

# House Calendar

---

Thursday, April 04, 2019

86th DAY OF THE BIENNIAL SESSION

House Convenes at 1:00 P.M.

---

## TABLE OF CONTENTS

---

**Page No.**

### **ACTION CALENDAR**

#### **Favorable with Amendment**

<b>H. 107</b> Paid family and medical leave.....	1255
Rep. Stevens for General, Housing, and Military Affairs	
Rep. Scheu for Ways and Means.....	1270
Rep. Hooper for Appropriations.....	1291
Rep. Ralph Amendment.....	1300
Rep. Browning, et al. Amendment.....	1300

#### **Ordered to Lie**

<b>H. 97</b> Fiscal year 2019 budget adjustments.....	1312
---	------

#### **Consent Calendar**

<b>H.C.R. 121</b> Commemorating the placement of the third statue of Agriculture atop the State House dome and honoring its creators, sculptors Chris Miller and Jerry Williams.....	1313
<b>H.C.R. 122</b> Congratulating Gloria Kigonya on winning the 2019 Vermont Debate and Forensics League State Forensics Tournament's performance poetry category.....	1313
<b>H.C.R. 123</b> Honoring Sarah E. Carpenter for her outstanding leadership as Vermont Housing Finance Agency Executive Director.....	1313
<b>H.C.R. 124</b> Congratulating the 2018 Thetford Academy Panthers girls' soccer team on winning a second consecutive Division III championship.....	1313
<b>H.C.R. 125</b> Congratulating Henry Farrington on being named the 2018 Vermont Gatorade Boys' Cross-Country Runner of the Year.....	1313
<b>H.C.R. 126</b> Congratulating the 2019 Essex High School Hornets State championship gymnastics team.....	1313
<b>H.C.R. 127</b> Congratulating the 2019 Essex High School Vermont Treasury Cup Challenge championship team.....	1313

<b>H.C.R. 128</b> Congratulating the 2019 Essex High School Hornets Division I girls' ice hockey championship team.....	1314
<b>H.C.R. 129</b> Congratulating the 2019 Essex High School Hornets boys' ice hockey team on winning the school's second-consecutive Division I championship.....	1314
<b>H.C.R. 130</b> Congratulating the 2019 Essex High School Hornets Division I indoor track and field championship team.....	1314
<b>H.C.R. 131</b> Congratulating Steve Gagner on his selection as the 2019 U.S. Small Business Administration's Vermont Small Business Person of the Year .....	1314
<b>H.C.R. 132</b> Congratulating Rutland High School for earning placement on the first ESPN Honor Roll, in recognition of the school's outstanding Special Olympics Unified Sports program.....	1314
<b>H.C.R. 133</b> Congratulating Champlain Valley Union High School Principal Adam Bunting on being named the 2018 Vermont Principal of the Year...	1314
<b>H.C.R. 134</b> Congratulating the 2019 Junior Iron Chefs championship teams .....	1314
<b>H.C.R. 135</b> Saluting the Vermonters who served in the Vietnam War and honoring the memory of those who died in this conflict.....	1314
<b>H.C.R. 136</b> Congratulating Katherine Suzanne Bove on winning one gold medal and one bronze medal at the 2019 Special Olympics World Games in Abu Dhabi, United Arab Emirates.....	1314
<b>H.C.R. 137</b> Congratulating American Legion Post 13 in Bennington on its 100th anniversary.....	1315
<b>S.C.R. 9</b> Senate concurrent resolution in memory of former University of Vermont Dean of the College of Education and Social Services and Associate Provost Jill Mattuck Tarule of Essex.....	1315
<b>S.C.R. 10</b> Senate concurrent resolution in memory of creative mathematics educator and passionate Celtic folk musician Timothy James Whiteford...	1315

---

---

**ORDERS OF THE DAY**

---

---

**ACTION CALENDAR**

**Favorable with Amendment**

**H. 107**

An act relating to paid family and medical leave

**Rep. Stevens of Waterbury**, for the Committee on General; Housing; and Military Affairs, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. chapter 5, subchapter 13 is added to read:

Subchapter 13. Family and Medical Leave Insurance

§ 571. DEFINITIONS

As used in this subchapter:

(1) “Average weekly wage” means the employee’s total wages from his or her two highest-earning quarters in the last four completed calendar quarters divided by 26.

(2) “Bereavement leave” means a leave of absence from employment by an employee for the death of the employee’s family member that occurs not more than one year after the family member’s death. Bereavement leave includes leave taken in relation to the administration or settlement of the deceased family member’s estate.

(3) “Domestic partner” has the same meaning as in 17 V.S.A. § 2414.

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

(5) “Employer” means an individual, organization, 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.

(6) “Family member” means the employee’s:

(A) child, step child or ward who lives with the employee, or foster child;

(B) spouse, domestic partner, or civil union partner;

(C) parent or the parent of the employee's spouse, domestic partner, or civil union partner;

(D) sibling or the sibling of the employee's spouse, domestic partner, or civil union partner;

(E) grandchild;

(F) grandparent or the spouse, domestic partner, or civil union partner of the employee's grandparent;

(G) a child for whom the employee stands in loco parentis or an individual who stood in loco parentis for the employee when he or she was a child.

(7) "In loco parentis" means a child for whom the employee has day-to-day responsibilities to care for and financially support, or, in the case of the employee, an individual who had such responsibility for the employee when he or she was a child.

(8) "Family and medical leave" means a leave of absence from employment by an employee for:

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

(B) a serious illness of the employee's family member;

(C) the employee's pregnancy;

(D) the birth of the employee's child; or

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

(9) "Qualifying employee" means an individual who has earned wages during the last four completed calendar quarters in an amount that is equal to or greater than 1,040 hours at the minimum wage established pursuant to section 384 of this chapter.

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

(11) "Serious illness" means an accident, disease, or physical or mental condition that:

(A) poses imminent danger of death;

(B) requires inpatient care in a hospital; or

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

(12) “Wages” means payments that are included in the definition of wages set forth in 26 U.S.C. § 3401.

§ 572. FAMILY AND MEDICAL LEAVE INSURANCE; SPECIAL  
FUND; ADMINISTRATION

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

(2)(A) The Commissioner of Taxes shall administer the collection of contributions and shall forward quarterly taxable wage information for each employee and quarterly self-employment income information for each self-employed individual who opts in to the Family and Medical Leave Insurance Program to the Commissioner of Labor.

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

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

(c)(1)(A) The Fund shall consist of contributions equal to 0.93 percent of each employee’s covered wages of which one-half shall be deducted and withheld by an employer from an employee’s wages and one-half shall be paid by the employer’s employer.

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

(C) As used in this subsection, the term “covered wages” does not include the amount of wages paid to an employee after he or she has received wages equal to \$150,000.00. Beginning on January 1, 2021, and on each

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

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

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

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

#### § 573. BENEFITS

(a)(1) A qualified employee shall be permitted to receive a total of not more than 12 weeks of Family and Medical Leave Insurance benefits in a 12-month period for family and medical leave taken by the employee.

(2) An employee may use up to two out of the 12 weeks of Family and Medical Leave Insurance benefits available to him or her during a 12-month period for bereavement leave.

(b) A qualified employee awarded Family and Medical Leave Insurance benefits under this section shall receive 100 percent of his or her average weekly wage or an amount equal to a 40-hour workweek paid at a rate double

that of the livable wage, as determined by the Joint Fiscal Office pursuant to 2 V.S.A. § 505, whichever is less.

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

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

#### § 574. APPLICATION FOR BENEFITS; PAYMENT; TAX

##### WITHHOLDING

(a) A qualified employee, or his or her agent, shall file an application for Family and Medical Leave Insurance benefits with the Commissioner of Labor under this section on a form provided by the Commissioner. The Commissioner shall determine whether the qualified employee is eligible to receive Family and Medical Leave Insurance benefits based on the following criteria:

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

(2) The employee satisfies the monetary eligibility requirements for a qualified employee.

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

(4) The benefits are being requested in relation to a family and medical leave or bereavement leave.

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

(2) A qualified employee may file an application for Family and Medical Leave Insurance benefits up to 60 days before an anticipated family and medical leave, or in the event of a premature birth, an unanticipated serious illness, or the death of a family member within 60 days after commencing a family and medical leave or bereavement leave.

(3) Benefits shall be paid to an employee for the time period beginning on the day his or her leave began and the first benefit payment shall be sent to a qualified employee within 14 days after his or her claim is approved, and subsequent payments shall be sent biweekly.

(4) The provisions of sections 1367 and 1367a of this title shall apply to Family and Medical Leave Insurance benefits.

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

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

(d) As used in this section, "agent" means an individual who holds a valid power of attorney for the employee or other legal authorization to act on the employee's behalf that is acceptable to the Commissioner.

#### § 575. REINSTATEMENT; SENIORITY AND BENEFITS PROTECTED

(a) The employer of an employee who receives Family and Medical Leave Insurance benefits under this subchapter shall reinstate the employee at the conclusion of his or her family and medical leave or bereavement leave, provided the employee does not take family and medical leave or bereavement leave for a total of more than 12 weeks in a 12-month period. The employee shall be reinstated in the first available suitable position given the position he or she held at the time his or her leave began.

(b) Upon reinstatement, the employee shall regain seniority and any unused accrued paid leave he or she was entitled to prior to the family and medical leave or bereavement leave, less any accrued paid leave used during the family and medical leave or bereavement leave.

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

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

(A) the employee had been given notice, or had given notice, prior to the employee providing his or her employer with notice of the leave;

(B) the employer can demonstrate by clear and convincing evidence that during the leave, or prior to the employee's reinstatement, the employee's position would have been terminated or the employee laid off for reasons unrelated to the leave or the reason for which the employee took the leave;

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

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

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

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

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

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

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

#### § 576. ELECTIVE COVERAGE

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

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

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

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

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

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

(c) A person who elects coverage pursuant to this section shall be eligible to file a claim for and receive Family and Medical Leave Insurance benefits if he or she has made contributions to the Fund on covered work income that is equal to or greater than the amount of wages required to be a qualified employee as that term is defined pursuant to subdivision 571(4) of this subchapter.

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

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

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

(e)(1) Nothing in this section shall be construed to prevent an individual who is both an employee and a self-employed person from electing to obtain coverage pursuant to this section.

(2) The monetary eligibility of an individual who is both an employee and a self-employed person shall be determined based on his or her combined wages and self-employment income during the last four completed calendar quarters.

#### § 577. APPEALS

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

(2) If an employer petitions the Commissioner to reconsider a decision pursuant to section 574 or 581 of this subchapter, the Commissioner shall promptly notify the individual of the petition by ordinary, certified, or

electronic mail and provide him or her with an opportunity to file an answer to the employer's petition.

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

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

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

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

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

#### § 578. FALSE STATEMENT OR REPRESENTATION; PENALTY

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

#### § 579. RULEMAKING

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

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

§ 580. CONFIDENTIALITY OF INFORMATION

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

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

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

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

§ 581. DISQUALIFICATIONS

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

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

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

§ 582. OVERPAYMENT OF BENEFITS; COLLECTION

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

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

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

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

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

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

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

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

#### § 583. PROTECTION FROM RETALIATION OR INTERFERENCE

(a) An employer shall not discharge or in any other manner retaliate against an employee who exercises or attempts to exercise his or her rights under this subchapter. The provisions against retaliation in subdivision 495(a)(8) of this title shall apply to this subchapter.

(b) An employer shall not interfere with, restrain, or otherwise prevent an employee from exercising or attempting to exercise his or her rights pursuant to this subchapter.

(c) An employee aggrieved by a violation of the provisions of this subchapter may bring an action in Superior Court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or other benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

#### Sec. 2. ADOPTION OF RULES

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

(1) procedures for the collection of contributions; and

(2) reporting and record-keeping requirements for employers and self-employed individuals.

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

(A) procedures for receiving and processing applications for benefits;

(B) acceptable documentation for demonstrating eligibility for benefits;

(C) procedures for issuing benefits payments;

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

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

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

(2) On or before October 1, 2021, the Commissioner shall adopt any necessary rules related to establishing that an in loco parentis relationship exists between an employee and another individual.

### Sec. 3. EDUCATION AND OUTREACH

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

### Sec. 4. ESTABLISHMENT OF FAMILY AND MEDICAL LEAVE

#### INSURANCE PROGRAM; EXPENDITURES FROM SPECIAL FUND

Beginning on July 1, 2019, the Commissioner of Finance and Management may, pursuant to 32 V.S.A. § 588(4)(C), issue warrants for expenditures from

the Family and Medical Leave Insurance Special Fund necessary to establish the Family and Medical Leave Insurance Program in anticipation of the receipt on or after July 1, 2020 of contributions submitted pursuant to 21 V.S.A. § 572.

Sec. 5. ADEQUACY OF RESERVES; REPORT

Annually, on or before January 15, 2022, 2023, and 2024, the Commissioners of Labor and of Taxes, in consultation with the Commissioners of Finance and Management and of Financial Regulation, shall submit a written report to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance regarding the amount and adequacy of the reserves in the Family and Medical Leave Insurance Special Fund and any recommendations for legislative action necessary to ensure that an adequate reserve is maintained in the Fund.

Sec. 6. 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 for the purposes of parental leave that 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.~~

\* \* \*

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

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

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

(4) ~~“Parental leave” means a leave of absence from employment by an employee who works for an employer which employs 10 or more individuals~~

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

(C) the employee's pregnancy;

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

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

(4) "Family member" means the employee's:

(A) child, step child or ward who lives with the employee, or foster child;

(B) spouse, domestic partner, or civil union partner;

(C) parent or the parent of the employee's spouse, domestic partner, or civil union partner;

(D) sibling or the sibling of the employee's spouse, domestic partner, or civil union partner;

(E) grandchild;

(F) grandparent or the spouse, domestic partner, or civil union partner of the employee's grandparent;

(G) a child for whom the employee stands in loco parentis or an individual who stood in loco parentis for the employee when he or she was a child.

\* \* \*

(6) "Commissioner" means the Commissioner of Labor.

(7) "Domestic partner" has the same meaning as in 17 V.S.A. § 2414.

(8) "In loco parentis" means a child for whom the employee has day-to-day responsibilities to care for and financially support, or, in the case of the employee, an individual who had such responsibility for the employee when he or she was a child.

Sec. 7. 21 V.S.A. § 472 is amended to read:

§ 472. FAMILY LEAVE

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

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

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

(3) within a year following the initial placement of a child ~~16~~ 18 years of age or younger with the employee for the purpose of adoption  ~~or foster care~~;

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

(5) ~~the serious illness of the employee's child, stepchild or ward of the employee who lives with the employee, foster child, parent, spouse, or parent of the employee's spouse~~ family member.

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

\* \* \*

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

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

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

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

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

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

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

\* \* \*

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

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

§ 1344. DISQUALIFICATIONS

(a) An individual shall be disqualified for benefits:

\* \* \*

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

\* \* \*

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

\* \* \*

Sec. 9. EFFECTIVE DATES

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

(b) Secs. 6, 7, and 8 shall take effect on October 1, 2021.

(c) Contributions shall begin being paid pursuant to 21 V.S.A. § 572 on July 1, 2020, and, beginning on October 1, 2021, employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

**( Committee Vote: 8-1-1)**

**Rep. Scheu of Middlebury**, for the Committee on Ways and Means, recommends the bill ought to pass when amended as recommended by the Committee on General; Housing; and Military Affairs and when further amended as follows:

By striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. PURPOSE

It is the intent of the General Assembly that:

(1) the Family and Medical Leave Insurance Program established by this act shall provide employees with affordable Family and Medical Leave Insurance benefits;

(2) the Commissioner of Labor shall seek a private insurance carrier to provide the benefits required under the Program; and

(3) if the Commissioner is able to identify an insurance carrier that can provide the required benefits in a more cost-effective manner than would be possible if benefits were provided by the State, the Commissioner shall enter into a contract with that insurance carrier to administer the Program and provide the benefits required by this act.

Sec. 2. 21 V.S.A. chapter 5, subchapter 13 is added to read:

Subchapter 13. Family and Medical Leave Insurance

§ 571. DEFINITIONS

As used in this subchapter:

(1) “Average weekly wage” means the employee’s total wages from his or her two highest-earning quarters in the last four completed calendar quarters divided by 26.

(2) “Bonding leave” means a leave of absence from employment by an employee for:

(A) the employee’s pregnancy;

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

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

(3) “Domestic partner” has the same meaning as in 17 V.S.A. § 2414.

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

(5) “Employer” means an individual, organization, 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.

(6) “Family member” means the employee’s:

(A) child, step child or ward who lives with the employee, or foster child;

(B) spouse, domestic partner, or civil union partner;

(C) parent or the parent of the employee’s spouse, domestic partner, or civil union partner;

(D) grandchild;

(E) grandparent; or

(F) a child for whom the employee stands in loco parentis or an individual who stood in loco parentis for the employee when he or she was a child.

(7) “In loco parentis” means a child for whom the employee has day-to-day responsibilities to care for and financially support, or, in the case of the employee, an individual who had such responsibility for the employee when he or she was a child.

(8) “Medical leave” means a leave of absence from employment by an employee for:

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

(B) a serious illness of the employee’s family member;

(9) “Qualified employee” means an employee who has:

(A) earned wages in at least six months during the last four completed calendar quarters; and

(B) earned wages during the last four completed calendar quarters in an amount that is equal to or greater than 1,040 hours at the minimum wage established pursuant to section 384 of this chapter.

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

(A) poses imminent danger of death;

(B) requires inpatient care in a hospital; or

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

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

(12) “Wages” means payments that are included in the definition of wages set forth in 26 U.S.C. § 3401.

§ 572. FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM;

ADMINISTRATION

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

(b)(1) The Commissioner of Labor shall endeavor to identify and contract with a suitable insurance company to provide paid family and medical leave insurance in accordance with this subchapter.

(2) On or before July 15, 2019, the Commissioner of Labor, in consultation with the Commissioners of Financial Regulation, of Human Resources, and of Taxes, shall develop and issue a request for proposals for an insurance carrier to provide family and medical leave insurance that satisfies the requirements of this subchapter. An insurance carrier shall not be selected unless it can demonstrate that it would be able to provide the required family and medical leave insurance benefits and comply with the provisions of this subchapter in a more cost-effective manner than if the Family and Medical Leave Insurance Program were administered by the State.

(3) The Commissioner of Labor, in consultation with the Commissioners of Financial Regulation, of Human Resources, and of Taxes, shall evaluate the proposals received in response to the request for proposals and shall select the proposal that the Commissioner determines:

(A) best satisfies the requirements of this subchapter;

(B) will provide the required family and medical leave insurance benefits and comply with the provisions of this subchapter in a more cost-effective manner than if the Family and Medical Leave Insurance Program were administered by the State; and

(C) delivers the greatest value to the State and Vermont’s employees and employers.

(4) An agreement with an insurance carrier to provide family and medical leave insurance pursuant to this subsection shall include a clause that permits the Commissioner of Labor to terminate the agreement for noncompliance with this chapter.

(5)(A) An agreement with an insurance carrier pursuant to this subsection shall be for a period of not more than four years.

(B) Not later than six months prior to the expiration on the agreement pursuant to this subsection, the Commissioner of Labor shall determine whether to renew the agreement for an additional period of not more than four years or to issue a new request for proposals for an insurance carrier to provide family and medical leave insurance that satisfies the requirements of this subchapter.

(c)(1) In the event that the Commissioner of Labor is unable to secure a suitable insurance carrier pursuant to subsection (b) of this section, the Paid Family and Medical Leave Insurance Program shall be administered by the Department of Labor pursuant to the provisions of this subchapter.

(2) In the event that the Paid Family and Medical leave Insurance Program is administered by the Department of Labor, the Commissioner of Labor may contract with a third-party administrator for actuarial support, fund administration, the processing of benefits claims and payments, and the initial determination of appeals.

#### § 573. CONTRIBUTIONS

(a) An employer that does not elect to meet its obligations under this subchapter as provided pursuant to section 577 shall remit the contributions required by subsection (b) of this section to the Commissioner of Taxes on a quarterly basis beginning with the calendar quarter that starts on January 1, 2020.

(b)(1) Contributions shall be equal to:

(A) for the two calendar quarters between January 1, 2020 and June 30, 2020, 0.20 percent of each employee's covered wages; and

(B) beginning on July 1, 2020 and thereafter, 0.55 percent of each employee's covered wages.

(2) An employer shall have the option of paying some or all of the contributions due for an employee's covered wages or may deduct and withhold the full amount of the contribution due from the employee's covered wages.

(c) As used in this section, the term "covered wages" shall include all wages paid to an employee up to the amount of the maximum Social Security Taxable Wage.

(d)(1) The General Assembly shall annually review and, if necessary, adjust the rate of contribution established pursuant to subsection (b) of this

section for the next fiscal year. The rate shall equal the amount necessary to provide Family and Medical Leave Insurance benefits pursuant to this subchapter, to administer the Family and Medical Leave Insurance Program during the next fiscal year, and, if a reserve is necessary, to ensure that it is adequately funded.

(2) On or before February 1 of each year, the Commissioner of Labor, in consultation with the insurance carrier that the State has contracted with, if any, and the Commissioners of Financial Regulation and of Taxes, shall report to the General Assembly the rate of contribution necessary to provide Family and Medical Leave Insurance benefits pursuant to this subchapter, to administer the Program during the next fiscal year, and, if a reserve is necessary, to ensure that it is adequately funded.

#### § 574. COLLECTION OF CONTRIBUTIONS; REMITTANCE

(a)(1) The Commissioner of Taxes shall collect all contributions required pursuant to section 573 of this subchapter and deposit them into the Family and Medical Leave Insurance Special Fund until the Commissioner remits them to the private insurance carrier contracted with by the Commissioner of Labor pursuant to section 572 of this subchapter.

(2) In the event that the Commissioner of Labor does not contract with a private insurance carrier to provide family and medical leave insurance that satisfies the requirements of this subchapter, the Commissioner of Taxes shall deposit the collected contributions into the Family and Medical Leave Insurance Special Fund for use by the Commissioner of Labor in the administration of this subchapter and the payment of benefits.

(b)(1) The Commissioner of Taxes shall require the withholding of the contributions required pursuant to section 573 of this subchapter from wages paid by any employer, as if the contributions were an additional Vermont income tax subject to the withholding requirements of 32 V.S.A. § 5841(a). The administrative and enforcement provisions of 32 V.S.A. chapter 151, subchapter 4 shall apply to the withholding requirement under this section as if the contributions withheld were a Vermont income tax.

(2) An employer that has received approval from the Commissioner of Labor for an alternative insurance or benefit plan pursuant to the provisions of section 577 shall not be required to withhold contributions pursuant to this section.

(c) The Commissioner of Taxes may enter into a memorandum of understanding with the private insurance carrier contracted with by the Commissioner of Labor pursuant to section 572 of this subchapter, the

Commissioner of Labor, or both, as the Commissioner of Taxes determines is necessary to carry out the provisions of this section.

§ 575. BENEFITS

(a) A qualified employee shall be permitted to receive a total of not more than 12 weeks of Family and Medical Leave Insurance benefits in a calendar year, which may include:

(1) up to 12 weeks of benefits for bonding leave taken by the employee; and

(2) up to eight weeks of benefits for medical leave taken by the employee.

(b)(1) A qualified employee awarded Family and Medical Leave Insurance benefits under this section shall receive a weekly benefit amount equal to:

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

(B) if he or she earns an average weekly wage that is greater than Vermont's weekly livable wage, 90 percent of Vermont's weekly livable wage plus 50 percent of the amount by which his or her average weekly wage exceeds Vermont's weekly livable wage.

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

(c) A qualified employee may receive Family and Medical Leave Insurance benefits for an intermittent leave or leave for a portion of a week. The benefit amount for an intermittent leave or leave for a portion of a week shall be calculated in increments of one full day or one fifth of the qualified employee's weekly benefit amount.

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

(e)(1) A qualified employee shall not be permitted to receive Family and Medical Leave Insurance benefits for any day for which he or she is receiving:

(A) wages;

(B) payment for the use of vacation leave, sick leave, or other accrued paid leave;

(C) payment pursuant to a disability insurance plan;

(D) unemployment insurance benefits pursuant to 21 V.S.A. chapter 17 or the law of any other state; or

(E) compensation for temporary partial disability or temporary total disability pursuant to 21 V.S.A. chapter 9, the workers' compensation law of any state, or any similar law of the United States.

(2) Notwithstanding subdivision (1) of this subsection, an employer may provide its employees with additional income to supplement the amount of the benefits provided pursuant to this section provided that the sum of the additional income and the benefits provided pursuant to this section does not exceed the employee's average weekly wage.

#### § 576. APPLICATION FOR BENEFITS; PAYMENT; TAX

##### WITHHOLDING

(a) A qualified employee, or his or her agent, shall file an application for Family and Medical Leave Insurance benefits under this subchapter on a form approved by the Commissioner of Labor. The determination of whether the qualified employee is eligible to receive Family and Medical Leave Insurance benefits shall be based on the following criteria:

(1) The claim is for a bonding leave or a medical leave and the need for the leave is adequately documented.

(2) The claimant satisfies the requirements to be a qualified employee as defined pursuant to subsection 571(8) of this subchapter.

(3) The claimant has specified the anticipated start date and duration of the leave.

(b)(1) A determination shall be made in relation to each claim within not more than five business days after the date the claim is filed. The time to make a determination on a claim may be extended by not more than 15 business days if necessary to obtain documents or information that are needed to make the determination.

(2) An application for Family and Medical Leave Insurance benefits may be filed:

(A) up to 60 days before an anticipated leave; or

(B) in the event of a premature birth or an unanticipated serious illness, within 60 days after the leave begins.

(3)(A) Benefits shall be paid to a qualified employee for the time period beginning on the day his or her leave began.

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

(4) The provisions of sections 1367 and 1367a of this title shall apply to Family and Medical Leave Insurance benefits.

(c)(1) An individual filing a claim for Family and Medical Leave Insurance benefits shall, at the time of filing, be advised that Family and Medical Leave Insurance benefits may be subject to income tax and that the individual's benefits may be subject to withholding.

(2) All procedures specified by 26 U.S.C. chapter 24 and 32 V.S.A. chapter 151, subchapter 4 pertaining to the withholding of income tax shall be followed in relation to the payment of Family and Medical Leave Insurance benefits.

(d) As used in this section, "agent" means an individual who holds a valid power of attorney for the employee or other legal authorization to act on the employee's behalf that is acceptable to the Commissioner of Labor.

§ 577. EMPLOYER OPTION; ALTERNATIVE INSURANCE OR BENEFITS

(a) As an alternative to and in lieu of participating in the Family and Medical Leave Insurance Program, an employer may, upon approval by the Commissioner of Labor, comply with the requirements of this subchapter through the use of an alternative insurance plan or benefit plan that provides to all of its employees benefits for bonding and medical leave that are equivalent to or more generous than the benefits provided pursuant to this subchapter. An employer may elect to provide such benefits by:

(1) establishing and maintaining to the satisfaction of the Commissioner of Financial Regulation self-insurance necessary to provide equivalent or greater benefits;

(2) purchasing insurance coverage for the payment of equivalent or greater benefits from any insurance carrier authorized to provide family and medical leave insurance in this State;

(3) establishing an employee benefits plan that provides equivalent or greater benefits; or

(4) any combination of subdivisions (1) through (3) of this subsection.

(b)(1) The Commissioner of Labor may approve an alternative insurance or benefit plan under this section upon making a determination that it provides benefits that are equivalent to or more generous than the benefits provided pursuant to this subchapter.

(2)(A) Nothing in this section shall be construed to required that the benefits provided by an alternative insurance or benefit plan be identical to the benefits provided pursuant to this subchapter.

(B) The Commissioner shall determine whether the benefits provided by a proposed alternative insurance or benefit plan are equivalent to or more generous than the benefits provided pursuant to this subchapter by weighing the relative value of the alternative plan's length of leave, wage replacement, and cost to employees against the provisions of this subchapter.

(c)(1) Except as otherwise provided pursuant to subdivision (4) of this subsection, an alternative insurance or benefit plan shall only be permitted to become effective on January 1 following its approval and shall remain in effect until it is discontinued pursuant to subdivision (3) of this subsection.

(2)(A) An employer shall submit an application to the Commissioner of Labor for approval of a new or modified alternative insurance or benefit plan on or before October 15 of the calendar year prior to when it shall take effect.

(B) The Commissioner shall make a determination and notify the employer of whether its application has been approved on or before December 1. If the application is approved, the Commissioner shall also provide a copy of the notice to the Commissioner of Taxes on or before December 1.

(3) An employer may discontinue its alternative insurance or benefit plan on January 1 of any year by filing notice of its intent to discontinue the plan with the Commissioners of Labor and of Taxes on or before November 1 of the prior year.

(4)(A) Notwithstanding any provisions of subdivisions (1) and (2) of this subsection to the contrary, for calendar year 2020, an employer shall submit an application for a new alternative insurance or benefit plan on or before April 15.

(B) The Commissioner shall make a determination and notify the employer of whether its application has been approved on or before June 1. If the application is approved, the Commissioner shall also provide a copy of the notice to the Commissioner of Taxes on or before June 1.

(C) Beginning on July 1, 2020, an employer that receives approval for an alternative insurance or benefit plan pursuant to this subdivision (4)

shall be exempt from withholding contributions as provided pursuant to subdivision 574(b)(2) of this subchapter.

(d) Nothing in this subchapter shall be construed to diminish an employer's obligation to comply with any collective bargaining agreement or paid time off policy that provides more generous benefits than the benefits provided pursuant to this subchapter.

#### § 578. DISQUALIFICATIONS

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

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

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

#### § 579. APPEALS

(a) An employer or employee aggrieved by a decision under section 576 or 578 of this subchapter may file an initial appeal of the decision with the insurance carrier that the State has contracted with.

(b) Within 20 days after receiving notice of the insurance carrier's decision on the initial appeal, the employer or employee may appeal the decision as provided pursuant to sections 1348, 1349, and 1351–1357 of this title.

#### § 580. FALSE STATEMENT OR REPRESENTATION; PENALTY

A person who willfully makes a false statement or representation for the purpose of obtaining any benefit or payment or to avoid payment of any required contributions under the provisions of this subchapter, either for himself or herself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than \$20,000.00 and shall forfeit all or a portion of any right to benefits under the provisions of this subchapter, as determined to be appropriate by the Commissioner of Labor.

#### § 581. REINSTATEMENT; SENIORITY AND BENEFITS PROTECTED

(a) The employer of an employee who receives Family and Medical Leave Insurance benefits under this subchapter shall reinstate the employee at the conclusion of his or her bonding leave or medical leave, provided the employee does not take bonding leave or medical leave for a combined total of more than 12 weeks in a calendar year. The employee shall be reinstated in

the first available suitable position given the position he or she held at the time his or her leave began.

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

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

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

(A) the employee had been given notice, or had given notice, prior to the employee providing his or her employer with notice of the leave;

(B) the employer can demonstrate by clear and convincing evidence that during the leave, or prior to the employee's reinstatement, the employee's position would have been terminated or the employee laid off for reasons unrelated to the leave or the reason for which the employee took the leave;

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

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

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

or

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

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

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

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

#### § 582. PROTECTION FROM RETALIATION OR INTERFERENCE

(a) An employer shall not discharge or in any other manner retaliate against an employee who exercises or attempts to exercise his or her rights

under this subchapter. The provisions against retaliation in subdivision 495(a)(8) of this title shall apply to this subchapter.

(b) An employer shall not interfere with, restrain, or otherwise prevent an employee from exercising or attempting to exercise his or her rights pursuant to this subchapter.

(c) An employee aggrieved by a violation of the provisions of this subchapter may bring an action in Superior Court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or other benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

#### § 583. CONFIDENTIALITY OF INFORMATION

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

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

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

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

#### § 584. RULEMAKING

(a) The Commissioner of Taxes shall adopt rules as necessary to implement the provisions of section 574 of this subchapter. The rules adopted by the Commissioner of Taxes shall include:

(1) procedures for the collection of contributions; and

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

(b) The Commissioner of Labor shall adopt rules as necessary to implement all other provisions of this subchapter. The rules adopted by the Commissioner of Labor shall include:

(1) acceptable documentation for demonstrating eligibility for benefits;

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

(3) requirements for obtaining authorization for an individual's health care provider to disclose information necessary to make a determination of the individual's eligibility for benefits;

(4) requirements and criteria for the approval of an employer's alternative insurance or benefit plan pursuant to 21 V.S.A. § 577 and for determining whether a proposed plan provides benefits that are equivalent to or more generous than the benefits provided pursuant to 21 V.S.A. chapter 5, subchapter 13; and

(5) procedures for appeals pursuant to 21 V.S.A. § 579(b).

#### § 585. FAMILY AND MEDICAL LEAVE INSURANCE SPECIAL FUND

The Family and Medical Leave Insurance Special Fund is created pursuant to 32 V.S.A. chapter 7, subchapter 5. The Fund shall consist of contributions collected from employers pursuant to section 574 of this subchapter. The Fund may be expended by the Commissioner of Taxes for the payment of premiums for the Family and Medical Leave Insurance Program. All interest earned on Fund balances shall be credited to the Fund.

Sec. 3. 21 V.S.A. § 586 is added to read:

#### § 586. OVERPAYMENT OF BENEFITS; COLLECTION

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

(2) Upon determining that an individual has received benefits under this chapter that he or she was not entitled to, the Commissioner of Labor shall provide the individual with notice of the determination. The notice shall include a statement that the individual is liable to repay to the Commissioner

the amount of overpaid benefits and shall identify the basis of the overpayment and the time period in which the benefits were paid.

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

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

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

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

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

(d) In addition to the remedy provided pursuant to this section, an individual who intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits may be subject to the penalties provided pursuant to section 580 of this title.

#### Sec. 4. ADOPTION OF RULES

(a) On or before January 1, 2020, the Commissioner of Taxes shall adopt rules necessary to implement the provisions of 21 V.S.A. § 574, which shall include:

(1) procedures for the collection of contributions; and

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

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

(A) acceptable documentation for demonstrating eligibility for benefits;

(B) requirements for providing certification from a health care provider of the need for family leave that are modeled on the federal rules

governing certification of a serious health condition under the Family and Medical Leave Act;

(C) requirements for obtaining authorization for an individual's health care provider to disclose information necessary to make a determination of the individual's eligibility for benefits;

(D) requirements and criteria for the approval of an employer's alternative insurance or benefit plan pursuant to 21 V.S.A. § 577 and for determining whether a proposed plan provides benefits that are equivalent to or more generous than the benefits provided pursuant to 21 V.S.A. chapter 5, subchapter 13; and

(E) procedures for appealing a decision pursuant to 21 V.S.A. § 579(b).

(2) On or before April 1, 2020, the Commissioner of Labor shall adopt any necessary rules related to establishing that an in loco parentis relationship exists between an employee and another individual.

#### Sec. 5. EDUCATION AND OUTREACH

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

#### Sec. 6. ESTABLISHMENT OF FAMILY AND MEDICAL LEAVE

##### INSURANCE PROGRAM; EXPENDITURES FROM SPECIAL FUND

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

#### Sec. 7. ADEQUACY OF RESERVES; REPORT

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

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

Sec. 8. 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 for the purposes of parental leave~~ that 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.~~

\* \* \*

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

(A) the serious illness of the employee; or

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

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

~~(C) the employee’s pregnancy;~~

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

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

(4) “Family member” means the employee’s:

(A) child, step child or ward who lives with the employee, or foster child;

(B) spouse, domestic partner, or civil union partner;

(C) parent or the parent of the employee's spouse, domestic partner, or civil union partner;

(D) grandchild;

(E) grandparent; or

(F) a child for whom the employee stands in loco parentis or an individual who stood in loco parentis for the employee when he or she was a child.

\* \* \*

(6) "Commissioner" means the Commissioner of Labor.

(7) "Domestic partner" has the same meaning as in 17 V.S.A. § 2414.

(8) "In loco parentis" means a child for whom the employee has day-to-day responsibilities to care for and financially support, or, in the case of the employee, an individual who had such responsibility for the employee when he or she was a child.

Sec. 9. 21 V.S.A. § 472 is amended to read:

§ 472. FAMILY LEAVE

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

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

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

(3) within a year following the initial placement of a child ~~16~~ 18 years of age or younger with the employee for the purpose of adoption- or foster care;

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

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

(b) During the leave, at the employee's option, the employee may use accrued sick leave ~~or~~ vacation leave ~~or~~ any other accrued paid leave, ~~not to exceed six weeks~~ Family and Medical Leave Insurance benefits pursuant to subchapter 13 of this chapter, or short-term disability insurance or other

insurance benefits. Utilization Use of accrued paid leave, Family and Medical Leave Insurance benefits, or other insurance benefits shall not extend the leave provided herein by this section.

\* \* \*

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

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

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

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

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

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

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

\* \* \*

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

Sec. 10. 21 V.S.A. § 1344 is amended to read:

#### § 1344. DISQUALIFICATIONS

(a) An individual shall be disqualified for benefits:

\* \* \*

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

\* \* \*

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

\* \* \*

Sec. 11. 21 V.S.A. § 1325 is amended to read:

§ 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;

DISCLOSURE TO SUCCESSOR ENTITY

(a)(1) The Commissioner shall maintain an experience-rating record for each employer. Benefits paid shall be charged against the experience-rating record of each subject employer who provided base-period wages to the eligible individual. Each subject employer's experience-rating charge shall bear the same ratio to total benefits paid as the total base-period wages paid by that employer bear to the total base-period wages paid to the individual by all base-period employers. The experience-rating record of an individual subject base-period employer shall not be charged for benefits paid to an individual under any of the following conditions:

\* \* \*

(G) The individual was employed by that employer as a result of another employee taking leave under chapter 5, subchapter 13 of this title, and the individual's employment was terminated as a result of the reinstatement of the other employee following his or her leave under chapter 5, subchapter 13 of this title.

\* \* \*

Sec. 12. SELF-EMPLOYED INDIVIDUAL; OPT-IN; REPORT

On or before January 15, 2021, the Commissioner of Labor, in consultation with the insurance carrier that the State has contracted with, if any, and the Commissioners of Financial Regulation and of Taxes, shall submit a written report to the House Committee on General, Housing, and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs regarding the potential for permitting self-employed individuals to elect to obtain coverage through the Family and Medical Leave Insurance Program. In particular, the report shall examine the experience of other states that allow self-employed individuals to obtain coverage under their family and medical leave insurance programs, and the potential impact of permitting self-

employed individuals to elect to obtain coverage through the Family and Medical Leave Insurance Program on the Program, contribution rates, and administrative costs. The report shall also include a recommendation for legislative action necessary to permit self-employed individuals to elect to obtain coverage through the Family and Medical Leave Insurance Program.

Sec. 13. POTENTIAL TRANSITION TO STATE-OPERATED FAMILY  
AND MEDICAL LEAVE INSURANCE PROGRAM; REPORT

On or before January 15, 2023, the Commissioner of Labor, in consultation with the Commissioner of Taxes, shall report to the House Committee on General, Housing, and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs regarding the potential for transitioning the Family and Medical Leave Insurance Program to a program that is fully administered and operated by the State. The report shall identify the potential costs to the State of such a transition and the amount of time necessary to successfully accomplish the transition, as well as the expected impacts on contribution rates, administrative efficiency, and the experience of employers and employees. The report shall also examine and contrast the potential benefits and drawbacks of ensuring the solvency of a program that is fully administered and operated by the State by either maintaining a reserve or obtaining reinsurance. The report shall include a recommendation regarding whether the Family and Medical Leave Insurance Program should transition to a program that is fully administered and operated by the State.

Sec. 14. EFFECTIVE DATES

(a) This section and Secs. 1, 2, 4, 5, 12, and 13 shall take effect on passage.

(b) Secs. 3, 6, and 7 shall not take effect until October 1, 2019, and shall not take effect at all if the Commissioner of Labor secures a suitable insurance company to provide paid family and medical leave insurance pursuant to the provisions of 21 V.S.A. § 572(b).

(c) Secs. 8, 9, 10, and 11 shall take effect on January 1, 2020.

(d)(1) Contributions shall begin being paid pursuant to 21 V.S.A. §§ 573 and 574 on January 1, 2020, and, beginning on July 1, 2020, employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

(2) An employer that is subject to a collective bargaining agreement shall not be required to pay contributions or be subject to the provisions of 21 V.S.A. chapter 5, subchapter 13 until the effective date of the next collective bargaining agreement after January 1, 2020 in order to permit the employer and the collective bargaining representative to negotiate regarding

the employer and employee shares of the contribution rate or whether the employer will provide benefits through an alternative plan established pursuant to 21 V.S.A. § 577.

**( Committee Vote: 7-4-0)**

**Rep. Hooper of Montpelier,** for the Committee on Appropriations, recommends the bill ought to pass when amended as recommended by the Committee on General; Housing; and Military Affairs and Ways and Means and when further amended as follows:

First: In Sec. 2, 21 V.S.A. chapter 5, subchapter 13, in section 572, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b)(1) The Commissioner of Financial Regulation shall endeavor to identify and contract with a suitable insurance company to provide paid family and medical leave insurance in accordance with this subchapter.

(2)(A) On or before July 1, 2019, the Commissioner of Financial Regulation, in consultation with the Commissioners of Human Resources, of Labor, and of Taxes, shall develop and issue a request for information related to the provision of family and medical leave insurance by a private insurance carrier on behalf of the State that satisfies the requirements of this subchapter. The request for information shall also seek input regarding the cost and administrative feasibility of the insurance carrier administering the collection of contributions on behalf of the Department of Taxes pursuant to section 574 of this subchapter.

(B) Responses to the request for information shall be due on or before August 15, 2019.

(3) On or before September 1, 2019, the Commissioner of Financial Regulation, in consultation with the Commissioners of Human Resources, of Labor, and of Taxes, shall develop and issue a request for proposals for an insurance carrier to provide family and medical leave insurance that satisfies the requirements of this subchapter. An insurance carrier shall not be selected unless it can demonstrate that it would be able to provide the required family and medical leave insurance benefits and comply with the provisions of this subchapter in a more cost-effective manner than if the Family and Medical Leave Insurance Program were administered by the State.

(4) The Commissioner of Financial Regulation, in consultation with the Commissioners of Human Resources, of Labor, and of Taxes, shall evaluate the proposals received in response to the request for proposals and shall select,

on or before November 15, 2019, the proposal that the Commissioner determines:

(A) best satisfies the requirements of this subchapter;

(B) will provide the required family and medical leave insurance benefits and comply with the provisions of this subchapter in a more cost-effective manner than if the Family and Medical Leave Insurance Program were administered by the State; and

(C) delivers the greatest value to the State and Vermont's employees and employers.

(5) An agreement with an insurance carrier to provide family and medical leave insurance pursuant to this subsection shall include a clause that permits the Commissioner of Financial Regulation to terminate the agreement for noncompliance with this chapter.

(6)(A) An agreement with an insurance carrier pursuant to this subsection shall be for a period of not more than four years.

(B) Not later than six months prior to the expiration on the agreement pursuant to this subsection, the Commissioner of Financial Regulation shall determine whether to renew the agreement for an additional period of not more than four years or to issue a new request for proposals for an insurance carrier to provide family and medical leave insurance that satisfies the requirements of this subchapter.

Second: In Sec. 2, 21 V.S.A. chapter 5, subchapter 13, in subdivision 572(c)(1), after the words "In the event that the Commissioner of", by striking out the word "Labor" and inserting in lieu thereof the words "Financial Regulation"

Third: In Sec. 2, 21 V.S.A. chapter 5, subchapter 13, in section 573, by striking out subdivision (b)(1) in its entirety and inserting in lieu thereof a new subdivision (b)(1) to read as follows:

(b)(1) Contributions shall be equal to:

(A) for the two calendar quarters between April 1, 2020 and September 30, 2020, 0.10 percent of each employee's covered wages; and

(B) beginning on October 1, 2020 and thereafter, 0.55 percent of each employee's covered wages.

Fourth: In Sec. 2, 21 V.S.A. chapter 5, subchapter 13, in section 573, by striking out subdivision (d)(2) in its entirety and inserting in lieu thereof a new subdivision (d)(2) to read as follows:

(2) On or before February 1 of each year, the Commissioner of Financial Regulation, in consultation with the insurance carrier that the State has contracted with, if any, and the Commissioners of Labor and of Taxes, shall report to the General Assembly the rate of contribution necessary to provide Family and Medical Leave Insurance benefits pursuant to this subchapter, to administer the Program during the next fiscal year, and, if a reserve is necessary, to ensure that it is adequately funded.

Fifth: In Sec. 2, 21 V.S.A. chapter 5, subchapter 13, by striking out section 574 in its entirety and inserting in lieu thereof a new section 574 to read as follows:

§ 574. COLLECTION OF CONTRIBUTIONS; REMITTANCE

(a) The Commissioner of Taxes shall collect all contributions required pursuant to section 573 of this subchapter and deposit them into the Family and Medical Leave Insurance Special Fund.

(b)(1) The Commissioner of Taxes shall require the withholding of the contributions required pursuant to section 573 of this subchapter from wages paid by any employer, as if the contributions were an additional Vermont income tax subject to the withholding requirements of 32 V.S.A. § 5841(a). The administrative and enforcement provisions of 32 V.S.A. chapter 151, subchapter 4 shall apply to the withholding requirement under this section as if the contributions withheld were a Vermont income tax.

(2) An employer that has received approval from the Commissioner of Financial Regulation for an alternative insurance or benefit plan pursuant to the provisions of section 577 shall not be required to withhold contributions pursuant to this section.

(c)(1) The Commissioner of Taxes may enter into a memorandum of understanding with the private insurance carrier contracted with by the Commissioner of Financial Regulation pursuant to section 572 of this subchapter, the Commissioner of Financial Regulation, or the Commissioner of Labor as the Commissioner of Taxes determines is necessary to carry out the provisions of this section.

(2) The Commissioner of Taxes may contract with the private insurance carrier contracted with by the Commissioner of Financial Regulation pursuant to section 572 of this subchapter to administer the collection of contributions pursuant to this section.

Sixth: In Sec. 2, 21 V.S.A. chapter 5, subchapter 13, in subsection 577(a), in the first sentence, by striking out the word “Labor” and inserting in lieu thereof the words “Financial Regulation”

Seventh: In Sec. 2, 21 V.S.A. chapter 5, subchapter 13, in subdivision 577(b)(1), by striking out the word “Labor” and inserting in lieu thereof the words “Financial Regulation”

Eighth: In Sec. 2, 21 V.S.A. chapter 5, subchapter 13, by striking out subsection 577(c) in its entirety and inserting in lieu thereof a new subsection 577(c) to read as follows:

(c)(1) Except as otherwise provided pursuant to subdivision (4) of this subsection, an alternative insurance or benefit plan shall only be permitted to become effective on January 1 following its approval and shall remain in effect until it is discontinued pursuant to subdivision (3) of this subsection.

(2)(A) An employer shall submit an application to the Commissioner of Financial Regulation for approval of a new or modified alternative insurance or benefit plan on or before October 15 of the calendar year prior to when it shall take effect.

(B) The Commissioner shall make a determination and notify the employer of whether its application has been approved on or before December 1. If the application is approved, the Commissioner shall also provide a copy of the notice to the Commissioners of Labor and of Taxes on or before December 1.

(3) An employer may discontinue its alternative insurance or benefit plan on January 1 of any year by filing notice of its intent to discontinue the plan with the Commissioners of Financial Regulation, of Labor, and of Taxes on or before November 1 of the prior year.

(4)(A) Notwithstanding any provisions of subdivisions (1) and (2) of this subsection to the contrary, for calendar year 2020, an employer shall submit an application for a new alternative insurance or benefit plan on or before February 1.

(B) The Commissioner shall make a determination and notify the employer of whether its application has been approved on or before March 15. If the application is approved, the Commissioner shall also provide a copy of the notice to the Commissioners of Labor and of Taxes on or before March 15.

(C) Beginning on April 1, 2020, an employer that receives approval for an alternative insurance or benefit plan pursuant to this subdivision (4) shall be exempt from withholding contributions as provided pursuant to subdivision 574(b)(2) of this subchapter.

Ninth: In Sec. 2, 21 V.S.A. chapter 5, subchapter 13, in section 580, after the words “Commissioner of Labor” by inserting the following: “or Commissioner of Financial Regulation, as appropriate”

Tenth: In Sec. 2, 21 V.S.A. chapter 5, subchapter 13, in subdivision 583(b)(2), by striking out “Commissioner of Labor or of Taxes” and inserting in lieu thereof the following: “Commissioner of Financial Regulation, of Labor, or of Taxes”

Eleventh: In Sec. 2, 21 V.S.A. chapter 5, subchapter 13, in section 584, by striking out subsection (b) in its entirety and inserting in lieu thereof subsections (b) and (c) to read as follows:

(b) The Commissioner of Financial Regulation shall adopt rules as necessary to implement the provisions of section 577 of this subchapter. The rules adopted by the Commissioner of Financial Regulation shall include requirements and criteria for the approval of an employer’s alternative insurance or benefit plan pursuant to section 577 of this subchapter and for determining whether a proposed plan provides benefits that are equivalent to or more generous than the benefits provided pursuant to this subchapter.

(c) The Commissioner of Labor shall adopt rules as necessary to implement all other provisions of this subchapter. The rules adopted by the Commissioner of Labor shall include:

(1) acceptable documentation for demonstrating eligibility for benefits;

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

(3) requirements for obtaining authorization for an individual’s health care provider to disclose information necessary to make a determination of the individual’s eligibility for benefits; and

(4) procedures for appeals pursuant to subsection 579(b) of this subchapter.

Twelfth: In Sec. 2, 21 V.S.A. chapter 5, subchapter 13, in section 585, by striking out the third sentence in its entirety and inserting in lieu thereof the following: “The Fund may be expended by the Commissioners of Financial Regulation, of Labor, and of Taxes for the payment of premiums for and the administration of the Family and Medical Leave Insurance Program.”

Thirteenth: In Sec. 4, adoption of rules, by striking out subsection (b) in its entirety and inserting in lieu thereof new subsections (b) and (c) to read as follows:

(b) On or before January 1, 2020, the Commissioner of Financial Regulation shall adopt rules as necessary to implement the provisions of

section 577 of this subchapter. The rules adopted by the Commissioner of Financial Regulation shall include requirements and criteria for the approval of an employer's alternative insurance or benefit plan pursuant to 21 V.S.A. § 577 and for determining whether a proposed plan provides benefits that are equivalent to or more generous than the benefits provided pursuant to 21 V.S.A. chapter 5, subchapter 13.

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

(A) acceptable documentation for demonstrating eligibility for benefits;

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

(C) requirements for obtaining authorization for an individual's health care provider to disclose information necessary to make a determination of the individual's eligibility for benefits;

(D) procedures for appealing a decision pursuant to 21 V.S.A. § 579(b)(2); and

(E) the establishment of the existence of an in loco parentis relationship between an employee and another individual.

Fourteenth: In Sec. 5, education and outreach, by striking out the word "April" and inserting in lieu thereof the word "June"

Fifteenth: By striking out Sec. 6, establishment of Family and Medical Leave Insurance Program, in its entirety and inserting in lieu thereof a new Sec. 6 to read as follows:

#### Sec. 6. ESTABLISHMENT OF FAMILY AND MEDICAL LEAVE

##### INSURANCE PROGRAM; EXPENDITURES FROM SPECIAL FUND

The Commissioner of Finance and Management may, pursuant to 32 V.S.A. § 588(4)(C), issue warrants for expenditures from the Family and Medical Leave Insurance Special Fund necessary to establish the Family and Medical Leave Insurance Program in anticipation of the receipt on or after April 1, 2020 of contributions submitted pursuant to 21 V.S.A. §§ 573 and 574.

Sixteenth: In Sec. 13, potential transition to State-operated Family and Medical Leave Insurance Program, in the first sentence, by striking out the words “Commissioner of Taxes” and inserting in lieu thereof the words “Commissioners of Financial Regulation and of Taxes”

Seventeenth: By striking out Sec. 14, effective dates, in its entirety and inserting in lieu thereof five new sections to be Secs. 14, 15, 16, 17, and 18 to read as follows:

Sec. 14. 3 V.S.A. § 638 is added to read:

§ 638. FAMILY AND MEDICAL LEAVE INSURANCE

(a) All State employees shall be provided with family and medical leave insurance that satisfies the requirements of 21 V.S.A. chapter 5, subchapter 13.

(b) The State shall bargain with the appropriate collective bargaining representative for each bargaining unit of State employees to determine:

(1) whether State employees will be covered by the Family and Medical Leave Insurance Program or an alternative insurance or benefit plan established pursuant to 21 V.S.A. § 577;

(2) if the State employees will be covered by the Family and Medical Leave Insurance Program, the portion of the contribution rate established pursuant to 21 V.S.A. § 573 that the State and the employees will be responsible for; and

(3) if the State employees will be covered by an alternative insurance or benefit plan established pursuant to 21 V.S.A. § 577, the cost of the program to the employees, and the length of leave and level of wage replacement that the employees will be eligible for.

(c)(1) The contribution rate determined pursuant to subdivision (b)(2) of this section or the cost of the plan to the employees determined pursuant to subdivision (b)(3) of this section shall be the same for all State employees, regardless of whether the employees are permitted to collectively bargain pursuant to 3 V.S.A. chapter 27 or 28.

(2) The length of leave and level of wage replacement determined pursuant to subdivision (b)(3) of this section shall be the same for all State employees, regardless of whether the employees are permitted to collectively bargain pursuant to 3 V.S.A. chapter 27 or 28.

(3) Notwithstanding subdivisions (1) and (2) of this subsection, the sworn Vermont State Police Officers below the rank of Lieutenant shall not be required to have the same rate of contribution or the same cost of the plan, length of leave, and level of wage replacement as other State employees.

Sec. 15. OUTCOME OF REQUEST FOR PROPOSAL PROCESS; REPORT

On or before December 15, 2019, the Commissioner of Financial Regulation shall submit a written report summarizing the outcome of the request for proposal process to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance.

Sec. 16. PLAN FOR STATE OPERATION OF FAMILY AND MEDICAL  
LEAVE INSURANCE PROGRAM; REPORT

In the event that the Commissioner of Financial Regulation is unable to secure a suitable insurance company to provide paid family and medical leave insurance pursuant to the provisions of 21 V.S.A. § 572(b), the Commissioner of Labor, in consultation with the Commissioners of Financial Regulation and of Taxes, shall, on or before December 15, 2019, submit a written report outlining a plan for the State to operate the Family and Medical Leave Insurance Program to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance. The report shall include a detailed explanation of how the State will implement Family and Medical Leave Insurance Program and carry out the requirements of 21 V.S.A. chapter 5, subchapter 13, including specific details and requirements related to staffing, information technology development, the development of rules and procedures, ensuring adequate reserves in the Family and Medical Leave Insurance Special Fund, and, if appropriate, the utilization of one or more third-party administrators. The report shall also include a recommendation for any legislative action necessary for the State to successfully implement the Family and Medical Leave Insurance Program.

Sec. 17. APPROPRIATIONS; POSITIONS

(a)(1) The sum of \$1,000,000.00 is appropriated from the Family and Medical Leave Insurance Special Fund to the Department of Taxes in fiscal year 2020 for the adoption of rules and the development of information technology systems necessary to implement the provisions of 21 V.S.A. § 574.

(2) The sum of \$217,900.00 is appropriated from the Family and Medical Leave Insurance Special Fund to the Department of Labor for the adoption of rules and the development of forms, procedures, and outreach and education materials related to the Family and Medical Leave Insurance Program established pursuant to 21 V.S.A. chapter 5, subchapter 13.

(b) The establishment of one new administrator position in the Department of Labor is authorized in fiscal year 2020.

Sec. 18. EFFECTIVE DATES

(a) This section and Secs. 1, 2, 4, 5, 6, 12, 13, 14, 15, 16, and 17 shall take effect on passage.

(b) Secs. 3 and 7 shall not take effect until December 1, 2019, and shall not take effect at all if the Commissioner of Financial Regulation secures a

suitable insurance company to provide paid family and medical leave insurance pursuant to the provisions of 21 V.S.A. § 572(b).

(c) Secs. 8, 9, 10, and 11 shall take effect on October 1, 2020.

(d)(1) Contributions shall begin being paid pursuant to 21 V.S.A. §§ 573 and 574 on April 1, 2020, and, beginning on October 1, 2020, employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

(2) An employer that is subject to a collective bargaining agreement shall not be required to pay contributions or be subject to the provisions of 21 V.S.A. chapter 5, subchapter 13 until either the effective date of the next collective bargaining agreement after April 1, 2020, or the effective date of a supplement to or provision of an existing collective bargaining agreement that specifically addresses the provisions of 21 V.S.A. chapter 5, subchapter 13, in order to permit the employer and the collective bargaining representative to negotiate regarding the employer and employee shares of the contribution rate or whether the employer will provide benefits through an alternative plan established pursuant to 21 V.S.A. § 577.

**( Committee Vote: 7-3-1)**

**Amendment to be offered by Rep. Ralph of Hartland to H. 107**

In Sec. 2, 21 V.S.A. chapter 5, subchapter 13, in section 573, by striking out subdivision (b)(2) in its entirety and inserting in lieu thereof a new subdivision (b)(2) to read as follows:

(2)(A) One-half of the contribution required pursuant subdivision (1) of this subsection shall be deducted and withheld by an employer from an employee's wages, and one-half shall be paid by the employee's employer.

(B) In lieu of deducting and withholding the full amount of the contribution pursuant to subdivision (A) of this subdivision (2), an employer may elect to pay all or a portion of the contributions due from the employee's covered wages.

**Amendment to be offered by Reps. Browning of Arlington and Sullivan of Dorset to H. 107**

By striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. chapter 5, subchapter 13 is added to read:

Subchapter 13. Family and Medical Leave Insurance

§ 571. DEFINITIONS

As used in this subchapter:

(1) “Average weekly wage” means the employee’s total wages from his or her two highest-earning quarters in the last four completed calendar quarters divided by 26.

(2) “Bonding leave” means a leave of absence from employment by an employee for:

(A) the employee’s pregnancy;

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

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

(3) “Domestic partner” has the same meaning as in 17 V.S.A. § 2414.

(4) “Employee” means an individual who is performing services for an employer for an average of 20 hours per week and is receiving payments for those services from which the employer is required to withhold Vermont income tax pursuant to 32 V.S.A. chapter 151, subchapter 4.

(5) “Employer” means an individual, organization, 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.

(6) “Enrolled employee” means an employee who has not elected to opt-out of the Family and Medical Leave Insurance Program pursuant to the provisions of section 576 of this subchapter.

(7) “Family member” means the employee’s:

(A) child, step child or ward who lives with the employee, or foster child;

(B) spouse, domestic partner, or civil union partner;

(C) parent or the parent of the employee’s spouse, domestic partner, or civil union partner;

(D) grandchild;

(E) grandparent; or

(F) a child for whom the employee stands in loco parentis or an individual who stood in loco parentis for the employee when he or she was a child.

(8) “In loco parentis” means a child for whom the employee has day-to-day responsibilities to care for and financially support, or, in the case of the employee, an individual who had such responsibility for the employee when he or she was a child.

(9) “Medical leave” means a leave of absence from employment by an employee for:

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

(B) a serious illness of the employee’s family member.

(10) “Qualified employee” means an enrolled employee who has earned wages subject to contributions pursuant to section 573 of this subchapter in at least 12 months during the last eight completed calendar quarters.

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

(A) poses imminent danger of death;

(B) requires inpatient care in a hospital; or

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

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

(13) “Wages” means payments that are included in the definition of wages set forth in 26 U.S.C. § 3401.

#### § 572. CONTRIBUTIONS

(a) An employer shall remit the contributions for enrolled employees that are required by subsection (b) of this section to the Commissioner of Taxes on a quarterly basis.

(b)(1) Contributions shall be equal to a percentage of each enrolled employee’s covered wages that is established by the General Assembly.

(2) An employer shall have the option of paying some or all of the contributions due for an enrolled employee’s covered wages or may deduct and withhold the full amount of the contribution due from the enrolled employee’s covered wages.

(c) As used in this section, the term “covered wages” shall include all wages paid to an enrolled employee up to the amount of the maximum Social Security Taxable Wage.

(d) The General Assembly shall annually review and, if necessary, adjust the rate of contribution established pursuant to subsection (b) of this section for the next fiscal year.

#### § 573. COLLECTION OF CONTRIBUTIONS; REMITTANCE

(a) The Commissioner of Taxes shall collect all contributions required pursuant to section 572 of this subchapter and deposit them into the Family and Medical Leave Insurance Special Fund.

(b) The Commissioner of Taxes shall require the withholding of the contributions required pursuant to section 572 of this subchapter from wages paid by any employer to an enrolled employee as if the contributions were an additional Vermont income tax subject to the withholding requirements of 32 V.S.A. § 5841(a). The administrative and enforcement provisions of 32 V.S.A. chapter 151, subchapter 4 shall apply to the withholding requirement under this section as if the contributions withheld were a Vermont income tax.

#### § 574. BENEFITS

(a) A qualified employee shall be permitted to receive a total of not more than four weeks of Family and Medical Leave Insurance benefits in a calendar year for bonding leave or medical leave, or both.

(b)(1) A qualified employee awarded Family and Medical Leave Insurance benefits under this section shall receive a weekly benefit amount equal to:

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

(B) if he or she earns an average weekly wage that is greater than Vermont’s weekly livable wage, 90 percent of Vermont’s weekly livable wage plus 50 percent of the amount by which his or her average weekly wage exceeds Vermont’s weekly livable wage.

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

(c)(1) A qualified employee shall not be entitled to receive benefits until he or she has been out of work for seven calendar days due to bonding leave or medical leave.

(2) After satisfying the waiting period in subdivision (1) of this subsection, a qualified employee may receive Family and Medical Leave Insurance benefits in increments of one week.

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

(e)(1) A qualified employee shall not be permitted to receive Family and Medical Leave Insurance benefits for any day for which he or she is receiving:

(A) wages;

(B) payment for the use of vacation leave, sick leave, or other accrued paid leave;

(C) severance pay;

(D) payment pursuant to a disability insurance plan;

(E) unemployment insurance benefits pursuant to 21 V.S.A. chapter 17 or the law of any other state; or

(F) compensation for temporary partial disability or temporary total disability pursuant to 21 V.S.A. chapter 9, the workers' compensation law of any state, or any similar law of the United States.

(2) Notwithstanding subdivision (1) of this subsection, an employer may provide its employees with additional income to supplement the amount of the benefits provided pursuant to this section provided that the sum of the additional income and the benefits provided pursuant to this section does not exceed the employee's average weekly wage.

#### § 575. ELIGIBILITY FOR BENEFITS; PAYMENT; TAX

##### WITHHOLDING

(a) The determination of whether the qualified employee is eligible to receive Family and Medical Leave Insurance benefits shall be based on the following criteria:

(1) The claim is for a bonding leave or a medical leave and the need for the leave is adequately documented.

(2) The claimant satisfies the requirements to be a qualified employee as defined pursuant to subsection 571(10) of this subchapter.

(3) The claimant has specified the anticipated start date and duration of the leave.

(b)(1) A determination shall be made in relation to each claim within not more than five business days after the date the claim is filed. The time to make a determination on a claim may be extended by not more than 15 business days if necessary to obtain documents or information that are needed to make the determination.

(2) An application for Family and Medical Leave Insurance benefits may be filed:

(A) up to 60 days before an anticipated leave; or

(B) in the event of a premature birth or an unanticipated serious illness, within 60 days after the leave begins.

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

(c)(1) An individual filing a claim for Family and Medical Leave Insurance benefits shall, at the time of filing, be advised that Family and Medical Leave Insurance benefits may be subject to income tax and that the individual's benefits may be subject to withholding.

(2) All procedures specified by 26 U.S.C. chapter 24 and 32 V.S.A. chapter 151, subchapter 4 pertaining to the withholding of income tax shall be followed in relation to the payment of Family and Medical Leave Insurance benefits.

#### § 576. EMPLOYEE OPT-OUT

(a) An employee may elect to opt-out of the Program by providing notice to the Commissioner of Taxes in a form provided by the Commissioner. The form shall include a space for the employee to identify his or her current employers.

(b)(1) An employee who wishes to opt-out of the Program shall submit the required form to the Commissioner between November 1 and December 1 of the year prior to the year in which the employee intends to opt-out of the Program.

(2) An employee from whom the Commissioner has received a timely notice of intent to opt-out shall, on January 1 of the next calendar year, no longer be eligible for Program benefits or required to pay contributions pursuant to sections 572 and 573 of this subchapter.

(c) Upon receiving a timely notice of intent to opt-out of the Program from an employee, the Commissioner shall notify each employer listed that the

employee's wage shall no longer be subject to contributions beginning on January 1 of the next calendar year.

(d)(1) An employee who has elected to opt-out of the Program pursuant to this section may elect to reenroll in the Program by notifying the Commissioner of Taxes in a form specified by the Commissioner. The form shall include a space for the employee to identify his or her current employers.

(2) A notice of intent to reenroll may only be filed between November 1 and December 1.

(3)(A) The wages of an employee who elects to reenroll in the Program shall be subject to contributions pursuant to sections 572 and 573 of this subchapter beginning on January 1 of the next calendar year.

(B)(i) The employee shall become eligible for benefits upon satisfying the requirements to be a qualified employee pursuant to subsection 571(10) of this subchapter.

(ii) Notwithstanding any provision of subdivision 571(10) of this subchapter to the contrary, for an employee who elects to reenroll in the Program pursuant to this subsection, time worked and wages on which contributions were paid prior to the employee opting out of the Program shall not count towards the determination of whether he or she is a qualified employee as defined pursuant to subdivision 571(10) of this subchapter.

(4) Upon receiving a timely notice of intent to reenroll in the Program from an employee, the Commissioner shall notify each employer listed that the employee's wage shall become subject to contributions beginning on January 1 of the next calendar year.

#### § 577. DISQUALIFICATIONS

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

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

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

#### § 578. PROTECTION FROM RETALIATION OR INTERFERENCE

(a) An employer shall not discharge or in any other manner retaliate against an employee who exercises or attempts to exercise his or her rights under this subchapter. The provisions against retaliation in subdivision 495(a)(8) of this title shall apply to this subchapter.

(b) An employer shall not interfere with, restrain, or otherwise prevent an employee from exercising or attempting to exercise his or her rights pursuant to this subchapter.

(c) An employee aggrieved by a violation of the provisions of this subchapter may bring an action in Superior Court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or other benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

#### § 579. CONFIDENTIALITY OF INFORMATION

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

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

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

(2) an employer may be provided with information that is necessary to enable the employer to discharge fully its obligations and protect its rights under this subchapter.

#### § 580. FAMILY AND MEDICAL LEAVE INSURANCE SPECIAL FUND

The Family and Medical Leave Insurance Special Fund is created pursuant to 32 V.S.A. chapter 7, subchapter 5. The Fund shall consist of contributions collected from employers pursuant to section 573 of this subchapter. The Fund may be expended by the Commissioners of Financial Regulation, of Labor, and of Taxes for the payment of premiums for and the administration of the Family and Medical Leave Insurance Program. All interest earned on Fund balances shall be credited to the Fund.

Sec. 2. 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 for the purposes of parental leave~~ that 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.~~

\* \* \*

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

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

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

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

(C) the employee’s pregnancy;

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

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

(4) “Family member” means the employee’s:

(A) child, step child or ward who lives with the employee, or foster child;

(B) spouse, domestic partner, or civil union partner;

(C) parent or the parent of the employee’s spouse, domestic partner, or civil union partner;

(D) grandchild;

(E) grandparent; or

(F) a child for whom the employee stands in loco parentis or an individual who stood in loco parentis for the employee when he or she was a child.

\* \* \*

(6) "Commissioner" means the Commissioner of Labor.

(7) "Domestic partner" has the same meaning as in 17 V.S.A. § 2414.

(8) "In loco parentis" means a child for whom the employee has day-to-day responsibilities to care for and financially support, or, in the case of the employee, an individual who had such responsibility for the employee when he or she was a child.

Sec. 3. 21 V.S.A. § 472 is amended to read:

§ 472. FAMILY LEAVE

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

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

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

(3) within a year following the initial placement of a child ~~16~~ 18 years of age or younger with the employee for the purpose of adoption- or foster care;

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

(5) the serious illness of the employee's child, ~~stepchild or ward of the employee who lives with the employee, foster child, parent, spouse,~~ or parent of the employee's spouse family member.

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

\* \* \*

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

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

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

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

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

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

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

\* \* \*

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

Sec. 4. 21 V.S.A. § 1344 is amended to read:

§ 1344. DISQUALIFICATIONS

(a) An individual shall be disqualified for benefits:

\* \* \*

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

\* \* \*

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

\* \* \*

Sec. 5. 21 V.S.A. § 1325 is amended to read:

§ 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;

DISCLOSURE TO SUCCESSOR ENTITY

(a)(1) The Commissioner shall maintain an experience-rating record for each employer. Benefits paid shall be charged against the experience-rating record of each subject employer who provided base-period wages to the eligible individual. Each subject employer's experience-rating charge shall bear the same ratio to total benefits paid as the total base-period wages paid by that employer bear to the total base-period wages paid to the individual by all base-period employers. The experience-rating record of an individual subject base-period employer shall not be charged for benefits paid to an individual under any of the following conditions:

\* \* \*

(G) The individual was employed by that employer as a result of another employee taking leave under chapter 5, subchapter 13 of this title, and the individual's employment was terminated as a result of the reinstatement of the other employee following his or her leave under chapter 5, subchapter 13 of this title.

\* \* \*

Sec. 6. ANALYSIS AND PLAN FOR FAMILY AND MEDICAL

LEAVE INSURANCE PROGRAM; REPORT

(a) On or before January 15, 2020, the Commissioner of Financial Regulation, in consultation with the Commissioners of Labor and of Taxes, private insurance carriers, and third-party benefits administrators, shall submit a written report analyzing the feasibility of creating a Family and Medical Leave Insurance Program based on the provisions of 21 V.S.A. chapter 5, subchapter 13 to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance.

(b) The report shall also include a detailed explanation of how to implement the Program and carry out the requirements of 21 V.S.A. chapter 5, subchapter 13, including specific details and requirements related to the following:

(1) an adequate contribution rate of between 0.30 percent and 0.50 percent of enrolled employee's covered wages;

(2) the establishment of a public-private partnership between the State and a private insurance carrier for the administration of some or all aspects of the program, including collection of contributions, determinations of eligibility for benefits, payment of benefits, actuarial services, and initial appeals determinations;

(3) ensuring an adequate appeals process related to benefits and enrollment decisions;

(4) efficient Program enrollment and benefits application procedures, including procedures for verification of medical conditions and health information;

(5) oversight of the Program by State agencies and departments;

(6) State requirements related to staffing, information technology development, the development of rules and procedures, and, if appropriate, the utilization of one or more third-party administrators; and

(7) any legislative action necessary for the State to successfully implement the Program and carry out the requirements of 21 V.S.A. chapter 5, subchapter 13.

(c) The report shall also examine the potential for permitting employers to enroll all of their employees in the Program by voluntarily assuming responsibility for the employee's required contributions.

#### Sec. 7. EFFECTIVE DATES

(a) This section and Sec. 6 shall take effect on passage.

(b) The remaining sections shall take effect on October 1, 2020.

(c) Contributions shall begin being paid pursuant to 21 V.S.A. §§ 572 and 573 on January 1, 2021, and, beginning on January 1, 2022, enrolled employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

### **Ordered to Lie**

#### **H. 97**

An act relating to fiscal year 2019 budget adjustments.

Pending Question: Shall the House concur in the Senate Proposal of Amendment to House Proposal of Amendment to Senate Proposal of Amendment?

**Consent Calendar**  
**Concurrent Resolutions**

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration in either chamber should be communicated to the Secretary's office and/or the House Clerk's office, respectively. For text of resolutions, see Addendum to House Calendar and Senate Calendar.

**H.C.R. 121**

House concurrent resolution commemorating the placement of the third statue of Agriculture atop the State House dome and honoring its creators, sculptors Chris Miller and Jerry Williams

**H.C.R. 122**

House concurrent resolution congratulating Gloria Kigonya on winning the 2019 Vermont Debate and Forensics League State Forensics Tournament's performance poetry category

**H.C.R. 123**

House concurrent resolution honoring Sarah E. Carpenter for her outstanding leadership as Vermont Housing Finance Agency Executive Director

**H.C.R. 124**

House concurrent resolution congratulating the 2018 Thetford Academy Panthers girls' soccer team on winning a second consecutive Division III championship

**H.C.R. 125**

House concurrent resolution congratulating Henry Farrington on being named the 2018 Vermont Gatorade Boys' Cross-Country Runner of the Year

**H.C.R. 126**

House concurrent resolution congratulating the 2019 Essex High School Hornets State championship gymnastics team

**H.C.R. 127**

House concurrent resolution congratulating the 2019 Essex High School Vermont Treasury Cup Challenge championship team

**H.C.R. 128**

House concurrent resolution congratulating the 2019 Essex High School Hornets Division I girls' ice hockey championship team

**H.C.R. 129**

House concurrent resolution congratulating the 2019 Essex High School Hornets boys' ice hockey team on winning the school's second-consecutive Division I championship

**H.C.R. 130**

House concurrent resolution congratulating the 2019 Essex High School Hornets Division I indoor track and field championship team

**H.C.R. 131**

House concurrent resolution congratulating Steve Gagner on his selection as the 2019 U.S. Small Business Administration's Vermont Small Business Person of the Year

**H.C.R. 132**

House concurrent resolution congratulating Rutland High School for earning placement on the first ESPN Honor Roll, in recognition of the school's outstanding Special Olympics Unified Sports program

**H.C.R. 133**

House concurrent resolution congratulating Champlain Valley Union High School Principal Adam Bunting on being named the 2018 Vermont Principal of the Year

**H.C.R. 134**

House concurrent resolution congratulating the 2019 Junior Iron Chefs championship teams

**H.C.R. 135**

House concurrent resolution saluting the Vermonters who served in the Vietnam War and honoring the memory of those who died in this conflict

**H.C.R. 136**

House concurrent resolution congratulating Katherine Suzanne Bove on winning one gold medal and one bronze medal at the 2019 Special Olympics World Games in Abu Dhabi, United Arab Emirates

**H.C.R. 137**

House concurrent resolution congratulating American Legion Post 13 in Bennington on its 100th anniversary

**S.C.R. 9**

Senate concurrent resolution in memory of former University of Vermont Dean of the College of Education and Social Services and Associate Provost Jill Mattuck Tarule of Essex.

**S.C.R. 10**

Senate concurrent resolution in memory of creative mathematics educator and passionate Celtic folk musician Timothy James Whiteford.

**For Informational Purposes**

**SENATE APPROPRIATIONS COMMITTEE**

**H.542 (FY 2020 Budget)**

**ADVOCATES TESTIMONY**

On **Tuesday, April 16, 2019** from **1:30-4:30 pm**, the Senate Appropriations Committee will be taking testimony from advocates regarding the Fiscal Year 2020 Budget (H.542) in Room 10 of the State House. To schedule time before the Committee contact Becky Buck at the Legislative Joint Fiscal Office located at 1 Baldwin Street; phone: 828-5969 or via email at: [rbuck@leg.state.vt.us](mailto:rbuck@leg.state.vt.us)