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H.107

Introduced by Representatives Scheu of Middlebury, Copeland-Hanzas of
Bradford, Young of Greensboro, Ancel of Calais, Anthony of
Barre City, Austin of Colchester, Bartholomew of Hartland,
Birong of Vergennes, Bock of Chester, Briglin of Thetford,
Brumsted of Shelburne, Burke of Brattleboro, Campbell of
St. Johnsbury, Carroll of Bennington, Chesnut-Tangerman of
Middletown Springs, Christensen of Weathersfield, Christie of
Hartford, Cina of Burlington, Coffey of Guilford, Colburn of
Burlington, Colston of Winooski, Conlon of Cornwall, Cordes
of Lincoln, Demrow of Corinth, Dolan of Waitsfield, Donovan
of Burlington, Durfee of Shaftsbury, Elder of Starksboro,
Emmons of Springfield, Gardner of Richmond, Giambatista of
Essex, Gonzalez of Winooski, Grad of Moretown, Haas of
Rochester, Hashim of Dummerston, Hill of Wolcott, Hooper of
Montpelier, Hooper of Randolph, Hooper of Burlington,
Houghton of Essex, Howard of Rutland City, James of
Manchester, Jessup of Middlesex, Killacky of South Burlington,
Kitzmilller of Montpelier, Kornheiser of Brattleboro, Krowinski
of Burlington, LaLonde of South Burlington, Lanpher of
Vergennes, Lippert of Hinesburg, Long of Newfane, Macaig of

1 Williston, Masland of Thetford, McCarthy of St. Albans City,
2 McCormack of Burlington, McCullough of Williston, Mrowicki
3 of Putney, Notte of Rutland City, Noyes of Wolcott, Ode of
4 Burlington, O’Sullivan of Burlington, Partridge of Windham,
5 Patt of Worcester, Pugh of South Burlington, Rachelson of
6 Burlington, Ralph of Hartland, Redmond of Essex, Sheldon of
7 Middlebury, Squirrell of Underhill, Stevens of Waterbury,
8 Sullivan of Burlington, Szott of Barnard, Toleno of Brattleboro,
9 Townsend of South Burlington, Troiano of Stannard, Walz of
10 Barre City, White of Hartford, Wood of Waterbury, Yacovone
11 of Morristown, and Yantachka of Charlotte

12 Referred to Committee on

13 Date:

14 Subject: Labor; employment practices; paid family leave

15 Statement of purpose of bill as introduced: This bill proposes to create a Paid
16 Family Leave Insurance Program within the Departments of Labor and Taxes
17 that will be funded by contributions from employers and employees. The bill
18 also proposes to amend Vermont’s existing Parental and Family Leave Act to
19 make it applicable to additional employers and to clarify certain provisions.

20 An act relating to paid family leave

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

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

3 § 471. DEFINITIONS

4 As used in this subchapter:

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

13 * * *

14 (3) “Family leave” means a leave of absence from employment by an
15 employee who works for an employer ~~which~~ that employs ~~15~~ 10 or more
16 individuals who are employed for an average of at least 30 hours per week
17 during the year for one of the following reasons:

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

19 (B) the serious illness of the employee’s child, stepchild or ward who
20 lives with the employee, foster child, parent, spouse, ~~or~~ parent of the
21 employee’s spouse;

1 (1) “Employee” means an individual who receives payments with
2 respect to services performed for an employer from which the employer is
3 required to withhold Vermont income tax pursuant to 32 V.S.A. chapter 151,
4 subchapter 4.

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

9 (3) “Parental and family leave” means a leave of absence from
10 employment by an employee for:

11 (A) his or her own serious illness, provided he or she is not eligible to
12 receive workers’ compensation pursuant to 21 V.S.A. chapter 9 for the serious
13 illness;

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

17 (C) the employee’s pregnancy;

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

19 (E) the initial placement of a child 16 years of age or younger with
20 the employee for the purpose of adoption or foster care.

1 (4) “Qualifying employee” means an individual who has earned wages
2 in Vermont during the last 12 months in an amount that is equal to or greater
3 than 1,040 hours at the minimum wage established pursuant to section 384 of
4 this chapter.

5 (5) “Self-employed person” means a sole proprietor or partner owner of
6 an unincorporated business, the sole member of an LLC that does not have any
7 employees other than the member, or the sole shareholder of a corporation that
8 does not have any employees other than the shareholder.

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

11 (A) poses imminent danger of death;

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

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

15 (7) “Wages” means payments from an employer to an employee that are
16 subject to income tax withholding pursuant to 32 V.S.A. chapter 151,
17 subchapter 4.

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)(A) The Commissioner of Taxes shall administer the collection of
7 contributions, the determination of monetary eligibility for benefits, and the
8 issuance of benefits checks for the program.

9 (B) The Commissioner of Labor shall administer the receipt and
10 processing of benefits applications, the determination of eligibility for benefits,
11 the collection of overpaid benefits, and all other aspects of the program that are
12 not administered by the Commissioner of Taxes.

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

19 (c)(1)(A) The Fund shall consist of contributions equal to 0.93 percent of
20 each employee's covered wages of which one-half shall be deducted and

1 withheld by an employer from an employee's wages and one-half shall be paid
2 by the employee's employer.

3 (B) In lieu of deducting and withholding the full amount of the
4 contribution pursuant to subdivision (A) of this subdivision (1), an employer
5 may elect to pay all or a portion of the contributions due from the employee's
6 covered wages.

7 (C) As used in this subsection, the term "covered wages" does not
8 include the amount of wages paid to an employee after he or she has received
9 wages equal to \$150,000.00. Beginning on January 1, 2021, and on each
10 subsequent January 1, the amount of wages included in the term "covered
11 wages" shall be increased by the percentage increase of the Consumer Price
12 Index, CPI-U, U.S. city average, not seasonally adjusted, or successor index, as
13 calculated by the U.S. Department of Labor or successor agency for the
14 12 months preceding the previous September 1. The amount of wages
15 included in the term "covered wages" shall not be decreased.

16 (2)(A) Notwithstanding subdivision (1)(A) of this subsection (c), the
17 General Assembly shall annually establish the rate of contribution for the next
18 fiscal year. The rate shall equal the amount necessary to provide Parental and
19 Family Leave Insurance benefits pursuant to this subchapter, to maintain a
20 reserve equal to at least nine months of the projected benefit payments for the
21 next fiscal year, and to administer the Parental and Family Leave Insurance

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

3 (B) On or before February 1 of each year, the Commissioner of
4 Labor, in consultation with the Commissioner of Taxes, shall report to the
5 General Assembly the rate of contribution necessary to provide Parental and
6 Family Leave Insurance benefits pursuant to this subchapter, to maintain a
7 reserve equal to at least nine months of the projected benefit payments for the
8 next fiscal year, and to administer the Program during the next fiscal year,
9 adjusted by any balance in the Fund from the prior fiscal year.

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

17 § 573. BENEFITS

18 (a) A qualified employee shall be permitted to receive a total of not more
19 than 12 weeks of Parental and Family Leave Insurance benefits in a 12-month
20 period for parental and family leave taken by the employee.

1 (b) A qualified employee awarded Parental and Family Leave Insurance
2 benefits under this section shall receive 100 percent of his or her average
3 weekly wage or an amount equal to a 40-hour workweek paid at a rate double
4 that of the livable wage, as determined by the Joint Fiscal Office pursuant to
5 2 V.S.A. § 505, whichever is less.

6 (c) A qualified employee who receives Parental and Family Leave
7 Insurance benefits for an intermittent leave or for a portion of a week, shall
8 receive a prorated benefit amount.

9 (d) A family leave or a parental and bonding leave for which benefits are
10 paid pursuant to this subchapter shall run concurrently with a leave taken
11 pursuant to section 472 of this title or the federal Family and Medical Leave
12 Act, 29 U.S.C. §§ 2611–2654.

13 § 574. APPLICATION FOR BENEFITS; PAYMENT; TAX

14 WITHHOLDING

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

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

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

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

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

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

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

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

19 (c)(1) An individual filing a claim for benefits pursuant to this section
20 shall, at the time of filing, be advised that Parental and Family Leave Insurance

1 benefits may be subject to income tax and that the individual's benefits may be
2 subject to withholding.

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

6 § 575. REINSTATEMENT; SENIORITY AND BENEFITS PROTECTED

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

13 (b) Upon reinstatement, the employee shall regain seniority and any unused
14 accrued paid leave he or she was entitled to prior to the family leave or
15 parental and bonding leave, less any accrued paid leave used during the family
16 leave or parental and bonding leave.

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

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

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

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

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

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

7 (ii) the date on which his or her leave is anticipated to conclude; or

8 (D) more than two years have elapsed since the conclusion of the
9 employee's leave.

10 (d)(1) An employee aggrieved by an employer's failure to comply with the
11 provisions of this section may bring an action in the Civil Division of the
12 Superior Court in the county where the employment is located for
13 compensatory and punitive damages or equitable relief, including restraint of
14 prohibited acts, restitution of wages or other benefits, reinstatement, costs, and
15 other appropriate relief.

16 (2) A copy of the complaint shall be filed with the Commissioner of
17 Labor.

18 (3) The court shall award reasonable attorney's fees to the employee if
19 he or she prevails.

1 § 576. ELECTIVE COVERAGE

2 (a)(1) A self-employed person may elect to obtain coverage under the
3 Parental and Family Leave Insurance Program for a period of three years by
4 filing a notice of his or her election with the Commissioner of Taxes on a form
5 provided by the Commissioner.

6 (2) The provisions of sections 573, 574, 578, 580, 581, and 582 of this
7 chapter shall apply to a self-employed person who elects to obtain coverage
8 pursuant to this section in the same manner as if he or she were an employee.

9 (b)(1) A person who elects to obtain coverage pursuant to this subsection
10 shall:

11 (A) contribute an amount equal to 0.93 percent of his or her covered
12 work income at times determined by the Commissioner; and

13 (B) provide to the Commissioner any documentation of his or her
14 work income and any related information that the Commissioner determines is
15 necessary.

16 (2) As used in this section, “covered work income” means an amount of
17 working income earned by a self-employed person that is equal to the amount
18 of covered wages pursuant to subdivision (c)(1)(C) of section 572 of this
19 chapter.

20 (c) A person who elects coverage pursuant to this section shall be eligible
21 to file a claim for and receive Parental and Family Leave Insurance benefits if

1 he or she has made contributions to the Fund on the amount of wages required
2 to be a qualified employee as that term is defined pursuant to subdivision
3 571(4) of this subchapter.

4 (d)(1) A person who elects coverage pursuant to this section may terminate
5 his or her coverage at the end of the three-year period by providing the
6 Commissioner with written notice of the termination at least 30 days before the
7 end of the period.

8 (2) If a person who elects coverage pursuant to this subsection does not
9 terminate it at the end of the initial three-year period, he or she may terminate
10 the coverage at the end of any succeeding annual period by providing the
11 Commissioner with written notice of the termination at least 30 days before the
12 end of the period.

13 (3) Notwithstanding subdivisions (1) and (2) of this subsection, a person
14 who, after electing to obtain coverage pursuant to this section, becomes an
15 employee or stops working in Vermont, may elect to terminate his or her
16 coverage pursuant to this section by providing the Commissioner with 30 days'
17 written notice in accordance with rules adopted by the Commissioner.

18 (e) Nothing in this section shall be construed to prevent an individual who
19 is both an employee and a self-employed person from electing to obtain
20 coverage pursuant to this section.

1 § 577. APPEALS

2 (a)(1) An employer or individual aggrieved by a decision of the
3 Commissioner of Labor under section 574 or 581 of this subchapter may file
4 with the Commissioner a petition for reconsideration within 30 days after
5 receipt of the decision. The petition shall set forth in detail the grounds upon
6 which it is claimed that the decision is erroneous and may include materials
7 supporting that claim.

8 (2) If an employer petitions the Commissioner to reconsider a decision
9 pursuant to section 574 or 581 of this subchapter, the Commissioner shall
10 promptly notify the individual of the petition by ordinary, certified, or
11 electronic mail and provide him or her with an opportunity to file an answer to
12 the employer's petition.

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

15 (b)(1) An employer or individual aggrieved by the Commissioner's
16 decision on reconsideration may file an appeal with a departmental
17 administrative law judge within 30 days after receiving the Commissioner's
18 decision. The appeal shall set forth in detail the grounds upon which it is
19 claimed that the decision is erroneous.

20 (2) The administrative law judge shall, upon not less than five business
21 days' notice, hold a hearing on the appeal as provided pursuant to rules

1 adopted by the Commissioner. After the hearing, all parties to the appeal shall
2 be promptly notified by ordinary, certified, or electronic mail of the findings of
3 fact, conclusions, and decision of the administrative law judge.

4 (c) Any party may appeal the administrative law judge's decision to the
5 Supreme Court within 30 days after receiving the decision.

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

9 § 578. FALSE STATEMENT OR REPRESENTATION; PENALTY

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

1 § 579. RULEMAKING

2 (a) The Commissioner of Taxes shall adopt rules as necessary to implement
3 the provisions of this subchapter related to the collection of contributions
4 pursuant to section 572 of this subchapter and the determination of monetary
5 eligibility for benefits.

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

8 § 580. CONFIDENTIALITY OF INFORMATION

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

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

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

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

5 § 581. DISQUALIFICATIONS

6 A qualified employee shall be disqualified for benefits for any week in
7 which he or she has received:

8 (1) compensation for temporary partial disability or temporary total
9 disability under the workers' compensation law of any state or under a similar
10 law of the United States; or

11 (2) unemployment compensation benefits under the law of any state.

12 § 582. OVERPAYMENT OF BENEFITS; COLLECTION

13 (a)(1) Any individual who by nondisclosure or misrepresentation of a
14 material fact, by him or her, or by another person, has received Parental and
15 Family Leave Insurance benefits when he or she failed to fulfill a requirement
16 for the receipt of benefits pursuant to this chapter or while he or she was
17 disqualified from receiving benefits pursuant to section 580 of this chapter
18 shall be liable to repay to the Commissioner of Labor the amount received.

19 (2) Upon determining that an individual has received benefits under this
20 chapter that he or she was not entitled to, the Commissioner of Labor shall
21 provide the individual with notice of the determination. The notice shall

1 include a statement that the individual is liable to repay to the Commissioner
2 the amount of overpaid benefits and shall identify the basis of the overpayment
3 and the time period in which the benefits were paid.

4 (3) The determination shall be made within not more than three years
5 after the date of the overpayment.

6 (b)(1) An individual liable under this section shall repay the overpaid
7 amount to the Commissioner for deposit into the Fund.

8 (2) If the Commissioner finds that the individual intentionally
9 misrepresented or failed to disclose a material fact with respect to his or her
10 claim for benefits, in addition to the repayment under subdivision (1) of this
11 subsection, the person shall pay an additional penalty of 15 percent of the
12 amount of the overpaid benefits, which shall also be deposited into the Fund.

13 (3) The Commissioner may collect the amounts due under this section in
14 civil action in the Superior Court.

15 (c) If an individual is liable to repay any amount pursuant to this section,
16 the Commissioner may withhold, in whole or in part, any future benefits
17 payable to the individual pursuant to this chapter and credit the withheld
18 benefits against the amount due from the individual until it is repaid in full,
19 less any penalties assessed under subdivision (b)(2) of this section.

20 (d) In addition to the remedy provided pursuant to this section, an
21 individual who intentionally misrepresented or failed to disclose a material fact

1 with respect to his or her claim for benefits may be subject to the penalties
2 provided pursuant to section 577 of this title.

3 Sec. 4. ADOPTION OF RULES

4 (a) On or before April 1, 2020, the Commissioner of Taxes shall
5 adopt rules necessary to implement the provisions of 21 V.S.A. chapter 5,
6 subchapter 13 related to the collection of contributions and the determination
7 of monetary eligibility, which shall include:

8 (1) procedures for the collection of contributions;

9 (2) procedures for the issuance of benefits payments; and

10 (3) reporting and record-keeping requirements for employers.

11 (b) On or before April 1, 2020, the Commissioner of Labor shall adopt
12 rules necessary to implement all other provisions of 21 V.S.A. chapter 5,
13 subchapter 13, which shall include:

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

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

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

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

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

7 Sec. 5. EDUCATION AND OUTREACH

8 On or before June 1, 2020, the Commissioner of Labor shall develop and
9 make available on the Department of Labor's website information and
10 materials to educate and inform employers and employees about the Parental
11 and Family Leave Insurance Program established pursuant to 21 V.S.A.
12 chapter 5, subchapter 13.

13 Sec. 6. ESTABLISHMENT OF PARENTAL AND FAMILY LEAVE

14 INSURANCE PROGRAM; EXPENDITURES FROM SPECIAL
15 FUND

16 Beginning on July 1, 2019, the Commissioner of Finance and Management
17 may, pursuant to 32 V.S.A. § 588(4)(C), issue warrants for expenditures from
18 the Parental and Family Leave Insurance Special Fund necessary to establish
19 the Parental and Family Leave Insurance Program in anticipation of the receipt
20 on or after July 1, 2020 of contributions submitted pursuant to 21 V.S.A.
21 § 572.

1 Sec. 9. EFFECTIVE DATES

2 (a) This section and Secs. 3, 4, 5, 6, and 7 shall take effect on July 1, 2019.

3 (b) Secs. 1, 2, and 8 shall take effect on October 1, 2021.

4 (c) Contributions shall begin being paid pursuant to 21 V.S.A. § 572 on

5 July 1, 2020, and, beginning on October 1, 2021, employees may begin to

6 receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.