY 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 for the following reasons:

5 (1) ~~for parental leave, during the employee's pregnancy and;~~

6 (2) following the birth of an the employee's child or;

7 (3) within a year following the initial placement of a child 16 years of
8 age or younger with the employee for the purpose of adoption; or foster care;

9 ~~(2)(4) for family leave, for the serious illness of the employee; or~~

10 (5) the serious illness of the employee's child, stepchild or ward of the
11 employee who lives with the employee, foster child, parent, spouse, or parent
12 of the employee's spouse.

13 (b) During the leave, at the employee's option, the employee may use
14 accrued sick leave or, vacation leave or, any other accrued paid leave, ~~not to~~
15 ~~exceed six weeks~~ Parental and Family Leave Insurance benefits pursuant to
16 subchapter 13 of this chapter, or short-term disability insurance or other
17 insurance benefits. Utilization Use of accrued paid leave, Parental and Family
18 Leave Insurance benefits, or insurance benefits shall not extend the leave
19 provided ~~herein~~ by this section.

20 * * *

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

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

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

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

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

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

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

21 * * *

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

7 Sec. 3. 21 V.S.A. chapter 5, subchapter 13 is added to read:

8 Subchapter 13. Parental and Family Leave Insurance

9 § 571. DEFINITIONS

10 As used in this subchapter:

11 (1) “Employee” means an individual who performs services in
12 employment for an employer.

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

17 (3) “Employment” has the same meaning as in subdivision 1301(6) of
18 this title.

19 (4) “Family leave” means a leave of absence from employment by an
20 employee for the serious illness of the employee’s child, stepchild or ward who

1 lives with the employee, foster child, parent, spouse, or parent of the
2 employee’s spouse.

3 (5) “Parental and bonding leave” means a leave of absence from
4 employment by an employee for:

5 (A) the birth of the employee’s child; or

6 (B) the initial placement of a child 16 years of age or younger with
7 the employee for the purpose of adoption or foster care.

8 (6) “Qualified employee” means an individual who has earned at least
9 \$10,710.00 in employment in Vermont during the last 12 months.

10 (7) “Serious illness” means an accident, disease, or physical or mental
11 condition that:

12 (A) poses imminent danger of death;

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

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

16 (8) “Wages” has the same meaning as in subdivision 1301(12) of this
17 title.

1 § 572. PARENTAL AND FAMILY LEAVE INSURANCE; SPECIAL

2 FUND; ADMINISTRATION

3 (a)(1) The Parental and Family Leave Insurance Program is established for
4 the provision of Parental and Family Leave Insurance benefits to eligible
5 employees pursuant to this section.

6 (2) The collection of contributions pursuant to this section and the
7 determination of monetary eligibility for benefits shall be administered by the
8 Commissioner of Taxes. All other aspects of the Program shall be
9 administered by the Commissioner of Labor.

10 (b) The Parental and Family Leave Insurance Special Fund is created
11 pursuant to 32 V.S.A. chapter 7, subchapter 5. The Fund may be expended by
12 the Commissioners of Labor and of Taxes for the administration of the
13 Parental and Family Leave Insurance Program and payment of Parental and
14 Family Leave Insurance benefits provided pursuant to this section. All interest
15 earned on Fund balances shall be credited to the Fund.

16 (c)(1)(A) The Fund shall consist of contributions equal to 0.141 percent of
17 each employee's covered wages, which an employer shall deduct and withhold
18 from each of its employee's wages.

19 (B) In lieu of deducting and withholding the full amount of the
20 contribution pursuant to subdivision (A) of this subdivision (1), an employer

1 may elect to pay all or a portion of the contributions due from the employee’s
2 covered wages.

3 (C) As used in this subsection, the term “covered wages” does not
4 include the amount of wages paid to an employee after he or she has received
5 wages equal to \$150,000.00. Annually on January 1, the amount of wages
6 included in the term “covered wages” shall be increased by the percentage
7 increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally
8 adjusted, or successor index, as calculated by the U.S. Department of Labor or
9 successor agency for the 12 months preceding the previous September 1. The
10 amount of wages included in the term “covered wages” shall not be decreased.

11 (2)(A) Notwithstanding subdivision (1)(A) of this subsection (c), the
12 General Assembly shall annually establish the rate of contribution for the next
13 fiscal year. The rate shall equal the amount necessary to provide Parental and
14 Family Leave Insurance benefits pursuant to this subchapter, to maintain a
15 reserve equal to at least **nine months** of the projected benefit payments for the
16 next fiscal year, and to administer the Parental and Family Leave Insurance
17 Program during the next fiscal year, adjusted by any balance in the Fund from
18 the prior fiscal year.

19 (B) On or before February 1 of each year, the Commissioner of
20 Labor, in consultation with the Commissioner of Taxes, shall report to the
21 General Assembly the rate of contribution necessary to provide Parental and

1 Family Leave Insurance benefits pursuant to this subchapter, to maintain a
2 reserve equal to at least **nine months** of the projected benefit payments for the
3 next fiscal year, and to administer the Program during the next fiscal year,
4 adjusted by any balance in the Fund from the prior fiscal year.

5 (d) The Commissioner of Taxes shall require the withholding of the
6 contributions required pursuant to subsection (c) of this section from wages
7 paid by any employer, as if the contributions were an additional Vermont
8 income tax subject to the withholding requirements of 32 V.S.A. § 5841(a).
9 The administrative and enforcement provisions of 32 V.S.A. chapter 151,
10 subchapter 4 shall apply to the withholding requirement under this section as if
11 the contributions withheld were a Vermont income tax.

12 § 573. BENEFITS

13 (a) Except as otherwise provided pursuant to section 572 of this subchapter,
14 a qualified employee awarded Parental and Family Leave Insurance benefits
15 under this section shall receive 70 percent of his or her average weekly wage
16 or an amount equal to a 40-hour workweek paid at a rate double that of the
17 livable wage, as determined by the Joint Fiscal Office pursuant to 2 V.S.A.
18 § 505, whichever is less.

19 (b) A qualified employee shall be permitted to receive a total of not more
20 than 12 weeks of Parental and Family Leave Insurance benefits in a 12-month

1 period for family leave or parental and bonding leave, or both, which shall
2 include:

3 (1) not more than 12 weeks of parental and bonding leave, provided that
4 if both parents are qualified employees they shall be permitted to receive a
5 combined total of not more than 12 weeks of Parental and Family Leave
6 Insurance benefits in a 12-month period for parental and bonding leave; and

7 (2) not more than six weeks of Parental and Family Leave Insurance
8 benefits in a 12-month period for family leave.

9 § 574. APPLICATION FOR BENEFITS; PAYMENT; TAX

10 WITHHOLDING

11 (a) A qualified employee shall file an application for Parental and Family
12 Leave Insurance benefits with the Commissioner of Labor under this section
13 on a form provided by the Commissioner. The Commissioner shall determine
14 whether the qualified employee is eligible to receive Parental and Family
15 Leave Insurance benefits based on the following criteria:

16 (1) The purposes for which the claim is made are adequately
17 documented pursuant to rules adopted by the Commissioner.

18 (2) The Commissioner of Taxes certifies that the individual is a
19 qualified employee.

20 (3) The qualified employee satisfies the eligibility requirements for the
21 requested leave and has specified the duration of the leave.

1 (4) The benefits are being requested in relation to a family leave or a
2 parental and bonding leave.

3 (b)(1) The Commissioner of Labor shall make a determination of each
4 claim not later than five business days after the date the claim is filed, and
5 Parental and Family Leave Insurance benefits shall be paid from the Fund
6 created pursuant to this section. The Commissioner may extend the time in
7 which to make a determination of a claim by not more than five business days
8 if necessary to obtain documents or information that are needed to make the
9 determination.

10 (2) The first benefit payment shall be sent to a qualified employee
11 within 14 days after his or her claim is approved, and subsequent payments
12 shall be sent biweekly.

13 (3) The provisions of section 1367 of this title shall apply to Parental
14 and Family Leave Insurance benefits.

15 (c)(1) An individual filing a claim for benefits pursuant to this section
16 shall, at the time of filing, be advised that Parental and Family Leave Insurance
17 benefits may be subject to income tax and that the individual's benefits may be
18 subject to withholding.

19 (2) The Commissioner of Labor shall follow all procedures specified by
20 26 U.S.C. chapter 24 and 32 V.S.A. chapter 151, subchapter 4 pertaining to the
21 withholding of income tax.

1 § 575. REINSTATEMENT; SENIORITY AND BENEFITS PROTECTED

2 (a) The employer of an employee who receives Parental and Family Leave
3 Insurance benefits under this subchapter shall reinstate the employee at the
4 conclusion of his or her family leave or parental and bonding leave, provided
5 the employee is not out of work for a continuous period in excess of 12 weeks.
6 The employee shall be reinstated in the first available suitable position given
7 the position he or she held at the time his or her leave began.

8 (b) Upon reinstatement, the employee shall regain seniority and any unused
9 accrued paid leave he or she was entitled to prior to the family leave or
10 parental and bonding leave, less any accrued paid leave used during the family
11 leave or parental and bonding leave.

12 (c)(1) Nothing in this section shall be construed to diminish an employee's
13 rights pursuant to subsection 472(f) of this chapter.

14 (2) The provisions of this section shall not apply if:

15 (A) the employee had been given notice, or had given notice, prior to
16 the beginning of his or her leave;

17 (B) the employee's position would have terminated of its own terms
18 prior to any reinstatement he or she would otherwise be entitled to under this
19 section; or

20 (C) the employee fails to inform the employer of:

1 (i) his or her interest in being reinstated at the conclusion of the
2 leave; and

3 (ii) the date on which his or her leave is anticipated to conclude.

4 (d)(1) An employee aggrieved by an employer’s failure to comply with the
5 provisions of this section may bring an action in the Civil Division of the
6 Superior Court in the county where the employment is located for
7 compensatory and punitive damages or equitable relief, including restraint of
8 prohibited acts, restitution of wages or other benefits, reinstatement, costs, and
9 other appropriate relief.

10 (2) A copy of the complaint shall be filed with the Commissioner of
11 Labor.

12 (3) The court shall award reasonable attorney’s fees to the employee if
13 he or she prevails.

14 § 576. APPEALS

15 (a)(1) An employer or individual aggrieved by a decision of the
16 Commissioner of Labor under section 574 of this subchapter may file with the
17 Commissioner a petition for reconsideration within 30 days after receipt of the
18 decision. The petition shall set forth in detail the grounds upon which it is
19 claimed that the decision is erroneous and may include materials supporting
20 that claim.

1 (2) If an employer petitions the Commissioner to reconsider a decision
2 pursuant to section 574 of this subchapter, the Commissioner shall promptly
3 notify the individual of the petition by ordinary, certified, or electronic mail
4 and provide him or her with an opportunity to file an answer to the employer’s
5 petition.

6 (3) The Commissioner shall promptly notify the employer or individual,
7 or both, of his or her decision by ordinary, certified, or electronic mail.

8 (b)(1) An employer or individual aggrieved by the Commissioner’s
9 decision on reconsideration may file an appeal with a departmental
10 administrative law judge within 30 days after receiving the Commissioner’s
11 decision. The appeal shall set forth in detail the grounds upon which it is
12 claimed that the decision is erroneous.

13 (2) The administrative law judge shall, upon not less than five business
14 days’ notice, hold a hearing on the appeal as provided pursuant to rules
15 adopted by the Commissioner. After the hearing, all parties to the appeal shall
16 be promptly notified by ordinary, certified, or electronic mail of the findings of
17 fact, conclusions, and decision of the administrative law judge.

18 (c) Any party may appeal the administrative law judge’s decision to the
19 Supreme Court within 30 days after receiving the decision.

1 (d) The provisions of section 1353 of this title shall apply to all
2 determinations, redeterminations, findings of fact, conclusions of law,
3 decisions, orders, or judgments entered or made pursuant to this section.

4 § 577. FALSE STATEMENT OR REPRESENTATION; PENALTY

5 A person who willfully makes a false statement or representation for the
6 purpose of obtaining any benefit or payment or to avoid payment of any
7 required contributions under the provisions of this subchapter, either for
8 himself or herself or for any other person, after notice and opportunity for
9 hearing, may be assessed an administrative penalty of not more than
10 \$20,000.00 and shall forfeit all or a portion of any right to benefits under the
11 provisions of this subchapter, as determined to be appropriate by the
12 Commissioner of Labor or of Taxes, as appropriate, after a determination by
13 the Commissioner that the person has willfully made a false statement or
14 representation of a material fact.

15 § 578. RULEMAKING

16 (a) The Commissioner of Taxes shall adopt rules as necessary to implement
17 the provisions of this subchapter related to the collection of contributions
18 pursuant to section 572 of this subchapter and the determination of monetary
19 eligibility for benefits.

20 (b) The Commissioner of Labor shall adopt rules as necessary to
21 implement all other provisions of this subchapter.

1 § 579. CONFIDENTIALITY OF INFORMATION

2 (a) Information obtained from an employer or individual in the
3 administration of this subchapter and determinations of an individual's right to
4 receive benefits that reveal an employer's or individual's identity in any
5 manner shall be kept confidential and shall be exempt from public inspection
6 and copying under the Public Records Act. Such information shall not be
7 admissible as evidence in any action or proceeding other than one brought
8 pursuant to the provisions of this subchapter.

9 (b) Notwithstanding subsection (a) of this section:

10 (1) an individual or his or her duly authorized agent may be provided
11 with information to the extent necessary for the proper presentation of his or
12 her claim for benefits or to inform him or her of his or her existing or
13 prospective rights to benefits; and

14 (2) an employer may be provided with information that the
15 Commissioner of Labor or of Taxes determines is necessary to enable the
16 employer to discharge fully its obligations and protect its rights under this
17 subchapter.

18 Sec. 4. ADOPTION OF RULES

19 (a) On or before January 1, 2019, the Commissioner of Taxes shall
20 adopt rules necessary to implement the provisions of 21 V.S.A. chapter 5,

1 subchapter 13 related to the collection of contributions and the determination
2 of monetary eligibility, which shall include:

3 (1) procedures for the collection of contributions; and

4 (2) reporting and record-keeping requirements for employers.

5 (b) On or before January 1, 2019, the Commissioner of Labor shall adopt
6 rules necessary to implement all other provisions of 21 V.S.A. chapter 5,
7 subchapter 13, which shall include:

8 (1) procedures for receiving and processing applications for benefits;

9 (2) acceptable documentation for demonstrating eligibility for benefits;

10 (3) forms and requirements for providing certification from a health care
11 provider of the need for family leave that are modeled on the federal rules
12 governing certification of a serious health condition under the Family and
13 Medical Leave Act;

14 (4) forms and procedures for obtaining authorization for an individual's
15 health care provider to disclose to the Commissioner information necessary to
16 make a determination of the individual's eligibility for benefits; and

17 (5) procedures for appealing a decision pursuant to 21 V.S.A. § 574 that
18 are modeled, to the extent possible, on the appeals process provided for
19 determinations of benefits in relation to unemployment insurance.

1 Sec. 5. EDUCATION AND OUTREACH

2 On or before January 1, 2019, the Commissioner of Labor shall develop and
3 make available on the Department of Labor’s website information and
4 materials to educate and inform employers and employees about the Parental
5 and Family Leave Insurance Program established pursuant to 21 V.S.A.
6 chapter 5, subchapter 13.

7 Sec. 6. ESTABLISHMENT OF PARENTAL AND FAMILY LEAVE

8 INSURANCE PROGRAM; EXPENDITURES FROM SPECIAL
9 FUND

10 Beginning on July 1, 2018, the Commissioner of Finance and Management
11 may, pursuant to 32 V.S.A. § 588(4)(C), issue warrants for expenditures from
12 the Parental and Family Leave Insurance Special Fund necessary to establish
13 the Parental and Family Leave Insurance Program in anticipation of the receipt
14 on or after July 1, 2019 of contributions submitted pursuant to 21 V.S.A.
15 § 572.

16 Sec. 7. ADEQUACY OF RESERVES; REPORT

17 Annually, on or before January 15, 2021, 2022, and 2023, the
18 Commissioners of Labor and of Taxes, in consultation with the Commissioners
19 of Finance and Management and of Financial Regulation, shall submit a
20 written report to the House Committees on Appropriations, on General,
21 Housing, and Military Affairs, and on Ways and Means and the Senate

1 Committees on Appropriations, on Economic Development, Housing and
2 General Affairs, and on Finance regarding the amount and adequacy of the
3 reserves in the Parental and Family Leave Insurance Special Fund and any
4 recommendations for legislative action necessary to ensure that an adequate
5 reserve is maintained in the Fund.

6 Sec. 8. 21 V.S.A. § 1344 is amended to read:

7 § 1344. DISQUALIFICATIONS

8 (a) An individual shall be disqualified for benefits:

9 * * *

10 (5) For any week with respect to which the individual is receiving or has
11 received remuneration in the form of:

12 * * *

13 (F) Parental and Family Leave Insurance benefits pursuant to
14 chapter 5, subchapter 13 of this title.

15 * * *

16 Sec. 9. EFFECTIVE DATES

17 (a) This section and Secs. 3, 4, 5, 6, and 7 shall take effect on July 1, 2018.

18 (b) Secs. 1, 2, and 8 shall take effect on October 1, 2020.

19 (c) Contributions shall begin being paid pursuant to 21 V.S.A. § 572 on
20 July 1, 2019, and, beginning on October 1, 2020, employees may begin to
21 receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

1

2 (Committee vote: _____)

3

4

Senator _____

5

FOR THE COMMITTEE