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H.107

Introduced by Representatives Scheu of Middlebury, Copeland-Hanzas of  
Bradford, Young of Greensboro, Ancel of Calais, Anthony of  
Barre City, Austin of Colchester, Bartholomew of Hartland,  
Birong of Vergennes, Bock of Chester, Briglin of Thetford,  
Brumsted of Shelburne, Burke of Brattleboro, Campbell of  
St. Johnsbury, Carroll of Bennington, Chesnut-Tangerman of  
Middletown Springs, Christensen of Weathersfield, Christie of  
Hartford, Cina of Burlington, Coffey of Guilford, Colburn of  
Burlington, Colston of Winooski, Conlon of Cornwall, Cordes  
of Lincoln, Demrow of Corinth, Dolan of Waitsfield, Donovan  
of Burlington, Durfee of Shaftsbury, Elder of Starksboro,  
Emmons of Springfield, Gardner of Richmond, Giambatista of  
Essex, Gonzalez of Winooski, Grad of Moretown, Haas of  
Rochester, Hashim of Dummerston, Hill of Wolcott, Hooper of  
Montpelier, Hooper of Randolph, Hooper of Burlington,  
Houghton of Essex, Howard of Rutland City, James of  
Manchester, Jessup of Middlesex, Killacky of South Burlington,  
Kitzmiller of Montpelier, Kornheiser of Brattleboro, Krowinski  
of Burlington, LaLonde of South Burlington, Lanpher of  
Vergennes, Lippert of Hinesburg, Long of Newfane, Macaig of

1 Williston, Masland of Thetford, McCarthy of St. Albans City,  
2 McCormack of Burlington, McCullough of Williston, Mrowicki  
3 of Putney, Notte of Rutland City, Noyes of Wolcott, Ode of  
4 Burlington, O’Sullivan of Burlington, Partridge of Windham,  
5 Patt of Worcester, Pugh of South Burlington, Rachelson of  
6 Burlington, Ralph of Hartland, Redmond of Essex, Sheldon of  
7 Middlebury, Squirrell of Underhill, Stevens of Waterbury,  
8 Sullivan of Burlington, Szott of Barnard, Toleno of Brattleboro,  
9 Townsend of South Burlington, Troiano of Stannard, Walz of  
10 Barre City, White of Hartford, Wood of Waterbury, Yacovone  
11 of Morristown, and Yantachka of Charlotte

12 Referred to Committee on

13 Date:

14 Subject: Labor; employment practices; paid family leave

15 Statement of purpose of bill as introduced: This bill proposes to create a Paid  
16 Family Leave Insurance Program within the Departments of Labor and Taxes  
17 that will be funded by contributions from employers and employees. The bill  
18 also proposes to amend Vermont’s existing Parental and Family Leave Act to  
19 make it applicable to additional employers and to clarify certain provisions.

20 An act relating to paid family leave

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

2 ~~Sec. 1. 21 V.S.A. § 471 is amended to read:~~

3 § 471. DEFINITIONS

4 As used in this subchapter:

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

13 \* \* \*

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

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

19 (B) the serious illness of the employee's child, stepchild or ward who  
20 lives with the employee, foster child, parent, spouse, or parent of the  
21 ~~employee's spouse,~~

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

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

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

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

9 ~~(5)(4) "Serious illness" means an accident, disease, or physical or~~  
10 ~~mental condition that:~~

11 \* \* \*

12 ~~(5) "Commissioner" means the Commissioner of Labor.~~

13 Sec. 2. 21 V.S.A. § 472 is amended to read:

14 § 472. FAMILY LEAVE

15 (a) During any 12-month period, an employee shall be entitled to take  
16 unpaid leave for a period not to exceed 12 weeks for the following reasons:

17 (1) ~~for parental leave, during the employee's pregnancy and;~~

18 ~~(2) following the birth of an the employee's child or;~~

19 ~~(3) within a year following the initial placement of a child 16 years of~~  
20 ~~age or younger with the employee for the purpose of adoption, or foster care;~~

21 ~~(2)(4) for family leave, for the serious illness of the employee, or~~

1 ~~(5) the serious illness of the employee's child, stepchild or ward of the~~  
2 employee who lives with the employee, foster child, parent, spouse, or parent  
3 of the employee's spouse.

4 (b) During the leave, at the employee's option, the employee may use  
5 accrued sick leave or, vacation leave or, any other accrued paid leave, not to  
6 exceed six weeks Parental and Family Leave Insurance benefits pursuant to  
7 subchapter 13 of this chapter, or short-term disability insurance or other  
8 insurance benefits. ~~Utilization~~ Use of accrued paid leave, Parental and Family  
9 Leave Insurance benefits, or other insurance benefits shall not extend the leave  
10 provided ~~herein~~ by this section.

11 \* \* \*

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

15 (e)(1) An employee shall give his or her employer reasonable written  
16 notice of intent to take family leave under this subchapter. Notice shall  
17 include the date the leave is expected to commence and the estimated duration  
18 of the leave.

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

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

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

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

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

11 \* \* \*

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

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

19 Subchapter 13. Parental and Family Leave Insurance

20 § 571. DEFINITIONS

21 As used in this subchapter.

1 (1) "Employee" means an individual who receives payments with  
2 respect to services performed for an employer from which the employer is  
3 required to withhold Vermont income tax pursuant to 32 V.S.A. chapter 151,  
4 subchapter 4.

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

9 (3) "Parental and family leave" means a leave of absence from  
10 employment by an employee for:

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

14 (B) a serious illness of the employee's child, stepchild or ward who  
15 lives with the employee, foster child, parent, spouse, or parent of the  
16 employee's spouse;

17 (C) the employee's pregnancy;

18 (D) the birth of the employee's child; or

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

1 ~~(4) “Qualifying employee” means an individual who has earned wages~~  
2 in Vermont during the last 12 months in an amount that is equal to or greater  
3 than 1,040 hours at the minimum wage established pursuant to section 384 of  
4 this chapter.

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

9 (6) “Serious illness” means an accident, disease, or physical or mental  
10 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 (7) “Wages” means payments from an employer to an employee that are  
16 subject to income tax withholding pursuant to 32 V.S.A. chapter 151,

17 subchapter 4.



~~§ 572. PARENTAL AND FAMILY LEAVE INSURANCE: SPECIAL~~

FUND; ADMINISTRATION

(a)(1) The Parental and Family Leave Insurance Program is established for the provision of Parental and Family Leave Insurance benefits to eligible employees pursuant to this section.

(2)(A) The Commissioner of Taxes shall administer the collection of contributions, the determination of monetary eligibility for benefits, and the issuance of benefits checks for the program.

(B) The Commissioner of Labor shall administer the receipt and processing of benefits applications, the determination of eligibility for benefits, the collection of overpaid benefits, and all other aspects of the program that are not administered by the Commissioner of Taxes.

(b) The Parental and Family Leave Insurance Special Fund is created pursuant to 32 V.S.A. chapter 7, subchapter 5. The Fund may be expended by the Commissioners of Labor and of Taxes for the administration of the Parental and Family Leave Insurance Program and payment of Parental and Family Leave Insurance benefits provided pursuant to this section. All interest earned on Fund balances shall be credited to the Fund.

(c)(1)(A) The Fund shall consist of contributions equal to 0.93 percent of each employee's covered wages of which one-half shall be deducted and

1 ~~withheld by an employer from an employee's wages and one-half shall be paid~~  
2 by the employee's employer.

3 (B) In lieu of deducting and withholding the full amount of the  
4 contribution pursuant to subdivision (A) of this subdivision (1), an employer  
5 may elect to pay all or a portion of the contributions due from the employee's  
6 covered wages.

7 (C) As used in this subsection, the term "covered wages" does not  
8 include the amount of wages paid to an employee after he or she has received  
9 wages equal to \$150,000.00. Beginning on January 1, 2021, and on each  
10 subsequent January 1, the amount of wages included in the term "covered  
11 wages" shall be increased by the percentage increase of the Consumer Price  
12 Index, CPI-U, U.S. city average, not seasonally adjusted, or successor index,  
13 as calculated by the U.S. Department of Labor or successor agency for the  
14 12 months preceding the previous September 1. The amount of wages  
15 included in the term "covered wages" shall not be decreased.

16 (2)(A) Notwithstanding subdivision (1)(A) of this subsection (c), the  
17 General Assembly shall annually establish the rate of contribution for the next  
18 fiscal year. The rate shall equal the amount necessary to provide Parental and  
19 Family Leave Insurance benefits pursuant to this subchapter, to maintain a  
20 reserve equal to at least nine months of the projected benefit payments for the  
21 next fiscal year, and to administer the Parental and Family Leave Insurance

1 ~~Program during the next fiscal year, adjusted by any balance in the Fund from~~  
2 ~~the prior fiscal year.~~

3 (B) On or before February 1 of each year, the Commissioner of  
4 Labor, in consultation with the Commissioner of Taxes, shall report to the  
5 General Assembly the rate of contribution necessary to provide Parental and  
6 Family Leave Insurance benefits pursuant to this subchapter, to maintain a  
7 reserve equal to at least nine months of the projected benefit payments for the  
8 next fiscal year, and to administer the Program during the next fiscal year,  
9 adjusted by any balance in the Fund from the prior fiscal year.

10 (d) The Commissioner of Taxes shall require the withholding of the  
11 contributions required pursuant to subsection (c) of this section from wages  
12 paid by any employer, as if the contributions were an additional Vermont  
13 income tax subject to the withholding requirements of 32 V.S.A. § 5841(a).  
14 The administrative and enforcement provisions of 32 V.S.A. chapter 151,  
15 subchapter 4 shall apply to the withholding requirement under this section as if  
16 the contributions withheld were a Vermont income tax.

17 § 573. BENEFITS

18 (a) A qualified employee shall be permitted to receive a total of not more  
19 than 12 weeks of Parental and Family Leave Insurance benefits in a 12-month  
20 period for parental and family leave taken by the employee.

1 ~~(b) A qualified employee awarded Parental and Family Leave Insurance~~  
2 ~~benefits under this section shall receive 100 percent of his or her average~~  
3 ~~weekly wage or an amount equal to a 40-hour workweek paid at a rate double~~  
4 ~~that of the payable wage, as determined by the Joint Fiscal Office pursuant to~~  
5 ~~2 V.S.A. § 505, whichever is less.~~

6 ~~(c) A qualified employee who receives Parental and Family Leave~~  
7 ~~Insurance benefits for an intermittent leave or for a portion of a week, shall~~  
8 ~~receive a prorated benefit amount.~~

9 ~~(d) A family leave or a parental and bonding leave for which benefits are~~  
10 ~~paid pursuant to this subchapter shall run concurrently with a leave taken~~  
11 ~~pursuant to section 472 of this title or the federal Family and Medical Leave~~  
12 ~~Act, 29 U.S.C. §§ 2611–2654.~~

13 § 574. APPLICATION FOR BENEFITS; PAYMENT; TAX

14 WITHHOLDING

15 ~~(a) A qualified employee shall file an application for Parental and Family~~  
16 ~~Leave Insurance benefits with the Commissioner of Labor under this section~~  
17 ~~on a form provided by the Commissioner. The Commissioner shall determine~~  
18 ~~whether the qualified employee is eligible to receive Parental and Family~~  
19 ~~Leave Insurance benefits based on the following criteria:~~

20 ~~(1) The purposes for which the claim is made are adequately~~  
21 ~~documented pursuant to rules adopted by the Commissioner.~~

1 ~~(2) The Commissioner of Taxes certifies that the individual is a~~  
2 ~~qualified employee.~~

3 ~~(3) The qualified employee satisfies the eligibility requirements for the~~  
4 ~~requested leave and has specified the duration of the leave.~~

5 ~~(4) The benefits are being requested in relation to a family leave or a~~  
6 ~~parental and bonding leave.~~

7 ~~(b)(1) The Commissioner of Labor shall make a determination of each~~  
8 ~~claim not later than five business days after the date the claim is filed, and~~  
9 ~~Parental and Family Leave Insurance benefits shall be paid from the Fund~~  
10 ~~created pursuant to this section. The Commissioner may extend the time in~~  
11 ~~which to make a determination of a claim by not more than five business days~~  
12 ~~if necessary to obtain documents or information that are needed to make the~~  
13 ~~determination.~~

14 ~~(2) The first benefit payment shall be sent to a qualified employee~~  
15 ~~within 14 days after his or her claim is approved, and subsequent payments~~  
16 ~~shall be sent biweekly.~~

17 ~~(3) The provisions of section 1367 of this title shall apply to Parental~~  
18 ~~and Family Leave Insurance benefits.~~

19 ~~(c)(1) An individual filing a claim for benefits pursuant to this section~~  
20 ~~shall, at the time of filing, be advised that Parental and Family Leave~~

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

3 (2) The Commissioner of Labor shall follow all procedures specified by  
4 26 U.S.C. chapter 24 and 32 V.S.A. chapter 151, subchapter 4 pertaining to the  
5 withholding of income tax.

6 § 575. REINSTATEMENT; SENIORITY AND BENEFITS PROTECTED

7 (a) The employer of an employee who receives Parental and Family Leave  
8 Insurance benefits under this subchapter shall reinstate the employee at the  
9 conclusion of his or her family leave or parental and bonding leave, provided  
10 the employee is not out of work for a continuous period in excess of 12 weeks.  
11 The employee shall be reinstated in the first available suitable position given  
12 the position he or she held at the time his or her leave began.

13 (b) Upon reinstatement, the employee shall regain seniority and any unused  
14 accrued paid leave he or she was entitled to prior to the family leave or  
15 parental and bonding leave, less any accrued paid leave used during the family  
16 leave or parental and bonding leave.

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

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

20 (A) the employee had been given notice, or had given notice, prior to  
21 the beginning of his or her leave;

1 ~~(B) the employee's position would have terminated of its own terms~~  
2 prior to any reinstatement he or she would otherwise be entitled to under this  
3 section,

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

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

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

8 or

9 (D) more than two years have elapsed since the conclusion of the  
10 employee's leave.

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

17 (2) A copy of the complaint shall be filed with the Commissioner of  
18 Labor.

19 (3) The court shall award reasonable attorney's fees to the employee if  
20 he or she prevails.

1 § 576. ELECTIVE COVERAGE

2 (a)(1) A self-employed person may elect to obtain coverage under the  
3 Parental and Family Leave Insurance Program for a period of three years by  
4 filing a notice of his or her election with the Commissioner of Taxes on a form  
5 provided by the Commissioner.

6 (2) The provisions of sections 573, 574, 578, 580, 581, and 582 of this  
7 chapter shall apply to a self-employed person who elects to obtain coverage  
8 pursuant to this section in the same manner as if he or she were an employee.

9 (b)(1) A person who elects to obtain coverage pursuant to this subsection  
10 shall:

11 (A) contribute an amount equal to 0.93 percent of his or her covered  
12 work income at times determined by the Commissioner; and

13 (B) provide to the Commissioner any documentation of his or her  
14 work income and any related information that the Commissioner determines is  
15 necessary.

16 (2) As used in this section, "covered work income" means an amount of  
17 working income earned by a self-employed person that is equal to the amount  
18 of covered wages pursuant to subdivision (c)(1)(C) of section 572 of this  
19 chapter.

20 (c) A person who elects coverage pursuant to this section shall be eligible  
21 to file a claim for and receive Parental and Family Leave Insurance benefits if



1 ~~he or she has made contributions to the Fund on the amount of wages required~~  
2 to be a qualified employee as that term is defined pursuant to subdivision  
3 571(4) of this subchapter.

4 (d)(1) A person who elects coverage pursuant to this section may terminate  
5 his or her coverage at the end of the three-year period by providing the  
6 Commissioner with written notice of the termination at least 30 days before  
7 the end of the period.

8 (2) If a person who elects coverage pursuant to this subsection does not  
9 terminate it at the end of the initial three-year period, he or she may terminate  
10 the coverage at the end of any succeeding annual period by providing the  
11 Commissioner with written notice of the termination at least 30 days before  
12 the end of the period.

13 (3) Notwithstanding subdivisions (1) and (2) of this subsection, a person  
14 who, after electing to obtain coverage pursuant to this section, becomes an  
15 employee or stops working in Vermont, may elect to terminate his or her  
16 coverage pursuant to this section by providing the Commissioner with  
17 30 days' written notice in accordance with rules adopted by the Commissioner.

18 (e) Nothing in this section shall be construed to prevent an individual who  
19 is both an employee and a self-employed person from electing to obtain  
20 coverage pursuant to this section.

1 § 577. APPEALS

2 (a)(1) An employer or individual aggrieved by a decision of the  
3 Commissioner of Labor under section 574 or 581 of this subchapter may file  
4 with the Commissioner a petition for reconsideration within 30 days after  
5 receipt of the decision. The petition shall set forth in detail the grounds upon  
6 which it is claimed that the decision is erroneous and may include materials  
7 supporting that claim.

8 (2) If an employer petitions the Commissioner to reconsider a decision  
9 pursuant to section 574 or 581 of this subchapter, the Commissioner shall  
10 promptly notify the individual of the petition by ordinary, certified, or  
11 electronic mail and provide him or her with an opportunity to file an answer to  
12 the employer's petition.

13 (3) The Commissioner shall promptly notify the employer or individual,  
14 or both, of his or her decision by ordinary, certified, or electronic mail.

15 (b)(1) An employer or individual aggrieved by the Commissioner's  
16 decision on reconsideration may file an appeal with a departmental  
17 administrative law judge within 30 days after receiving the Commissioner's  
18 decision. The appeal shall set forth in detail the grounds upon which it is  
19 claimed that the decision is erroneous.

20 (2) The administrative law judge shall, upon not less than five business  
21 days' notice, hold a hearing on the appeal as provided pursuant to rules

1 ~~ted by the Commissioner. After the hearing, all parties to the appeal shall be~~  
2 promptly notified by ordinary, certified, or electronic mail of the findings of  
3 fact, conclusions, and decision of the administrative law judge.

4 (c) Any party may appeal the administrative law judge's decision to the  
5 Supreme Court within 30 days after receiving the decision.

6 (d) The provisions of section 1353 of this title shall apply to all  
7 determinations, redeterminations, findings of fact, conclusions of law,  
8 decisions, orders, or judgments entered or made pursuant to this section.

9 § 578. FALSE STATEMENT OR REPRESENTATION; PENALTY

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

1 § 579. RULEMAKING

2 (a) The Commissioner of Taxes shall adopt rules as necessary to implement  
3 the provisions of this subchapter related to the collection of contributions  
4 pursuant to section 572 of this subchapter and the determination of monetary  
5 eligibility for benefits.

6 (b) The Commissioner of Labor shall adopt rules as necessary to  
7 implement all other provisions of this subchapter.

8 § 580. CONFIDENTIALITY OF INFORMATION

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

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

17 (1) an individual or his or her duly authorized agent may be provided  
18 with information to the extent necessary for the proper presentation of his or  
19 her claim for benefits or to inform him or her of his or her existing or  
20 prospective rights to benefits, and

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

5 § 581. 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 compensation benefits under the law of any state.

12 § 582. OVERPAYMENT OF BENEFITS; COLLECTION

13 (a)(1) Any individual who by nondisclosure or misrepresentation of a  
14 material fact, by him or her, or by another person, has received Parental and  
15 Family Leave Insurance benefits when he or she failed to fulfill a requirement  
16 for the receipt of benefits pursuant to this chapter or while he or she was  
17 disqualified from receiving benefits pursuant to section 580 of this chapter  
18 shall be liable to repay to the Commissioner of Labor the amount received.

19 (2) Upon determining that an individual has received benefits under this  
20 chapter that he or she was not entitled to, the Commissioner of Labor shall  
21 provide the individual with notice of the determination. The notice shall

1 make a statement that the individual is liable to repay to the Commissioner the  
2 amount of overpaid benefits and shall identify the basis of the overpayment  
3 and the time period in which the benefits were paid.

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

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

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

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

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

20 (d) In addition to the remedy provided pursuant to this section, an  
21 individual who intentionally misrepresented or failed to disclose a material fact

1 ~~with respect to his or her claim for benefits may be subject to the penalties~~  
2 ~~provided pursuant to section 577 of this title.~~

3 Sec. 4. ADOPTION OF RULES

4 (a) On or before April 1, 2020, the Commissioner of Taxes shall  
5 adopt rules necessary to implement the provisions of 21 V.S.A. chapter 5,  
6 subchapter 13 related to the collection of contributions and the determination  
7 of monetary eligibility, which shall include:

8 (1) procedures for the collection of contributions;

9 (2) procedures for the issuance of benefits payments; and

10 (3) reporting and record-keeping requirements for employers.

11 (b) On or before April 1, 2020, the Commissioner of Labor shall adopt  
12 rules necessary to implement all other provisions of 21 V.S.A. chapter 5,  
13 subchapter 13, which shall include:

14 (1) procedures for receiving and processing applications for benefits;

15 (2) acceptable documentation for demonstrating eligibility for benefits;

16 (3) forms and requirements for providing certification from a health  
17 care provider of the need for family leave that are modeled on the federal rules  
18 governing certification of a serious health condition under the Family and  
19 Medical Leave Act,

1 ~~(4) forms and procedures for obtaining authorization for an individual's~~  
2 health care provider to disclose to the Commissioner information necessary to  
3 make a determination of the individual's eligibility for benefits; and

4 (5) procedures for appealing a decision pursuant to 21 V.S.A. § 574 that  
5 are modeled, to the extent possible, on the appeals process provided for  
6 determinations of benefits in relation to unemployment insurance.

7 Sec. 5. EDUCATION AND OUTREACH

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

13 Sec. 6. ESTABLISHMENT OF PARENTAL AND FAMILY LEAVE

14 INSURANCE PROGRAM; EXPENDITURES FROM SPECIAL  
15 FUND

16 Beginning on July 1, 2019, the Commissioner of Finance and Management  
17 may, pursuant to 32 V.S.A. § 588(4)(C), issue warrants for expenditures from  
18 the Parental and Family Leave Insurance Special Fund necessary to establish  
19 the Parental and Family Leave Insurance Program in anticipation of the receipt  
20 on or after July 1, 2020 of contributions submitted pursuant to 21 V.S.A.  
21 § 572.



1 Sec. 7. ADEQUACY OF RESERVES; REPORT

2 Annually, on or before January 15, 2022, 2023, and 2024, the  
3 Commissioners of Labor and of Taxes, in consultation with the Commissioners  
4 of Finance and Management and of Financial Regulation, shall submit a  
5 written report to the House Committees on Appropriations, on General,  
6 Housing, and Military Affairs, and on Ways and Means and the Senate  
7 Committees on Appropriations, on Economic Development, Housing and  
8 General Affairs, and on Finance regarding the amount and adequacy of the  
9 reserves in the Parental and Family Leave Insurance Special Fund and any  
10 recommendations for legislative action necessary to ensure that an adequate  
11 reserve is maintained in the Fund.

12 Sec. 8. 21 V.S.A. § 1344 is amended to read:

13 § 1344. DISQUALIFICATIONS

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

15 \* \* \*

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

18 \* \* \*

19 (F) Parental and Family Leave Insurance benefits pursuant to  
20 chapter 5, subchapter 13 of this title.

21

Sec. 9. EFFECTIVE DATES

(a) This section and Secs. 3, 4, 5, 6, and 7 shall take effect on July 1, 2019.

(b) Secs. 1, 2, and 8 shall take effect on October 1, 2021.

(c) Contributions shall begin being paid pursuant to 21 V.S.A. § 572 on July 1, 2020, and, beginning on October 1, 2021, employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

Sec. 1. PURPOSE

It is the intent of the General Assembly that:

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

(2) the Commissioner of Labor shall seek a private insurance carrier to provide the benefits required under the Program; and

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

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

Subchapter 13. Family and Medical Leave Insurance

§ 571. DEFINITIONS

As used in this subchapter:

(1) "Average weekly wage" means the employee's total wages from his or her two highest-earning quarters in the last four completed calendar quarters divided by 26.

(2) "Bonding leave" means a leave of absence from employment by an employee for:

(A) the employee's pregnancy;

(B) the birth of the employee's child; or

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

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

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

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

(6) "Family member" means the employee's.

~~(A) child, step child or ward who lives with the employee, or foster child;~~

~~(B) spouse, domestic partner, or civil union partner;~~

~~(C) parent or the parent of the employee's spouse, domestic partner, or civil union partner;~~

~~(D) grandchild;~~

~~(E) grandparent; or~~

~~(F) a child for whom the employee stands in loco parentis or an individual who stood in loco parentis for the employee when he or she was a child.~~

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

~~(8) "Medical leave" means a leave of absence from employment by an employee for:~~

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

~~(B) a serious illness of the employee's family member;~~

~~(9) "Qualified employee" means an employee who has.~~

(A) earned wages in at least six months during the last four completed calendar quarters; and

(B) earned wages during the last four completed calendar quarters in an amount that is equal to or greater than 1,040 hours at the minimum wage established pursuant to section 384 of this chapter.

(10) "Serious illness" means an accident, disease, or physical or mental condition that:

(A) poses imminent danger of death;

(B) requires inpatient care in a hospital; or

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

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

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

§ 572. FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM;

ADMINISTRATION

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

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

~~(2) On or before July 15, 2019, the Commissioner of Labor, in consultation with the Commissioners of Financial Regulation, of Human Resources, and of Taxes, shall develop and issue a request for proposals for an insurance carrier to provide family and medical leave insurance that satisfies the requirements of this subchapter. An insurance carrier shall not be selected unless it can demonstrate that it would be able to provide the required family and medical leave insurance benefits and comply with the provisions of this subchapter in a more cost-effective manner than if the Family and Medical Leave Insurance Program were administered by the State.~~

~~(3) The Commissioner of Labor, in consultation with the Commissioners of Financial Regulation, of Human Resources, and of Taxes, shall evaluate the proposals received in response to the request for proposals and shall select the proposal that the Commissioner determines:~~

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

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

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

~~(4) An agreement with an insurance carrier to provide family and medical leave insurance pursuant to this subsection shall include a clause that permits the Commissioner of Labor to terminate the agreement for noncompliance with this chapter.~~

~~(5)(A) An agreement with an insurance carrier pursuant to this subsection shall be for a period of not more than four years.~~

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

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

~~(2)(A) On or before July 1, 2019, the Commissioner of Financial Regulation, in consultation with the Commissioners of Human Resources, of Labor, and of Taxes, shall develop and issue a request for information related to the provision of family and medical leave insurance by a private insurance~~

~~carrier on behalf of the State that satisfies the requirements of this subchapter.~~  
~~The request for information shall also seek input regarding the cost and administrative feasibility of the insurance carrier administering the collection of contributions on behalf of the Department of Taxes pursuant to section 574 of this subchapter.~~

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

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

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

~~(A) best satisfies the requirements of this subchapter,~~



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

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

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

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

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

~~(c)(1) In the event that the Commissioner of ~~Labor~~ Financial Regulation is unable to secure a suitable insurance carrier pursuant to subsection (b) of this section, the Paid Family and Medical Leave Insurance Program shall be~~

~~nistered by the Department of Labor pursuant to the provisions of this subchapter.~~

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

§ 573. CONTRIBUTIONS

~~(a) An employer that does not elect to meet its obligations under this subchapter as provided pursuant to section 577 shall remit the contributions required by subsection (b) of this section to the Commissioner of Taxes on a quarterly basis beginning with the calendar quarter that starts on January 1, 2020.~~

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

~~(A) for the two calendar quarters between January 1, 2020 and June 30, 2020, 0.20 percent of each employee's covered wages; and~~

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

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

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

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

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

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

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

~~(2) On or before February 1 of each year, the Commissioner of Labor in consultation with the insurance carrier that the State has contracted with, if any, and the Commissioners of Financial Regulation and of Taxes, shall report to the General Assembly the rate of contribution necessary to provide Family and Medical Leave Insurance benefits pursuant to this subchapter.~~

~~administer the Program during the next fiscal year, and, if necessary, to ensure that it is adequately funded.~~

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

§ 574. COLLECTION OF CONTRIBUTIONS; REMITTANCE

~~(a)(1) The Commissioner of Taxes shall collect all contributions required pursuant to section 573 of this subchapter and deposit them into the Family and Medical Leave Insurance Special Fund until the Commissioner remits them to the private insurance carrier contracted with by the Commissioner of Labor pursuant to section 572 of this subchapter.~~

~~(2) In the event that the Commissioner of Labor does not contract with a private insurance carrier to provide family and medical leave insurance that satisfies the requirements of this subchapter, the Commissioner of Taxes shall deposit the collected contributions into the Family and Medical Leave Insurance Special Fund for use by the Commissioner of Labor in the administration of this subchapter and the payment of benefits.~~

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

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

~~(c) The Commissioner of Taxes may enter into a memorandum of understanding with the private insurance carrier contracted with by the Commissioner of Labor pursuant to section 572 of this subchapter, the Commissioner of Labor, or both, as the Commissioner of Taxes determines is necessary to carry out the provisions of this section.~~

§ 574. COLLECTION OF CONTRIBUTIONS; REMITTANCE

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

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

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

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

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

§ 575. BENEFITS

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

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

and

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

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

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

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

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

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

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

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

~~(A) wages;~~

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

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

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

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



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

§ 576. APPLICATION FOR BENEFITS; PAYMENT; TAX

WITHHOLDING

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

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

~~(2) The claimant satisfies the requirements to be a qualified employee as defined pursuant to subsection 571(8) of this subchapter.~~

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

~~(b)(1) A determination shall be made in relation to each claim within not more than five business days after the date the claim is filed. The time to make a determination on a claim may be extended by not more than 15 business days~~

~~if necessary to obtain documents or information that are needed to make the determination.~~

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

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

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

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

~~(B) The first benefit payment shall be sent to the qualified employee within 14 days after his or her claim is approved, and subsequent payments shall be sent biweekly.~~

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

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

~~(2) All procedures specified by 26 U.S.C. chapter 24 and 32 V.S.A. chapter 151, subchapter 4 pertaining to the withholding of income tax shall be~~

followed in relation to the payment of Family and Medical Leave Insurance benefits.

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

§ 577. EMPLOYER OPTION; ALTERNATIVE INSURANCE OR

BENEFITS

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

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

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

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

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

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

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

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

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

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

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

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

~~(4)(A) Notwithstanding any provisions of subdivisions (1) and (2) of this subsection to the contrary, for calendar year 2020, an employer shall submit an application for a new alternative insurance or benefit plan on or before April 15.~~

~~(B) The Commissioner shall make a determination and notify the employer of whether its application has been approved on or before June 1. If the application is approved, the Commissioner shall also provide a copy of the notice to the Commissioner of Taxes on or before June 1.~~

~~(C) Beginning on July 1, 2020, an employer that receives approval for an alternative insurance or benefit plan pursuant to this subdivision (4)~~

~~shall be exempt from withholding contributions as provided pursuant to  
subdivision 574(b)(2) of this subchapter.~~

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

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

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

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

~~(4)(A) Notwithstanding any provisions of subdivisions (1) and (2) of this  
subsection to the contrary, for calendar year 2020, an employer shall submit~~

~~an application for a new alternative insurance or benefit plan on or before  
February 1.~~

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

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

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

§ 578. DISQUALIFICATIONS

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

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

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

§ 579. APPEALS

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

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

§ 580. FALSE STATEMENT OR REPRESENTATION; PENALTY

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

§ 581. REINSTATEMENT; SENIORITY AND BENEFITS PROTECTED

(a) The employer of an employee who receives Family and Medical Leave Insurance benefits under this subchapter shall reinstate the employee at the conclusion of his or her bonding leave or medical leave, provided the



~~employee does not take bonding leave or medical leave for a combined total of more than 12 weeks in a calendar year. The employee shall be reinstated in the first available suitable position given the position he or she held at the time his or her leave began.~~

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

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

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

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

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

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

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

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

~~or~~

~~(D) more than two years have elapsed since the conclusion of the employee's leave.~~

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

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

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

~~§ 582. PROTECTION FROM RETALIATION OR INTERFERENCE~~

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

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

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

~~§ 583. CONFIDENTIALITY OF INFORMATION~~

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

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

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

~~(2) an employer may be provided with information that the~~

~~Commissioner of Labor or the Commissioner of Financial Regulation, of~~

~~Labor or of Taxes determines is necessary to enable the employer to discharge fully its obligations and protect its rights under this subchapter.~~

§ 584. RULEMAKING

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

- ~~(1) procedures for the collection of contributions; and~~
- ~~(2) reporting and record-keeping requirements for employers.~~

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

- ~~(1) acceptable documentation for demonstrating eligibility for benefits;~~
- ~~(2) requirements for providing certification from a health care provider of the need for family leave that are modeled on the federal rules governing certification of a serious health condition under the Family and Medical Leave Act;~~
- ~~(3) requirements for obtaining authorization for an individual's health care provider to disclose information necessary to make a determination of the individual's eligibility for benefits;~~
- ~~(4) requirements and criteria for the approval of an employer's~~

~~approval to provide family leave to an employee under 29 U.S.C. § 2611 and the~~

~~etermining whether a proposed plan provides benefits that are equivalent to or  
more generous than the benefits provided pursuant to 21 V.S.A. chapter 5,  
subchapter 13; and~~

~~(5) procedures for appeals pursuant to 21 V.S.A. § 570(b).~~

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

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

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

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

~~Act,~~

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

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

~~§ 585. FAMILY AND MEDICAL LEAVE INSURANCE SPECIAL FUND~~

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

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

~~§ 586. OVERPAYMENT OF BENEFITS; COLLECTION~~

~~(a)(1) Any individual who by nondisclosure or misrepresentation of a material fact, by him or her, or by another person, has received Family and Medical Leave Insurance benefits when he or she failed to fulfill a requirement for the receipt of benefits pursuant to this chapter or while he or she wa~~

~~qualified from receiving benefits pursuant to section 580 of this chapter shall be liable to repay to the Commissioner of Labor the amount received.~~

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

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

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

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

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

~~(c) If an individual is liable to repay any amount pursuant to this section, the Commissioner may withhold, in whole or in part, any future benefits.~~

~~ble to the individual pursuant to this chapter and credit the withheld benefits against the amount due from the individual until it is repaid in full, less any penalties assessed under subdivision (b)(2) of this section.~~

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

*Sec. 4. ADOPTION OF RULES*

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

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

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

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

~~(A) acceptable documentation for demonstrating eligibility for benefits;~~

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



Medical Leave Act;

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

(D) requirements and criteria for the approval of an employer's alternative insurance or benefit plan pursuant to 21 V.S.A. § 577 and for determining whether a proposed plan provides benefits that are equivalent to or more generous than the benefits provided pursuant to 21 V.S.A. chapter 5, subchapter 13; and

(E) procedures for appealing a decision pursuant to 21 V.S.A. § 579(b).

(2) On or before April 1, 2020, the Commissioner of Labor shall adopt any necessary rules related to establishing that an in loco parentis relationship exists between an employee and another individual.

(b) On or before January 1, 2020, the Commissioner of Financial Regulation shall adopt rules as necessary to implement the provisions of section 577 of this subchapter. The rules adopted by the Commissioner of Financial Regulation shall include requirements and criteria for the approval of an employer's alternative insurance or benefit plan pursuant to 21 V.S.A. § 577 and for determining whether a proposed plan provides benefits that are

~~equivalent to or more generous than the benefits provided pursuant to  
21 V.S.A. chapter 5, subchapter 13.~~

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

~~(A) acceptable documentation for demonstrating eligibility for  
benefits;~~

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

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

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

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

**Sec. 5. EDUCATION AND OUTREACH**

~~On or before ~~April~~ June 1, 2020, the Commissioner of Labor shall develop  
and make available on the Department of Labor's website information and~~

~~materials to educate and inform employers and employees about the Family and Medical Leave Insurance Program established pursuant to 21 V.S.A. chapter 5, subchapter 13.~~

~~Sec. 6. ESTABLISHMENT OF FAMILY AND MEDICAL LEAVE~~

~~INSURANCE PROGRAM; EXPENDITURES FROM SPECIAL  
FUND~~

~~Beginning on October 1, 2019, the Commissioner of Finance and Management may, pursuant to 32 V.S.A. § 588(4)(C), issue warrants for expenditures from the Family and Medical Leave Insurance Special Fund necessary to establish the Family and Medical Leave Insurance Program in anticipation of the receipt on or after January 1, 2020 of contributions submitted pursuant to 21 V.S.A. § 572.~~

~~Sec. 6. ESTABLISHMENT OF FAMILY AND MEDICAL LEAVE~~

~~INSURANCE PROGRAM; EXPENDITURES FROM SPECIAL  
FUND~~

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

~~Sec. 7. ADEQUACY OF RESERVES: REPORT~~

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

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

~~§ 471. DEFINITIONS~~

~~As used in this subchapter:~~

~~(1) “Employer” means an individual, organization or governmental body, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air or express company doing business in or operating within this State which for the purposes of parental leave that employs 10 or more individuals who are employed for an average of at least 50 hours per week during a year and for~~

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

~~\*\*\*~~

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

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

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

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

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

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

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

~~(4) "Family member" means the employee's.~~

~~(A) child, step child, or ward who lives with the employee, or foster child;~~

~~(B) spouse, domestic partner, or civil union partner;~~

~~(C) parent or the parent of the employee's spouse, domestic partner, or civil union partner;~~

~~(D) grandchild;~~

~~(E) grandparent; or~~

~~(F) a child for whom the employee stands in loco parentis or an individual who stood in loco parentis for the employee when he or she was a child.~~

~~\*\*\*~~

~~(6) "Commissioner" means the Commissioner of Labor.~~

~~(7) "Domestic partner" has the same meaning as in 17 V.S.A. § 2414.~~

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

~~Sec. 9. 21 V.S.A. § 472 is amended to read:~~

~~§ 472. FAMILY LEAVE~~

~~(a) During any 12-month period, an employee shall be entitled to take unpaid leave for a period not to exceed 12 weeks for the following reasons.~~

- ~~(1) for parental leave during the employee's pregnancy and;~~  
~~(2) following the birth of ~~an~~ the employee's child ~~or~~;~~  
~~(3) within a year following the initial placement of a child ~~16~~ 18 years of age or younger with the employee for the purpose of adoption ~~or foster care~~;~~  
~~(2)(4) for family leave, for the serious illness of the employee; or~~  
~~(5) the serious illness of the employee's child, stepchild or ward of the employee who lives with the employee, foster child, parent, spouse, or parent of the employee's spouse family member.~~

~~(b) During the leave, at the employee's option, the employee may use accrued sick leave ~~or~~, vacation leave ~~or~~, any other accrued paid leave, ~~not to exceed six weeks~~ Family and Medical Leave Insurance benefits pursuant to subchapter 13 of this chapter; or short-term disability insurance or other insurance benefits. ~~Utilization~~ Use of accrued paid leave, Family and Medical Leave Insurance benefits, or other insurance benefits shall not extend the leave provided herein by this section.~~

\* \* \*

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

~~(e)(1) An employee shall give his or her employer reasonable written notice of intent to take family leave under this subchapter. Notice shall include the date the leave is expected to commence and the estimated duration of the leave.~~

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

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

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

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

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

\* \* \*

~~(h) Except for serious illness of the employee, an employee who does not return to employment with the employer who provided the family leave shall return to the employer the value of any compensation paid to or on behalf of~~



~~the employee during the leave, except payments of Family and Medical Leave Insurance benefits and payments for accrued sick leave or vacation leave. An employer may elect to waive the rights provided pursuant to this subsection.~~

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

*§ 1344. DISQUALIFICATIONS*

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

*\* \* \**

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

*\* \* \**

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

*\* \* \**

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

*§ 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;*

*DISCLOSURE TO SUCCESSOR ENTITY*

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

~~by that employer bear to the total base-period wages paid to the individual by all base-period employers. The experience-rating record of an individual subject base-period employer shall not be charged for benefits paid to an individual under any of the following conditions:~~

~~\* \* \*~~

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

~~\* \* \*~~

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

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

~~leave insurance programs and the potential impact of permitting self-employed individuals to elect to obtain coverage through the Family and Medical Leave Insurance Program on the Program, contribution rates, and administrative costs. The report shall also include a recommendation for legislative action necessary to permit self-employed individuals to elect to obtain coverage through the Family and Medical Leave Insurance Program.~~

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

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

~~ining reinsurance. The report shall include a recommendation regarding whether the Family and Medical Leave Insurance Program should transition to a program that is fully administered and operated by the State.~~

~~Sec. 14. EFFECTIVE DATES.~~

~~(a) This section and Secs. 1, 2, 4, 5, 12, and 13 shall take effect on passage.~~

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

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

~~(d)(1) Contributions shall begin being paid pursuant to 21 V.S.A. §§ 573 and 574 on January 1, 2020, and, beginning on July 1, 2020, employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.~~

~~(2) An employer that is subject to a collective bargaining agreement shall not be required to pay contributions or be subject to the provisions of 21 V.S.A. chapter 5, subchapter 13 until the effective date of the next collective bargaining agreement after January 1, 2020 in order to permit the employer and the collective bargaining representative to negotiate regarding the employer and employee shares of the contribution rate or whether the~~

~~employer will provide benefits through an alternative plan established pursuant to 21 V.S.A. § 577.~~

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

~~§ 638. FAMILY AND MEDICAL LEAVE INSURANCE~~

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

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

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

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

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

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

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

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

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

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

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

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

~~LEAVE INSURANCE PROGRAM; REPORT~~

~~*In the event that the Commissioner of Financial Regulation is unable to secure a suitable insurance company to provide paid family and medical leave insurance pursuant to the provisions of 21 V.S.A. § 572(b), the Commissioner of Labor, in consultation with the Commissioners of Financial Regulation and of Taxes, shall, on or before December 15, 2019, submit a written report outlining a plan for the State to operate the Family and Medical Leave Insurance Program to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance. The report shall include a detailed explanation of how the State will implement Family and Medical Leave Insurance Program and carry out the requirements of 21 V.S.A. chapter 5, subchapter 13, including specific details and requirements related to staffing, information technology development, the development of rules and procedures, ensuring adequate reserves in the Family and Medical Leave Insurance Special Fund, and, if appropriate, the utilization of one or more third-party administrators. The report shall also include a recommendation for any legislative action necessary for the State to successfully implement the Family and Medical Leave Insurance Program.*~~

~~Sec. 17. APPROPRIATIONS- POSITIONS~~

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

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

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

Sec. 18. EFFECTIVE DATES

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

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

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



~~(d)(1) Contributions shall begin being paid pursuant to 21 V.S.A. §§ 573 and 574 on April 1, 2020, and, beginning on October 1, 2020, employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.~~

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

*Sec. 1. PURPOSE*

It is the intent of the General Assembly that:

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

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

(3) if the Commissioner is able to identify an insurance carrier that can

provide the required benefits in a more cost-effective manner than would be possible if benefits were provided by the State, the Commissioner shall enter into a contract with that insurance carrier to administer the Program and provide the benefits required by this act; and

(4) if the Commissioner is unable to identify a suitable insurance carrier, the Program shall be administered by the Department of Labor in coordination with the Departments of Financial Regulation and of Taxes.

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

Subchapter 13. Family and Medical Leave Insurance

§ 571. DEFINITIONS

As used in this subchapter:

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

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

(A) the employee’s pregnancy;

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

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

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

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

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

(6) “Family care leave” means a leave of absence from employment by an employee for a serious illness of the employee’s family member.

(7) “Family member” means:

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

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

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

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

(E) the employee’s sibling;

(F) the employee’s grandparent;

(G) the employee’s grandchild; or

(H) a child for whom the employee stands in loco parentis or an individual who stood in loco parentis for the employee when he or she was a

child.

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

(9) “Medical leave” means a leave of absence from employment by an employee for his or her own serious illness.

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

(A) earned wages from which contributions were withheld pursuant to sections 573 and 574 of this subchapter during at least two of the last four completed calendar quarters; and

(B) earned wages from which contributions were withheld pursuant to sections 573 and 574 of this subchapter during the last four completed calendar quarters in an amount that is equal to or greater than 675 hours at the minimum wage established pursuant to section 384 of this chapter.

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

(A) poses imminent danger of death;

(B) requires inpatient care in a hospital; or

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

(12) "Vermont average weekly wage" means the most recent average weekly wage for Vermont as calculated by the U.S. Bureau of Labor Statistics.

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

§ 572. FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM;

ADMINISTRATION

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

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

(2)(A) Within 45 calendar days after the effective date of this section, but in no event later than July 1, 2020, the Commissioner of Financial Regulation, in consultation with the Commissioners of Human Resources, of Labor, and of Taxes, shall develop and issue a request for information related to the provision of family and medical leave insurance by a private insurance carrier on behalf of the State that satisfies the requirements of this subchapter. The request for information shall also seek input regarding the cost and administrative feasibility of the insurance carrier administering the collection of contributions on behalf of the Department of Taxes pursuant to section 574

of this subchapter.

(B) Responses to the request for information shall be due 45 calendar days after the request for information is issued.

(3)(A) The Commissioner of Financial Regulation, in consultation with the Commissioners of Human Resources, of Labor, and of Taxes, shall develop a request for proposals for an insurance carrier to provide family and medical leave insurance that satisfies the requirements of this subchapter. The request for proposals shall be issued 15 calendar days after the date on which responses to the request for information are due.

(B) An insurance carrier shall not be selected unless it can demonstrate that it would be able to provide the required insurance benefits and comply with the provisions of this subchapter in a more cost-effective manner than if the Family and Medical Leave Insurance Program were administered by the State.

(4) Not more than 75 calendar days after the request for proposals is issued, the Commissioner of Financial Regulation, in consultation with the Commissioners of Human Resources, of Labor, and of Taxes, shall evaluate the proposals received in response to the request for proposals and shall select the proposal that the Commissioner determines:

(A) best satisfies the requirements of this subchapter;

(B) will provide the required insurance benefits and comply with the

provisions of this subchapter in a more cost-effective manner than if the Family and Medical Leave Insurance Program were administered by the State; and

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

(5) An agreement with an insurance carrier to provide family and medical leave insurance pursuant to this section shall include provisions that:

(A) permit the Commissioner of Financial Regulation to terminate the agreement for noncompliance with this chapter; and

(B) in the event the General Assembly enacts legislation providing for mandatory coverage for medical leave, require the Commissioner of Financial Regulation and the insurance carrier to reopen the agreement to make any amendments that are necessary to ensure that the agreement complies with the requirements of the legislation.

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

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

this subchapter.

(7)(A) The insurance carrier shall have its books and financial records related to the provision of family and medical leave insurance pursuant to this subchapter audited annually. The audit shall also include detailed information regarding the number of claims submitted broken down by the type of leave, the average duration of benefits provided for each type of leave, the number of claims that were denied, the number of claim denials that were overturned on appeal, and any changes in those amounts in comparison to the prior year.

(B) The insurance carrier shall provide a copy of the annual audit to the Commissioner of Financial Regulation, who shall review the audit and, not later than 30 calendar days after receiving the audit, submit a detailed summary to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and to the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance.

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

(2) In the event that the Paid Family and Medical leave Insurance



Program is administered by the Department of Labor, the Commissioner of Labor may contract with one or more third-party administrators for actuarial support, Program and fund administration, the processing of benefits claims and payments, and the initial determination of appeals.

§ 572a. NOTICE

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

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

§ 573. CONTRIBUTIONS

(a) An employer that does not elect to meet its obligations under this subchapter as provided pursuant to section 577 shall remit the contributions required by subsection (b) of this section to the Commissioner of Taxes on a quarterly basis as provided pursuant to 32 V.S.A. § 5842(a)(1).

(b)(1)(A) Contributions for bonding and family care insurance shall be equal to 0.20 percent of each employee's covered wages.

(B) Contributions for medical leave benefits for employees who have elected to obtain coverage pursuant to section 577a of this subchapter shall be equal to 0.38 percent of the employee's covered wages.

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

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

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

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

§ 574. COLLECTION OF CONTRIBUTIONS; REMITTANCE

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

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

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

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

(2) The Commissioner of Taxes may contract with the private insurance

carrier contracted with by the Commissioner of Financial Regulation pursuant to section 572 of this subchapter to administer the collection of contributions pursuant to this section.

§ 575. BENEFITS

(a)(1) A qualified employee shall be permitted to receive a total of not more than 12 weeks of Family and Medical Leave Insurance benefits in a calendar year; which may include:

(A) up to 12 weeks of benefits for bonding leave taken by the employee;

(B) up to eight weeks of benefits for family care leave taken by the employee; and

(C) for an employee who has elected to obtain medical leave coverage pursuant to the provisions of section 577a of this subchapter; up to six weeks of benefits for medical leave taken by the employee.

(2) Notwithstanding subdivision (1)(B) of this subsection, with respect to a serious illness of an individual who is a sibling or grandparent of one or more qualified employees, the qualified employees who are a sibling or grandchild of that individual shall be permitted to receive a combined total of not more than six weeks of Parental and Family Leave Insurance benefits in a calendar year for family care leave related to that individual.

(b)(1) The weekly benefit amount for a qualified employee awarded Family

and Medical Leave Insurance benefits under this section shall be determined as follows:

(A) the portion of the qualified employee's average weekly wage that is less than or equal to 55 percent of the Vermont average weekly wage shall be replaced at a rate of 90 percent; and

(B) the portion of the qualified employee's average weekly wage that is greater than 55 percent of the Vermont average weekly wage shall be replaced at a rate of 55 percent.

(2) Notwithstanding subdivision (1) of this subsection, no qualified employee may receive Parental and Family Leave Insurance benefits that exceed the Vermont average weekly wage.

(c)(1)(A) Each qualified employee shall complete a waiting period before he or she may receive benefits for a medical leave or family care leave.

(B) The waiting period shall consist of the first five calendar days in a calendar year for which the qualified employee would otherwise be eligible to receive benefits for a medical leave or family care leave.

(C) Family and Medical Leave Insurance benefits shall not be payable for any day in the waiting period.

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

(3) No waiting period shall be required before a qualified employee is

eligible to receive Family and Medical Leave Insurance benefits in relation to a bonding leave.

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

(e) Family and Medical Leave Insurance benefits paid pursuant to this subchapter may be used as wage replacement for a leave taken pursuant to section 472 of this title or the federal Family and Medical Leave Act, 29 U.S.C. §§ 2611–2654. The receipt of benefits paid pursuant to this subchapter shall not extend the leave provided pursuant to section 472 of this title or the federal Family and Medical Leave Act.

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

(A) wages;

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

(C) payment pursuant to a disability insurance plan;

(D) unemployment insurance benefits pursuant to chapter 17 of this title or the law of any other state; or

(E) compensation for temporary partial disability or temporary total disability pursuant to chapter 9 of this title, the workers' compensation law of any state, or any similar law of the United States.

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

§ 576. APPLICATION FOR BENEFITS; PAYMENT; TAX

WITHHOLDING

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

(1) The claim is for a bonding leave, a family care leave, or, if applicable, a medical leave and the need for the leave is adequately documented.

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

(3) The claimant has specified the anticipated start date and duration of

the leave.

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

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

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

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

(3)(A) Benefits shall be paid to a qualified employee for the time period beginning on the day his or her leave began less any waiting period required pursuant to subsection 575(c) of this subchapter.

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

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

(c)(1) An individual filing a claim for Family and Medical Leave Insurance benefits shall, at the time of filing, be advised that Family and Medical Leave



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

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

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

§ 577. EMPLOYER OPTION; ALTERNATIVE INSURANCE OR

BENEFITS

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

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

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

(3) establishing an employee benefits plan that provides equivalent or more generous benefits; or

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

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

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

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

(ii) In making the determination pursuant to this subdivision (b)(2)(B), the Commissioner shall also consider the relative value of any medical leave that is provided to employees as set forth in subdivision

(b)(2)(C)(i) of this section.

(C) The Commissioner shall not approve an alternative insurance or benefit plan under this section unless the plan either:

(i) provides employees with coverage for medical leave for a period of at least six weeks at the same level of wage replacement as the plan provides for family care leave; or

(ii) offers employees the option to obtain, at a reasonable cost, coverage for medical leave for a period of at least six weeks at the same level of wage replacement as the plan provides for family care leave.

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

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

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

before December 1.

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

(4)(A) Notwithstanding any provisions of subdivisions (1) and (2) of this subsection to the contrary, for calendar year 2021, an employer shall submit an application for a new alternative insurance or benefit plan not less than 60 calendar days prior to the first day of the first quarter for which contributions shall be due.

(B) The Commissioner shall make a determination and notify the employer of whether its application has been approved not later than 15 calendar days prior to the first day of the first quarter for which contributions shall be due. If the application is approved, the Commissioner shall also provide a copy of the notice to the Commissioners of Labor and of Taxes not later than 15 calendar days prior to the first day of the first quarter for which contributions shall be due.

(C) An employer that receives approval for an alternative insurance or benefit plan pursuant to this subdivision (4) shall, during calendar year 2021, be exempt from withholding contributions as provided pursuant to subdivision 574(b)(2) of this subchapter.

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

§ 577a. MEDICAL LEAVE COVERAGE; ELECTION

(a)(1) An employee may elect to obtain coverage for medical leave by submitting an enrollment form approved by the Commissioner of Taxes to either:

(A) his or her employer and the Commissioner of Taxes; or

(B) if his or her employer has received approval for an alternative insurance or benefits plan pursuant to section 577 of this subchapter, his or her employer.

(2) An employee who elects to enroll in medical leave coverage shall submit the form required pursuant to subdivision (a)(1) of this section not later than December 1 of the year prior to the year in which the employee intends to begin medical leave coverage.

(b)(1) An employee who has enrolled in medical leave coverage pursuant to the provisions of subsection (a) of this section shall become liable for the additional contribution amount required pursuant to subdivision 573(b)(1)(B) of this subchapter or the additional cost for medical leave coverage under his or her employer's alternative plan beginning on the next January 1 following

his or her enrollment.

(2)(A) An employee who enrolls in medical leave coverage through the Family and Medical Leave Insurance Program shall remain enrolled for a minimum period of three years. At the conclusion of his or her initial three-year period, and annually thereafter, the employee may discontinue his or her medical leave coverage pursuant to subsection (c) of this section.

(B) An employee who enrolls in medical leave coverage through an alternative insurance or benefits plan offered by his or her employer shall remain enrolled for the minimum period required pursuant to the plan. At the conclusion of the minimum required period, and annually thereafter, the employee may discontinue his or her medical leave coverage pursuant to subsection (c) of this section.

(3) The employee shall be liable for the additional medical leave contribution amount required pursuant to subdivision 573(b)(1)(B) of this subchapter or the additional cost for medical leave coverage under his or her employer's alternative plan until he or she discontinues medical leave coverage pursuant to subsection (c) or (d) of this section.

(4) The employee shall become eligible to use medical leave benefits upon satisfying the requirements to be a qualified employee pursuant to subdivision 571(10) of this subchapter or meeting the eligibility requirements for his or her employer's alternative insurance or benefits plan, as

appropriate.

(c)(1) An employee may discontinue medical leave coverage by submitting, not later than December 1, of the year prior to the calendar year in which the employee intends to discontinue coverage, a form approved by the Commissioner of Taxes to either:

(A) his or her employer and the Commissioner of Taxes; or

(B) if his or her employer has received approval for an alternative insurance or benefits plan pursuant to section 577 of this subchapter, his or her employer.

(2) On the next January 1 after the timely submission of the form required pursuant to subdivision (1) of this subsection, the employee shall no longer:

(A) be eligible for medical leave benefits; and

(B) be liable for the additional contribution amount required pursuant to subdivision 573(b)(1)(B) of this subchapter or the additional cost for medical leave coverage under his or her employer's alternative plan.

(d)(1) An employee who is ceasing employment in Vermont or becoming self-employed may discontinue his or her medical leave coverage effective on his or her last day of employment by submitting a form approved by the Commissioner of Taxes to either:

(A) his or her employer and the Commissioner of Taxes; or

(B) if his or her employer has received approval for an alternative insurance or benefits plan pursuant to section 577 of this subchapter; his or her employer.

(2) Upon the effective date of the employee's discontinuation of coverage, he or she shall no longer be:

(A) eligible for medical leave benefits; and

(B) liable for the additional contribution amount required pursuant to subdivision 573(b)(1)(B) of this subchapter or the additional cost for medical leave coverage under his or her employer's alternative plan.

(e)(1) For an employee who has elected to obtain medical leave coverage through the Family and Medical Leave Insurance Program:

(A) If during the initial three-year period, he or she experiences a break in employment and is subsequently rehired by any employer participating in the Family and Medical Leave Insurance Program, the employee shall remain enrolled in medical leave coverage and the period of his or her break in employment shall count toward the initial three-year period.

(B) If at any time, he or she separates from employment with an employer that is participating in the Family and Medical Leave Insurance Program in order to take a job with another employer that is participating in the Family and Medical Leave Insurance Program, the employee shall remain



enrolled in medical leave coverage and, if applicable, the period of any break in employment shall count toward the initial three-year period.

(C) If at any time, he or she separates from employment with an employer that is participating in the Family and Medical Leave Insurance Program and subsequently begins employment with an employer that has received approval for an alternative insurance or benefits plan pursuant to section 577 of this subchapter, the employee's medical leave coverage under the Family and Medical Leave Insurance Program shall cease on the day he or she commences employment with the new employer.

(2)(A) If an employee who has elected to obtain medical leave coverage through an alternative insurance or benefits plan approved pursuant to section 577 of this subchapter separates from employment with his or her employer that has received approval for an alternative plan in order to take a job with another employer, the employee's medical leave coverage under the alternative plan shall cease on the day he or she separates from employment with the current employer.

(B) On the date the employee separates from employment, he or she shall no longer be eligible for medical leave benefits under the alternative plan, and shall no longer be liable for the additional cost for medical leave coverage under his or her former employer's alternative plan.

(f)(1) Notwithstanding any provision of subsection (a) to the contrary, an

employee who elects to enroll in medical leave coverage for calendar year 2021, shall, not later than 30 calendar days prior to the first day of the first quarter for which contributions shall be due, submit an enrollment form approved by the Commissioner of Taxes to either:

(A) the Commissioner of Taxes and his or her employer; or

(B) if his or her employer has received approval for an alternative insurance or benefits plan pursuant to section 577 of this subchapter, his or her employer:

(2) An employee who has enrolled in medical leave coverage pursuant to the provisions of subdivision (1) of this subsection shall become liable for the additional contribution amount required pursuant to subdivision 573(b)(1)(B) of this subchapter or the additional cost for medical leave coverage under his or her employer's alternative plan beginning on the first day of the first quarter for which contributions shall be due.

(3)(A) An employee who has enrolled pursuant to subdivision (1) of this subsection in medical leave coverage offered through the Family and Medical Leave Insurance Program shall be eligible to discontinue that coverage on January 1, 2024 by submitting the required form not later than December 1, 2023.

(B) An employee who has enrolled pursuant to subdivision (1) of this subsection in medical leave coverage offered through his or her employer's

alternative insurance or benefits plan shall be eligible to discontinue that coverage not later than January 1, 2024 by submitting the required form at least 30 calendar days prior to the date on which his or her coverage will cease.

§ 578. DISQUALIFICATIONS

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

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

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

§ 579. APPEALS

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

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

(c) Within 30 calendar days after receiving notice of the administrative law judge's decision, either party may appeal that decision to the Supreme Court.

§ 580. FALSE STATEMENT OR REPRESENTATION; PENALTY

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

§ 581. REHIRING; LIMITED RIGHT; SENIORITY AND BENEFITS

PROTECTED

(a)(1)(A) An employee who is not entitled to job protection pursuant to section 472 of this chapter and is separated from employment in relation to a leave for which he or she receives Family and Medical Leave Insurance benefits pursuant to this subchapter shall have a limited right to be rehired by his or her employer following the conclusion of his or her leave.

(B) The employer shall offer the employee the first available suitable position based on the position the employee held at the time his or her leave began.

(C) If the employee declines the offer, he or she shall not be entitled

to any further employment offers from the employer.

(2) An employee shall not be entitled to be rehired pursuant to the provisions of this section if:

(A) the employee fails to inform the employer of:

(i) the need for the leave;

(ii) his or her interest in being rehired at the conclusion of the leave; and

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

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

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

(D) the employee has exhausted his or her right to job protection for the leave pursuant to section 472 of this chapter and the federal Family and Medical Leave Act, 29 U.S.C. §§ 2611–2654.

(3) An employee's right to be rehired pursuant to the provisions of this section shall expire two years after the date on which his or her leave concluded.

(b) Upon being rehired pursuant to the provisions of this section, an

employee shall regain any seniority and unused accrued paid leave he or she was entitled to prior to the leave, less any accrued paid leave used during the leave.

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

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

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

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

§ 582. PROTECTION FROM RETALIATION OR INTERFERENCE

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

(b) An employer shall not interfere with, restrain, or otherwise prevent an

employee from exercising or attempting to exercise his or her rights pursuant to this subchapter.

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

§ 583. CONFIDENTIALITY OF INFORMATION

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

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

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

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

§ 584. RULEMAKING

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

- (1) procedures for the collection of contributions;
- (2) reporting and record-keeping requirements for employers; and
- (3) requirements for forms related to enrollment in medical leave coverage and discontinuance of medical leave coverage.

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

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



Commissioner of Labor shall include:

(A) acceptable documentation for demonstrating eligibility for benefits;

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

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

(D) procedures for appeals pursuant to subsection 579(b) of this subchapter; and

(E) rules to permit an employee to authorize the Department, in compliance with all applicable provisions of federal law, to disclose unemployment insurance information to the insurance carrier as necessary to determine if the employee meets the requirements to be a qualified employee as defined pursuant to subdivision 571(10) of this subchapter.

(2) The Commissioner of Labor shall create a form that will permit an employee to provide informed consent for the Department to disclose unemployment insurance information to the insurance carrier as necessary to determine if the employee meets the requirements to be a qualified employee as

defined pursuant to subdivision 571(10) of this subchapter. The form shall satisfy all applicable requirements under federal law.

§ 585. FAMILY AND MEDICAL LEAVE INSURANCE SPECIAL FUND

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

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

§ 586. OVERPAYMENT OF BENEFITS; COLLECTION

(a)(1) Any individual who by nondisclosure or misrepresentation of a material fact, by him or her or by another person, has received Family and Medical Leave Insurance benefits when he or she failed to fulfill a requirement for the receipt of benefits pursuant to this chapter or while he or she was disqualified from receiving benefits pursuant to section 578 of this chapter shall be liable to repay to the Commissioner of Labor the amount received.

(2) Upon determining that an individual has received benefits under this chapter that he or she was not entitled to, the Commissioner of Labor shall

provide the individual with notice of the determination. The notice shall include a statement that the individual is liable to repay to the Commissioner the amount of overpaid benefits and shall identify the basis of the overpayment and the time period in which the benefits were paid.

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

(b)(1) An individual liable under this section shall repay the overpaid amount to the Commissioner for deposit into the Family and Medical Leave Insurance Special Fund.

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

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

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

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

*Sec. 4. ADOPTION OF RULES*

(a) Not later than 215 calendar days after the effective date of this act, the Commissioner of Taxes shall adopt rules necessary to implement the provisions of 21 V.S.A. § 574, which shall include:

(1) procedures for the collection of contributions;  
(2) reporting and record-keeping requirements for employers; and  
(3) requirements for forms related to enrollment in medical leave coverage and discontinuance of medical leave coverage.

(b) Not later than 215 calendar days after the effective date of this act, the Commissioner of Financial Regulation shall adopt rules as necessary to implement the provisions of 21 V.S.A. § 577. The rules adopted by the Commissioner of Financial Regulation shall include requirements and criteria for the approval of an employer's alternative insurance or benefit plan pursuant to 21 V.S.A. § 577 and for determining whether a proposed plan provides benefits that are equivalent to or more generous than the benefits provided pursuant to 21 V.S.A. chapter 5, subchapter 13.

(c) Not later than one year after the effective date of this act, the

Commissioner of Labor shall adopt rules necessary to implement all other provisions of 21 V.S.A. chapter 5, subchapter 13, which shall include:

(1) acceptable documentation for demonstrating eligibility for benefits;

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

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

(4) procedures for appealing a decision pursuant to 21 V.S.A. § 579(b);

(5) the establishment of the existence of an in loco parentis relationship between an employee and another individual; and

(6) rules to permit an employee to authorize the Department, in compliance with all applicable provisions of federal law, to disclose unemployment insurance information to the insurance carrier as necessary to determine if the employee meets the requirements to be a qualified employee as defined pursuant to subdivision 571(10) of this chapter.

**Sec. 5. EDUCATION AND OUTREACH**

(a) Not later than one year after the effective date of this act, the Commissioner of Labor shall develop and make available on the Department

of Labor's website:

(1) information and materials to educate and inform employers and employees about the Family and Medical Leave Insurance Program established pursuant to 21 V.S.A. chapter 5, subchapter 13; and

(2) a model poster providing notice of the provisions of 21 V.S.A. chapter 5, subchapter 13.

(b) On or before June 15, 2021, an employer shall provide written notice of the provisions of 21 V.S.A. chapter 5, subchapter 13 to each employee who was employed by the employer on June 1, 2021.

*Sec. 6. ESTABLISHMENT OF FAMILY AND MEDICAL LEAVE*

*INSURANCE PROGRAM; EXPENDITURES FROM SPECIAL  
FUND*

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

*Sec. 7. ADEQUACY OF RESERVES; REPORT*

Annually, on or before January 15, 2022, 2023, and 2024, the Commissioner of Labor, in consultation with the Commissioners of Finance and Management, of Financial Regulation, and of Taxes, shall submit a

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

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

§ 471. DEFINITIONS

*As used in this subchapter:*

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

\* \* \*

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

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

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

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

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

*(C) the employee's pregnancy;*

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

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

*(4) "Family member" means:*

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

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

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

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

*(E) the employee's sibling;*



(F) the employee's grandparent;

(G) the employee's grandchild; or

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

\* \* \*

(6) "Commissioner" means the Commissioner of Labor.

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

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

Sec. 9. 21 V.S.A. § 472 is amended to read:

§ 472. FAMILY LEAVE

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

(1) for parental leave, during the employee's pregnancy and;

(2) following the birth of an ~~an~~ the employee's child or;

(3) within a year following the initial placement of a child ~~16~~ 18 years of age or younger with the employee for the purpose of adoption; or foster care;

~~(2)(4) for family leave, for the serious illness of the employee; or~~  
~~(5) the serious illness of the employee's child, stepchild or ward of the~~  
~~employee who lives with the employee, foster child, parent, spouse, or parent~~  
~~of the employee's spouse family member.~~

~~(b) During the leave, at the employee's option, the employee may use~~  
~~accrued sick leave or, vacation leave or, any other accrued paid leave, not to~~  
~~exceed six weeks. Family and Medical Leave Insurance benefits pursuant to~~  
~~subchapter 13 of this chapter; or short-term disability insurance or other~~  
~~insurance benefits. Utilization Use of accrued paid leave, Family and Medical~~  
~~Leave Insurance benefits, or other insurance benefits shall not extend the leave~~  
~~provided herein by this section.~~

\* \* \*

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

~~(e)(1) An employee shall give his or her employer reasonable written notice~~  
~~of intent to take family leave under this subchapter. Notice shall include the~~  
~~date the leave is expected to commence and the estimated duration of the~~  
~~leave.~~

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

*commencement of the leave.*

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

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

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

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

\* \* \*

*(h) Except for a serious illness of the employee, an employee who does not return to employment with the employer who provided the family leave shall return to the employer the value of any compensation paid to or on behalf of the employee during the leave, except payments of Family and Medical Leave Insurance benefits and payments or for accrued sick leave or vacation leave, or other paid leave. An employer may elect to waive the rights provided pursuant to this subsection.*

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

*§ 1344. DISQUALIFICATIONS*

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

\* \* \*

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

\* \* \*

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

\* \* \*

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

*§ 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;*

*DISCLOSURE TO SUCCESSOR ENTITY*

*(a)(1) The Commissioner shall maintain an experience-rating record for each employer. Benefits paid shall be charged against the experience-rating record of each subject employer who provided base-period wages to the eligible individual. Each subject employer's experience-rating charge shall bear the same ratio to total benefits paid as the total base-period wages paid by that employer bear to the total base-period wages paid to the individual by all base-period employers. The experience-rating record of an individual subject base-period employer shall not be charged for benefits paid to an individual under any of the following conditions:*

\* \* \*

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

\* \* \*

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

On or before January 15, 2022, the Commissioner of Labor, in consultation with the insurance carrier that the State has contracted with, if any, and the Commissioners of Financial Regulation and of Taxes, shall submit a written report to the House Committee on General, Housing, and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs regarding the potential for permitting self-employed individuals to elect to obtain coverage through the Family and Medical Leave Insurance Program. In particular, the report shall examine the experience of other states that allow self-employed individuals to obtain coverage under their family and medical leave insurance programs, and the potential impact of permitting self-employed individuals to elect to obtain coverage through the Family and Medical Leave Insurance Program on the Program, contribution rates, and administrative costs. The report shall also include a recommendation for legislative action necessary to permit self-employed individuals to elect to

obtain coverage through the Family and Medical Leave Insurance Program.

*Sec. 13. POTENTIAL TRANSITION TO STATE-OPERATED FAMILY*

*AND MEDICAL LEAVE INSURANCE PROGRAM; REPORT*

On or before January 15, 2024, the Commissioner of Labor, in consultation with the Commissioners of Financial Regulation and of Taxes, shall report to the House Committee on General, Housing, and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs regarding the potential for transitioning the Family and Medical Leave Insurance Program to a program that is fully administered and operated by the State. The report shall identify the potential costs to the State of such a transition and the amount of time necessary to successfully accomplish the transition, as well as the expected impacts on contribution rates, administrative efficiency, and the experience of employers and employees. The report shall also examine and contrast the potential benefits and drawbacks of ensuring the solvency of a program that is fully administered and operated by the State by either maintaining a reserve or obtaining reinsurance. The report shall include a recommendation regarding whether the Family and Medical Leave Insurance Program should transition to a program that is fully administered and operated by the State.

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

§ 638. FAMILY AND MEDICAL LEAVE INSURANCE

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

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

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

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

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

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

(2) The length of leave and level of wage replacement determined

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

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

Sec. 15. REQUEST FOR INFORMATION; REQUEST FOR PROPOSALS;

REPORTS

(a) For calendar year 2020, not later than 15 calendar days after the request for information is issued pursuant to 21 V.S.A. § 572, the Commissioner of Financial Regulation shall submit a copy of the request for information to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance.

(b) For calendar year 2020, not later than 15 calendar days after the request for information is due pursuant to 21 V.S.A. § 572, the Commissioner of Finance shall submit a brief summary of the responses to the request for information together with copies of all the responses to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways



and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance. The Commissioner of Financial Regulation may redact confidential business information from the copies of the responses to the request for information before submitting them.

(c) For calendar year 2020, not later than 15 calendar days after the request for proposals is issued pursuant to 21 V.S.A. § 572, the Commissioner of Financial Regulation shall submit a copy of the request for proposals to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance.

(d) For calendar year 2020, not later than 15 calendar days after the Commissioner of Financial Regulation selects an insurance carrier pursuant to 21 V.S.A. § 572, the Commissioner of Financial Regulation shall submit a written report summarizing the outcome of the request for proposal process to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance.

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

*LEAVE INSURANCE PROGRAM; REPORT*

*In the event that the Commissioner of Financial Regulation is unable to secure a suitable insurance carrier to provide paid family and medical leave insurance pursuant to the provisions of 21 V.S.A. § 572(b), the Commissioner of Labor, in consultation with the Commissioners of Financial Regulation and of Taxes, shall, not later than 60 calendar days after the deadline to select an insurance carrier pursuant to 21 V.S.A. § 572, submit a written report outlining a plan for the State to operate the Family and Medical Leave Insurance Program to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance. The report shall include a detailed explanation of how the State will implement Family and Medical Leave Insurance Program and carry out the requirements of 21 V.S.A. chapter 5, subchapter 13, including specific details and requirements related to staffing, information technology development, the development of rules and procedures, ensuring adequate reserves in the Family and Medical Leave Insurance Special Fund, and, if appropriate, the utilization of one or more third-party administrators. The report shall also include a recommendation for any legislative action necessary for the State to successfully implement the Family and Medical Leave Insurance Program.*

*Sec. 17. APPROPRIATIONS; POSITIONS*

*(a)(1) The sum of \$1,000,000.00 is appropriated from the Family and Medical Leave Insurance Special Fund to the Department of Taxes in fiscal year 2021 for temporary staffing needs related to the adoption of rules, the development of information technology systems necessary to implement the provisions of 21 V.S.A. § 574, and, if applicable, to contract with the private insurance carrier selected pursuant to 21 V.S.A. § 572 to administer the collection of Family and Medical Leave Insurance contributions.*

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

*(b) The establishment of one new administrator position in the Department of Labor is authorized in fiscal year 2021.*

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

*§ 3102. CONFIDENTIALITY OF TAX RECORDS*

*\* \* \**

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

*\* \* \**

*(8) to the Attorney General, the Data Clearinghouse established in the October 2017 Non-Participating Manufacturer Adjustment Settlement Agreement, which the State of Vermont joined in 2018, the National Association of Attorneys General, and counsel for the parties to the Agreement as required by the Agreement and to the extent necessary to comply with the Agreement and only as long as the State is a party thereto; and*

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

\* \* \*

*Sec. 19. 21 V.S.A. § 1314 is amended to read:*

*§ 1314. REPORTS AND RECORDS; SEPARATION INFORMATION;  
DETERMINATION OF ELIGIBILITY; FAILURE TO REPORT  
EMPLOYMENT INFORMATION; DISCLOSURE OF  
INFORMATION TO OTHER STATE AGENCIES TO  
INVESTIGATE MISCLASSIFICATION OR MISCODING*

\* \* \*

*(e)(1) Subject to such restrictions as the Board may ~~by regulation~~ prescribe by rule, information from unemployment insurance records may be made available to any public officer or public agency of this or any other state or the federal government dealing with the administration or regulation of relief, public assistance, unemployment compensation, a system of public employment*

*offices, wages and hours of employment, workers' compensation, misclassification or miscoding of workers, occupational safety and health, or a public works program for purposes appropriate to the necessary operation of those offices or agencies. The Commissioner may also make information available to colleges, universities, and public agencies of the State for use in connection with research projects of a public service nature, and to the Vermont Economic Progress Council with regard to the administration of 32 V.S.A. chapter 105, subchapter 2; but no person associated with those institutions or agencies may disclose that information in any manner that would reveal the identity of any individual or employing unit from or concerning whom the information was obtained by the Commissioner.*

\* \* \*

*(8)(A) The Department of Labor shall disclose, upon request, to the insurance carrier that the Commissioner of Financial Regulation has contracted with to operate the Family and Medical Leave Insurance Program pursuant to section 572 of this title, any information in its records related to an identified individual that is necessary for the purpose of determining the individual's eligibility for Family and Medical Leave Insurance benefits pursuant to chapter 5, subchapter 13 of this title.*

*(B) The Commissioner shall enter into an agreement with the insurance carrier that governs the use of the disclosed information and*

complies with all requirements of 20 C.F.R. § 603.10.

(C) The information requested shall not be released unless the individual to whom the requested information relates has signed a consent form, approved by the Commissioner, that permits the release of the requested information.

(D) The requested information shall not be released unless the insurance carrier agrees to reimburse the Department of Labor for the costs involved in furnishing the requested information.

\* \* \*

*Sec. 20. POTENTIAL TRANSITION TO MANDATORY COVERAGE FOR  
MEDICAL LEAVE FOR AN EMPLOYEE'S OWN SERIOUS  
ILLNESS; REPORT*

(a) On or before January 15, 2021, the Commissioner of Labor, in consultation with the Commissioners of Financial Regulation and of Taxes, shall report to the House Committee on General, Housing, and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs regarding the potential for transitioning, not later than July 1, 2023, from voluntary, opt-in coverage for medical leave to mandatory coverage for medical leave for all employees. The report shall examine:

(1) the potential cost of such a transition;

(2) the potential impacts on contribution rates, administrative efficiency,

and the experience of employers and employees;

(3) any projected changes in the usage of Family and Medical Leave Insurance benefits; and

(4) any potential changes to the agreement between the State and the private insurance carrier that the State has contracted with pursuant to 21 V.S.A. § 572 that the transition may make necessary.

(b) The report shall include a detailed description of any legislative changes that would be necessary to accomplish the transition.

(c) As used in this section:

(1) "Employee" has the same meaning as in 21 V.S.A. § 571(4).

(2) "Medical leave" has the same meaning as in 21 V.S.A. § 571(9).

## *Sec. 21. STATE PLAN FOR FAMILY AND MEDICAL LEAVE*

### *INSURANCE*

(a) Notwithstanding any provision of 21 V.S.A. § 577 to the contrary, the paid family and medical leave program agreed to by the State and its collective bargaining units that takes effect on July 1, 2020 shall be deemed to provide benefits that are equivalent to the benefits provided pursuant to 21 V.S.A. chapter 5, subchapter 13.

(b) Notwithstanding any provision of 3 V.S.A. § 638(b) to the contrary, the State and its collective bargaining units shall not be required to conduct negotiations pursuant to 3 V.S.A. § 638(b) for purposes of the collective

bargaining agreements that take effect on July 1, 2020.

*Sec. 22. EFFECTIVE DATES*

(a) This section and Secs. 1, 2, 4, 5, 6, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 shall take effect on passage.

(b) Secs. 3 and 7 shall not take effect until January 1, 2021, and shall not take effect at all if the Commissioner of Financial Regulation secures a suitable insurance carrier to provide paid family and medical leave insurance pursuant to the provisions of 21 V.S.A. § 572(b).

(c) Secs. 8, 9, 10, and 11 shall take effect on the date upon which employees may begin receiving benefits pursuant to subsection (d) of this section.

(d)(1)(A) If the Commissioner of Financial Regulation selects a private insurance carrier pursuant to 21 V.S.A. § 572 on or before September 1, 2020, contributions shall begin being withheld pursuant to 21 V.S.A. §§ 573 and 574 on January 1, 2021, and, beginning on July 1, 2021, employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

(B) If the Commissioner of Financial Regulation selects a private insurance carrier pursuant to 21 V.S.A. § 572 after September 1, 2020, contributions shall begin being withheld pursuant to 21 V.S.A. §§ 573 and 574 on April 1, 2021, and, beginning on October 1, 2021, employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.



(C) Notwithstanding subdivisions (A) and (B) of this subdivision (d)(1), if the Commissioner of Financial Regulation is unable to secure a private insurance carrier pursuant to 21 V.S.A. § 572, contributions shall begin being withheld pursuant to 21 V.S.A. §§ 573 and 574 on July 1, 2021, and, beginning on July 1, 2022, employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

(2) In order to permit employers and collective bargaining representatives to negotiate regarding the employer's and employees' shares of the contribution rate and whether the employer will provide benefits through an alternative plan established pursuant to 21 V.S.A. § 577, an employer that is subject to a collective bargaining agreement shall not be required to withhold contributions or be subject to the provisions of 21 V.S.A. chapter 5, subchapter 13 until the earlier of:

(A) the effective date of the next collective bargaining agreement after the date when contributions are required to begin being withheld pursuant to subdivision (1) of this subsection; or

(B) the effective date of a supplement to or provision of an existing collective bargaining agreement that specifically addresses the provisions of 21 V.S.A. chapter 5, subchapter 13.