

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Appropriations to which was referred House Bill No.
3 107 entitled “An act relating to paid family leave” respectfully reports that it
4 has considered the same and recommends that the bill be amended as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (A) for the two calendar quarters between April 1, 2020 and
2 September 30, 2020, 0.10 percent of each employee’s covered wages; and
3 (B) beginning on October 1, 2020 and thereafter, 0.55 percent of each
4 employee’s covered wages.

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

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

15 Fifth: In Sec. 2, 21 V.S.A. chapter 5, subchapter 13, by striking out section
16 574 in its entirety and inserting in lieu thereof a new section 574 to read as
17 follows:

18 § 574. COLLECTION OF CONTRIBUTIONS; REMITTANCE

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

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

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

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

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

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

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

7 Eighth: In Sec. 2, 21 V.S.A. chapter 5, subchapter 13, by striking out
8 subsection 577(c) in its entirety and inserting in lieu thereof a new subsection
9 577(c) to read as follows:

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

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

18 (B) The Commissioner shall make a determination and notify the
19 employer of whether its application has been approved on or before
20 December 1. If the application is approved, the Commissioner shall also

1 provide a copy of the notice to the Commissioners of Labor and of Taxes on or
2 before December 1.

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

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

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

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

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

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

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

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

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

18 (1) acceptable documentation for demonstrating eligibility for benefits;
19 (2) requirements for providing certification from a health care provider
20 of the need for family leave that are modeled on the federal rules governing

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

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

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

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

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

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

1 equivalent to or more generous than the benefits provided pursuant to
2 21 V.S.A. chapter 5, subchapter 13.

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

6 (A) acceptable documentation for demonstrating eligibility for
7 benefits;

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

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

15 (D) procedures for appealing a decision pursuant to 21 V.S.A.
16 § 579(b)(2); and

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

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

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

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

7 The Commissioner of Finance and Management may, pursuant to 32 V.S.A.
8 § 588(4)(C), issue warrants for expenditures from the Family and Medical
9 Leave Insurance Special Fund necessary to establish the Family and Medical
10 Leave Insurance Program in anticipation of the receipt on or after April 1,
11 2020 of contributions submitted pursuant to 21 V.S.A. §§ 573 and 574.

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

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

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

20 § 638. FAMILY AND MEDICAL LEAVE INSURANCE

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

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

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

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

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

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

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

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

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

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

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

18 In the event that the Commissioner of Financial Regulation is unable to
19 secure a suitable insurance company to provide paid family and medical leave
20 insurance pursuant to the provisions of 21 V.S.A. § 572(b), the Commissioner
21 of Labor, in consultation with the Commissioners of Financial Regulation and

1 of Taxes, shall, on or before December 15, 2019, submit a written report
2 outlining a plan for the State to operate the Family and Medical Leave
3 Insurance Program to the House Committees on Appropriations, on General,
4 Housing, and Military Affairs, and on Ways and Means and the Senate
5 Committees on Appropriations, on Economic Development, Housing and
6 General Affairs, and on Finance. The report shall include a detailed
7 explanation of how the State will implement Family and Medical Leave
8 Insurance Program and carry out the requirements of 21 V.S.A. chapter 5,
9 subchapter 13, including specific details and requirements related to staffing,
10 information technology development, the development of rules and
11 procedures, ensuring adequate reserves in the Family and Medical Leave
12 Insurance Special Fund, and, if appropriate, the utilization of one or more
13 third-party administrators. The report shall also include a recommendation for
14 any legislative action necessary for the State to successfully implement the
15 Family and Medical Leave Insurance Program.

16 Sec. 17. APPROPRIATIONS; POSITIONS

17 (a)(1) The sum of \$1,000,000.00 is appropriated from the Family and
18 Medical Leave Insurance Special Fund to the Department of Taxes in fiscal

1 year 2020 for the adoption of rules and the development of information
2 technology systems necessary to implement the provisions of 21 V.S.A. § 574.

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

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

10 Sec. 18. EFFECTIVE DATES

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

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

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

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

1 (2) An employer that is subject to a collective bargaining agreement
2 shall not be required to pay contributions or be subject to the provisions of
3 21 V.S.A. chapter 5, subchapter 13 until either the effective date of the next
4 collective bargaining agreement after April 1, 2020, or the effective date of a
5 supplement to or provision of an existing collective bargaining agreement that
6 specifically addresses the provisions of 21 V.S.A. chapter 5, subchapter 13, in
7 order to permit the employer and the collective bargaining representative to
8 negotiate regarding the employer and employee shares of the contribution rate
9 or whether the employer will provide benefits through an alternative plan
10 established pursuant to 21 V.S.A. § 577.

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(Committee vote: _____)

Representative _____

FOR THE COMMITTEE