

1 H.107

2 Representatives Browning of Arlington and Sullivan of Dorset move that
3 the bill be amended by striking out all after the enacting clause and inserting in
4 lieu thereof the following:

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

6 Subchapter 13. Family and Medical Leave Insurance

7 § 571. DEFINITIONS

8 As used in this subchapter:

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

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

14 (A) the employee’s pregnancy;

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

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

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

19 (4) “Employee” means an individual who is performing services for an
20 employer for an average of 20 hours per week and is receiving payments for

1 those services from which the employer is required to withhold Vermont
2 income tax pursuant to 32 V.S.A. chapter 151, subchapter 4.

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

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

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

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

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

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

16 (D) grandchild;

17 (E) grandparent; or

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

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

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

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

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

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

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

16 (A) poses imminent danger of death;

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

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

1 (12) “Vermont’s weekly livable wage” means a 40-hour workweek paid
2 at the rate of the livable wage determined by the Joint Fiscal Office pursuant to
3 2 V.S.A. § 505.

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

6 § 572. CONTRIBUTIONS

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

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

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

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

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

1 § 573. COLLECTION OF CONTRIBUTIONS; REMITTANCE

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

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

12 § 574. BENEFITS

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

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

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

20 (B) if he or she earns an average weekly wage that is greater than
21 Vermont's weekly livable wage, 90 percent of Vermont's weekly livable wage

1 plus 50 percent of the amount by which his or her average weekly wage
2 exceeds Vermont's weekly livable wage.

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

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

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

13 (d) A bonding leave or medical leave for which benefits are paid pursuant
14 to this subchapter shall run concurrently with a leave taken pursuant to
15 section 472 of this title or the federal Family and Medical Leave Act,
16 29 U.S.C. §§ 2611–2654.

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

19 (A) wages;

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

1 (C) severance pay;

2 (D) payment pursuant to a disability insurance plan;

3 (E) unemployment insurance benefits pursuant to 21 V.S.A. chapter
4 17 or the law of any other state; or

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

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

13 § 575. ELIGIBILITY FOR BENEFITS; PAYMENT; TAX

14 WITHHOLDING

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

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

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

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

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

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

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

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

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

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

20 (2) All procedures specified by 26 U.S.C. chapter 24 and 32 V.S.A.
21 chapter 151, subchapter 4 pertaining to the withholding of income tax shall be

1 followed in relation to the payment of Family and Medical Leave Insurance
2 benefits.

3 § 576. EMPLOYEE OPT-OUT

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

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

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

16 (c) Upon receiving a timely notice of intent to opt-out of the Program from
17 an employee, the Commissioner shall notify each employer listed that the
18 employee's wage shall no longer be subject to contributions beginning on
19 January 1 of the next calendar year.

20 (d)(1) An employee who has elected to opt-out of the Program pursuant to
21 this section may elect to reenroll in the Program by notifying the

1 Commissioner of Taxes in a form specified by the Commissioner. The form
2 shall include a space for the employee to identify his or her current employers.

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

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

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

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

17 (4) Upon receiving a timely notice of intent to reenroll in the Program
18 from an employee, the Commissioner shall notify each employer listed that the

1 employee's wage shall become subject to contributions beginning on January 1
2 of the next calendar year.

3 § 577. DISQUALIFICATIONS

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

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

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

10 § 578. PROTECTION FROM RETALIATION OR INTERFERENCE

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

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

18 (c) An employee aggrieved by a violation of the provisions of this
19 subchapter may bring an action in Superior Court seeking compensatory and
20 punitive damages or equitable relief, including restraint of prohibited acts.

1 restitution of wages or other benefits, reinstatement, costs, reasonable
2 attorney's fees, and other appropriate relief.

3 § 579. CONFIDENTIALITY OF INFORMATION

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

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

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

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

1 § 580. FAMILY AND MEDICAL LEAVE INSURANCE SPECIAL FUND

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

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

10 § 471. DEFINITIONS

11 As used in this subchapter:

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

20 * * *

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

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

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

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

13 (C) the employee’s pregnancy;

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

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

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

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

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

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

4 ~~(2)(4)~~ ~~for family leave, for the serious illness of the employee; or~~
5 (5) the serious illness of the employee's child, stepchild or ward of the
6 ~~employee who lives with the employee, foster child, parent, spouse, or parent~~
7 ~~of the employee's spouse~~ family member.

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

15 * * *

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

19 (e)(1) An employee shall give his or her employer reasonable written
20 notice of intent to take family leave under this subchapter. Notice shall include

1 the date the leave is expected to commence and the estimated duration of the
2 leave.

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

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

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

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

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

16 * * *

17 (h) Except for serious illness of the employee, an employee who does not
18 return to employment with the employer who provided the family leave shall
19 return to the employer the value of any compensation paid to or on behalf of
20 the employee during the leave, except payments of Family and Medical Leave

1 Insurance benefits and payments for accrued sick leave or vacation leave. An
2 employer may elect to waive the rights provided pursuant to this subsection.

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

4 § 1344. DISQUALIFICATIONS

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

6 * * *

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

9 * * *

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

12 * * *

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

14 § 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;

15 DISCLOSURE TO SUCCESSOR ENTITY

16 (a)(1) The Commissioner shall maintain an experience-rating record for
17 each employer. Benefits paid shall be charged against the experience-rating
18 record of each subject employer who provided base-period wages to the
19 eligible individual. Each subject employer's experience-rating charge shall
20 bear the same ratio to total benefits paid as the total base-period wages paid by
21 that employer bear to the total base-period wages paid to the individual by all

1 base-period employers. The experience-rating record of an individual subject
2 base-period employer shall not be charged for benefits paid to an individual
3 under any of the following conditions:

4 * * *

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

10 * * *

11 Sec. 6. ANALYSIS AND PLAN FOR FAMILY AND MEDICAL
12 LEAVE INSURANCE PROGRAM; REPORT

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

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

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

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

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

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

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

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

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

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

7 Sec. 7. EFFECTIVE DATES

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

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

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