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Document Showing Merger of

House Ways & Means and House Appropriations Amendments

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:

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

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

6 (A) the employee’s pregnancy;

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

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

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

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

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

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

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

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

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

4 (D) grandchild;

5 (E) grandparent; or

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

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

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

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

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

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

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

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

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

6 (A) poses imminent danger of death;

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

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

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

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

15 § 572. FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM;

16 ADMINISTRATION

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

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

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

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

15 (3) On or before September 1, 2019, the Commissioner of Financial
16 Regulation, in consultation with the Commissioners of Human Resources, of
17 Labor, and of Taxes, shall develop and issue a request for proposals for an
18 insurance carrier to provide family and medical leave insurance that satisfies
19 the requirements of this subchapter. An insurance carrier shall not be selected
20 unless it can demonstrate that it would be able to provide the required family
21 and medical leave insurance benefits and comply with the provisions of this

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1 subchapter in a more cost-effective manner than if the Family and Medical
2 Leave Insurance Program were administered by the State.

3 (4) The Commissioner of Financial Regulation, in consultation with the
4 Commissioners of Human Resources, of Labor, and of Taxes, shall evaluate
5 the proposals received in response to the request for proposals and shall select,
6 on or before November 15, 2019, the proposal that the Commissioner
7 determines:

8 (A) best satisfies the requirements of this subchapter;

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

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

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

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

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

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

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

16 § 573. CONTRIBUTIONS

17 (a) An employer that does not elect to meet its obligations under this
18 subchapter as provided pursuant to section 577 shall remit the contributions
19 required by subsection (b) of this section to the Commissioner of Taxes on a
20 quarterly basis beginning with the calendar quarter that starts on January 1,
21 2020.

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

2 (A) for the two calendar quarters between April 1, 2020 and

3 September 30, 2020, 0.10 percent of each employee's covered wages; and

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

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

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

13 (d)(1) The General Assembly shall annually review and, if necessary,
14 adjust the rate of contribution established pursuant to subsection (b) of this
15 section for the next fiscal year. The rate shall equal the amount necessary to
16 provide Family and Medical Leave Insurance benefits pursuant to this
17 subchapter, to administer the Family and Medical Leave Insurance Program
18 during the next fiscal year, and, if a reserve is necessary, to ensure that it is
19 adequately funded.

20 (2) On or before February 1 of each year, the Commissioner of Financial
21 Regulation, in consultation with the insurance carrier that the State has

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1 contracted with, if any, and the Commissioners of Labor and of Taxes, shall
2 report to the General Assembly the rate of contribution necessary to provide
3 Family and Medical Leave Insurance benefits pursuant to this subchapter, to
4 administer the Program during the next fiscal year, and, if a reserve is
5 necessary, to ensure that it is adequately funded.

6 § 574. COLLECTION OF CONTRIBUTIONS; REMITTANCE

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

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

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

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

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

11 § 575. BENEFITS

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

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

16 and

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

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

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

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

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

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

16 (d) A bonding leave or medical leave for which benefits are paid pursuant
17 to this subchapter shall run concurrently with a leave taken pursuant to
18 section 472 of this title or the federal Family and Medical Leave Act,
19 29 U.S.C. §§ 2611–2654.

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

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1 (A) wages;

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

4 (C) payment pursuant to a disability insurance plan;

5 (D) unemployment insurance benefits pursuant to 21 V.S.A. chapter
6 17 or the law of any other state; or

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

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

15 § 576. APPLICATION FOR BENEFITS; PAYMENT; TAX

16 WITHHOLDING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 § 577. EMPLOYER OPTION; ALTERNATIVE INSURANCE OR
15 BENEFITS

16 (a) As an alternative to and in lieu of participating in the Family and
17 Medical Leave Insurance Program, an employer may, upon approval by the
18 Commissioner of **Financial Regulation**, comply with the requirements of this
19 subchapter through the use of an alternative insurance plan or benefit plan that
20 provides to all of its employees benefits for bonding and medical leave that are

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1 equivalent to or more generous than the benefits provided pursuant to this

2 subchapter. An employer may elect to provide such benefits by:

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

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

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

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

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

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

19 (B) The Commissioner shall determine whether the benefits provided
20 by a proposed alternative insurance or benefit plan are equivalent to or more
21 generous than the benefits provided pursuant to this subchapter by weighing

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1 the relative value of the alternative plan's length of leave, wage replacement,
2 and cost to employees against the provisions of this subchapter.

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

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

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

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

20 (4)(A) Notwithstanding any provisions of subdivisions (1) and (2) of
21 this subsection to the contrary, for calendar year 2020, an employer shall

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1 submit an application for a new alternative insurance or benefit plan on or
2 before February 1.

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

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

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

15 § 578. DISQUALIFICATIONS

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

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

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

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1 § 579. APPEALS

2 (a) An employer or employee aggrieved by a decision under section 576 or
3 578 of this subchapter may file an initial appeal of the decision with the
4 insurance carrier that the State has contracted with.

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

8 § 580. FALSE STATEMENT OR REPRESENTATION; PENALTY

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

18 § 581. REINSTATEMENT; SENIORITY AND BENEFITS PROTECTED

19 (a) The employer of an employee who receives Family and Medical Leave
20 Insurance benefits under this subchapter shall reinstate the employee at the
21 conclusion of his or her bonding leave or medical leave, provided the

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1 employee does not take bonding leave or medical leave for a combined total of
2 more than 12 weeks in a calendar year. The employee shall be reinstated in the
3 first available suitable position given the position he or she held at the time his
4 or her leave began.

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

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

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

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

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

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

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

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

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

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

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

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

13 § 582. PROTECTION FROM RETALIATION OR INTERFERENCE

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

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

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

6 § 583. CONFIDENTIALITY OF INFORMATION

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

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

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

20 (2) an employer may be provided with information that the
21 Commissioner of Financial Regulation, of Labor, or of Taxes determines is

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1 necessary to enable the employer to discharge fully its obligations and protect
2 its rights under this subchapter.

3 § 584. RULEMAKING

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

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

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

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

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

19 (1) acceptable documentation for demonstrating eligibility for benefits;

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

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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.

§ 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 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. 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

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1 disqualified from receiving benefits pursuant to section 580 of this chapter
2 shall be liable to repay to the Commissioner of Labor the amount received.

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

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

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

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

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

20 (c) If an individual is liable to repay any amount pursuant to this section,
21 the Commissioner may withhold, in whole or in part, any future benefits

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1 payable to the individual pursuant to this chapter and credit the withheld
2 benefits against the amount due from the individual until it is repaid in full,
3 less any penalties assessed under subdivision (b)(2) of this section.

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

8 Sec. 4. ADOPTION OF RULES

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

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

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

14 (b) On or before January 1, 2020, the Commissioner of Financial
15 Regulation shall adopt rules as necessary to implement the provisions of
16 section 577 of this subchapter. The rules adopted by the Commissioner of
17 Financial Regulation shall include requirements and criteria for the approval of
18 an employer's alternative insurance or benefit plan pursuant to 21 V.S.A. § 577
19 and for determining whether a proposed plan provides benefits that are
20 equivalent to or more generous than the benefits provided pursuant to
21 21 V.S.A. chapter 5, subchapter 13.

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1 (c) On or before June 1, 2020, the Commissioner of Labor shall adopt rules
2 necessary to implement all other provisions of 21 V.S.A. chapter 5, subchapter
3 13, which shall include:

4 (A) acceptable documentation for demonstrating eligibility for
5 benefits;

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

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

13 (D) procedures for appealing a decision pursuant to 21 V.S.A.
14 § 579(b)(2); and

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

17 Sec. 5. EDUCATION AND OUTREACH

18 On or before June 1, 2020, the Commissioner of Labor shall develop and
19 make available on the Department of Labor's website information and
20 materials to educate and inform employers and employees about the Family

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1 and Medical Leave Insurance Program established pursuant to 21 V.S.A.

2 chapter 5, subchapter 13.

3 **Sec. 6. ESTABLISHMENT OF FAMILY AND MEDICAL LEAVE**

4 **INSURANCE PROGRAM; EXPENDITURES FROM SPECIAL**

5 **FUND**

6 The Commissioner of Finance and Management may, pursuant to 32 V.S.A. §
7 588(4)(C), issue warrants for expenditures from the Family and Medical Leave
8 Insurance Special Fund necessary to establish the Family and Medical Leave
9 Insurance Program in anticipation of the receipt on or after April 1, 2020 of
10 contributions submitted pursuant to 21 V.S.A. §§ 573 and 574.

11 **Sec. 7. ADEQUACY OF RESERVES; REPORT**

12 Annually, on or before January 15, 2021, 2022, and 2023, the
13 Commissioner of Labor, in consultation with the Commissioners of Finance
14 and Management, of Financial Regulation, and of Taxes, shall submit a written
15 report to the House Committees on Appropriations, on General, Housing, and
16 Military Affairs, and on Ways and Means and the Senate Committees on
17 Appropriations, on Economic Development, Housing and General Affairs, and
18 on Finance regarding the amount and adequacy of the reserves in the Family
19 and Medical Leave Insurance Special Fund and any recommendations for
20 legislative action necessary to ensure that an adequate reserve is maintained in
21 the Fund.

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1 Sec. 8. 21 V.S.A. § 471 is amended to read:

2 § 471. DEFINITIONS

3 As used in this subchapter:

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

12 * * *

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

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

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

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

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

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

7 § 472. FAMILY LEAVE

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

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

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

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

15 ~~(2)(4) for family leave, for the serious illness of the employee; or~~

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

19 (b) During the leave, at the employee’s option, the employee may use
20 accrued sick leave ~~or~~, vacation leave ~~or~~, any other accrued paid leave, ~~not to~~
21 ~~exceed six weeks~~ Family and Medical Leave Insurance benefits pursuant to

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1 subchapter 13 of this chapter, or short-term disability insurance or other
2 insurance benefits. Utilization Use of accrued paid leave, Family and Medical
3 Leave Insurance benefits, or other insurance benefits shall not extend the leave
4 provided ~~herein~~ by this section.

5 * * *

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

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

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

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

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

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

2 § 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;

3 DISCLOSURE TO SUCCESSOR ENTITY

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

13 * * *

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

19 * * *

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

2 On or before January 15, 2021, the Commissioner of Labor, in consultation
3 with the insurance carrier that the State has contracted with, if any, and the
4 Commissioners of Financial Regulation and of Taxes, shall submit a written
5 report to the House Committee on General, Housing, and Military Affairs and
6 the Senate Committee on Economic Development, Housing and General
7 Affairs regarding the potential for permitting self-employed individuals to elect
8 to obtain coverage through the Family and Medical Leave Insurance Program.

9 In particular, the report shall examine the experience of other states that allow
10 self-employed individuals to obtain coverage under their family and medical
11 leave insurance programs, and the potential impact of permitting self-
12 employed individuals to elect to obtain coverage through the Family and
13 Medical Leave Insurance Program on the Program, contribution rates, and
14 administrative costs. The report shall also include a recommendation for
15 legislative action necessary to permit self-employed individuals to elect to
16 obtain coverage through the Family and Medical Leave Insurance Program.

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

19 On or before January 15, 2023, the Commissioner of Labor, in consultation
20 with the **Commissioners of Financial Regulation and of Taxes**, shall report to
21 the House Committee on General, Housing, and Military Affairs and the

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1 Senate Committee on Economic Development, Housing and General Affairs
2 regarding the potential for transitioning the Family and Medical Leave
3 Insurance Program to a program that is fully administered and operated by the
4 State. The report shall identify the potential costs to the State of such a
5 transition and the amount of time necessary to successfully accomplish the
6 transition, as well as the expected impacts on contribution rates, administrative
7 efficiency, and the experience of employers and employees. The report shall
8 also examine and contrast the potential benefits and drawbacks of ensuring the
9 solvency of a program that is fully administered and operated by the State by
10 either maintaining a reserve or obtaining reinsurance. The report shall include
11 a recommendation regarding whether the Family and Medical Leave Insurance
12 Program should transition to a program that is fully administered and operated
13 by the State.

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

15 **§ 638. FAMILY AND MEDICAL LEAVE INSURANCE**

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

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

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

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

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

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

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

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

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

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

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

14 In the event that the Commissioner of Financial Regulation is unable to
15 secure a suitable insurance company to provide paid family and medical leave
16 insurance pursuant to the provisions of 21 V.S.A. § 572(b), the Commissioner
17 of Labor, in consultation with the Commissioners of Financial Regulation and
18 of Taxes, shall, on or before December 15, 2019, submit a written report
19 outlining a plan for the State to operate the Family and Medical Leave
20 Insurance Program to the House Committees on Appropriations, on General,
21 Housing, and Military Affairs, and on Ways and Means and the Senate

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1 Committees on Appropriations, on Economic Development, Housing and
2 General Affairs, and on Finance. The report shall include a detailed
3 explanation of how the State will implement Family and Medical Leave
4 Insurance Program and carry out the requirements of 21 V.S.A. chapter 5,
5 subchapter 13, including specific details and requirements related to staffing,
6 information technology development, the development of rules and
7 procedures, ensuring adequate reserves in the Family and Medical Leave
8 Insurance Special Fund, and, if appropriate, the utilization of one or more
9 third-party administrators. The report shall also include a recommendation for
10 any legislative action necessary for the State to successfully implement the
11 Family and Medical Leave Insurance Program.

12 **Sec. 17. APPROPRIATIONS; POSITIONS**

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

17 (2) The sum of \$217,900.00 is appropriated from the Family and
18 Medical Leave Insurance Special Fund to the Department of Labor for the
19 adoption of rules and the development of forms, procedures, and outreach and

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1 education materials related to the Family and Medical Leave Insurance

2 Program established pursuant to 21 V.S.A. chapter 5, subchapter 13.

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

5 **Sec. 18. EFFECTIVE DATES**

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

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

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

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

16 (2) An employer that is subject to a collective bargaining agreement
17 shall not be required to pay contributions or be subject to the provisions of
18 21 V.S.A. chapter 5, subchapter 13 until either the effective date of the next
19 collective bargaining agreement after April 1, 2020, or the effective date of a
20 supplement to or provision of an existing collective bargaining agreement that
21 specifically addresses the provisions of 21 V.S.A. chapter 5, subchapter 13, in

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1 order to permit the employer and the collective bargaining representative to
2 negotiate regarding the employer and employee shares of the contribution rate
3 or whether the employer will provide benefits through an alternative plan
4 established pursuant to 21 V.S.A. § 577.

5

6