

1 TO THE HONORABLE SENATE:

2 The Committee on Economic Development, Housing and General Affairs to
3 which was referred House Bill No. 107 entitled “An act relating to paid family
4 leave” respectfully reports that it has considered the same and recommends
5 that the Senate propose to the House that the bill be amended by striking out all
6 after the enacting clause and inserting in lieu thereof the following:

7 Sec. 1. PURPOSE

8 It is the intent of the General Assembly that:

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

12 (2) the Commissioner of Financial Regulation shall seek a private
13 insurance carrier to provide the benefits required under the Program;

14 (3) if the Commissioner is able to identify an insurance carrier that can
15 provide the required benefits in a more cost-effective manner than would be
16 possible if benefits were provided by the State, the Commissioner shall enter
17 into a contract with that insurance carrier to administer the Program and
18 provide the benefits required by this act beginning in October of 2020; and

19 (4) if the Commissioner is unable to identify a suitable insurance carrier,
20 the Program shall be administered by the Department of Labor in coordination

1 with the Departments of Financial Regulation and of Taxes, and benefits shall
2 become available beginning in October of 2022.

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

4 Subchapter 13. Family and Medical Leave Insurance

5 § 571. DEFINITIONS

6 As used in this subchapter:

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

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

12 (A) the employee’s pregnancy;

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

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

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

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

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

5 (6) “Family member” means:

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

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

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

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

11 (E) the employee’s grandchild;

12 (F) the employee’s grandparent; or

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

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

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

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

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

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

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

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

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

17 (A) poses imminent danger of death;

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

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

1 (11) “Vermont’s weekly livable wage” means a 40-hour workweek paid
2 at the rate of the livable wage determined by the Joint Fiscal Office pursuant to
3 2 V.S.A. § 505.

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

6 § 572. FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM;

7 ADMINISTRATION

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

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

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

1 of contributions on behalf of the Department of Taxes pursuant to section 574
2 of this subchapter.

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

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

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

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

20 (B) will provide the required family and medical leave insurance
21 benefits and comply with the provisions of this subchapter in a more cost-

1 effective manner than if the Family and Medical Leave Insurance Program
2 were administered by the State; and

3 (C) delivers the greatest value to the State and Vermont’s employees
4 and employers.

5 (5) 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 Financial Regulation to terminate the agreement
8 for noncompliance with this chapter.

9 (6)(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 Financial Regulation shall
13 determine whether to renew the agreement for an additional period of not more
14 than four years or to issue a new request for proposals for an insurance carrier
15 to provide family and medical leave insurance that satisfies the requirements of
16 this subchapter.

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

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

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

10 § 573. CONTRIBUTIONS

11 (a) An employer that does not elect to meet its obligations under this
12 subchapter as provided pursuant to section 577 shall remit the contributions
13 required by subsection (b) of this section to the Commissioner of Taxes on a
14 quarterly basis as provided pursuant to 32 V.S.A. § 5842(a)(1) beginning with
15 the calendar quarter that starts on April 1, 2020.

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

17 (A) for the two calendar quarters between April 1, 2020 and
18 September 30, 2020, 0.10 percent of each employee's covered wages; and

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

1 (2) An employer shall have the option of paying some or all of the
2 contributions due for an employee’s covered wages or may deduct and
3 withhold the full amount of the contribution due from the employee’s covered
4 wages.

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

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

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

1 § 574. COLLECTION OF CONTRIBUTIONS; REMITTANCE

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

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

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

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

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

5 § 575. BENEFITS

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

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

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

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

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

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

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

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

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

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

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

18 (e) A bonding leave or medical leave for which benefits are paid pursuant
19 to this subchapter shall run concurrently with a leave taken pursuant to
20 section 472 of this title or the federal Family and Medical Leave Act,
21 29 U.S.C. §§ 2611–2654.

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

3 (A) wages;

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

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

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

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

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

17 § 576. APPLICATION FOR BENEFITS; PAYMENT; TAX

18 WITHHOLDING

19 (a) A qualified employee, or his or her agent, shall file an application for
20 Family and Medical Leave Insurance benefits under this subchapter on a form
21 approved by the Commissioner of Labor. The determination of whether the

1 qualified employee is eligible to receive Family and Medical Leave Insurance
2 benefits shall be based on the following criteria:

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

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

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

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

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

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

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

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

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

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

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

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

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

17 § 577. EMPLOYER OPTION; ALTERNATIVE INSURANCE OR

18 BENEFITS

19 (a) As an alternative to and in lieu of participating in the Family and
20 Medical Leave Insurance Program, an employer may, upon approval by the
21 Commissioner of Financial Regulation, comply with the requirements of this

1 subchapter through the use of an alternative insurance plan or benefit plan that
2 provides to all of its employees benefits for bonding and medical leave that are
3 equivalent to or more generous than the benefits provided pursuant to this
4 subchapter. An employer may elect to provide such benefits by:

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

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

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

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

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

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

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

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

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

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

19 (3) An employer may discontinue its alternative insurance or benefit
20 plan on January 1 of any year by filing notice of its intent to discontinue the

1 plan with the Commissioners of Financial Regulation, of Labor, and of Taxes
2 on or before November 1 of the prior year.

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

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

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

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

19 § 578. DISQUALIFICATIONS

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

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

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

5 **§ 579. APPEALS**

6 (a) An employer or employee aggrieved by a decision under section 576 or
7 578 of this subchapter may file an initial appeal of the decision with the
8 insurance carrier that the State has contracted with.

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

12 **§ 580. FALSE STATEMENT OR REPRESENTATION; PENALTY**

13 A person who willfully makes a false statement or representation for the
14 purpose of obtaining any benefit or payment or to avoid payment of any
15 required contributions under the provisions of this subchapter, either for
16 himself or herself or for any other person, after notice and opportunity for
17 hearing, may be assessed an administrative penalty of not more than
18 \$20,000.00 and shall forfeit all or a portion of any right to benefits under the
19 provisions of this subchapter, as determined to be appropriate by the
20 Commissioner of Labor or Commissioner of Financial Regulation, as
21 appropriate.

1 § 581. REINSTATEMENT; SENIORITY AND BENEFITS PROTECTED

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

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

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

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

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

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

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

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

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

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

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

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

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

17 § 582. PROTECTION FROM RETALIATION OR INTERFERENCE

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

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

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

9 § 583. CONFIDENTIALITY OF INFORMATION

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

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

19 (1) an individual or his or her duly authorized agent may be provided
20 with information to the extent necessary for the proper presentation of his or

1 her claim for benefits or to inform him or her of his or her existing or
2 prospective rights to benefits; and

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

7 § 584. RULEMAKING

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

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

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

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

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

12 (4) procedures for appeals pursuant to subsection 579(b) of this
13 subchapter.

14 **§ 585. FAMILY AND MEDICAL LEAVE INSURANCE SPECIAL FUND**

15 The Family and Medical Leave Insurance Special Fund is created pursuant
16 to 32 V.S.A. chapter 7, subchapter 5. The Fund shall consist of contributions
17 collected from employers pursuant to section 574 of this subchapter. The Fund
18 may be expended by the Commissioners of Financial Regulation, of Labor, and
19 of Taxes for the payment of premiums for and the administration of the Family
20 and Medical Leave Insurance Program. All interest earned on Fund balances
21 shall be credited to the Fund.

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

2 **§ 586. OVERPAYMENT OF BENEFITS; COLLECTION**

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

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

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

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

19 (2) If the Commissioner finds that the individual intentionally
20 misrepresented or failed to disclose a material fact with respect to his or her
21 claim for benefits, in addition to the repayment under subdivision (1) of this

1 subsection, the person shall pay an additional penalty of 15 percent of the
2 amount of the overpaid benefits, which shall also be deposited into the Fund.

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

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

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

14 Sec. 4. ADOPTION OF RULES

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

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

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

20 (b) On or before January 1, 2020, the Commissioner of Financial
21 Regulation shall adopt rules as necessary to implement the provisions of

1 section 577 of this subchapter. The rules adopted by the Commissioner of
2 Financial Regulation shall include requirements and criteria for the approval of
3 an employer’s alternative insurance or benefit plan pursuant to 21 V.S.A. § 577
4 and for determining whether a proposed plan provides benefits that are
5 equivalent to or more generous than the benefits provided pursuant to
6 21 V.S.A. chapter 5, subchapter 13.

7 (c) On or before June 1, 2020, the Commissioner of Labor shall adopt rules
8 necessary to implement all other provisions of 21 V.S.A. chapter 5, subchapter
9 13, which shall include:

10 (A) acceptable documentation for demonstrating eligibility for
11 benefits;

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

16 (C) requirements for obtaining authorization for an individual’s
17 health care provider to disclose information necessary to make a determination
18 of the individual’s eligibility for benefits;

19 (D) procedures for appealing a decision pursuant to 21 V.S.A.
20 § 579(b)(2); and

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

3 Sec. 5. EDUCATION AND OUTREACH

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

9 Sec. 6. ESTABLISHMENT OF FAMILY AND MEDICAL LEAVE

10 INSURANCE PROGRAM; EXPENDITURES FROM SPECIAL
11 FUND

12 The Commissioner of Finance and Management may, pursuant to 32 V.S.A.
13 § 588(4)(C), issue warrants for expenditures from the Family and Medical
14 Leave Insurance Special Fund necessary to establish the Family and Medical
15 Leave Insurance Program in anticipation of the receipt on or after April 1,
16 2020 of contributions submitted pursuant to 21 V.S.A. §§ 573 and 574.

17 Sec. 7. ADEQUACY OF RESERVES; REPORT

18 Annually, on or before January 15, 2021, 2022, and 2023, the
19 Commissioner of Labor, in consultation with the Commissioners of Finance
20 and Management, of Financial Regulation, and of Taxes, shall submit a written
21 report to the House Committees on Appropriations, on General, Housing, and

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

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

8 § 471. DEFINITIONS

9 As used in this subchapter:

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

18 * * *

19 (3) “Family leave” means a leave of absence from employment by an
20 employee who works for an employer ~~which~~ that employs ~~15~~ 10 or more

1 individuals who are employed for an average of at least 30 hours per week
2 during the year for one of the following reasons:

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

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

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

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

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

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

15 (4) "Family member" means:

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

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

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

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

21 (E) the employee's grandchild;

1 the individual's employment was terminated as a result of the reinstatement of
2 the other employee following his or her leave under chapter 5, subchapter 13
3 of this title.

4 * * *

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

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

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

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

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

2 § 638. FAMILY AND MEDICAL LEAVE INSURANCE

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

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

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

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

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

18 (c)(1) The contribution rate determined pursuant to subdivision (b)(2) of
19 this section or the cost of the plan to the employees determined pursuant to
20 subdivision (b)(3) of this section shall be the same for all State employees.

1 regardless of whether the employees are permitted to collectively bargain
2 pursuant to 3 V.S.A. chapter 27 or 28.

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

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

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

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

18 Sec. 16. PLAN FOR STATE OPERATION OF FAMILY AND MEDICAL

19 LEAVE INSURANCE PROGRAM; REPORT

20 In the event that the Commissioner of Financial Regulation is unable to
21 secure a suitable insurance company to provide paid family and medical leave

1 insurance pursuant to the provisions of 21 V.S.A. § 572(b), the Commissioner
2 of Labor, in consultation with the Commissioners of Financial Regulation and
3 of Taxes, shall, on or before January 15, 2020, submit a written report
4 outlining a plan for the State to operate the Family and Medical Leave
5 Insurance Program to the House Committees on Appropriations, on General,
6 Housing, and Military Affairs, and on Ways and Means and the Senate
7 Committees on Appropriations, on Economic Development, Housing and
8 General Affairs, and on Finance. The report shall include a detailed
9 explanation of how the State will implement Family and Medical Leave
10 Insurance Program and carry out the requirements of 21 V.S.A. chapter 5,
11 subchapter 13, including specific details and requirements related to staffing,
12 information technology development, the development of rules and
13 procedures, ensuring adequate reserves in the Family and Medical Leave
14 Insurance Special Fund, and, if appropriate, the utilization of one or more
15 third-party administrators. The report shall also include a recommendation for
16 any legislative action necessary for the State to successfully implement the
17 Family and Medical Leave Insurance Program.

18 Sec. 17. APPROPRIATIONS; POSITIONS

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

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

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

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

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

11 **§ 3102. CONFIDENTIALITY OF TAX RECORDS**

12 * * *

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

14 * * *

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

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

1 * * *

2 Sec. 19. EFFECTIVE DATES

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

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

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

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

15 (B) If the Commissioner of Financial Regulation is unable to secure a
16 private insurance carrier pursuant to 21 V.S.A. § 572, contributions shall begin
17 being paid pursuant to 21 V.S.A. §§ 573 and 574 on July 1, 2021, and,
18 beginning on July 1, 2022, employees may begin to receive benefits pursuant
19 to 21 V.S.A. chapter 5, subchapter 13.

20 (2) An employer that is subject to a collective bargaining agreement
21 shall not be required to pay contributions or be subject to the provisions of

1 21 V.S.A. chapter 5, subchapter 13 until either the effective date of the next
2 collective bargaining agreement after April 1, 2020, or the effective date of a
3 supplement to or provision of an existing collective bargaining agreement that
4 specifically addresses the provisions of 21 V.S.A. chapter 5, subchapter 13, in
5 order to permit the employer and the collective bargaining representative to
6 negotiate regarding the employer and employee shares of the contribution rate
7 or whether the employer will provide benefits through an alternative plan
8 established pursuant to 21 V.S.A. § 577.

9
10
11
12
13
14
15
16
17
18

(Committee vote: _____)

Senator _____

FOR THE COMMITTEE