

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 July 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) “Base period” means:

11 (A) the first four of the most recently completed five calendar  
12 quarters; or

13 (B) for an employee who fails to meet the requirements to be a  
14 “qualified employee” pursuant to subdivision (10) of this section during the  
15 period set forth in subdivision (A) of this subdivision (2), the last four  
16 completed calendar quarters; or

17 (C) for an employee who fails to meet the requirements to be a  
18 “qualified employee” pursuant to subdivision (10) of this section during the  
19 period set forth in subdivisions (A) and (B) of this subdivision (2), the last  
20 three completed calendar quarters and the period between the end of the most

1 recently completed calendar quarter and the date on which the employee filed  
2 his or her application for Family and Medical Leave Insurance benefits.

3 (3) “Bonding leave” means a leave of absence from employment by an  
4 employee for:

5 (A) the employee’s pregnancy;

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

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

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

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

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

18 (7) “Family member” means:

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

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

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

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

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

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

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

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

15               (B) a serious illness of the employee’s family member.

16          (10) “Qualified employee” means an employee who has been paid:

17               (A) in one quarter of his or her base period, wages from which  
18               contributions were withheld pursuant to section 574 of this subchapter that  
19               equal at least the amount of the minimum wage qualifier for unemployment  
20               insurance established pursuant to 21 V.S.A. § 1338; and

1           (B) additional wages in his or her base period from which  
2           contributions were withheld pursuant to section 574 of this subchapter that  
3           equal or exceed 40 percent of the total wages paid in the highest earning  
4           quarter of his or her base period.

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

7                   (A) poses imminent danger of death;

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

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

11           (12) “Vermont’s weekly livable wage” means 55 percent of the most  
12           recent Vermont average weekly wage as calculated by the U.S. Bureau of  
13           Labor Statistics.

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

16           § 572. FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM;

17                   ADMINISTRATION

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

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

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

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

15               (3) On or before September 1, 2019, the Commissioner of Financial  
16       Regulation, in consultation with the Commissioners of Human Resources, of  
17       Labor, and of Taxes, shall develop and issue a request for proposals for an  
18       insurance carrier to provide family and medical leave insurance that satisfies  
19       the requirements of this subchapter. An insurance carrier shall not be selected  
20       unless it can demonstrate that it would be able to provide the required family  
21       and medical leave insurance benefits and comply with the provisions of this

1 subchapter in a more cost-effective manner than if the Family and Medical  
2 Leave Insurance Program were administered by the State.

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

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

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

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

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

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

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

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

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

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

1     § 573. CONTRIBUTIONS

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

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

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

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

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

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

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

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

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

18       § 574. COLLECTION OF CONTRIBUTIONS; REMITTANCE

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

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

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

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

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

1     § 575. BENEFITS

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

5           (1) up to 12 weeks of benefits for bonding leave taken by the employee,  
6     provided that if both parents of a child are qualified employees they shall be  
7     permitted to receive a combined total of not more than 12 weeks of Family and  
8     Medical Leave Insurance benefits for bonding leave in relation to a birth or  
9     placement of a child for adoption or foster care; and

10          (2) up to six weeks of benefits for medical leave taken by the employee,  
11     provided that an employee and his or her spouse, domestic partner, or civil  
12     union partner shall be permitted to receive a combined total of not more than  
13     six weeks Family and Medical Leave Insurance benefits for medical leave  
14     taken in relation to each serious illness of a family member.

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

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

19            (B) if he or she earns an average weekly wage that is greater than  
20     Vermont's weekly livable wage, 90 percent of Vermont's weekly livable wage

1 plus 60 percent of the amount by which his or her average weekly wage  
2 exceeds Vermont's weekly livable wage.

3 (2) Notwithstanding subdivision (1) of this subsection, no qualified  
4 employee may receive Parental and Family Leave Insurance benefits that  
5 exceed the most recent average weekly wage for Vermont as calculated by the  
6 U.S. Bureau of Labor Statistics.

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

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

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

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

20 (e) A bonding leave or medical leave for which benefits are paid pursuant  
21 to this subchapter shall run concurrently with a leave taken pursuant to

1 section 472 of this title or the federal Family and Medical Leave Act,  
2 29 U.S.C. §§ 2611–2654.

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

5 (A) wages;

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

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

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

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

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

1     § 576. APPLICATION FOR BENEFITS; PAYMENT; TAX

2             WITHHOLDING

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

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

10                (2) The claimant satisfies the requirements to be a qualified employee as  
11                defined pursuant to subsection 571(10) of this subchapter.

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

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

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

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

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

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

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

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

10           (5) If it is the most cost-effective method, the determination of whether  
11           an employee satisfies the requirements to be a qualified employee as defined  
12           pursuant to subdivision 571(10) of this subchapter shall, to the extent possible,  
13           be made through the State's unemployment insurance program.

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

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

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

4        § 577. EMPLOYER OPTION; ALTERNATIVE INSURANCE OR  
5        BENEFITS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5        § 578. DISQUALIFICATIONS

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

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

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

12       § 579. APPEALS

13       (a) An employer or employee aggrieved by a decision under section 576 or  
14       578 of this subchapter may file an initial appeal of the decision with the  
15       insurance carrier that the State has contracted with.

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

19       § 580. FALSE STATEMENT OR REPRESENTATION; PENALTY

20       A person who willfully makes a false statement or representation for the  
21       purpose of obtaining any benefit or payment or to avoid payment of any

1 required contributions under the provisions of this subchapter, either for  
2 himself or herself or for any other person, after notice and opportunity for  
3 hearing, may be assessed an administrative penalty of not more than  
4 \$20,000.00 and shall forfeit all or a portion of any right to benefits under the  
5 provisions of this subchapter, as determined to be appropriate by the  
6 Commissioner of Labor or Commissioner of Financial Regulation, as  
7 appropriate.

8 § 581. REINSTATEMENT; SENIORITY AND BENEFITS PROTECTED

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

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

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

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

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

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

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

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

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

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

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

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

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

3           § 582. PROTECTION FROM RETALIATION OR INTERFERENCE

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

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

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

16          § 583. CONFIDENTIALITY OF INFORMATION

17          (a) Information obtained from an employer or individual in the  
18          administration of this subchapter and determinations of an individual’s right to  
19          receive benefits that reveal an employer’s or individual’s identity in any  
20          manner shall be kept confidential and, to the extent that such information is  
21          obtained by the State, shall be exempt from public inspection and copying

1 under the Public Records Act. Such information shall not be admissible as  
2 evidence in any action or proceeding other than one brought pursuant to the  
3 provisions of this subchapter.

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

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

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

13 § 584. RULEMAKING

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

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

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

19 (b) The Commissioner of Financial Regulation shall adopt rules as  
20 necessary to implement the provisions of section 577 of this subchapter. The  
21 rules adopted by the Commissioner of Financial Regulation shall include

1 requirements and criteria for the approval of an employer’s alternative  
2 insurance or benefit plan pursuant to section 577 of this subchapter and for  
3 determining whether a proposed plan provides benefits that are equivalent to or  
4 more generous than the benefits provided pursuant to this subchapter.

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

8 (1) acceptable documentation for demonstrating eligibility for benefits;

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

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

16 (4) procedures for appeals pursuant to subsection 579(b) of this  
17 subchapter.

18 § 585. FAMILY AND MEDICAL LEAVE INSURANCE SPECIAL FUND

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

1 may be expended by the Commissioners of Financial Regulation, of Labor, and  
2 of Taxes for the payment of premiums for and the administration of the Family  
3 and Medical Leave Insurance Program. All interest earned on Fund balances  
4 shall be credited to the Fund.

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

6 § 586. OVERPAYMENT OF BENEFITS; COLLECTION

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

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

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

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

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

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

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

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

1       Sec. 4. ADOPTION OF RULES

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

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

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

7           (b) On or before January 1, 2020, the Commissioner of Financial  
8       Regulation shall adopt rules as necessary to implement the provisions of  
9       section 577 of this subchapter. The rules adopted by the Commissioner of  
10       Financial Regulation shall include requirements and criteria for the approval of  
11       an employer's alternative insurance or benefit plan pursuant to 21 V.S.A. § 577  
12       and for determining whether a proposed plan provides benefits that are  
13       equivalent to or more generous than the benefits provided pursuant to  
14       21 V.S.A. chapter 5, subchapter 13.

15           (c) On or before June 1, 2020, the Commissioner of Labor shall adopt rules  
16       necessary to implement all other provisions of 21 V.S.A. chapter 5, subchapter  
17       13, which shall include:

18           (A) acceptable documentation for demonstrating eligibility for  
19       benefits;

20           (B) requirements for providing certification from a health care  
21       provider of the need for family leave that are modeled on the federal rules

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

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

6 (D) procedures for appealing a decision pursuant to 21 V.S.A.  
7 § 579(b)(2); and

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

10 Sec. 5. EDUCATION AND OUTREACH

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

16 Sec. 6. ESTABLISHMENT OF FAMILY AND MEDICAL LEAVE

17 INSURANCE PROGRAM; EXPENDITURES FROM SPECIAL  
18 FUND

19 The Commissioner of Finance and Management may, pursuant to 32 V.S.A.  
20 § 588(4)(C), issue warrants for expenditures from the Family and Medical  
21 Leave Insurance Special Fund necessary to establish the Family and Medical

1 Leave Insurance Program in anticipation of the receipt on or after April 1,  
2 2020 of contributions submitted pursuant to 21 V.S.A. §§ 573 and 574.

3 Sec. 7. ADEQUACY OF RESERVES; REPORT

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

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

15 § 471. DEFINITIONS

16 As used in this subchapter:

17 (1) “Employer” means an individual, organization ~~or~~, governmental  
18 body, partnership, association, corporation, legal representative, trustee,  
19 receiver, trustee in bankruptcy, and any common carrier by rail, motor, water,  
20 air or express company doing business in or operating within this State ~~which~~  
21 ~~for the purposes of parental leave~~ that employs 10 or more individuals who are

1 employed for an average of at least 30 hours per week during a year ~~and for the~~  
2 ~~purposes of family leave employs 15 or more individuals for an average of at~~  
3 ~~least 30 hours per week during a year.~~

4 \* \* \*

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

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

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

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

17 (C) the employee’s pregnancy;

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

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

21 (4) “Family member” means:





1 the date the leave is expected to commence and the estimated duration of the  
2 leave.

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

6 (3) In the case of an unanticipated serious illness or premature birth, the  
7 employee shall give the employer notice of the commencement of the leave as  
8 soon as practicable.

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

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

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

16 \* \* \*

17 (h) Except for serious illness of the employee, an employee who does not  
18 return to employment with the employer who provided the family leave shall  
19 return to the employer the value of any compensation paid to or on behalf of  
20 the employee during the leave, except payments of Family and Medical Leave

1 Insurance benefits and payments for accrued sick leave or vacation leave. An  
2 employer may elect to waive the rights provided pursuant to this subsection.

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

4 § 1344. DISQUALIFICATIONS

5 (a) An individual shall be disqualified for benefits:

6 \* \* \*

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

9 \* \* \*

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

12 \* \* \*

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

14 § 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;

15 DISCLOSURE TO SUCCESSOR ENTITY

16 (a)(1) The Commissioner shall maintain an experience-rating record for  
17 each employer. Benefits paid shall be charged against the experience-rating  
18 record of each subject employer who provided base-period wages to the  
19 eligible individual. Each subject employer's experience-rating charge shall  
20 bear the same ratio to total benefits paid as the total base-period wages paid by  
21 that employer bear to the total base-period wages paid to the individual by all

1 base-period employers. The experience-rating record of an individual subject  
2 base-period employer shall not be charged for benefits paid to an individual  
3 under any of the following conditions:

4 \* \* \*

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

10 \* \* \*

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

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

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

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

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

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

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

4 § 638. FAMILY AND MEDICAL LEAVE INSURANCE

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

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

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

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

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

20 (c)(1) The contribution rate determined pursuant to subdivision (b)(2) of  
21 this section or the cost of the plan to the employees determined pursuant to

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

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

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

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

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

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

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

1 any legislative action necessary for the State to successfully implement the  
2 Family and Medical Leave Insurance Program.

3 Sec. 17. APPROPRIATIONS; POSITIONS

4 (a)(1) The sum of \$1,000,000.00 is appropriated from the Family and  
5 Medical Leave Insurance Special Fund to the Department of Taxes in fiscal  
6 year 2020 for the adoption of rules and the development of information  
7 technology systems necessary to implement the provisions of 21 V.S.A. § 574.

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

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

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

16 § 3102. CONFIDENTIALITY OF TAX RECORDS

17 \* \* \*

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

19 \* \* \*

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



1 being paid pursuant to 21 V.S.A. §§ 573 and 574 on July 1, 2021, and,  
2 beginning on July 1, 2022, employees may begin to receive benefits pursuant  
3 to 21 V.S.A. chapter 5, subchapter 13.

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

14  
15  
16  
17  
18  
19  
20 (Committee vote: \_\_\_\_\_)

1

\_\_\_\_\_

2

Senator \_\_\_\_\_

3

FOR THE COMMITTEE