

**SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION**

S.F. No. 1385

(SENATE AUTHORS: COLEMAN, Rasmusson, Duckworth, Housley and Nelson)
DATE 02/08/2023 D-PG Introduction and first reading OFFICIAL STATUS
Referred to Commerce and Consumer Protection

1.1 A bill for an act
1.2 relating to commerce; authorizing certain insurers to offer paid family leave
1.3 insurance benefits; creating a tax credit; proposing coding for new law in Minnesota
1.4 Statutes, chapter 290; proposing coding for new law as Minnesota Statutes, chapter
1.5 63A.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. 63A.01 DEFINITIONS.

1.8 (a) As used in this chapter, the following terms have the meanings given.

1.9 (b) "Armed forces of the United States" means members of the National Guard and
1.10 Reserves.

1.11 (c) "Child" means a person who is:

1.12 (1) under 18 years of age, or 18 years of age or older and incapable of self-care as a
1.13 result of a mental or physical disability; and

1.14 (2) a biological, adopted, or foster son or daughter; a stepson or stepdaughter; a legal
1.15 ward; a son or daughter of a domestic partner; or a son or daughter of a person to whom the
1.16 employee stands in loco parentis.

1.17 (d) "Family leave" means leave taken by an employee from work for a reason specified
1.18 in section 63A.03.

1.19 (e) "Family member" means a child, spouse, parent, or grandparent, as defined in this
1.20 chapter, or any other person defined as a family member in an insurance policy.

1.21 (f) "Health care provider" means a person licensed under the public health laws of
1.22 Minnesota.

2.1 (g) "Parent" means a biological, foster, or adoptive parent; a stepparent; a legal guardian;
2.2 or other person who stood in loco parentis to the employee when the employee was a child.

2.3 (h) "Serious health condition" means an illness, injury, impairment, or physical or mental
2.4 condition, including organ or tissue transplant or donation, that involves inpatient care in a
2.5 hospital, hospice, or residential health care facility, continuing treatment, or continuing
2.6 supervision by a health care provider, as defined in an insurance policy. Continuing
2.7 supervision by a health care provider includes a period of incapacity that is permanent or
2.8 long term due to a condition for which treatment may not be effective and where the family
2.9 member is not receiving active treatment by a health care provider.

2.10 **Sec. 2. [63A.02] PAID FAMILY LEAVE INCOME REPLACEMENT BENEFITS.**

2.11 (a) An insurance company licensed to issue disability income insurance policies in
2.12 Minnesota may also offer paid family leave insurance benefits providing wage replacement
2.13 for the employee's income loss due to:

2.14 (1) the birth or adoption of a child by the employee;

2.15 (2) placement of a child with the employee for foster care;

2.16 (3) care of an employee's family member who has a serious health condition; or

2.17 (4) circumstances arising from the fact that the employee's family member is a service
2.18 member on active duty or has been notified of an impending call or order to active duty.

2.19 (b) The benefits may be offered either through a rider to a disability income insurance
2.20 policy or written as a separate group insurance policy purchased by an employer.

2.21 **Sec. 3. [63A.03] FAMILY LEAVE BENEFITS.**

2.22 Family leave benefits may be provided for leave taken from work by an employee to:

2.23 (1) participate in providing care, including physical or psychological care, for the
2.24 employee's family member that is made necessary by the family member's serious health
2.25 condition;

2.26 (2) bond with the employee's child during the first 12 months after the child's birth, or
2.27 the first 12 months after the placement of the child for adoption or foster care with the
2.28 employee;

2.29 (3) address a qualifying exigency, as interpreted under the Family and Medical Leave
2.30 Act, United States Code, title 29, section 2612(a)(1)(e), and Code of Federal Regulations,
2.31 title 29, sections 825.126(a)(1) to (8), arising from the fact that the spouse, child, or parent

3.1 of the employee is on active duty or has been notified of an impending call or order to active
3.2 duty in the armed forces of the United States;

3.3 (4) care for a family service member injured in the line of duty; or

3.4 (5) take other leave to provide care for a family member or other family leave, as specified
3.5 in an insurance policy.

3.6 **Sec. 4. [63A.04] EXPLANATION OF FAMILY LEAVE REASONS.**

3.7 An insurance policy must set forth the details and requirements regarding each reason
3.8 for covered family leave.

3.9 **Sec. 5. [63A.05] BENEFIT PERIOD.**

3.10 (a) An insurance policy must set the length of family leave benefits available for each
3.11 covered family leave reason as 52 consecutive calendar weeks. Fifty-two consecutive
3.12 calendar weeks may be calculated by:

3.13 (1) a calendar year;

3.14 (2) any fixed period starting on a particular date, including the policy effective date or
3.15 anniversary date;

3.16 (3) the period measured forward from the employee's first day of family leave;

3.17 (4) a rolling period measured by looking back from the employee's first day of family
3.18 leave; or

3.19 (5) any other method specified in the insurance policy.

3.20 (b) An insurance policy must set forth whether there is an unpaid waiting period and, if
3.21 so, the unpaid waiting period terms and conditions, which may include but are not limited
3.22 to whether:

3.23 (1) the waiting period runs over a period of consecutive calendar days;

3.24 (2) the waiting period is in addition to the annual allotment of family leave benefits;

3.25 (3) the waiting period must be met only once per benefit year; and

3.26 (4) the employee may work or receive paid time off or other compensation from the
3.27 employer during the waiting period.

3.28 **Sec. 6. [63A.06] AMOUNT OF FAMILY LEAVE BENEFITS; OTHER INCOME.**

3.29 (a) An insurance policy must set forth:

4.1 (1) the amount of benefits that are paid for covered family leave reasons;

4.2 (2) the definition of the wages or other income upon which the amount of family leave
4.3 benefits is based; and

4.4 (3) how the wages or other income is calculated.

4.5 (b) If family leave benefits are subject to offsets for wages, other income received, or
4.6 other income that the insured may be eligible for, the policy must set forth:

4.7 (1) all wages or other income that may be set off; and

4.8 (2) the circumstances under which wages or other income may be offset.

4.9 **Sec. 7. [63A.07] PERMISSIBLE LIMITATIONS AND EXCLUSIONS.**

4.10 Any limitations or exclusions must be set forth in an insurance policy and approved by
4.11 the commissioner.

4.12 **Sec. 8. [63A.08] OTHER PROVISIONS.**

4.13 Subdivision 1. **State may not act as insurer.** The state of Minnesota must not act as an
4.14 insurer under sections 63A.01 to 63A.08. The state must not provide or facilitate coverage
4.15 under sections 63A.01 to 63A.08 either by contract with a licensed insurer or otherwise.

4.16 Subd. 2. **Joint pool.** Any two or more employers or an association of employers may
4.17 jointly issue paid family leave insurance benefits as set forth under sections 62H.01 to
4.18 62H.08.

4.19 **Sec. 9. [290.0687] SMALL BUSINESS TAX CREDITS FOR PAID FAMILY LEAVE**
4.20 **INSURANCE BENEFITS.**

4.21 Subdivision 1. **Employer tax credit.** (a) A qualified employer is allowed a credit against
4.22 the taxes imposed under this chapter equal to the amount of the employer's contributions
4.23 made to paid family leave insurance benefits on behalf of a qualified employee.

4.24 (b) The credit allowed to an employer under this subdivision for a qualifying employee
4.25 for a taxable year is limited to the lesser of the amounts listed in clauses (1) and (2), to the
4.26 extent not deducted in determining federal taxable income:

4.27 (1) \$3,000; or

4.28 (2) the total amount of the qualified employer's contributions made for paid family leave
4.29 insurance benefits on behalf of a qualified employee.

5.1 Subd. 2. **Definitions.** (a) For purposes of this section, the terms in this subdivision have
5.2 the meanings given unless the context clearly indicates otherwise.

5.3 (b) "Employee" has the meaning given in section 290.92, subdivision 1, clause (3).

5.4 (c) "Family leave" means leave for any purpose allowed under paid family leave insurance
5.5 benefits authorized under sections 63A.01 to 63A.08.

5.6 (d) "Qualified employer" means an employer subject to the withholding requirements
5.7 under section 290.92 who:

5.8 (1) employs 50 or fewer employees in Minnesota; and

5.9 (2) makes a contribution to paid family leave insurance benefits authorized under sections
5.10 63A.01 to 63A.08.

5.11 (e) "Qualifying employee" means an employee who has been employed by the qualified
5.12 employer for at least one year.

5.13 (f) "Tax imposed under this chapter" means the taxes imposed under sections 290.06,
5.14 290.091, and 290.0921, but excludes the fee under section 290.0922.

5.15 Subd. 3. **Nonresidents and part-year residents.** For a nonresident or part-year resident,
5.16 the credit must be allocated using the percentage calculated in section 290.06, subdivision
5.17 2c, paragraph (e).

5.18 Subd. 4. **Carryover.** If the credit allowed under subdivision 1 exceeds the tax imposed
5.19 under this chapter, the excess is a credit carryover to each of the five succeeding taxable
5.20 years. The entire amount of the excess unused credit must be carried first to the earliest
5.21 taxable year to which the amount may be carried. The unused portion of the credit must be
5.22 carried to the following taxable year. A credit must not be carried to a taxable year more
5.23 than five years after the taxable year in which the credit was earned.

5.24 Sec. 10. **EFFECTIVE DATE.**

5.25 Sections 1 to 8 are effective January 1, 2024. Section 9 is effective for tax years beginning
5.26 after December 31, 2023.