

TO THE HONORABLE SENATE

The Committee on Finance to which was referred House Bill No. H. 107 entitled "An act relating to paid family and medical leave."

respectfully report that they have considered the same and recommend that the bill be amended as recommended by the Committee on Economic Development, Housing and General Affairs with the following amendment thereto:

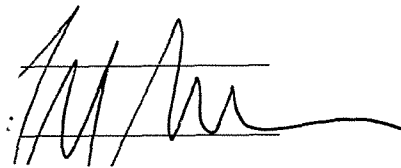
In Sec. 2, 21 V.S.A. § 575, by striking out subdivision (c)(1) in its entirety and inserting in lieu thereof a new subdivision (c)(1) to read as follows:

(c)(1)(A) Each qualified employee shall complete a waiting period before he or she may receive benefits for a family care leave.

(B) The waiting period shall consist of the first five calendar days in a calendar year for which the qualified employee would otherwise be eligible to receive benefits for a family care leave.

(C) Family and Medical Leave Insurance benefits shall not be payable for any day in the waiting period.

(Committee vote: 6-1-0)



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Senator Sirotkin  
FOR THE COMMITTEE

TO THE HONORABLE SENATE

The Committee on Economic Development, Housing and General Affairs to which was referred House Bill No. H. 107, entitled "An act relating to paid family and medical leave"

respectfully reports that it has considered the same and recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

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 Financial Regulation shall seek a private insurance carrier to provide the benefits required under the Program;

(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 beginning in October of 2020; and

(4) if the Commissioner is unable to identify a suitable insurance carrier, the Program shall be administered by the Department of Labor in coordination with the Departments of Financial Regulation and of Taxes, and benefits shall become available beginning in July of 2021.

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:

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

(2) "Bonding leave" means a leave of absence from employment by an employee for:

(A) the employee's pregnancy;

(B) the birth of the employee's child; or

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

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

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

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

(6) “Family care leave” means a leave of absence from employment by an employee for a serious illness of the employee’s family member.

(7) “Family member” means:

(A) the employee’s child or foster child;

(B) a step child or ward who lives with the employee;

(C) the employee’s spouse, domestic partner, or civil union partner;

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

(E) the employee’s sibling;

(F) the employee’s grandparent; or

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

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

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

(A) earned wages from which contributions were withheld pursuant to section 574 of this subchapter during at least two of the last four completed calendar quarters; and

(B) earned wages from which contributions were withheld pursuant to section 574 of this subchapter during the last four completed calendar quarters in an amount that is equal to or greater than 1,040 hours at the minimum wage established pursuant to section 384 of this chapter.

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

- (A) poses imminent danger of death;
- (B) requires inpatient care in a hospital; or
- (C) requires continuing in-home care under the direction of a physician.

(11) "Vermont average weekly wage" means the most recent average weekly wage for Vermont as calculated by the U.S. Bureau of Labor Statistics.

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

§ 572. FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM;  
ADMINISTRATION

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

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

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

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

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

(4) The Commissioner of Financial Regulation, in consultation with the Commissioners of Human Resources, of Labor, and of Taxes, shall evaluate the proposals received in response to the request for proposals and shall select,

on or before November 15, 2019, the proposal that the Commissioner determines:

(A) best satisfies the requirements of this subchapter;

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

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

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

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

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

(7) The insurance carrier shall have its books and financial records related to the provision of family and medical leave insurance pursuant to this subsection audited annually and shall provide a copy of the annual audit to the Commissioner of Financial Regulation.

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

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

§ 573. CONTRIBUTIONS

(a) An employer that does not elect to meet its obligations under this subchapter as provided pursuant to section 577 shall remit the contributions required by subsection (b) of this section to the Commissioner of Taxes on a quarterly basis as provided pursuant to 32 V.S.A. § 5842(a)(1) beginning with

the calendar quarter that starts on April 1, 2020.

(b)(1) Contributions shall be equal to 0.20 percent of each employee's covered wages.

(2)(A) One-half of the contribution required pursuant subdivision (1) of this subsection shall be deducted and withheld by an employer from an employee's covered wages, and one-half shall be paid by the employee's employer.

(B) In lieu of deducting and withholding the full amount of the contributions due from the employee's covered wages pursuant to subdivision (A) of this subdivision (2), an employer may elect to pay all or a portion of the contributions due from the employee's covered wages.

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

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

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

§ 574. COLLECTION OF CONTRIBUTIONS; REMITTANCE

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

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

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

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

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

§ 575. BENEFITS

(a)(1) A qualified employee shall be permitted to receive a total of not more than 12 weeks of Family and Medical Leave Insurance benefits in a calendar year, which may include:

(A) up to 12 weeks of benefits for bonding leave taken by the employee, provided that if both parents are qualified employees they shall be permitted to receive a combined total of not more than 12 weeks of Parental and Family Leave Insurance benefits in a 12-month period for bonding leave; and

(B) up to six weeks of benefits for family care leave taken by the employee.

(2) Notwithstanding subdivision (1)(B) of this subsection, with respect to a serious illness of an individual who is a sibling or grandparent of one or more qualified employees, the qualified employees who are a sibling or grandchild of that individual shall be permitted to receive a combined total of not more than six weeks of Parental and Family Leave Insurance benefits in a 12-month period for family care leave related to that individual.

(b)(1) The weekly benefit amount for a qualified employee awarded Family and Medical Leave Insurance benefits under this section shall be determined as follows:

(A) the portion of the qualified employee's average weekly wage that is less than or equal to 55 percent of the Vermont average weekly wage shall be replaced at a rate of 90 percent; and

(B) the portion of the qualified employee's average weekly wage that is greater than 55 percent of the Vermont average weekly wage shall be

replaced at a rate of 55 percent.

(2) Notwithstanding subdivision (1) of this subsection, no qualified employee may receive Parental and Family Leave Insurance benefits that exceed the Vermont average weekly wage.

(c)(1) After the occurrence of a family care leave event, a qualified employee shall wait for a period of one week for which he or she shall not be eligible to receive Family and Medical Leave Insurance benefits.

(2) A qualified employee shall only have one waiting period in a calendar year.

(3) No waiting period shall be required before a qualified employee is eligible to receive Family and Medical Leave Insurance benefits in relation to a bonding leave.

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

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

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

(A) wages;

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

(C) payment pursuant to a disability insurance plan;

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

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

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



§ 576. APPLICATION FOR BENEFITS: PAYMENT; TAX WITHHOLDING

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

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

(2) The claimant satisfies the requirements to be a qualified employee as defined pursuant to subdivision 571(9) of this subchapter.

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

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

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

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

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

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

(B) The first benefit payment shall be sent to the qualified employee within 14 days after the leave begins or the claim is approved, whichever is later, and subsequent payments shall be sent biweekly.

(4) The provisions of section 1367 of this title shall apply to Family and Medical Leave Insurance benefits.

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

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

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

§ 577. EMPLOYER OPTION; ALTERNATIVE INSURANCE OR BENEFITS

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

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

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

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

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

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

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

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

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

(2)(A) An employer shall submit an application to the Commissioner of Financial Regulation for approval of a new or modified alternative insurance

or benefit plan on or before October 15 of the calendar year prior to when it shall take effect.

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

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

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

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

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

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

#### § 578. DISQUALIFICATIONS

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

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

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

#### § 579. APPEALS

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

(b) Within 20 days after receiving notice of the insurance carrier's decision on the initial appeal, the employer or employee may appeal the decision to an administrative law judge as provided pursuant to sections 1348 and 1351-1357 of this title.

(c) Within 30 days after receiving notice of the administrative law judge's decision, either party may appeal that decision to the Supreme Court.

§ 580. FALSE STATEMENT OR REPRESENTATION; PENALTY

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

§ 581. REINSTATEMENT; SENIORITY AND BENEFITS PROTECTED

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

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

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

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

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

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

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

(i) his or her interest in being reinstated at the conclusion of the

leave; and

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

or

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

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

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

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

§ 582. PROTECTION FROM RETALIATION OR INTERFERENCE

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

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

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

§ 583. CONFIDENTIALITY OF INFORMATION

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

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

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

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

#### § 584. RULEMAKING

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

(1) procedures for the collection of contributions; and

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

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

(c)(1) The Commissioner of Labor shall adopt rules as necessary to implement all other provisions of this subchapter. The rules adopted by the Commissioner of Labor shall include:

(A) acceptable documentation for demonstrating eligibility for benefits;

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

(C) 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;

(D) procedures for appeals pursuant to subsection 579(b) of this subchapter; and

(E) rules to permit an employee to authorize the Department, in compliance with all applicable provisions of federal law, to disclose unemployment insurance information to the insurance carrier as necessary to

determine if the employee meets the requirements to be a qualified employee as defined pursuant to subdivision 571(9) of this chapter.

(2) The Commissioner of Labor shall create a form that will permit an employee to provide informed consent for the Department to disclose unemployment insurance information to the insurance carrier as necessary to determine if the employee meets the requirements to be a qualified employee as defined pursuant to subdivision 571(9) of this chapter. The form shall satisfy all applicable requirements under federal law.

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

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

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

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

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

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

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

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

Sec. 4. ADOPTION OF RULES

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

- (1) procedures for the collection of contributions; and
- (2) reporting and record-keeping requirements for employers.

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

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

- (1) acceptable documentation for demonstrating eligibility for benefits;
- (2) requirements for providing certification from a health care provider of the need for family leave that are modeled on the federal rules governing 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;
- (4) procedures for appealing a decision pursuant to 21 V.S.A. § 579(b)(2);



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(5) the establishment of the existence of an in loco parentis relationship between an employee and another individual; and

(6) rules to permit an employee to authorize the Department, in compliance with all applicable provisions of federal law, to disclose unemployment insurance information to the insurance carrier as necessary to determine if the employee meets the requirements to be a qualified employee as defined pursuant to subdivision 571(9) of this chapter.

Sec. 5. EDUCATION AND OUTREACH

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

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

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

Sec. 7. ADEQUACY OF RESERVES; REPORT

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

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

§ 471. DEFINITIONS

As used in this subchapter:

(1) "Employer" means an individual, organization or governmental body, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air or express company doing business in or operating within this State which

~~for the purposes of parental leave that employs 10 or more individuals who are employed for an average of at least 30 hours per week during a year and for the purposes of family leave employs 15 or more individuals for an average of at least 30 hours per week during a year.~~

\* \* \*

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

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

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

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

~~(C) the employee's pregnancy;~~

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

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

~~(4) "Family member" means:~~

~~(A) the employee's child or foster child;~~

~~(B) a step child or ward who lives with the employee;~~

~~(C) the employee's spouse, domestic partner, or civil union partner;~~

~~(D) the employee's parent or the parent of the employee's spouse, domestic partner, or civil union partner;~~

~~(E) the employee's sibling;~~

~~(F) the employee's grandparent; or~~

~~(G) a child for whom the employee stands in loco parentis or an individual who stood in loco parentis for the employee when he or she was a child.~~

\* \* \*

(6) "Commissioner" means the Commissioner of Labor.

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

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

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

§ 472. FAMILY LEAVE

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

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

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

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

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

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

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

\* \* \*

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

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

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

(3) In the case of an unanticipated serious illness or premature birth, the employee shall give the employer notice of the commencement of the leave as

soon as practicable.

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

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

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

\* \* \*

(h) Except for serious illness of the employee, an employee who does not return to employment with the employer who provided the family leave shall return to the employer the value of any compensation paid to or on behalf of the employee during the leave, except payments of Family and Medical Leave Insurance benefits and payments for accrued sick leave or vacation leave. An employer may elect to waive the rights provided pursuant to this subsection.

Sec. 10. 21 V.S.A. § 1344 is amended to read:

§ 1344. DISQUALIFICATIONS

(a) An individual shall be disqualified for benefits:

\* \* \*

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

\* \* \*

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

\* \* \*

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

§ 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;  
DISCLOSURE TO SUCCESSOR ENTITY

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

\* \* \*

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

\* \* \*

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

On or before January 15, 2021, the Commissioner of Labor, in consultation with the insurance carrier that the State has contracted with, if any, and the Commissioners of Financial Regulation and of Taxes, shall submit a written report to the House Committee on General, Housing, and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs regarding the potential for permitting self-employed individuals to elect to obtain coverage through the Family and Medical Leave Insurance Program. In particular, the report shall examine the experience of other states that allow self-employed individuals to obtain coverage under their family and medical leave insurance programs, and the potential impact of permitting self-employed individuals to elect to obtain coverage through the Family and Medical Leave Insurance Program on the Program, contribution rates, and administrative costs. The report shall also include a recommendation for legislative action necessary to permit self-employed individuals to elect to obtain coverage through the Family and Medical Leave Insurance Program.

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

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

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

§ 638. FAMILY AND MEDICAL LEAVE INSURANCE

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

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

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

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

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

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

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

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

Sec. 15. REQUEST FOR INFORMATION; REQUEST FOR PROPOSALS;  
REPORTS

(a) On or before July 15, 2019, the Commissioner of Financial Regulation shall submit a copy of the request for information to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance.

(b) On or before September, 1, 2019, the Commissioner of Finance shall

submit a brief summary of the responses to the request for information together with copies of all the responses to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance. The Commissioner of Financial Regulation may redact confidential business information from the copies of the responses to the request for information before submitting them.

(c) On or before September 15, 2019, the Commissioner of Financial Regulation shall submit a copy of the request for proposals to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance.

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

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

In the event that the Commissioner of Financial Regulation is unable to secure a suitable insurance company to provide paid family and medical leave insurance pursuant to the provisions of 21 V.S.A. § 572(b), the Commissioner of Labor, in consultation with the Commissioners of Financial Regulation and of Taxes, shall, on or before January 15, 2020, submit a written report outlining a plan for the State to operate the Family and Medical Leave Insurance Program to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance. The report shall include a detailed explanation of how the State will implement Family and Medical Leave Insurance Program and carry out the requirements of 21 V.S.A. chapter 5, subchapter 13, including specific details and requirements related to staffing, information technology development, the development of rules and procedures, ensuring adequate reserves in the Family and Medical Leave Insurance Special Fund, and, if appropriate, the utilization of one or more third-party administrators. The report shall also include a recommendation for any legislative action necessary for the State to successfully implement the Family and Medical Leave Insurance Program.

#### Sec. 17. APPROPRIATIONS; POSITIONS

(a)(1) The sum of \$1,000,000.00 is appropriated from the Family and Medical Leave Insurance Special Fund to the Department of Taxes in fiscal year 2020 for temporary staffing needs related to the adoption of rules, the development of information technology systems necessary to implement the provisions of 21 V.S.A. § 574, and, if applicable, to contract with the private insurance carrier selected pursuant to 21 V.S.A. § 572 to administer the collection of Family and Medical Leave Insurance contributions.

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

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

Sec. 18. 32 V.S.A. § 3102 is amended to read:

§ 3102. CONFIDENTIALITY OF TAX RECORDS

\* \* \*

(d) The Commissioner shall disclose a return or return information:

\* \* \*

(7) to the Joint Fiscal Office pursuant to subsection 10503(e) of this title and subject to the conditions and limitations specified in that subsection; and

(8) to the Commissioner of Financial Regulation, the Commissioner of Labor, or the private insurance carrier contracted with by the Commissioner of Financial Regulation pursuant to 21 V.S.A. § 572, provided the information is related to the administration of the Family and Medical Leave Insurance Program created pursuant to 21 V.S.A. chapter 5, subchapter 13.

\* \* \*

Sec. 19. 21 V.S.A. § 1314 is amended to read:

§ 1314. REPORTS AND RECORDS; SEPARATION INFORMATION;  
DETERMINATION OF ELIGIBILITY; FAILURE TO REPORT  
EMPLOYMENT INFORMATION; DISCLOSURE OF  
INFORMATION TO OTHER STATE AGENCIES TO  
INVESTIGATE MISCLASSIFICATION OR MISCODING

\* \* \*

(e)(1) Subject to such restrictions as the Board may ~~by regulation~~ prescribe by rule, information from unemployment insurance records may be made



available to any public officer or public agency of this or any other state or the federal government dealing with the administration or regulation of relief, public assistance, unemployment compensation, a system of public employment offices, wages and hours of employment, workers' compensation, misclassification or miscoding of workers, occupational safety and health, or a public works program for purposes appropriate to the necessary operation of those offices or agencies. The Commissioner may also make information available to colleges, universities, and public agencies of the State for use in connection with research projects of a public service nature, and to the Vermont Economic Progress Council with regard to the administration of 32 V.S.A. chapter 105, subchapter 2; but no person associated with those institutions or agencies may disclose that information in any manner that would reveal the identity of any individual or employing unit from or concerning whom the information was obtained by the Commissioner.

\* \* \*

(8)(A) The Department of Labor shall disclose, upon request, to the insurance carrier that the Commissioner of Financial Regulation has contracted with to operate the Family and Medical Leave Insurance Program pursuant to section 572 of this title, any information in its records related to an identified individual that is necessary for the purpose of determining the individual's eligibility for Family and Medical Leave Insurance benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

(B) The Commissioner shall enter into an agreement with the insurance carrier that governs the use of the disclosed information and complies with all requirements of 20 C.F.R. § 603.10.

(C) The information requested shall not be released unless the individual to whom the requested information relates has signed a consent form, approved by the Commissioner, that permits the release of the requested information.

(D) The requested information shall not be released unless the insurance carrier agrees to reimburse the Department of Labor for the costs involved in furnishing the requested information.

\* \* \*

Sec. 20. EFFECTIVE DATES

(a) This section and Secs. 1, 2, 4, 5, 6, 12, 13, 14, 15, 16, 17, 18, and 19 shall take effect on passage.

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

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

(d)(1)(A) If the Commissioner of Financial Regulation secures a private insurance carrier pursuant to 21 V.S.A. § 572, contributions shall begin being paid pursuant to 21 V.S.A. §§ 573 and 574 on April 1, 2020, and, beginning on October 1, 2020, employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

(B) If the Commissioner of Financial Regulation is unable to secure a private insurance carrier pursuant to 21 V.S.A. § 572, contributions shall begin being paid pursuant to 21 V.S.A. §§ 573 and 574 on July 1, 2020, and, beginning on July 1, 2021, employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

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

(Committee vote: 4-1-0)



Senator \_\_\_\_\_  
Senator Sirotkin  
FOR THE COMMITTEE