

Short Summary of H.107 as Passed House

Sec.1. Purpose

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

§ 571. Definitions

- Covers all employers in Vermont.
- Employee is anyone who receives wage or tip income subject to VT income tax.
- Defines a “qualified employee” for purposes of benefit eligibility as someone who has:
 - Earned wages in six months during the last four completed calendar quarters; and
 - Earned 1,040 times the hourly VT minimum wage (currently about \$11,200).

§ 572. Family and Medical Leave Insurance Program; Administration

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

§ 573. Contributions

- Collected by Commissioner of Taxes on a quarterly basis.
- Initial rate is 0.10% between 4/1/20 and 9/30/20, and rate rises to 0.55% on 10/1/20.
- Employer determines portion of contribution rate to be paid by employee and employer.
- General Assembly will annually review and, if necessary, adjust the contribution rate.

§ 574. Collection of Contributions; Remittance

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

§ 575. Benefits

- Employee may receive up to 12 weeks of total benefits:
 - 12 weeks for bonding leave; and
 - 8 weeks for medical leave (own or family member)
- Wage replacement equal to:
 - 90% of wages up to Vermont Livable Wage; plus

- 50% of any wages above Vermont Livable Wage.
- Capped at 2.5 times Vermont livable wage (\$1,334/week)
- Leave runs concurrently with leave under federal and State unpaid family leave laws

§ 576. Application for Benefits; Payment; Tax Withholding

- Eligibility for benefits determined based on:
 - Adequate documentation of need for leave;
 - Satisfy work (6 mos. VT employment in last 4 qtrs) and income (~\$11,200 wages in last 4 qtrs) requirements; and
 - Employee specifies start date and expected duration of leave.

§ 577. Employer Option; Alternative Insurance or Benefits

- Employer may opt out of Program by providing equivalent or more generous benefits through:
 - Self-insurance;
 - Purchasing insurance;
 - A benefits plan; or
 - Some combination of those three.
- Commissioner of Financial Regulation will review and approve proposed alternative plans.
- In first year, applications are due by 2/1/20, with DFR issuing a decision by 3/15/20 for a 4/1/20 opt-out of Program.

§ 578. Disqualifications

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

§ 579. Appeals

- Initial appeals are handled by the insurance carrier.
- Subsequent appeals are handled in the same manner as unemployment insurance appeals:

§ 580. False Statement or Representation; Penalty

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

§ 581. Reinstatement; Seniority and Benefits Protected

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

§ 582. Protection from Retaliation or Interference

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

§ 583. Confidentiality of Information

- Makes information obtained in relation to the Program confidential.

§ 584. Rulemaking

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

§ 585. Family and Medical Leave Insurance Special Fund

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

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

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

Sec.4. Adoption of Rules

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

Sec. 5. Education and Outreach

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

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

- ~~Contingent on DOL failing to secure an insurance carrier for the Program.~~
- Allows expenditures necessary to establish Program before contributions have been received.

Sec. 7. Adequacy of Reserves; Report

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

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

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

- Adds definition of family member for consistency with new FMLI law.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 15. Outcome of Requests for Proposals; Report

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

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

- If State fails to find an insurance carrier to operate Program, requires Commissioner of Labor to report to General Assembly by 12/15/20 regarding a plan for the State to operate the Program.

Sec. 17. Appropriations; Positions

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

- Creates 1 permanent administrator position at DOL.

Sec. 18. Effective Dates

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