

1 S.88

2 Introduced by Senators Sirotkin, Balint, Baruth, Bray, Clarkson, Cummings,
3 Hardy, Hooker, Ingram, Lyons, MacDonald, McCormack,
4 Pearson, Perchlik, Pollina and White

5 Referred to Committee on

6 Date:

7 Subject: Labor; employment practices; paid family leave

8 Statement of purpose of bill as introduced: This bill proposes to create a
9 Parental and Family Leave Insurance Program within the Departments of
10 Labor and of Taxes that will provide employees with paid parental and family
11 leave and that will be funded by contributions from employers and employees.
12 This bill also proposes to amend Vermont's existing Parental and Family
13 Leave Act to make it applicable to additional employers and to clarify certain
14 provisions.

15 An act relating to paid family leave

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

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

18 § 471. DEFINITIONS

19 As used in this subchapter:

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

8 * * *

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 family leave under this subchapter. Notice shall include
14 the 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 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 * * *

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

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

16 Subchapter 13. Parental and Family Leave Insurance

17 § 571. DEFINITIONS

18 As used in this subchapter:

19 (1) "Employee" means an individual who receives payments with
20 respect to services performed for an employer from which the employer is

1 required to withhold Vermont income tax pursuant to 32 V.S.A. chapter 151,
2 subchapter 4.

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

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

9 (A) his or her own serious illness, provided that he or she is not
10 eligible to receive workers’ compensation for the serious illness pursuant to the
11 law of any state or the United States; or

12 (B) a serious illness of the employee’s child, stepchild or ward who
13 lives with the employee, foster child, parent, spouse, or parent of the
14 employee’s spouse.

15 (C) the employee’s pregnancy;

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

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

19 (4) “Qualified employee” means an individual who has earned at least
20 \$11,200.00 in wages in Vermont during the last 12 months.

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

3 (A) poses imminent danger of death;

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

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

7 (6) “Vermont’s weekly livable wage” means a 40-hour workweek paid
8 at the rate of the livable wage determined by the Joint Fiscal Office pursuant to
9 2 V.S.A. § 505.

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

13 § 572. PARENTAL AND FAMILY LEAVE INSURANCE; SPECIAL

14 FUND; ADMINISTRATION

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

18 (2)(A) The Commissioner of Taxes shall administer the collection of
19 contributions, the determination of monetary eligibility for benefits, and the
20 issuance of benefits payments for the program.

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

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

11 (c)(1)(A) The Fund shall consist of contributions equal to 0.58 percent of
12 each employee's covered wages of which one-half shall be deducted and
13 withheld by an employer from the employee's wages and one-half shall be
14 paid by the employee's employer.

15 (B) In lieu of deducting and withholding the full amount of the
16 employee's share pursuant to subdivision (A) of this subdivision (1), an
17 employer may elect to pay all or a portion of the employee's share.

18 (C) As used in this subsection, the term "covered wages" does not
19 include any additional amount of wages paid to an employee during a calendar
20 year after he or she has received wages equal to \$150,000.00. Beginning on
21 January 1, 2021, and on each subsequent January 1, the amount of wages

1 included in the term “covered wages” shall be increased by the percentage
2 increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally
3 adjusted, or successor index, as calculated by the U.S. Department of Labor or
4 successor agency for the 12 months preceding the previous September 1. The
5 amount of wages included in the term “covered wages” shall not be decreased.

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

14 (B) On or before February 1 of each year, the Commissioner of
15 Labor, in consultation with the Commissioner of Taxes, shall report to the
16 General Assembly the rate of contribution for the next fiscal year that is
17 necessary to provide Parental and Family Leave Insurance benefits pursuant to
18 this subchapter, to maintain a reserve equal to at least nine months of the
19 projected benefit payments for the next fiscal year, and to administer the
20 Program, adjusted by any balance in the Fund from the prior fiscal year.

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

8 § 573. BENEFITS

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

12 (b)(1) A qualified employee who is determined to be eligible for Parental
13 and Family Leave Insurance benefits under section 574 of this chapter shall
14 receive a weekly benefit amount equal to:

15 (A) if he or she earns an average weekly wage that is not more than
16 Vermont's weekly livable wage, 90 percent of his or her average weekly wage;

17 (B) if he or she earns an average weekly wage that is greater than
18 Vermont's weekly livable wage but not more than two times Vermont's
19 weekly livable wage, 90 percent of Vermont's weekly livable wage plus 60
20 percent of the amount by which his or her average weekly wage exceeds
21 Vermont's weekly livable wage; and

1 (C) if he or she earns an average weekly wage that is more than two
2 times Vermont's weekly livable wage, 90 percent of Vermont's weekly livable
3 wage plus 60 percent of Vermont's weekly livable wage plus 50 percent of the
4 amount by which his or her average weekly wage exceeds two times
5 Vermont's weekly livable wage.

6 (2) Notwithstanding subdivision (1) of this subsection, no qualified
7 employee may receive Parental and Family Leave Insurance benefits that
8 exceed two times Vermont's weekly livable wage for any single week.

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

12 (d) A parental and family leave for which benefits are paid pursuant to
13 this subchapter shall run concurrently with a leave taken pursuant to
14 section 472 of this title or the federal Family and Medical Leave Act,
15 29 U.S.C. §§ 2611–2654.

16 § 574. APPLICATION FOR BENEFITS; PAYMENT; TAX

17 WITHHOLDING

18 (a) A qualified employee shall file an application for Parental and Family
19 Leave Insurance benefits with the Commissioner of Labor under this section
20 on a form provided by the Commissioner. The Commissioner shall determine

1 whether the qualified employee is eligible to receive Parental and Family
2 Leave Insurance benefits based on the following criteria:

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

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

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

9 (4) The benefits are being requested in relation to a parental and family
10 leave.

11 (b)(1) The Commissioner of Labor shall make a determination of each
12 claim not later than five business days after the date the claim is filed, and
13 Parental and Family Leave Insurance benefits shall be paid from the Fund
14 created pursuant to section 572 of this subchapter. The Commissioner may
15 extend the time in which to make a determination of a claim by not more than
16 five business days if necessary to obtain documents or information that are
17 needed to make the determination.

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

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

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

7 (2) The Commissioner of Labor shall follow all procedures specified by
8 26 U.S.C. chapter 24 and 32 V.S.A. chapter 151, subchapter 4 pertaining to the
9 withholding of income tax.

10 § 575. REEMPLOYMENT; SENIORITY AND BENEFITS PROTECTED;

11 SMALL BUSINESS EXEMPTION

12 (a)(1)(A) An employee who receives Parental and Family Leave Insurance
13 benefits under this subchapter shall, upon returning from the leave, be offered
14 the same or a comparable job at the same level of compensation, employment
15 benefits, seniority, or any other term or condition of the employment existing
16 on the day leave began if:

17 (i) the leave does not exceed six continuous weeks; or

18 (ii) the employee works for an employer who employs five or
19 more individuals who are employed for an average of at least 30 hours per
20 week during a year and the leave does not exceed 12 continuous weeks.

1 (B) Upon return from the leave, the employee shall regain seniority
2 and any unused accrued paid leave he or she was entitled to prior to the
3 parental and family leave, less any accrued paid leave used during the parental
4 and family leave.

5 (2) This subsection shall not apply if:

6 (A) prior to requesting leave, the employee had been given notice or
7 had given notice that the employment would terminate;

8 (B) the employer can demonstrate by clear and convincing evidence
9 that:

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

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

18 (C) prior to commencing his or her leave, the employee fails to
19 inform to the employer of:

20 (i) the date on which his or her leave is anticipated to conclude;
21 and

1 (ii) his or her interest in returning to employment at the conclusion
2 of the leave.

3 (b) Nothing in this section shall be construed to diminish an employee's
4 rights pursuant to subsection 472(f) of this chapter.

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

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

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

15 § 576. APPEALS

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

1 (2) If an employer petitions the Commissioner to reconsider a decision
2 pursuant to section 574 or 581 of this subchapter, the Commissioner shall
3 promptly notify the relevant employee of the petition by ordinary, certified, or
4 electronic mail and provide him or her with an opportunity to file an answer to
5 the employer's 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 first-class, certified, or electronic mail of the findings
17 of 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, may, after notice and opportunity for
9 hearing, be assessed an administrative penalty of not more than \$20,000.00 and
10 shall forfeit all or a portion of any right to benefits under the provisions of this
11 subchapter, as determined to be appropriate by the Commissioner of Labor or
12 of Taxes, as appropriate, after a determination by the Commissioner that the
13 person has willfully made a false statement or representation of a material fact.

14 § 578. RULEMAKING

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

19 (b) The Commissioner of Labor shall adopt rules as necessary to
20 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 § 580. DISQUALIFICATIONS

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

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

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

5 § 581. OVERPAYMENT OF BENEFITS; COLLECTION

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

12 (2) Upon determining that an individual has received benefits under this
13 chapter that he or she was not entitled to, the Commissioner of Labor shall
14 provide the individual with notice of the determination. The notice shall
15 include a statement that the individual is liable to repay to the Commissioner
16 the amount of overpaid benefits and shall identify the basis of the overpayment
17 and the time period in which the benefits were paid.

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

20 (b)(1) An individual liable under this section shall repay the overpaid
21 amount to the Commissioner for deposit in the Fund.

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

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

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

13 (d) In addition to the remedy provided pursuant to this section, an
14 individual who intentionally misrepresented or failed to disclose a material fact
15 with respect to his or her claim for benefits may be subject to the penalties
16 provided pursuant to section 577 of this title.

17 Sec. 4. ADOPTION OF RULES

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

- 1 (1) procedures for the collection of contributions;
- 2 (2) procedures for the issuance of benefits payments; and
- 3 (3) reporting and record-keeping requirements for employers.

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

- 7 (1) procedures for receiving and processing applications for benefits;
- 8 (2) acceptable documentation for demonstrating eligibility for benefits;
- 9 (3) forms and requirements for providing certification from a health care

10 provider of a serious illness for which Parental and Family Leave benefits are
11 being requested that are modeled on the federal rules governing certification of
12 a serious health condition under the Family and Medical Leave Act;

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

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

19 Sec. 5. EDUCATION AND OUTREACH

20 On or before June 1, 2020, 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 Parental
2 and Family Leave Insurance Program established pursuant to 21 V.S.A.
3 chapter 5, subchapter 13.

4 Sec. 6. ESTABLISHMENT OF PARENTAL AND FAMILY LEAVE
5 INSURANCE PROGRAM; EXPENDITURES FROM SPECIAL
6 FUND

7 Beginning on July 1, 2019, the Commissioner of Finance and Management
8 may, pursuant to 32 V.S.A. § 588(4)(C), issue warrants for expenditures from
9 the Parental and Family Leave Insurance Special Fund necessary to establish
10 the Parental and Family Leave Insurance Program in anticipation of the receipt
11 on or after July 1, 2020 of contributions submitted pursuant to 21 V.S.A.
12 § 572.

13 Sec. 7. ADEQUACY OF RESERVES; REPORT

14 Annually, on or before January 15, 2022, 2023, and 2024, the
15 Commissioners of Labor and of Taxes, in consultation with the Commissioners
16 of Finance and Management and of Financial Regulation, shall submit a
17 written report to the House Committees on Appropriations, on General,
18 Housing, and Military Affairs, and on Ways and Means and the Senate
19 Committees on Appropriations, on Economic Development, Housing and
20 General Affairs, and on Finance regarding the amount and adequacy of the
21 reserves in the Parental and Family Leave Insurance Special Fund and any

1 recommendations for legislative action necessary to ensure that an adequate
2 reserve is maintained in the Fund.

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

4 § 1344. DISQUALIFICATIONS

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

6 * * *

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

9 * * *

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

12 * * *

13 Sec. 9. EFFECTIVE DATES

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

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

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

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

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