

Short Summary of H.107 as Passed Senate

Section by Section

Sec.1. Purpose

Sec. 2. Adds 21 V.S.A. ch. 5, subch. 13: Family and Medical Leave Insurance

§ 571. Definitions

- Covers all employers in Vermont.
- Employee is anyone who receives wage or tip income subject to VT income tax.
- Defines a “qualified employee” for purposes of benefit eligibility as someone who has:
 - Earned wages in two of the last four completed calendar quarters; and
 - Earned 1,040 times the hourly VT minimum wage (currently about \$11,400).
- Family care leave is defined as leave to care for a family member with a serious illness.
- Medical leave is defined as leave for the employee’s own serious illness.
 - Employee may opt-in to medical leave coverage pursuant to § 577a.

§ 572. Family and Medical Leave Insurance Program; Administration

- Commissioner of Financial Regulation must attempt to identify and contract with an insurance carrier for program.
 - RFI issued by 7/1/19 and due 8/15/19.
 - RFP issued by 9/1/19 in consultation with DOL, DHR, and Tax.
 - Commissioner selects insurance carrier by 11/15/19 that:
 - Best satisfies requirements of law;
 - Can provide Family and Medical Leave Insurance in a more cost-effective manner than if administered by State; and
 - Delivers greatest value to State, employers, and employees.
- If Commissioner is unable to find an insurance carrier, DOL will administer the chapter.
 - Can contract with a third-party administrator.

§ 573. Contributions

- Collected by Commissioner of Taxes on a quarterly basis.
- Contribution rate is:
 - 0.20% for mandatory coverage (bonding and family care leave); and
 - 0.38% for voluntary coverage (own serious illness).
- Contributions split evenly between employee and employer.
- General Assembly will annually review and, if necessary, adjust the contribution rate.

§ 574. Collection of Contributions; Remittance

- Contributions are collected by Tax and remitted to insurance carrier.
 - Tax may contract with insurance carrier to administer collection of contributions.
- Contributions are withheld from wages in the same manner as Vermont income tax.
 - Employers with approved alternative plan do not have to withhold contributions.

§ 575. Benefits

- Employee may receive up to 12 weeks of total benefits:
 - 12 weeks for bonding leave (combined total of 16 weeks/child for 2 parents);
 - 8 weeks for family care leave (combined total of 6 weeks for sibling or grandparent); and
 - 6 weeks for voluntary medical leave for employee's own serious illness.
- Wage replacement equal to:
 - 90% of wages up to 55% of VT avg. weekly wage (\$530/week); plus
 - 55% of any wages above 55% of VT avg. weekly wage.
 - Capped at Vermont average weekly wage (\$964/week)
- Benefits may be used as wage replacement for leave under federal and State unpaid family leave laws
- 5-day waiting period before leave benefits can be paid for family care or medical leave.

§ 576. Application for Benefits; Payment; Tax Withholding

- Eligibility for benefits determined based on:
 - Adequate documentation of need for leave;
 - Satisfy work (earned wages in 2 of last 4 qtrs) and income (~\$11,200 wages in last 4 qtrs) requirements; and
 - Employee specifies start date and expected duration of leave.

§ 577. Employer Option; Alternative Insurance or Benefits

- Employer may opt out of Program by providing equivalent or more generous benefits through:
 - Self-insurance;
 - Purchasing insurance;
 - A benefits plan; or
 - Some combination of those three.
- Commissioner of Financial Regulation will review and approve proposed alternative plans.

- In first year, applications are due by 2/1/20, with DFR issuing a decision by 3/15/20 for a 4/1/20 opt-out of Program.

§ 577a. Medical Leave Coverage; Election

- Employee may elect to obtain coverage for a medical leave related to his or her own serious illness.
- Available to all employees regardless of whether employee is enrolled in State Program or an alternative insurance or benefit plan.
- Initial enrollment period for State Program is 3 years. After that, employee may elect to discontinue coverage during an annual enrollment period.
 - Minimum period of coverage under an alternative plan is determined by terms of the plan.

§ 578. Disqualifications

- Cannot receive benefits for any week in which receiving workers' comp or UI benefits.

§ 579. Appeals

- Initial appeals are handled by the insurance carrier.
- Subsequent appeals are handled by administrative law judge and then VT Sup. Ct.:

§ 580. False Statement or Representation; Penalty

- Fine of up to \$20,000 for willful false statement to get benefit or avoid paying contributions may be imposed by Commissioner of Labor or Commissioner of Financial Regulation.

§ 581. Reinstatement; Seniority and Benefits Protected

- Individuals not covered by job protections in VT's unpaid leave law shall be offered first available suitable job by former employer after return from leave.

§ 582. Protection from Retaliation or Interference

- Retaliation against an employee for exercising right under subchapter is prohibited.

§ 583. Confidentiality of Information

- Makes information obtained in relation to the Program confidential.

§ 584. Rulemaking

- Directs Commissioners of Financial Regulation, of Labor, and of Taxes to adopt necessary rules related to Program.

§ 585. Family and Medical Leave Insurance Special Fund

- Special Fund to hold contributions before they are remitted to insurance carrier.
- May be used by DOL, DFR, or Tax for administrative expenses related to Program.

Sec. 3. Adds 21 V.S.A. § 586. Overpayment of Benefits; Collection

- **Contingent on DOL failing to secure an insurance carrier for the Program.**
- Will allow DOL to recover overpaid benefits.

Sec.4. Adoption of Rules

- Requires Commissioner of Taxes to adopt rules by 1/1/20
- Requires Commissioner of Financial Regulation to adopt rules by 1/1/20
- Requires Commissioner of Labor to adopt rules by 6/1/20

Sec. 5. Education and Outreach

- Requires Commissioner of Labor to develop information materials for FMLI by 6/1/20.

Sec. 6. Establishment of Family and Medical Leave Insurance Special Fund

- Allows expenditures necessary to establish Program before contributions have been received.

Sec. 7. Adequacy of Reserves; Report

- **Contingent on DOL failing to secure an insurance carrier for the Program.**
- Requires Commissioner of Labor to report on whether Program has adequate reserves.

Sec. 8. Amends 21 V.S.A. § 471. Definitions

- **Section is from Vermont's existing UNPAID family and medical leave law.**
- Amends definition of employer to employers with 10 or more employees who work an average of 30 hours per week during a year.
 - Used to be defined as a person that employed either 10 or more employees or 15 or more employees depending on whether the leave was for bonding or a serious illness.
- Adds definition of family member for consistency with new FMLI law.

Sec. 9. Amends 21 V.S.A. § 472. Family Leave

- **Section is from Vermont's existing UNPAID family and medical leave law.**
- Makes changes for clarity and consistency with PFMLI Program.

Sec. 10. Amends 21 V.S.A. § 1344. Disqualifications.

- Adds FMLI benefits to payments that will disqualify individual from receiving UI benefits.

Sec. 11. Amends 21 V.S.A. § 1325. Employers' Experience Rating Records

- Amends UI experience rating provisions to protect employers from adverse impact of laying off temp employee after an employee returns from FMLI leave.

Sec. 12. Self-Employed Individual; Opt-In; Report

- Requires Comm. of Labor to report by 1/15/21 on self-employed opt-in for FMLI Program.

Sec. 13. Potential to Transition to State-Operated Family and Medical Leave Insurance Program; Report

- Requires Comm. of Labor to report by 1/15/23 on transitioning FMLI to being fully administered and operated by State.

Sec. 14. Adds 3 V.S.A. § 638. Family and Medical Leave Insurance

- Requires State to negotiate with unions re: family and medical leave insurance benefits
- Requires State to provide same benefits at the same cost to all State employees.

Sec. 15. Request for Information; Requests for Proposals; Report

- Requires Commissioner of Financial Regulation to report back to General Assembly regarding outcome of the RFI and RFP processes.

Sec. 16. Plan for Operations of Family and Medical Leave Insurance Program; Report

- If State fails to find an insurance carrier to operate Program, requires Commissioner of Labor to report to General Assembly by 1/15/20 regarding a plan for the State to operate the Program.

Sec. 17. Appropriations; Positions

- Appropriates \$1,000,000 to tax and \$217,900 to DOL for adoption of rules, IT development, and other work related to establishment of Program.
- Creates 1 permanent administrator position at DOL.

Sec. 18. Amends 32 V.S.A. § 3102

- Permits Tax Department to share information related to the PFMLI Program with DFR, DOL, and the insurance carrier.

Sec. 19. Amends 21 V.S.A. § 1314

- Permits DOL to share Unemployment Insurance information with the insurance carrier for the purpose of determining an individual's eligibility for benefits.

Sec. 20. Effective Dates

- Bill and sections related to Family and Medical Leave Insurance are effective on passage.
- Secs. 3 and 7 take effect on 12/1 **if, and only if**, State fails to secure private insurance carrier to operate Program.
- Sections amending existing leave and unemployment insurance laws take effect on 10/1/20.
- Contributions begin being collected on 4/1/20 and benefits become available on 10/1/20.
 - Does not apply to employers who are subject to a collective bargaining agreement until their first new collective bargaining that takes effect after 4/1/20 or adoption of a supplement or provision of existing bargaining agreement that specifically addresses Paid Family and Medical Leave law.
 - If State fails to secure an insurance carrier, contributions begin on 7/1/20 and benefits become available on 7/1/21.