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S.62

Introduced by Senators Ram Hinsdale, Bray, Campion, Clarkson, Gulick,
Hardy, Harrison, Hashim, MacDonald, McCormack, Perchlik,
Vyhovsky, Watson, White and Wrenner

Referred to Committee on

Date:

Subject: Labor; employment practices; paid family and medical leave; Parental
and Family Leave Act; leave related to domestic and sexual violence

Statement of purpose of bill as introduced: This bill proposes to create the
Family and Medical Leave Insurance Program within the Office of the
Treasurer, to amend the Parental and Family Leave Act, and to provide job-
protected leave from employment for reasons related to domestic and sexual
violence.

An act relating to paid family and medical leave insurance

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 21 V.S.A. chapter 26 is added to read:

CHAPTER 26. FAMILY AND MEDICAL LEAVE INSURANCE

§ 2051. DEFINITIONS

As used in this chapter:

1 (1) “Agent” means an individual who holds a valid power of attorney
2 for an employee or self-employed individual or another legal authorization to
3 act on the employee or self-employed individual’s behalf that is acceptable to
4 the Director.

5 (2) “Average weekly earnings” means the sum of a qualified
6 individual’s wages, if any, upon which contributions have been paid pursuant
7 to section 2054 of this chapter during the individual’s two highest-earning
8 quarters plus the qualified individual’s self-employment income, if any, upon
9 which contributions have been paid pursuant to section 2054 of this chapter
10 during the individual’s two highest-earning quarters divided by 26.

11 (3) “Benefits” means Family and Medical Leave Insurance benefits
12 provided pursuant to this chapter.

13 (4) “Director” means the Director of the Division of Family and Medical
14 Leave.

15 (5) “Division” means the Division of Family and Medical Leave in the
16 Office of the Treasurer.

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

18 (7) “Domestic violence” has the same meaning as in 15 V.S.A. § 1151.

19 (8) “Employee” means an individual who receives payments with
20 respect to services performed for an employer from which the employer is

1 required to withhold Vermont income tax pursuant to 32 V.S.A. chapter 151,
2 subchapter 4.

3 (9) “Employer” means a person who employs one or more employees.

4 (10) “Enrolled self-employed individual” means a self-employed
5 individual who has obtained coverage under the Program pursuant to section
6 2059 of this chapter.

7 (11) “Family and medical leave” means a leave of absence from
8 employment or from self-employment by a qualified individual for:

9 (A) the qualified individual’s own serious illness or injury;

10 (B) a serious illness or injury of the qualified individual’s family
11 member;

12 (C) the qualified individual’s pregnancy;

13 (D) the birth of the qualified individual’s child;

14 (E) the initial placement of a child 18 years of age or younger with
15 the qualified individual for the purpose of adoption or foster care; or

16 (F) a qualifying exigency arising out of a qualified individual’s
17 family member’s active duty service in the U.S. Armed Forces or notice of an
18 impending call or order to active duty in the U.S. Armed Forces.

19 (12) “Family member” means:

20 (A) regardless of age, a qualified individual’s biological, adopted, or
21 foster child; a qualified individual’s stepchild or legal ward; a child of the

1 qualified individual's spouse or civil union or domestic partner; a child to
2 whom the qualified individual stands in loco parentis; or an individual to
3 whom the qualified individual stood in loco parentis when the individual was
4 under 18 years of age;

5 (B)(i) a parent of a qualified individual or qualified individual's
6 spouse or civil union or domestic partner, regardless of whether the
7 relationship to the qualified individual or qualified individual's spouse or civil
8 union or domestic partner is a biological, foster, adoptive, or step relationship;

9 (ii) a legal guardian of a qualified individual or qualified
10 individual's spouse or civil union or domestic partner; or

11 (iii) a person who stood in loco parentis when the qualified
12 individual or qualified individual's spouse or civil union or domestic partner
13 was under 18 years of age;

14 (C) a person to whom the qualified individual is legally married
15 under the laws of any state or a civil union or domestic partner of a qualified
16 individual;

17 (D) a grandparent, grandchild, or sibling of the qualified individual or
18 qualified individual's spouse or civil union or domestic partner, regardless of
19 whether the relationship to the qualified individual or the qualified individual's
20 spouse or civil union or domestic partner is a biological, foster, adoptive, or
21 step relationship; or

1 (E) as shown by the qualified individual, any other individual with
2 whom the qualified individual has a significant personal bond that is or is like
3 a family relationship, regardless of biological or legal relationship.

4 (13) “Highest earning quarters” means the two calendar quarters of the
5 last four completed calendar quarters when an individual earned the highest
6 combined total of wages upon which contributions were paid pursuant to
7 section 2054 of this chapter and self-employment income upon which
8 contributions were paid pursuant to section 2054 of this chapter.

9 (14) “In loco parentis” means a child for whom an individual has day-
10 to-day responsibilities to care for and financially support or, in the case of a
11 qualified individual or the qualified individual’s spouse or civil union or
12 domestic partner, an individual who had such responsibility for the qualified
13 individual or the spouse or civil union or domestic partner when the qualified
14 individual or the spouse or civil union or domestic partner was under 18 years
15 of age.

16 (15) “Program” means the Family and Medical Leave Insurance
17 Program created pursuant to this chapter.

18 (16) “Qualified individual” means an employee or enrolled self-
19 employed individual who:

20 (A) satisfies the eligibility requirements established pursuant to
21 section 2056 of this chapter; and

1 (B) has submitted an application and all necessary documentation of
2 the need for the leave pursuant to section 2057 of this chapter.

3 (17) “Qualifying exigency” means a qualifying exigency related to
4 active duty service in the U.S. Armed Forces that is identified pursuant to 29
5 C.F.R. § 825.126.

6 (18) “Safe leave” means a leave of absence from employment or self-
7 employment by a qualified individual because:

8 (A) the qualified individual or the qualified individual’s family
9 member is a victim of domestic violence, sexual assault, or stalking;

10 (B) the qualified individual is using the leave for one of the following
11 reasons related to the domestic violence, sexual assault, or stalking:

12 (i) to seek or obtain medical care, counseling, or social or legal
13 services, either for themselves or for a family member;

14 (ii) to recover from injuries;

15 (iii) to participate in safety planning, either for themselves or for a
16 family member;

17 (iv) to relocate or secure safe housing, either for themselves or for
18 a family member; or

19 (v) to meet with a State’s Attorney or law enforcement officer;

20 and

1 (C) the qualified individual is not the alleged perpetrator of the
2 domestic violence, sexual assault, or stalking.

3 (19) “Self-employed individual” means a sole proprietor or partner
4 owner of an unincorporated business, the sole member of an LLC that does not
5 have any employees other than the member, or the sole shareholder of a
6 corporation that does not have any employees other than the shareholder.

7 (20) “Self-employment income” has the same meaning as in 26 U.S.C.
8 § 1402.

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

11 (A) poses imminent danger of death;

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

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

15 (22) “Sexual assault” has the same meaning as in 15 V.S.A. § 1151.

16 (23) “Stalking” has the same meaning as in 15 V.S.A. § 1151.

17 (24) “U.S. Armed Forces” means:

18 (A) the U.S. Army, Navy, Air Force, Marine Corps, Space Force, and
19 Coast Guard;

20 (B) a reserve component of the U.S. Army, Navy, Air Force, Marine
21 Corps, Space Force, and Coast Guard; or

1 (C) the National Guard of any state.

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

4 § 2052. DIVISION OF FAMILY AND MEDICAL LEAVE; DIRECTOR

5 (a) The Division of Family and Medical Leave is established in the Office
6 of the Treasurer to administer the Family and Medical Leave Insurance
7 Program established pursuant to this chapter.

8 (b)(1) The Treasurer shall appoint a director of the Division. The Director
9 shall be a full-time State employee and exempt from the classified system and
10 shall serve at the pleasure of the Treasurer.

11 (2) The Director shall be responsible for:

12 (A) the operation and supervision of the Division of Family and
13 Medical Leave;

14 (B) the implementation of this chapter and any rules adopted
15 pursuant to section 2064 of this chapter; and

16 (C) employing staff as necessary to implement and carry out the
17 provisions of this chapter.

18 § 2053. FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM;

19 SPECIAL FUND

20 (a) The Family and Medical Leave Insurance Program is established within
21 the Division of Family and Medical Leave for the provision of Family and

1 Medical Leave Insurance benefits to qualified individuals pursuant to the
2 provisions of this chapter.

3 (b) The Family and Medical Leave Insurance Special Fund is created
4 pursuant to 32 V.S.A. chapter 7, subchapter 5. The Fund may be expended by
5 the Director and the Commissioner of Taxes for the administration of the
6 Family and Medical Leave Insurance Program, for the payment of benefits
7 provided pursuant to the provisions of this chapter, and for necessary costs
8 incurred in administering the Fund. All interest earned on Fund balances shall
9 be credited to the Fund.

10 (c) The Fund shall consist of:

11 (1) contributions collected pursuant to section 2054 of this chapter;

12 (2) amounts recovered or collected pursuant to sections 2062 and 2063
13 of this chapter; and

14 (3) any amounts appropriated to the Fund.

15 (d) The Director may seek and accept gifts, donations, and grants from any
16 source, public or private, to be dedicated for deposit into the Fund.

17 § 2054. CONTRIBUTIONS; RATE; COLLECTION

18 (a) The following contribution rates shall apply to employees and enrolled
19 self-employed individuals.

20 (1)(A) Contributions for employees shall equal 0.5 percent of each
21 employee's covered wages.

1 (B) Employers shall be responsible for one-half of the contribution
2 amount and employees shall be responsible for the remaining half.

3 (C) Employers shall deduct and withhold from each employee's
4 covered wages the employee's portion of the contributions due.

5 (D) In lieu of deducting and withholding the full amount of the
6 employee's portion of the contribution, an employer may elect to pay some or
7 all of the employee's portion of the contributions.

8 (E) As used in this subdivision (1), the term "covered wages" means
9 all wages paid to an employee by an employer up to an amount equal to the
10 maximum Social Security Contribution and Benefit Base.

11 (2)(A) Contributions from enrolled self-employed individuals shall
12 equal 0.5 percent of each enrolled self-employed individual's covered work
13 income.

14 (B) As used in this subdivision (2), the term "covered work income"
15 means self-employment work income earned by an enrolled self-employed
16 individual up to an amount equal to the maximum Social Security Contribution
17 and Benefit Base.

18 (b)(1) Notwithstanding subsection (a) of this section, the General Assembly
19 shall annually establish the rate of contribution for the next fiscal year. The
20 rate shall generate contributions in an amount equal to the sum of the projected
21 amount necessary to provide benefits pursuant to this chapter during the next

1 fiscal year plus a reserve equal to at least nine months of the projected benefit
2 payments for the next fiscal year plus the projected cost to administer the
3 Program during the next fiscal year minus any balance in the Fund from the
4 prior fiscal year.

5 (2) On or before February 1 of each year, the Director shall report to the
6 General Assembly the rate necessary to generate contributions in an amount
7 equal to the sum of the projected amount necessary to provide benefits
8 pursuant to this chapter during the next fiscal year plus a reserve equal to at
9 least nine months of the projected benefit payments for the next fiscal year plus
10 the projected cost to administer the Program during the next fiscal year minus
11 any balance in the Fund from the prior fiscal year.

12 (c)(1) The Commissioner of Taxes shall collect the contributions required
13 pursuant to this section and shall deposit them into the Fund.

14 (2) Employers shall withhold contributions pursuant to subdivision
15 (a)(1) of this section from wages that employers pay to employees as if the
16 contributions were Vermont income tax subject to the withholding
17 requirements of 32 V.S.A. chapter 151, subchapter 4. The administrative and
18 enforcement provisions of 32 V.S.A. chapter 151 shall apply to the
19 contribution and withholding requirements under this section as if the
20 contributions due pursuant to subdivision (a)(1) of this section were Vermont
21 income tax.

1 (3) Enrolled self-employed individuals shall make installment payments
2 of estimated contributions pursuant to subdivision (a)(2) of this section from
3 the enrolled self-employed individual's covered work income as if the
4 contributions were Vermont income tax subject to the estimated payment
5 requirements of 32 V.S.A. chapter 151, subchapter 5. The administrative and
6 enforcement provisions of 32 V.S.A. chapter 151 shall apply to the estimated
7 payment requirement under this section as if the contributions due pursuant to
8 subdivision (a)(2) of this section were Vermont income tax.

9 (d) An employer with an approved private plan pursuant to section 2060 of
10 this chapter shall not be required to withhold and pay contributions pursuant to
11 this section.

12 § 2055. BENEFITS

13 (a) A qualified individual shall be permitted to receive a total of not more
14 than 12 weeks of benefits in a 12-month period for family and medical leave
15 and safe leave taken by the employee.

16 (b) A qualified individual awarded benefits under this section shall receive
17 100 percent of the individual's average weekly earnings or an amount equal to
18 the State average weekly wage determined pursuant to section 1338 of this
19 title, whichever is less.

20 (c) A qualified individual may receive benefits for an intermittent leave or
21 leave for a portion of a week. The benefit amount for an intermittent leave or

1 leave for a portion of a week shall be calculated in increments of one full day
2 or one-fifth of the qualified individual's weekly benefit amount.

3 (d) Benefits paid pursuant to this chapter may be used as wage replacement
4 for a leave taken pursuant to sections 472 and 472d of this title or the federal
5 Family and Medical Leave Act, 29 U.S.C. §§ 2611–2654. The receipt of
6 benefits paid pursuant to this chapter shall not extend the leave provided
7 pursuant to sections 472 and 472d of this title or the federal Family and
8 Medical Leave Act.

9 § 2056. ELIGIBILITY

10 An individual shall be eligible to receive benefits pursuant to the provisions
11 of this chapter during any week in which:

12 (1) the individual is an employee or an enrolled self-employed individual
13 who:

14 (A) earned wages from which contributions were withheld pursuant
15 to section 2054 of this chapter in two of the last four calendar quarters;

16 (B) made contributions to the Fund on covered work income that was
17 earned during two of the last four calendar quarters; or

18 (C) both;

19 (2) the individual:

20 (A) has a serious illness or injury;

21 (B) is caring for a family member with a serious illness or injury;

1 (C) is pregnant;

2 (D) is caring for a new child during the first year following the birth,
3 adoption, or placement for foster care of that child; or

4 (E) is taking safe leave; and

5 (3) the Director determines that the individual is not disqualified
6 pursuant to section 2066 of this chapter.

7 § 2057. APPLICATION FOR BENEFITS

8 (a)(1) An employee or enrolled self-employed individual, or the
9 employee's or enrolled self-employed individual's agent, may apply for
10 benefits pursuant to this chapter by filing an application with the Division in a
11 form approved by the Director.

12 (2) An employee or enrolled self-employed individual, or the
13 employee's or enrolled self-employed individual's agent, shall, to the extent
14 possible, submit documentation of the need for the leave together with the
15 application filed pursuant to subdivision (1) or this subsection. The Director
16 shall specify acceptable forms of documentation on the application form.

17 (b)(1) The Division shall review each application and any accompanying
18 documentation and determine if the employee or enrolled self-employed
19 individual is eligible to receive benefits pursuant to section 2055 of this
20 chapter not later than five business days after the date the application is filed
21 with the Division.

1 (2) Notwithstanding subdivision (1) of this subsection, the Director may
2 extend the time in which to make a determination by not more than 15 business
3 days if necessary to obtain documents or information that are needed to make
4 the determination.

5 (c) An employee or enrolled self-employed individual may file an
6 application for benefits up to 60 days before an anticipated family and medical
7 leave or safe leave or, in the event of a premature birth, an unanticipated
8 serious illness, a safe leave, or the death of a family member, within 60 days
9 after commencing a family and medical leave or safe leave.

10 § 2058. PAYMENT OF BENEFITS; TAX WITHHOLDING

11 (a) Benefits shall be paid to a qualified individual for the time period
12 beginning on the day the qualified individual's leave began.

13 (b) A qualified individual's first benefit payment shall be sent within 14
14 days after the qualified individual's claim is approved, and subsequent
15 payments shall be sent biweekly.

16 (c) Benefits paid pursuant to the provisions of this chapter shall not be
17 assignable before payment and shall be exempt from all claims of creditors,
18 and from levy, execution, attachment, trustee process, and any other remedy
19 provided for the recovery or collection of a debt.

20 (d)(1) An individual filing a claim for benefits pursuant to this section
21 shall, at the time of filing, be advised that Family and Medical Leave Insurance

1 benefits may be subject to income tax and that the individual's benefits may be
2 subject to withholding.

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

6 § 2059. ELECTIVE COVERAGE

7 (a) A self-employed individual may elect to obtain coverage through the
8 Program for an initial period of three years by filing a notice of the election
9 with the Division on a form provided by the Director.

10 (b) A self-employed individual who elects to obtain coverage pursuant to
11 this section shall agree as a condition of obtaining coverage to provide to the
12 Director and the Commissioner of Taxes any documentation of the self-
13 employed individual's work income and any related information that the
14 Director, in consultation with the Commissioner of Taxes, determines is
15 necessary.

16 (c)(1) An enrolled self-employed individual may terminate the coverage at
17 the end of the initial three-year period by providing the Director with written
18 notice of the termination at least 30 days before the end of the period.

19 (2) An enrolled self-employed individual who does not terminate
20 coverage at the end of the initial three-year period may terminate the coverage

1 at the end of any succeeding annual period by providing the Director with
2 written notice of the termination at least 30 days before the end of the period.

3 (3) Notwithstanding subdivisions (1) and (2) of this subsection, an
4 enrolled self-employed individual who becomes an employee or stops working
5 in Vermont may elect to terminate coverage pursuant to this section by
6 providing the Director with 30 days' written notice in accordance with rules
7 adopted by the Director.

8 (d) Nothing in this section shall be construed to prevent an individual who
9 is both an employee and a self-employed individual from electing to obtain
10 coverage pursuant to this section.

11 § 2060. EMPLOYER OPTION; PRIVATE PLAN

12 (a)(1) As an alternative to and in lieu of participating in the Program, an
13 employer may, upon approval by the Commissioner of Financial Regulation,
14 comply with the requirements of this chapter through the use of a private
15 insurance or benefit plan that provides to all of its employees benefits that are
16 equivalent to or more generous than the benefits provided pursuant to this
17 chapter. An employer may elect to provide such benefits by:

18 (A) establishing and maintaining to the satisfaction of the
19 Commissioner of Financial Regulation self-insurance necessary to provide
20 equivalent or more generous benefits;

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

4 (C) establishing an employee benefits plan that provides equivalent
5 or more generous benefits; or

6 (D) any combination of subdivisions (A) through (C) of this
7 subdivision (a)(1).

8 (2) A private plan shall:

9 (A) provide coverage for all employees who would otherwise be
10 eligible for benefits pursuant to this chapter;

11 (B) cost employees the same or less than the employees' portion of
12 the contribution would be pursuant to subsection 2054(a) of this chapter;

13 (C) provide coverage for all forms of leave for which benefits may be
14 paid pursuant to this chapter;

15 (D) provide wage replacement in an amount that is equal to or greater
16 than the rate of wage replacement provided pursuant to section 2055 of this
17 chapter;

18 (E) impose no additional restrictions or conditions on the use of paid
19 leave benefits beyond the restrictions and conditions that are established
20 pursuant to this chapter and the rules adopted by the Director; and

1 (F) satisfy any additional requirements established in rules adopted
2 by the Director in consultation with the Commissioner of Financial Regulation.

3 (b)(1) The Commissioner of Financial Regulation may approve a private
4 insurance or benefit plan under this section upon making a determination that it
5 provides benefits that are equivalent to or more generous than the benefits
6 provided pursuant to this chapter and meets the requirements of subdivision
7 (a)(2) of this section.

8 (2)(A) Nothing in this section shall be construed to require the benefits
9 provided by a private insurance or benefit plan to be identical to the benefits
10 provided pursuant to this chapter.

11 (B) If the benefits provided by a proposed private insurance or
12 benefit plan differ from the benefits provided pursuant to this chapter, the
13 Commissioner shall determine whether the benefits provided by a proposed
14 private plan are equivalent to or more generous than the benefits provided
15 pursuant to this chapter by weighing the relative value of the private plan's
16 length of leave, wage replacement, and cost to employees against the
17 provisions of this chapter.

18 (c)(1) A private insurance or benefit plan shall only be permitted to become
19 effective on January 1 following its approval and shall remain in effect until it
20 is discontinued pursuant to subdivision (3) of this subsection.

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

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

9 (3) An employer may discontinue its private insurance or benefit plan on
10 January 1 of any year by filing notice of its intent to discontinue the plan with
11 the Commissioner of Financial Regulation and the Director on or before
12 November 1 of the prior year.

13 (d) A contested determination or a denial of benefits under a private plan
14 approved pursuant to this section shall be subject to appeal pursuant to section
15 2061 of this chapter.

16 (e)(1) The Commissioner of Financial Regulation may terminate the
17 approval of a private plan approved pursuant to this section if the
18 Commissioner determines that the terms and conditions of the plan have been
19 violated, including if the plan:

20 (A) fails to pay benefits in a timely manner or in a manner that is
21 consistent with the plan's terms;

1 (B) misuses private plan funds;

2 (C) fails to submit required reports to the Commissioner of Financial
3 Regulation or the Director; or

4 (D) fails to comply with any applicable provisions of law or with
5 rules adopted by the Commissioner of Financial Regulation or the Director.

6 (2) The Commissioner shall provide notice to the employer of the
7 termination of the plan that includes the date on which the private plan is
8 terminated and the reason for the termination.

9 (3) An employer may appeal the termination to the Commissioner in
10 accordance with rules adopted by the Commissioner.

11 (4) All private plan monies and funds shall, on the date of termination,
12 be transferred to the Director for deposit in the Family and Medical Leave
13 Insurance Special Fund created pursuant to section 2053 of this chapter. The
14 Director may collect any monies or funds that an employer fails to pay
15 pursuant to the provisions of this subdivision in a civil action in the Superior
16 Court.

17 (f) Each employee covered by a private plan on the date it is terminated
18 shall, for purposes of determining eligibility for benefits pursuant to the
19 provisions of this chapter, be treated as if the employer had paid contributions

1 for that employee pursuant to the provisions of section 2054 of this chapter
2 throughout the period of the employee's employment with the employer.

3 § 2061. APPEALS

4 (a)(1) An employer or individual aggrieved by a decision of the Director
5 relating to eligibility for benefits, the amount of benefits that a qualified
6 individual is entitled to receive, or the amount of contributions due may file
7 with the Director a petition for reconsideration within 30 days after receipt of
8 the decision. The petition shall set forth in detail the grounds upon which it is
9 claimed that the decision is erroneous and may include materials supporting
10 that claim.

11 (2) If an employer petitions the Director to reconsider a decision relating
12 to an application for benefits or the amount of benefits that a qualified
13 individual is entitled to receive, the Director shall promptly notify the
14 individual who applied for the benefits of the petition by ordinary, certified, or
15 electronic mail and provide the individual with an opportunity to file an answer
16 to the employer's petition.

17 (3) The Director shall promptly notify the employer or individual, or
18 both, as appropriate, of the Director's decision by ordinary, certified, or
19 electronic mail.

1 (b) An employer or individual aggrieved by the Director’s decision on
2 reconsideration may file an appeal with the Supreme Court within 30 days
3 after receiving the decision.

4 (c) Any determination, redetermination, finding of fact, conclusion of law,
5 decision, order, or judgment entered or made pursuant to this section shall only
6 be binding on the Division and all parties in that proceeding and is not binding,
7 conclusive, or admissible in any separate or subsequent action between an
8 individual and any other party brought before an arbitrator, court, or judge of
9 this State or of the United States, regardless of whether the prior proceeding
10 was between the same or related parties or involved the same facts.

11 § 2062. FALSE STATEMENT OR REPRESENTATION; PENALTY

12 (a)(1) An individual who intentionally makes a false statement or
13 representation for the purpose of obtaining any benefit or payment or to avoid
14 payment of any required contributions under the provisions of this chapter,
15 whether for themselves or for any other person, after notice and opportunity for
16 hearing, shall be prohibited from receiving benefits pursuant to this chapter for
17 a period of not less than one year and not more than three years as determined
18 to be appropriate by the Director.

19 (2) The penalty imposed pursuant to this section shall be in addition to
20 any liability incurred by the individual pursuant to section 2063 of this chapter.

1 (b) A person who intentionally makes a false statement to avoid payment of
2 any required contributions under the provisions of this chapter shall, after
3 notice and an opportunity for a hearing, be liable for:

4 (1) the full amount of unpaid contributions; and

5 (2) an administrative penalty of not more than \$5,000.00.

6 (c)(1) The administrative penalty imposed pursuant to subsection (b) of this
7 section may be collected in a civil action in Superior Court brought in the
8 name of the Director. If the action is successful, the Director shall be entitled
9 to recover the Division's costs and reasonable attorney's fees incurred in
10 bringing the action.

11 (2) Any amounts recovered and any penalties collected pursuant to this
12 section shall be deposited in the Fund.

13 § 2063. OVERPAYMENT OF BENEFITS; COLLECTION

14 (a)(1) Any individual who by nondisclosure or misrepresentation of a
15 material fact, by either the individual or another person, receives benefits that
16 the individual is not eligible to receive shall be liable to repay to the Division
17 the amount received in excess of the amount, if any, that the individual is
18 eligible to receive.

19 (2) Notwithstanding the provisions of subdivision (1) of this subsection,
20 an individual shall not be liable to repay an overpayment of benefits caused by
21 the Division's mistake or an unintentional error or omission by another person.

1 (3) Upon determining that an individual is liable for an overpayment of
2 benefits pursuant to subdivision (1) of this subsection, the Director shall
3 provide the individual with notice of the determination. The notice shall
4 include a statement that the individual is liable to repay to the Division the
5 amount of overpaid benefits and shall identify the basis of the overpayment
6 and the time period in which the benefits were paid. The notice shall also
7 provide information regarding the individual's right to appeal the
8 determination pursuant to the provisions of section 2061 of this chapter.

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

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

13 (2) The Director may collect the amounts due under this section in a
14 civil action in the Superior Court.

15 (3) An individual may, at any time, request that the Director reduce or
16 waive the amount for which the individual is liable pursuant to subsection (a)
17 of this section. Upon receipt of a request, the Director may reduce or waive
18 the amount for which an individual is liable for good cause or as the Director
19 deems appropriate and just.

20 (c) If an individual is liable to repay any amount pursuant to this section,
21 the Director may withhold, in whole or in part, any future benefits payable to

1 the individual pursuant to this chapter and credit the withheld benefits against
2 the amount due from the individual until it is repaid in full.

3 (d) In addition to the remedy provided pursuant to this section, an
4 individual who intentionally misrepresented or failed to disclose a material fact
5 with respect to the individual's claim for benefits may be subject to the
6 penalties provided pursuant to section 2062 of this chapter.

7 § 2064. RULEMAKING

8 (a) The Commissioner of Taxes, in consultation with the Director, shall
9 adopt rules as necessary to implement the provisions of this chapter related to
10 the collection of contributions pursuant to section 2054 of this chapter.

11 (b) The Commissioner of Financial Regulation, in consultation with the
12 Director, shall adopt rules related to the approval of private plans pursuant to
13 section 2060 of this chapter.

14 (c) The Director shall adopt rules as necessary to implement all other
15 provisions of this chapter.

16 § 2065. CONFIDENTIALITY OF INFORMATION

17 (a) Information obtained from an employer or individual in the
18 administration of this chapter 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 shall be exempt from public inspection
21 and copying under the Public Records Act. Such information shall not be

1 admissible as evidence in any action or proceeding other than one brought
2 pursuant to the provisions of this chapter.

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

4 (1) an individual or the individual's agent may be provided with
5 information to the extent necessary for the proper presentation of the
6 individual's claim for benefits or to inform the individual of the individual's
7 existing or prospective rights to benefits; and

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

12 § 2066. DISQUALIFICATIONS

13 An individual shall be disqualified from receiving benefits for any week in
14 which the individual has received:

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

17 (B) compensation for temporary partial disability related to the
18 serious illness or injury for which the individual is seeking benefits pursuant to
19 this chapter; or

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

1 § 2067. PROTECTION FROM RETALIATION OR INTERFERENCE

2 (a) An employer shall not discharge or in any other manner retaliate against
3 an employee who exercises or attempts to exercise the rights provided pursuant
4 to this chapter. The provisions against retaliation in subdivision 495(a)(8) of
5 this title shall apply to this chapter.

6 (b) An employer shall not interfere with, restrain, or otherwise prevent an
7 employee from exercising or attempting to exercise the employee's rights
8 pursuant to this chapter.

9 (c) An employer shall not treat any leave for which benefits are provided
10 pursuant to this chapter as an absence that may lead to or result in discipline,
11 discharge, demotion, suspension, or any other adverse employment action.

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

17 § 2068. NOTICE

18 (a) An employer shall post and maintain in a conspicuous place in and
19 about each of its places of business printed notices of the provisions of this
20 chapter on forms provided by the Director.

1 (b) An employer shall provide written notice of the provisions of this
2 chapter to new employees within 30 calendar days after the date on which they
3 are hired.

4 § 2069. EMPLOYER OBLIGATIONS; EMPLOYEE RIGHTS

5 (a) Nothing in this chapter shall be construed to diminish an employer's
6 obligation to comply with any collective bargaining agreement, employer
7 policy, or employment agreement that provides more generous benefits than
8 the benefits provided pursuant to this chapter.

9 (b) Nothing in this chapter shall be construed to diminish any rights,
10 privileges, and protections provided to an employee pursuant to a collective
11 bargaining agreement, employer policy, or employment agreement.

12 (c)(1) An employee taking family and medical leave shall be entitled to all
13 of the rights and protections provided pursuant to section 472 of this title and
14 the federal Family and Medical Leave Act, 29 U.S.C. §§ 2611–2654.

15 (2) An employee taking safe leave shall be entitled to all of the rights
16 and protections provided pursuant to section 472d of this title.

17 (d) Any agreement to waive the rights and protections provided to an
18 employee pursuant to this chapter shall be void.

19 Sec. 2. 32 V.S.A. § 3102(e) is amended to read:

20 (e) The Commissioner may, in the Commissioner's discretion and subject
21 to such conditions and requirements as the Commissioner may provide,

1 including any confidentiality requirements of the Internal Revenue Service,
2 disclose a return or return information:

3 * * *

4 (22) To the Treasurer, the Commissioner of Financial Regulation, and
5 the Director of the Division of Family and Medical Leave, provided the return
6 or return information relates to the provision of family and medical leave
7 insurance under 21 V.S.A. chapter 26.

8 Sec. 3. ADOPTION OF RULES

9 (a) On or before April 1, 2025, the Director of the Division of Family and
10 Medical Leave shall adopt rules necessary to implement the provisions of
11 21 V.S.A. chapter 26.

12 (b) On or before April 1, 2025, the Commissioner of Taxes, in consultation
13 with the Director of the Division of Family and Medical Leave, shall adopt
14 rules as necessary to carry out the provisions of 21 V.S.A. § 2054.

15 (c) On or before April 1, 2025, the Commissioner of Financial Regulation,
16 in consultation with the Director of the Division of Family and Medical Leave,
17 shall adopt rules as necessary to carry out the provisions of 21 V.S.A. § 2060.

18 (d) On or before October 1, 2026, the Director of the Division of Family
19 and Medical Leave shall adopt any necessary rules related to an employee
20 establishing that a significant personal bond that is or is like a family

1 relationship exists with another individual, regardless of whether a biological
2 or legal relationship exists between the employee and that individual.

3 Sec. 4. EDUCATION AND OUTREACH

4 (a) On or before June 1, 2025, the Director of the Division of Family and
5 Medical Leave shall develop and make available on the Division's website
6 information and materials to educate and inform employers and employees
7 about the Family and Medical Leave Insurance Program established pursuant
8 to 21 V.S.A. chapter 26.

9 (b) The Director shall make available translations of all information and
10 materials created pursuant to subsection (a) of this section on the Division's
11 website in the five most commonly spoken languages in Vermont after
12 English.

13 (c) The Division's website shall be accessible to individuals with
14 disabilities in accordance with WCAG 2.1 AA or a similar updated standard.

15 Sec. 5. APPROPRIATION; ADVANCE PAYMENT OF STATE

16 CONTRIBUTIONS

17 (a) The amount of \$20,000,000.00 is appropriated to the Family and
18 Medical Leave Insurance Special Fund from the General Fund.

19 (b) The amount appropriated pursuant to subsection (a) of this section shall
20 be considered an advance payment of the State's portion of the contributions
21 due for State employees pursuant to 21 V.S.A. § 2054(a). The State shall

1 receive a credit against the contributions due from the State pursuant to 21
2 V.S.A. § 2054 equal to 100 percent of the State’s portion of the contributions
3 due until the cumulative amount of the credit equals the amount appropriated
4 pursuant to subsection (a) of this section.

5 Sec. 6. ADEQUACY OF RESERVES; REPORT

6 Annually, on or before January 15, 2026, 2027, and 2028, the Director of
7 the Division of Family and Medical Leave, in consultation with the
8 Commissioners of Finance and Management, of Financial Regulation, and of
9 Taxes, shall submit a written report to the House Committees on
10 Appropriations; on General and Housing; and on Ways and Means and the
11 Senate Committees on Appropriations; on Economic Development, Housing
12 and General Affairs; and on Finance regarding the amount and adequacy of the
13 reserves in the Family and Medical Leave Insurance Special Fund and any
14 recommendations for legislative action necessary to ensure that an adequate
15 reserve is maintained in the Fund.

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

17 § 471. DEFINITIONS

18 As used in this subchapter:

19 (1) “Commissioner” means the Commissioner of Labor.

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

1 (3) “Employer” means an individual, organization, or governmental
2 body, partnership, association, corporation, legal representative, trustee,
3 receiver, trustee in bankruptcy, and any common carrier by rail, motor, water,
4 air, or express company doing business in or operating within this State which
5 for the purposes of parental leave employs 10 or more individuals who are
6 employed for an average of at least 30 hours per week during a year and for the
7 purposes of family leave employs 15 or more individuals for an average of at
8 least 30 hours per week during a year a person who employs one or more
9 individuals in Vermont.

10 (2)(4) “Employee” means a person who, either:

11 (A) in consideration of direct or indirect gain or profit, has been
12 continuously employed by the same employer for a period of one year for an
13 average of at least 30 hours per week; or

14 (B) is employed by an employer and, during at least two of the last
15 four completed calendar quarters, has received payments with respect to
16 services performed for the employer from which the employer is required to
17 withhold Vermont income tax pursuant to 32 V.S.A. chapter 151, subchapter 4.

18 (3)(5) “Family leave” means a leave of absence from employment by an
19 employee who works for an employer which employs 15 or more individuals
20 who are employed for an average of at least 30 hours per week during the year
21 for one of the following reasons:

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

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

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

9 (C) the employee's pregnancy;

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

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

13 (6) “Family member” means:

14 (A) regardless of age, an employee's biological, adopted, or foster
15 child; an employee's stepchild or legal ward; a child of the employee's spouse
16 or civil union or domestic partner; a child to whom the employee stands in loco
17 parentis; or an individual to whom the employee stood in loco parentis when
18 the individual was under 18 years of age;

19 (B)(i) a parent of an employee or an employee's spouse or civil union
20 or domestic partner, regardless of whether the relationship to the employee or

1 employee's spouse or civil union or domestic partner is a biological, foster,
2 adoptive, or step relationship;

3 (ii) a legal guardian of an employee or employee's spouse or civil
4 union or domestic partner; or

5 (iii) a person who stood in loco parentis when the employee or
6 employee's spouse or civil union or domestic partner was under 18 years of
7 age;

8 (C) A person to whom the employee is legally married under the laws
9 of any state or a civil union or domestic partner of an employee;

10 (D) A grandparent, grandchild, or sibling of the employee or the
11 employee's spouse or civil union or domestic partner, regardless of whether
12 the relationship to the employee or the employee's spouse or civil union or
13 domestic partner is a biological, foster, adoptive, or step relationship; or

14 (E) As shown by the employee, any other individual with whom the
15 employee has a significant personal bond that is or is like a family relationship,
16 regardless of biological or legal relationship.

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

1 ~~(5)~~(8) “Serious illness or injury” means an accident, injury, disease, or
2 physical or mental condition that:

3 (A) poses imminent danger of death;

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

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

7 Sec. 8. 21 V.S.A. § 472 is amended to read:

8 § 472. LEAVE

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

11 ~~(1) for parental leave, during the employee’s pregnancy and following~~
12 ~~the birth of an employee’s child or within a year following the initial~~
13 ~~placement of a child 16 years of age or younger with the employee for the~~
14 ~~purpose of adoption.~~

15 ~~(2) for family leave, for the serious illness of the employee or the~~
16 ~~employee’s child, stepchild or ward of the employee who lives with the~~
17 ~~employee, foster child, parent, spouse, or parent of the employee’s spouse.~~

18 (b) During the leave, at the employee’s option, the employee may use
19 accrued sick leave ~~or~~, vacation leave ~~or~~, any other accrued paid leave, ~~not to~~
20 ~~exceed six weeks~~ Family and Medical Leave Insurance benefits pursuant to
21 chapter 26 of this title, or short-term disability insurance or other insurance

1 benefits. Utilization of accrued paid leave, Family and Medical Leave
2 Insurance benefits, or insurance benefits shall not extend the leave provided
3 herein by this section.

4 * * *

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

8 (e)(1) An employee shall give the employee's employer reasonable written
9 notice of intent to take family leave under this subchapter. Notice shall include
10 the date the leave is expected to commence and the estimated duration of the
11 leave.

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

15 (3) In the case of an unanticipated serious illness or injury or a
16 premature birth, the employee shall give the employer notice of the
17 commencement of the leave as soon as practicable.

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

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

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

5 (f) Upon return from leave taken under this subchapter, an employee shall
6 be offered the same or comparable job at the same level of compensation,
7 employment benefits, seniority, or any other term or condition of the
8 employment existing on the day leave began. This ~~subchapter~~ subsection shall
9 not apply if, prior to requesting leave, the employee had been given notice or
10 had given notice that the employment would terminate. This subsection shall
11 not apply if the employer can demonstrate by clear and convincing evidence
12 that:

13 (1) during the period of leave the employee's job would have been
14 terminated or the employee laid off for reasons unrelated to the leave or the
15 condition for which the leave was granted; or

16 (2) the employee performed unique services and hiring a permanent
17 replacement during the leave, after giving reasonable notice to the employee of
18 intent to do so, was the only alternative available to the employer to prevent
19 substantial and grievous economic injury to the employer's operation.

20 (g) An employer may adopt a leave policy more generous than the leave
21 policy provided by this subchapter. Nothing in this subchapter shall be

1 construed to diminish an employer's obligation to comply with any collective
2 bargaining agreement or any employment benefit program or plan ~~which~~ that
3 provides greater leave rights than the rights provided by this subchapter. A
4 collective bargaining agreement or employment benefit program or plan may
5 not diminish rights provided by this subchapter. ~~Notwithstanding the~~
6 ~~provisions of this subchapter, an employee may, at the time a need for parental~~
7 ~~or family leave arises, waive some or all the rights under this subchapter~~
8 ~~provided the waiver is informed and voluntary and any changes in conditions~~
9 ~~of employment related to any waiver shall be mutually agreed upon between~~
10 ~~employer and employee.~~

11 (h) Except for serious illness of the employee, an employee who does not
12 return to employment with the employer who provided the family leave shall
13 return to the employer the value of any compensation that the employer paid to
14 or on behalf of the employee during the leave, except payments for accrued
15 ~~sick leave or vacation~~ leave. An employer may elect to waive the rights
16 provided pursuant to this subsection.

17 Sec. 9. 21 V.S.A. § 472d is added to read:

18 § 472d. SAFE LEAVE

19 (a) As used in this section:

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

21 (2) "Domestic violence" has the same meaning as in 15 V.S.A. § 1151.

1 (3) “Employer” means any person who employs one or more individuals
2 to perform services in Vermont.

3 (4) “Employee” means a person who either:

4 (A) in consideration of direct or indirect gain or profit, has been
5 continuously employed by the same employer for a period of six months for an
6 average of at least 20 hours per week; or

7 (B) is employed by an employer and, during at least two of the last
8 four completed calendar quarters, has received payments with respect to
9 services performed for the employer from which the employer is required to
10 withhold Vermont income tax pursuant to 32 V.S.A. chapter 151, subchapter 4.

11 (5) “Sexual assault” has the same meaning as in 15 V.S.A. § 1151.

12 (6) “Stalking” has the same meaning as in 15 V.S.A. § 1151.

13 (b)(1) In addition to any other leave provided pursuant to this subchapter,
14 an employee shall be entitled to take up to 12 weeks of leave in a 12-month
15 period if:

16 (A) the employee or the employee’s family member is a victim of
17 domestic violence, sexual assault, or stalking;

18 (B) the employee is using the leave for one of the following reasons
19 related to the domestic violence, sexual assault, or stalking:

20 (i) to seek or obtain medical care, counseling, or social or legal
21 services, either for themselves or for a family member;

1 (ii) to recover from injuries;

2 (iii) to participate in safety planning, either for themselves or for a
3 family member;

4 (iv) to relocate or secure safe housing, either for themselves or for
5 a family member; or

6 (v) to meet with a State’s Attorney or law enforcement officer;

7 and

8 (C) the employee is not the alleged perpetrator of the domestic
9 violence, sexual assault, or stalking.

10 (2)(A) An employee may use the leave provided pursuant to this
11 subsection (b) intermittently.

12 (B) An employee who uses leave intermittently shall be entitled to
13 take leave in increments of not less than one day.

14 (c) During the leave, at the employee’s option, the employee may use
15 accrued sick leave, vacation leave, or any other accrued paid leave. Use of
16 accrued paid leave shall not extend the leave provided pursuant to this section.

17 (d)(1)(A) If the need for a leave pursuant to this section is foreseeable, the
18 employee shall provide the employer with written notice of the need for the
19 leave as soon as practicable.

20 (B) An employee shall not be required to provide advance notice of
21 the need for leave caused by an emergency or other unforeseen event but shall

1 instead notify the employer that the leave was taken or is being taken within
2 three business days after commencing the leave.

3 (2)(A) An employer may require an employee to provide documentation
4 of the need for the leave from one of the following sources:

5 (i) a court or a law enforcement or other government agency;

6 (ii) a domestic violence, sexual assault, or stalking assistance
7 program;

8 (iii) a legal, clerical, medical, or other professional from whom the
9 employee, or the employee's family member, received counseling or other
10 assistance concerning domestic violence, sexual assault, or stalking; or

11 (iv) a self-certification of the employee's, or the employee's
12 family member's, status as a victim of domestic violence, sexual assault, or
13 stalking, signed under penalty of perjury, on a standard form adopted for that
14 purpose by:

15 (I) a federal or State government entity, including the Vermont
16 Department for Children and Families; or

17 (II) a nonprofit organization that provides support services to
18 protected tenants.

19 (B) An employer shall not disclose any information received
20 pursuant to this subdivision (d)(2) except to the extent:

21 (i) consented to by the employee in writing;

1 (ii) required pursuant to a court order; or

2 (iii) required pursuant to State or federal law.

3 (e) The employer shall continue employment benefits for the duration of a
4 leave taken pursuant to this section at the level and under the conditions
5 coverage would be provided if the employee continued in employment
6 continuously for the duration of the leave. The employer may require that the
7 employee contribute to the cost of benefits during the leave at the existing rate
8 of employee contribution.

9 (f) An employer shall post and maintain in a conspicuous place in and
10 about each of its places of business printed notices of the provisions of this
11 section on forms provided by the Commissioner of Labor.

12 (g)(1) Upon return from leave taken under this section, an employee shall
13 be offered the same or comparable job at the same level of compensation,
14 employment benefits, seniority, and any other term or condition of the
15 employment existing on the day leave began.

16 (2) This subsection shall not apply if, prior to requesting leave, the
17 employee had been given notice or had given notice that the employment
18 would terminate.

19 (3) This subsection shall not apply if the employer can demonstrate by
20 clear and convincing evidence that during the period of leave the employee's

1 job would have been terminated or the employee would have been laid off for
2 reasons unrelated to the leave or the reason for which the leave was taken.

3 (h)(1) An employer may adopt a leave policy more generous than the leave
4 provided by this section.

5 (2) Nothing in this section shall be construed to diminish an employer's
6 obligation to comply with any collective bargaining agreement or any
7 employment benefit program or plan that provides greater leave rights than the
8 rights provided by this section.

9 (3) A collective bargaining agreement or employment benefit program
10 or plan shall not diminish the rights provided by this section.

11 Sec. 10. EFFECTIVE DATES

12 (a) This section and Secs. 1, 2, 3, 4, 5, 6, and 9 shall take effect on July 1,
13 2023.

14 (b) Secs. 7 and 8 shall take effect on October 1, 2026.

15 (c) Contributions shall begin to be paid pursuant to 21 V.S.A. § 2054 on
16 July 1, 2025, and, beginning on October 1, 2026, employees may begin to
17 apply for and receive benefits pursuant to 21 V.S.A. chapter 26.