

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Ways and Means 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 by striking
5 out all after the enacting clause and inserting in lieu thereof the following:

6 Sec. 1. PURPOSE

7 It is the intent of the General Assembly that:

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

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

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

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

19 Subchapter 13. Family and Medical Leave Insurance

20 § 571. DEFINITIONS

21 As used in this subchapter:

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;

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

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.

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

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

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

17 (i) best satisfies the requirements of this subchapter;

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

1 (iii) delivers the greatest value to the State, and Vermont’s
2 employees and employers.

3 (B) The Commissioner shall not determine which proposal to select
4 based solely on cost.

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

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

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

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

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

6 § 573. CONTRIBUTIONS

7 (a) An employer that does not elect to meet its obligations under this
8 subchapter as provided pursuant to section 577 shall remit the contributions
9 required by subsection (b) of this section to the Commissioner of Taxes on a
10 quarterly basis beginning with the calendar quarter that starts on January 1,
11 2020.

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

13 (A) for the two calendar quarters between January 1, 2020 and June
14 30, 2020, 0.20 percent of each employee's covered wages; and

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

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

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

4 (d)(1) The General Assembly shall annually review and, if necessary,
5 adjust the rate of contribution established pursuant to subsection (b) of this
6 section for the next fiscal year. The rate shall equal the amount necessary to
7 provide Family and Medical Leave Insurance benefits pursuant to this
8 subchapter, to administer the Family and Medical Leave Insurance Program
9 during the next fiscal year, and, if a reserve is necessary, to ensure that it is
10 adequately funded.

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

18 § 574. COLLECTION OF CONTRIBUTIONS; REMITTANCE

19 (a)(1) 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 until the Commissioner remits

1 them to the private insurance carrier contracted with by the Commissioner of
2 Labor pursuant to section 572 of this subchapter.

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

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

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

20 (c) The Commissioner of Taxes may enter into a memorandum of
21 understanding with the private insurance carrier contracted with by the

1 Commissioner of Labor pursuant to section 572 of this subchapter, the
2 Commissioner of Labor, or both, as the Commissioner of Taxes determines is
3 necessary to carry out the provisions of this section.

4 § 575. BENEFITS

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

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

9 and

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

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

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

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

20 (2) Notwithstanding subdivision (1) of this subsection, no qualified
21 employee may receive Parental and Family Leave Insurance benefits that

1 exceed two-and-one-half times Vermont’s weekly livable wage for any single
2 week.

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

8 (d) A bonding leave or medical leave for which benefits are paid pursuant
9 to this subchapter shall run concurrently with a leave taken pursuant to
10 section 472 of this title or the federal Family and Medical Leave Act,
11 29 U.S.C. §§ 2611–2654.

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

14 (A) wages;

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

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

18 (D) unemployment insurance benefits pursuant to 21 V.S.A. chapter
19 17 or the law of any other state; or

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

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

9 § 576. APPLICATION FOR BENEFITS; PAYMENT; TAX

10 WITHHOLDING

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

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

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

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

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

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

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

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

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

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

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

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

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

8 § 577. EMPLOYER OPTION; ALTERNATIVE INSURANCE OR
9 BENEFITS

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

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

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

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

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

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

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

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

19 (c)(1) Except as otherwise provided pursuant to subdivision (4) of this
20 subsection, an alternative insurance or benefit plan shall only be permitted to

1 become effective on January 1 following its approval and shall remain in effect
2 until it is discontinued pursuant to subdivision (3) of this subsection.

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

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

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

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

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

1 (C) An alternative insurance or benefit plan approved pursuant to this
2 subdivision (4) shall take effect on July 1, 2020.

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

7 § 578. DISQUALIFICATIONS

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

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

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

14 § 579. APPEALS

15 (a) An employer or employee aggrieved by a decision under section 576 or
16 578 of this subchapter may file an initial appeal of the decision with the
17 insurance carrier that the State has contracted with.

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

1 § 580. FALSE STATEMENT OR REPRESENTATION; PENALTY

2 A person who willfully makes a false statement or representation for the
3 purpose of obtaining any benefit or payment or to avoid payment of any
4 required contributions under the provisions of this subchapter, either for
5 himself or herself or for any other person, after notice and opportunity for
6 hearing, may be assessed an administrative penalty of not more than
7 \$20,000.00 and shall forfeit all or a portion of any right to benefits under the
8 provisions of this subchapter, as determined to be appropriate by the
9 Commissioner of Labor.

10 § 581. REINSTATEMENT; SENIORITY AND BENEFITS PROTECTED

11 (a) The employer of an employee who receives Family and Medical Leave
12 Insurance benefits under this subchapter shall reinstate the employee at the
13 conclusion of his or her bonding leave or medical leave, provided the
14 employee does not take bonding leave or medical leave for a combined total of
15 more than 12 weeks in a calendar year. The employee shall be reinstated in the
16 first available suitable position given the position he or she held at the time his
17 or her leave began.

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

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

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

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

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

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

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

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

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

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

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

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

5 § 582. PROTECTION FROM RETALIATION OR INTERFERENCE

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

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

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

18 § 583. CONFIDENTIALITY OF INFORMATION

19 (a) Information obtained from an employer or individual in the
20 administration of this subchapter and determinations of an individual’s right to
21 receive benefits that reveal an employer’s or individual’s identity in any

1 manner shall be kept confidential and, to the extent that such information is
2 obtained by the State, shall be exempt from public inspection and copying
3 under the Public Records Act. Such information shall not be admissible as
4 evidence in any action or proceeding other than one brought pursuant to the
5 provisions of this subchapter.

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

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

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

15 § 584. RULEMAKING

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

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

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

1 (b) The Commissioner of Labor shall adopt rules as necessary to
2 implement all other provisions of this subchapter. The rules adopted by the
3 Commissioner of Labor shall include:
4 (1) acceptable documentation for demonstrating eligibility for benefits;
5 (2) requirements for providing certification from a health care provider
6 of the need for family leave that are modeled on the federal rules governing
7 certification of a serious health condition under the Family and Medical Leave
8 Act;
9 (3) requirements for obtaining authorization for an individual’s health
10 care provider to disclose information necessary to make a determination of the
11 individual’s eligibility for benefits;
12 (4) requirements and criteria for the approval of an employer’s
13 alternative insurance or benefit plan pursuant to 21 V.S.A. § 577 and for
14 determining whether a proposed plan provides benefits that are equivalent to or
15 more generous than the benefits provided pursuant to 21 V.S.A. chapter 5,
16 subchapter 13; and
17 (5) procedures for appeals pursuant to 21 V.S.A. § 579(b).

18 § 585. FAMILY AND MEDICAL LEAVE INSURANCE SPECIAL FUND

19 The Family and Medical Leave Insurance Special Fund is created pursuant
20 to 32 V.S.A. chapter 7, subchapter 5. The Fund shall consist of contributions
21 collected from employers pursuant to section 574 of this subchapter. The Fund

1 may be expended by the Commissioner of Taxes for the payment of premiums
2 for the Family and Medical Leave Insurance Program. All interest earned on
3 Fund balances shall be credited to the Fund.

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

5 § 586. OVERPAYMENT OF BENEFITS; COLLECTION

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

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

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

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

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

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

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

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

17 Sec. 4. ADOPTION OF RULES

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

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

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

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

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

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

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

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

19 (E) procedures for appealing a decision pursuant to 21 V.S.A.
20 § 579(b).

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

4 Sec. 5. EDUCATION AND OUTREACH

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

10 Sec. 6. ESTABLISHMENT OF FAMILY AND MEDICAL LEAVE

11 INSURANCE PROGRAM; EXPENDITURES FROM SPECIAL
12 FUND

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

19 Sec. 7. ADEQUACY OF RESERVES; REPORT

20 Annually, on or before January 15, 2021, 2022, and 2023, the
21 Commissioner of Labor, in consultation with the Commissioners of Finance

1 and Management, of Financial Regulation, and of Taxes, shall submit a written
2 report to the House Committees on Appropriations, on General, Housing, and
3 Military Affairs, and on Ways and Means and the Senate Committees on
4 Appropriations, on Economic Development, Housing and General Affairs, and
5 on Finance regarding the amount and adequacy of the reserves in the Family
6 and Medical Leave Insurance Special Fund and any recommendations for
7 legislative action necessary to ensure that an adequate reserve is maintained in
8 the Fund.

9 Sec. 8. 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 (C) parent or the parent of the employee’s spouse, domestic partner,
2 or civil union partner;
- 3 (D) grandchild;
- 4 (E) grandparent; or
- 5 (F) a child for whom the employee stands in loco parentis or an
6 individual who stood in loco parentis for the employee when he or she was a
7 child.

8 * * *

- 9 (6) “Commissioner” means the Commissioner of Labor.
- 10 (7) “Domestic partner” has the same meaning as in 17 V.S.A. § 2414.
- 11 (8) “In loco parentis” means a child for whom the employee has day-to-
12 day responsibilities to care for and financially support, or, in the case of the
13 employee, an individual who had such responsibility for the employee when he
14 or she was a child.

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

16 § 472. FAMILY LEAVE

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

- 19 (1) ~~for parental leave,~~ during the employee’s pregnancy ~~and;~~
20 (2) following the birth of ~~an~~ the employee’s child ~~or;~~

1 (3) within a year following the initial placement of a child ~~46~~ 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. 10. 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. 11. 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. 12. SELF-EMPLOYED INDIVIDUAL; OPT-IN; REPORT

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

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

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

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

1 Program should transition to a program that is fully administered and operated
2 by the State.

3 Sec. 14. EFFECTIVE DATES

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

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

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

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

13 (2) An employer that is subject to a collective bargaining agreement
14 shall not be required to pay contributions or be subject to the provisions of
15 21 V.S.A. chapter 5, subchapter 13 until the effective date of the next
16 collective bargaining agreement after January 1, 2020 in order to permit the
17 employer and the collective bargaining representative to negotiate regarding
18 the employer and employee shares of the contribution rate or whether the
19 employer will provide benefits through an alternative plan established pursuant
20 to 21 V.S.A. § 577.

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(Committee vote: _____)

Representative _____

FOR THE COMMITTEE

(Committee vote: _____)

Representative _____

FOR THE COMMITTEE