

SENATE BILL 211

K3

(PRE-FILED)

1lr0545
CF HB 375

By: **Senator Hayes**

Requested: September 22, 2020

Introduced and read first time: January 13, 2021

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Family and Medical Leave Insurance Program –**
3 **Establishment**
4 **(Time to Care Act of 2021)**

5 FOR the purpose of establishing the Family and Medical Leave Insurance Program;
6 prohibiting an employee from disclosing certain information; authorizing a
7 self-employed individual to elect to participate in the Program by filing a certain
8 notice with the Secretary of Labor in accordance with certain regulations; providing
9 that a certain election becomes effective on the date a certain notice is filed; requiring
10 a certain individual to participate in the Program for a certain initial period;
11 authorizing a certain individual to renew participation in the Program for a certain
12 period; requiring a certain individual to notify the Secretary in writing of the
13 individual's withdrawal from the Program within a certain time period; requiring a
14 certain individual to pay certain contributions during a certain period; providing that
15 an employee's right to benefits under this Act may not be diminished by a collective
16 bargaining agreement entered into or renewed or by an employer policy adopted or
17 retained after a certain date; providing that a certain agreement is void as against
18 public policy; stating the purpose of the Program; providing for the manner in which
19 the Program is to be administered; providing for the powers and duties of the
20 Secretary under the Program; requiring a certain covered individual to include
21 certification for a certain claim for certain benefits; requiring the Secretary to
22 establish certain standards for certain claims in regulation; establishing the Family
23 and Medical Leave Insurance Fund as a special, nonlapsing fund; providing for the
24 administration of the Fund; specifying the contents of the Fund; specifying the
25 purposes for which the Fund may be used; requiring, beginning on a certain date,
26 certain employees, employers, and self-employed individuals to pay the Secretary
27 certain contributions; requiring the Secretary to set a total rate of contribution,
28 subject to certain limitations and conditions; requiring employers of employees to
29 deduct certain contributions from the wages of the employees; authorizing,
30 beginning on a certain date, a covered individual taking certain leave from

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



employment to submit a claim for benefits; authorizing a covered individual to take certain leave on an intermittent leave schedule; requiring a certain covered individual who is taking certain leave on an intermittent leave schedule to take certain action; prohibiting an employer from taking certain action if leave is taken on an intermittent leave schedule; providing for the manner in which benefits are to be calculated and paid; requiring that certain leave taken by a covered individual run concurrently with certain federal leave under certain circumstances; providing for the calculation of certain weekly wages for certain purposes; requiring the Division of Unemployment Insurance, under certain circumstances, to notify certain individuals of certain information regarding the federal income tax; requiring the Division, under certain circumstances, to deduct and withhold a certain amount from benefits paid; authorizing certain employers to satisfy certain requirements through a certain private employer plan under certain circumstances; authorizing certain employers to require certain covered individuals to use certain benefits concurrently with certain benefits provided under an employer policy; requiring that a certain private employer plan be filed with the Division; providing that certain employers and employees are exempt from certain contribution requirements under certain circumstances; providing for the manner in which certain employees who receive benefits or take certain leave are to be treated by employers; requiring employers to provide certain notice to certain employees at certain times under certain circumstances; establishing certain prohibited acts; authorizing the Division to seek repayment of benefits under certain circumstances; authorizing the Secretary to waive the repayment of benefits under certain circumstances; authorizing the Secretary to take certain actions if certain employers fail to pay certain contributions; authorizing certain employees to file a certain complaint with the Secretary under certain circumstances; authorizing certain employees to bring a certain action against certain employers for certain violations of this Act under certain circumstances; requiring a court to allow certain fees and costs under certain circumstances; requiring the Secretary to establish a system of appeals for certain covered individuals; requiring that certain judicial review be allowed after a certain aggrieved party has exhausted certain administrative remedies; requiring interest earnings of the Fund to be credited to the Fund; exempting the Fund from a certain provision of law requiring interest earnings on State money to accrue to the General Fund of the State; providing for the construction and application of this Act; requiring the Secretary to adopt certain regulations on or before a certain date; defining certain terms; making a conforming change; stating the intent of the General Assembly; and generally relating to the Family and Medical Leave Insurance Program.

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section 8–302
Annotated Code of Maryland
(2016 Replacement Volume and 2020 Supplement)

BY adding to
Article – Labor and Employment

Section 8.3–101 through 8.3–1001 to be under the new title “Title 8.3. Family and Medical Leave Insurance Program”
Annotated Code of Maryland
(2016 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, without amendments,
Article – State Finance and Procurement
Section 6–226(a)(2)(i)
Annotated Code of Maryland
(2015 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 6–226(a)(2)(ii) 122. and 123.
Annotated Code of Maryland
(2015 Replacement Volume and 2020 Supplement)

BY adding to
Article – State Finance and Procurement
Section 6–226(a)(2)(ii) 124.
Annotated Code of Maryland
(2015 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Labor and Employment

8–302.

(a) There is a Division of Unemployment Insurance.

(b) The Division of Unemployment Insurance shall perform any function that the Secretary assigns to it to carry out this title **AND TITLE 8.3 OF THIS ARTICLE.**

TITLE 8.3. FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.

SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.

8.3–101.

(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “APPLICATION YEAR” MEANS THE 12-MONTH PERIOD BEGINNING ON THE FIRST DAY OF THE CALENDAR WEEK IN WHICH A COVERED INDIVIDUAL FILES

1 AN APPLICATION FOR BENEFITS.

2 (C) “BENEFITS” MEANS THE MONEY PAYABLE UNDER THIS TITLE TO A
3 COVERED INDIVIDUAL.

4 (D) “COVERED EMPLOYEE” MEANS AN EMPLOYEE WHO HAS WORKED AT
5 LEAST 680 HOURS OVER THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE
6 DATE ON WHICH LEAVE IS TO BEGIN.

7 (E) “COVERED INDIVIDUAL” MEANS A COVERED EMPLOYEE OR A
8 SELF-EMPLOYED INDIVIDUAL WHO ELECTS TO PARTICIPATE IN THE PROGRAM
9 UNDER § 8.3-201 OF THIS TITLE.

10 (F) “DEPARTMENT” MEANS THE MARYLAND DEPARTMENT OF LABOR.

11 (G) “DIVISION” MEANS THE DIVISION OF UNEMPLOYMENT INSURANCE
12 ESTABLISHED UNDER § 8-302 OF THIS ARTICLE.

13 (H) “EMPLOYER” MEANS A PERSON OR GOVERNMENTAL ENTITY THAT
14 EMPLOYS AT LEAST ONE INDIVIDUAL IN THE STATE.

15 (I) “FAMILY MEMBER” MEANS:

16 (1) A BIOLOGICAL CHILD, AN ADOPTED CHILD, A FOSTER CHILD, OR A
17 STEPCHILD OF THE COVERED INDIVIDUAL;

18 (2) A CHILD FOR WHOM THE COVERED INDIVIDUAL HAS LEGAL OR
19 PHYSICAL CUSTODY OR GUARDIANSHIP;

20 (3) A CHILD FOR WHOM THE COVERED INDIVIDUAL STANDS IN LOCO
21 PARENTIS, REGARDLESS OF THE CHILD’S AGE;

22 (4) A BIOLOGICAL PARENT, AN ADOPTIVE PARENT, A FOSTER PARENT,
23 OR A STEPPARENT OF THE COVERED INDIVIDUAL OR OF THE COVERED INDIVIDUAL’S
24 SPOUSE;

25 (5) THE LEGAL GUARDIAN OR WARD OF THE COVERED INDIVIDUAL OR
26 OF THE COVERED INDIVIDUAL’S SPOUSE;

27 (6) AN INDIVIDUAL WHO ACTED AS A PARENT OR STOOD IN LOCO
28 PARENTIS TO THE COVERED INDIVIDUAL OR THE COVERED INDIVIDUAL’S SPOUSE
29 WHEN THE COVERED INDIVIDUAL OR THE COVERED INDIVIDUAL’S SPOUSE WAS A
30 MINOR;

1 **(7) THE SPOUSE OF THE COVERED INDIVIDUAL;**

2 **(8) A BIOLOGICAL GRANDPARENT, AN ADOPTED GRANDPARENT, A**
3 **FOSTER GRANDPARENT, OR A STEPGRANDPARENT OF THE COVERED INDIVIDUAL;**

4 **(9) A BIOLOGICAL GRANDCHILD, AN ADOPTED GRANDCHILD, A**
5 **FOSTER GRANDCHILD, OR A STEPGRANDCHILD OF THE COVERED INDIVIDUAL; OR**

6 **(10) A BIOLOGICAL SIBLING, AN ADOPTED SIBLING, A FOSTER SIBLING,**
7 **OR A STEPSIBLING OF THE COVERED INDIVIDUAL.**

8 **(J) “FUND” MEANS THE FAMILY AND MEDICAL LEAVE INSURANCE FUND**
9 **ESTABLISHED UNDER § 8.3–501 OF THIS TITLE.**

10 **(K) “GOVERNMENTAL ENTITY” HAS THE MEANING STATED IN § 8–101 OF**
11 **THIS ARTICLE.**

12 **(L) “NEXT OF KIN” MEANS THE NEAREST BLOOD RELATIVE.**

13 **(M) “PROGRAM” MEANS THE FAMILY AND MEDICAL LEAVE INSURANCE**
14 **PROGRAM ESTABLISHED UNDER § 8.3–301 OF THIS TITLE.**

15 **(N) “QUALIFYING EXIGENCY” MEANS ANY OF THE FOLLOWING REASONS**
16 **FOR WHICH LEAVE MAY BE NEEDED BY A FAMILY MEMBER OF A SERVICE MEMBER:**

17 **(1) BECAUSE THE SERVICE MEMBER HAS RECEIVED NOTICE OF**
18 **DEPLOYMENT WITHIN 7 DAYS BEFORE THE DEPLOYMENT IS TO BEGIN;**

19 **(2) TO ATTEND MILITARY EVENTS AND RELATED ACTIVITIES**
20 **INCLUDING FAMILY SUPPORT PROGRAMS RELATED TO THE ACTIVE DUTY OF THE**
21 **SERVICE MEMBER;**

22 **(3) TO ARRANGE, PROVIDE, OR ATTEND CHILD CARE OR SCHOOL**
23 **ACTIVITIES ONLY WHEN THE SERVICE MEMBER IS ON ACTIVE DUTY CALL OR ACTIVE**
24 **DUTY STATUS;**

25 **(4) TO MAKE FINANCIAL AND LEGAL ARRANGEMENTS FOR THE**
26 **SERVICE MEMBER’S ABSENCE OR BECAUSE OF THE ABSENCE;**

27 **(5) TO ATTEND COUNSELING THAT:**

28 **(I) IS NEEDED DUE TO THE ACTIVE DUTY OR CALL TO ACTIVE**

1 DUTY STATUS OF THE SERVICE MEMBER; AND

2 (II) IS PROVIDED BY AN INDIVIDUAL WHO IS NOT A LICENSED
3 HEALTH CARE PROVIDER;

4 (6) TO SPEND UP TO 15 CALENDAR DAYS WITH A SERVICE MEMBER
5 WHO IS ON SHORT-TERM TEMPORARY REST AND RECUPERATION LEAVE DURING
6 THE PERIOD OF DEPLOYMENT;

7 (7) TO ATTEND POSTDEPLOYMENT ACTIVITIES INCLUDING
8 REINTEGRATION SERVICES FOR A PERIOD OF 90 DAYS IMMEDIATELY FOLLOWING
9 THE TERMINATION OF ACTIVE STATUS;

10 (8) TO ATTEND TO MATTERS RELATED TO THE DEATH OF THE
11 SERVICE MEMBER WHILE ON ACTIVE DUTY STATUS;

12 (9) TO ARRANGE FOR OR PROVIDE ALTERNATIVE CARE FOR A PARENT
13 OF THE SERVICE MEMBER WHEN THE PARENT IS INCAPABLE OF SELF-CARE AND THE
14 COVERED ACTIVE DUTY OR CALL TO ACTIVE DUTY NECESSITATES A CHANGE; OR

15 (10) BECAUSE OF ANY OTHER ISSUES THAT ARISE OUT OF ACTIVE DUTY
16 OR A CALL TO ACTIVE DUTY THAT AN EMPLOYER AND COVERED EMPLOYEE AGREE
17 SHOULD BE COVERED.

18 (O) "SECRETARY" MEANS THE SECRETARY OF LABOR.

19 (P) (1) "SERIOUS HEALTH CONDITION" MEANS AN ILLNESS, AN INJURY,
20 AN IMPAIRMENT, OR A PHYSICAL OR MENTAL CONDITION THAT INVOLVES:

21 (I) INPATIENT CARE IN A HOSPITAL, HOSPICE, OR RESIDENTIAL
22 HEALTH CARE FACILITY;

23 (II) CONTINUED TREATMENT BY A LICENSED HEALTH CARE
24 PROVIDER; OR

25 (III) CONTINUED TREATMENT OR SUPERVISION AT HOME BY A
26 LICENSED HEALTH CARE PROVIDER OR OTHER COMPETENT INDIVIDUAL UNDER
27 THE SUPERVISION OF A LICENSED HEALTH CARE PROVIDER.

28 (2) "SERIOUS HEALTH CONDITION" INCLUDES AN ILLNESS, AN
29 INJURY, AN IMPAIRMENT, OR A PHYSICAL OR MENTAL CONDITION DESCRIBED IN
30 PARAGRAPH (1) OF THIS SUBSECTION THAT CONTINUES OVER AN EXTENDED
31 PERIOD OF TIME AND REQUIRES INTERMITTENT TREATMENT.

1 **(Q) “SERVICE MEMBER” MEANS AN INDIVIDUAL WHO IS AN ACTIVE DUTY OR**
2 **FORMER MEMBER OF:**

3 **(1) THE UNITED STATES ARMED FORCES;**

4 **(2) A RESERVE COMPONENT OF THE UNITED STATES ARMED FORCES;**
5 **OR**

6 **(3) THE NATIONAL GUARD OF ANY STATE.**

7 **(R) “TREATMENT” INCLUDES:**

8 **(1) EXAMINATIONS OR TESTING TO DETERMINE THE EXTENT TO**
9 **WHICH A SERIOUS HEALTH CONDITION EXISTS OR PERSISTS;**

10 **(2) ONGOING OR PERIODIC EVALUATIONS OF THE SERIOUS HEALTH**
11 **CONDITION; AND**

12 **(3) ACTUAL TREATMENT BY A HEALTH CARE PROVIDER.**

13 **8.3–102.**

14 **(A) THIS SECTION DOES NOT APPLY TO THE DISCLOSURE OF INFORMATION**
15 **TO:**

16 **(1) A PUBLIC EMPLOYEE IN THE PERFORMANCE OF THE PUBLIC**
17 **EMPLOYEE’S OFFICIAL DUTIES;**

18 **(2) THE INDIVIDUAL TO WHOM THE INFORMATION RELATES; OR**

19 **(3) IF AN AUTHORIZED REPRESENTATIVE HAS THE SIGNED**
20 **AUTHORIZATION OF THE INDIVIDUAL TO WHOM THE INFORMATION RELATES, THE**
21 **AUTHORIZED REPRESENTATIVE.**

22 **(B) AN EMPLOYEE OF THE DEPARTMENT MAY NOT DISCLOSE INFORMATION**
23 **RELATING TO AN INDIVIDUAL WHO HAS APPLIED FOR OR RECEIVED BENEFITS**
24 **UNDER THIS TITLE.**

25 **SUBTITLE 2. SCOPE OF TITLE.**

26 **8.3–201.**

(A) (1) A SELF-EMPLOYED INDIVIDUAL MAY ELECT TO PARTICIPATE IN THE PROGRAM BY FILING A WRITTEN NOTICE OF ELECTION WITH THE SECRETARY IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE SECRETARY.

(2) AN ELECTION MADE UNDER PARAGRAPH (1) OF THIS SUBSECTION BECOMES EFFECTIVE ON THE DATE THE WRITTEN NOTICE IS FILED.

(B) (1) IF A SELF-EMPLOYED INDIVIDUAL ELECTS TO PARTICIPATE IN THE PROGRAM UNDER SUBSECTION (A) OF THIS SECTION, THE INDIVIDUAL SHALL PARTICIPATE FOR AN INITIAL PERIOD OF NOT LESS THAN 3 YEARS.

(2) ONCE THE INITIAL PARTICIPATION PERIOD EXPIRES, THE SELF-EMPLOYED INDIVIDUAL MAY RENEW PARTICIPATION IN THE PROGRAM FOR A PERIOD OF NOT LESS THAN 1 YEAR.

(3) IF THE SELF-EMPLOYED INDIVIDUAL DOES NOT WISH TO RENEW PARTICIPATION IN THE PROGRAM UNDER PARAGRAPH (2) OF THIS SUBSECTION, WITHIN 30 DAYS BEFORE THE PARTICIPATION PERIOD EXPIRES, THE SELF-EMPLOYED INDIVIDUAL SHALL NOTIFY THE SECRETARY IN WRITING OF THE SELF-EMPLOYED INDIVIDUAL'S WITHDRAWAL FROM THE PROGRAM.

(C) DURING THE PERIOD A SELF-EMPLOYED INDIVIDUAL PARTICIPATES IN THE PROGRAM, THE SELF-EMPLOYED INDIVIDUAL SHALL PAY THE CONTRIBUTION REQUIRED UNDER § 8.3-601 OF THIS TITLE.

8.3-202.

THIS TITLE MAY NOT BE CONSTRUED TO DIMINISH AN EMPLOYER'S OBLIGATION TO COMPLY WITH A COLLECTIVE BARGAINING AGREEMENT OR AN EMPLOYER POLICY THAT ALLOWS AN EMPLOYEE TO TAKE LEAVE FOR A LONGER PERIOD OF TIME THAN THE EMPLOYEE WOULD BE ABLE TO RECEIVE BENEFITS UNDER THIS TITLE.

8.3-203.

(A) AN EMPLOYEE'S RIGHT TO BENEFITS UNDER THIS TITLE MAY NOT BE DIMINISHED BY A COLLECTIVE BARGAINING AGREEMENT ENTERED INTO OR RENEWED OR BY AN EMPLOYER POLICY ADOPTED OR RETAINED ON OR AFTER JUNE 1, 2021.

(B) AN AGREEMENT TO WAIVE THE EMPLOYEE'S RIGHTS UNDER THIS TITLE IS VOID AS AGAINST PUBLIC POLICY.

SUBTITLE 3. ESTABLISHMENT OF PROGRAM.

8.3-301.

THERE IS A FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.

8.3-302.

THE PURPOSE OF THE PROGRAM IS TO PROVIDE TEMPORARY BENEFITS TO A COVERED INDIVIDUAL WHO IS TAKING LEAVE FROM EMPLOYMENT:

(1) TO CARE FOR A CHILD DURING THE FIRST YEAR AFTER THE CHILD'S BIRTH OR AFTER THE PLACEMENT OF THE CHILD THROUGH FOSTER CARE, KINSHIP CARE, OR ADOPTION;

(2) TO CARE FOR A FAMILY MEMBER WITH A SERIOUS HEALTH CONDITION;

(3) BECAUSE THE COVERED INDIVIDUAL HAS A SERIOUS HEALTH CONDITION THAT RESULTS IN THE COVERED INDIVIDUAL BEING UNABLE TO PERFORM THE FUNCTIONS OF THE COVERED INDIVIDUAL'S POSITION;

(4) TO CARE FOR A SERVICE MEMBER WHO IS THE COVERED INDIVIDUAL'S NEXT OF KIN; OR

(5) BECAUSE THE COVERED INDIVIDUAL HAS A QUALIFYING EXIGENCY ARISING OUT OF THE DEPLOYMENT OF A SERVICE MEMBER WHO IS A FAMILY MEMBER OF THE COVERED INDIVIDUAL.

SUBTITLE 4. ADMINISTRATION.

8.3-401.

THIS TITLE SHALL BE ADMINISTERED UNDER THE SUPERVISION OF THE SECRETARY BY THE DIVISION OF UNEMPLOYMENT INSURANCE ESTABLISHED UNDER § 8-302 OF THIS ARTICLE.

8.3-402.

THE SECRETARY MAY DELEGATE TO AN EMPLOYEE OF THE DEPARTMENT ANY POWER OR DUTY THAT IS REASONABLE AND PROPER FOR THE ADMINISTRATION OF THIS TITLE.

8.3-403.

(A) THE SECRETARY SHALL:

(1) SUBJECT TO SUBSECTION (B) OF THIS SECTION, ADOPT REGULATIONS NECESSARY TO CARRY OUT THIS TITLE;

(2) ESTABLISH PROCEDURES AND FORMS FOR FILING CLAIMS FOR BENEFITS, INCLUDING:

(I) PROCEDURES FOR NOTIFYING AN EMPLOYER WITHIN 5 BUSINESS DAYS AFTER AN EMPLOYEE OF THE EMPLOYER FILES A CLAIM FOR BENEFITS UNDER THIS TITLE; AND

(II) NOTICES OF ELECTIONS BY SELF-EMPLOYED INDIVIDUALS FOR BENEFITS UNDER § 8.3-201 OF THIS TITLE;

(3) USE INFORMATION-SHARING AND INTEGRATION TECHNOLOGY TO FACILITATE THE DISCLOSURE OF RELEVANT INFORMATION OR RECORDS NEEDED FOR THE ADMINISTRATION OF THIS TITLE; AND

(4) SUBJECT TO SUBSECTION (D) OF THIS SECTION, CARRY OUT A PUBLIC EDUCATION PROGRAM.

(B) THE REGULATIONS ADOPTED UNDER SUBSECTION (A)(1) OF THIS SECTION SHALL BE CONSISTENT WITH REGULATIONS ADOPTED TO IMPLEMENT THE FEDERAL FAMILY AND MEDICAL LEAVE ACT AND ANY RELEVANT STATE LAWS TO THE EXTENT THAT THE ADOPTED REGULATIONS DO NOT CONFLICT WITH THIS TITLE.

(C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A COVERED INDIVIDUAL UNDER § 8.3-302(2), (3), (4), OR (5) OF THIS TITLE SHALL PROVIDE CERTIFICATION FOR A CLAIM FOR BENEFITS UNDER THIS TITLE.

(2) A CERTIFICATION FOR A CLAIM FOR BENEFITS FOR A COVERED INDIVIDUAL UNDER § 8.3-302(2), (3), OR (4) OF THIS TITLE SHALL INCLUDE:

(I) THE DATE ON WHICH THE SERIOUS HEALTH CONDITION OF THE FAMILY MEMBER, COVERED INDIVIDUAL, OR SERVICE MEMBER COMMENCED;

(II) THE PROBABLE DURATION OF THE SERIOUS HEALTH CONDITION;

1 (III) THE APPROPRIATE FACTS RELATED TO THE SERIOUS
2 HEALTH CONDITION WITHIN THE KNOWLEDGE OF THE LICENSED HEALTH CARE
3 PROVIDER;

4 (IV) 1. FOR A CLAIM FOR BENEFITS UNDER § 8.3-302(2) OF
5 THIS TITLE, A STATEMENT THAT THE COVERED INDIVIDUAL NEEDS TO CARE FOR A
6 FAMILY MEMBER AND AN ESTIMATE OF THE AMOUNT OF TIME REQUIRED TO
7 PROVIDE THE CARE; OR

8 2. FOR A CLAIM FOR BENEFITS UNDER § 8.3-302(3) OF
9 THIS TITLE, A STATEMENT THAT THE COVERED INDIVIDUAL IS UNABLE TO PERFORM
10 THE FUNCTIONS OF THE COVERED INDIVIDUAL'S POSITION; AND

11 (V) FOR A CERTIFICATION FOR INTERMITTENT LEAVE, THE
12 EXPECTED DATES AND DURATION OF THE LEAVE.

13 (3) THE SECRETARY SHALL ESTABLISH STANDARDS IN REGULATION
14 FOR THE CERTIFICATION OF CLAIMS FOR BENEFITS UNDER § 8.3-302(5) OF THIS
15 TITLE.

16 (D) (1) THE SECRETARY MAY USE A PORTION OF THE FUNDS PAID UNDER
17 § 8.3-601 OF THIS TITLE OR OTHER AVAILABLE FUNDING TO PAY FOR AND CARRY
18 OUT THE REQUIREMENTS UNDER SUBSECTION (A)(4) OF THIS SECTION.

19 (2) MATERIALS USED IN THE PUBLIC EDUCATION PROGRAM
20 REQUIRED UNDER SUBSECTION (A)(4) OF THIS SECTION SHALL BE MADE AVAILABLE
21 IN ENGLISH AND SPANISH.

22 8.3-404.

23 (A) TO ENFORCE THIS TITLE, THE SECRETARY MAY:

24 (1) CONDUCT AN INVESTIGATION UNDER THIS TITLE, ON THE
25 SECRETARY'S OWN INITIATIVE OR ON RECEIPT OF A WRITTEN COMPLAINT;

26 (2) ADMINISTER AN OATH;

27 (3) CERTIFY TO AN OFFICIAL ACT;

28 (4) TAKE A DEPOSITION;

29 (5) ISSUE A SUBPOENA FOR THE ATTENDANCE OF A WITNESS TO
30 TESTIFY OR THE PRODUCTION OF BOOKS, CORRESPONDENCE, MEMORANDA,

PAPERS, OR OTHER RECORDS; AND

(6) BRING A CIVIL ACTION IN THE COUNTY WHERE THE VIOLATION ALLEGEDLY OCCURRED.

(B) (1) A SUBPOENA ISSUED UNDER SUBSECTION (A)(5) OF THIS SECTION SHALL BE SERVED IN ANY MANNER IN WHICH A SUBPOENA OF A COURT MAY BE SERVED.

(2) IF A PERSON FAILS TO COMPLY WITH A SUBPOENA ISSUED UNDER SUBSECTION (A)(5) OF THIS SECTION ON A COMPLAINT FILED BY THE SECRETARY, THE CIRCUIT COURT FOR THE COUNTY WHERE THE INVESTIGATION IS BEING CONDUCTED OR WHERE THE PERSON RESIDES, IS PRESENT, OR TRANSACTS BUSINESS MAY ISSUE AN ORDER DIRECTING COMPLIANCE WITH THE SUBPOENA OR COMPELLING TESTIMONY.

(3) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, A PERSON MAY NOT BE EXCUSED FROM COMPLYING WITH A SUBPOENA ISSUED UNDER SUBSECTION (A)(5) OF THIS SECTION ON THE GROUND THAT THE EVIDENCE OR TESTIMONY REQUIRED MAY TEND TO INCRIMINATE THE PERSON OR SUBJECT THE PERSON TO A FORFEITURE OR PENALTY.

(II) 1. EXCEPT AS PROVIDED IN SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH, AFTER CLAIMING THE PRIVILEGE AGAINST SELF-INCRIMINATION, A PERSON MAY NOT BE PROSECUTED OR SUBJECTED TO ANY FORFEITURE OR PENALTY BECAUSE OF ANY MATTER, THING, OR TRANSACTION ABOUT WHICH THE PERSON IS COMPELLED TO PRODUCE EVIDENCE OR TESTIFY.

2. IF THE PERSON COMMITS PERJURY WHILE GIVING TESTIMONY, THE PERSON IS SUBJECT TO PROSECUTION FOR THAT OFFENSE.

8.3-405.

IN A CIVIL ACTION TO ENFORCE THIS TITLE, THE SECRETARY AND THE STATE MAY BE REPRESENTED BY:

(1) THE ATTORNEY GENERAL; OR

(2) ANY QUALIFIED ATTORNEY WHO:

(I) IS A SALARIED EMPLOYEE OF THE SECRETARY; AND

(II) ON RECOMMENDATION OF THE ATTORNEY GENERAL, IS

DESIGNATED TO REPRESENT THE SECRETARY OR THE BOARD OF APPEALS AND THE STATE.

8.3–406.

(A) ON OR BEFORE SEPTEMBER 1 EACH YEAR, THE SECRETARY SHALL SUBMIT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2–1257 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY AN ANNUAL REPORT ON THE ADMINISTRATION AND OPERATION OF THIS TITLE DURING THE IMMEDIATELY PRECEDING FISCAL YEAR.

(B) THE ANNUAL REPORT SHALL INCLUDE INFORMATION REGARDING:

(1) PROJECTED AND ACTUAL PROGRAM PARTICIPATION RATES;

(2) CONTRIBUTION RATES;

(3) PROJECTED AND ACTUAL FUND BALANCES;

(4) PUBLIC OUTREACH AND TECHNICAL ASSISTANCE EFFORTS;

(5) ALL ENFORCEMENT EFFORTS;

(6) THE NUMBER AND STATUS OF COMPLAINTS UNDER SUBTITLE 9 OF THIS TITLE; AND

(7) THE COST OF ADMINISTERING THE PROGRAM.

SUBTITLE 5. THE FAMILY AND MEDICAL LEAVE INSURANCE FUND.

8.3–501.

THERE IS A FAMILY AND MEDICAL LEAVE INSURANCE FUND.

8.3–502.

(A) THE SECRETARY SHALL ADMINISTER THE FUND.

(B) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7–302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(C) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

8.3-503.**(A) THE FUND CONSISTS OF:****(1) EMPLOYEE CONTRIBUTIONS;****(2) SELF-EMPLOYED INDIVIDUAL CONTRIBUTIONS;****(3) EMPLOYER CONTRIBUTIONS;****(4) MONEY PAID TO THE FUND FOR THE PURPOSE OF REIMBURSING THE SECRETARY UNDER § 8.3-902 OF THIS TITLE FOR BENEFITS PAID IN ERROR;****(5) INTEREST EARNED ON MONEY IN THE FUND; AND****(6) MONEY RECEIVED FOR THE FUND FROM ANY OTHER SOURCE.****(B) MONEY IN THE FUND MAY BE COMMINGLED.****(C) THE FUND MAY BE USED ONLY FOR THE PURPOSES OF THIS TITLE.****8.3-504.****(A) (1) THE STATE TREASURER IS CUSTODIAN OF THE FUND.****(2) THE STATE TREASURER SHALL MANAGE THE FUND IN ACCORDANCE WITH REGULATIONS THAT THE SECRETARY ADOPTS.****(B) UNDER THE DIRECTION OF THE SECRETARY, THE STATE TREASURER SHALL ESTABLISH THE FUND ACCOUNT IN ANY FINANCIAL INSTITUTION IN WHICH THE GENERAL FUND OF THE STATE MAY BE DEPOSITED.****(C) ON RECEIPT OF ANY MONEY PAYABLE TO THE FUND, THE SECRETARY SHALL ENSURE IMMEDIATE DEPOSIT OF THE MONEY INTO THE FUND ACCOUNT AS REQUIRED BY THE STATE TREASURER.****(D) IN ACCORDANCE WITH REGULATIONS THAT THE SECRETARY ADOPTS, MONEY IN THE FUND ACCOUNT:****(1) SHALL BE USED TO PAY BENEFITS UNDER THIS TITLE; AND****(2) MAY BE USED TO PAY FOR:**

1 (I) THE PUBLIC EDUCATION PROGRAM; AND

2 (II) ANY COSTS ASSOCIATED WITH THE INITIAL
3 IMPLEMENTATION AND ONGOING ADMINISTRATION OF THIS TITLE.

4 **8.3–505.**

5 A CHECK THAT THE STATE TREASURER ISSUES TO PAY BENEFITS OR
6 REFUNDS SHALL:

7 (1) BE ISSUED ONLY ON A WARRANT SIGNED BY THE SECRETARY;

8 (2) BEAR THE SIGNATURE OF THE STATE TREASURER; AND

9 (3) BE COUNTERSIGNED BY AN AUTHORIZED AGENT.

10 **8.3–506.**

11 THIS TITLE DOES NOT GRANT AN EMPLOYEE ANY PRIOR CLAIM OR RIGHT TO
12 MONEY THE EMPLOYEE PAYS INTO THE FUND.

13 **SUBTITLE 6. CONTRIBUTIONS.**

14 **8.3–601.**

15 (A) BEGINNING JANUARY 1, 2022, EACH EMPLOYEE OF AN EMPLOYER,
16 EACH EMPLOYER, AND EACH SELF-EMPLOYED INDIVIDUAL PARTICIPATING IN THE
17 PROGRAM SHALL CONTRIBUTE TO THE FUND.

18 (B) (1) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE
19 SECRETARY SHALL SET A TOTAL RATE OF CONTRIBUTION TO BE PAID IN
20 ACCORDANCE WITH THIS SUBSECTION.

21 (II) THE TOTAL RATE OF CONTRIBUTION ESTABLISHED UNDER
22 SUBPARAGRAPH (I) OF THIS PARAGRAPH:

23 1. MAY NOT EXCEED 0.75% OF AN EMPLOYEE'S WAGES;

24 2. SHALL BE APPLIED TO ALL WAGES UP TO AND
25 INCLUDING THE SOCIAL SECURITY WAGE BASE;

26 3. SHALL BE SHARED EQUALLY BY EMPLOYERS AND

1 EMPLOYEES; AND

2 4. SHALL BE SUFFICIENT TO FUND THE BENEFITS
3 PAYABLE UNDER THIS TITLE.

4 (2) EACH EMPLOYER SHALL CONTRIBUTE AN AMOUNT EQUAL TO 50%
5 OF THE TOTAL RATE OF CONTRIBUTION FOR EACH EMPLOYEE EMPLOYED BY THE
6 EMPLOYER.

7 (3) (I) EACH EMPLOYEE OF AN EMPLOYER SHALL CONTRIBUTE AN
8 AMOUNT EQUAL TO 50% OF THE TOTAL RATE OF CONTRIBUTION.

9 (II) THE EMPLOYER OF THE EMPLOYEE SHALL DEDUCT THE
10 CONTRIBUTION REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH FROM
11 THE WAGES OF THE EMPLOYEE.

12 (4) EACH SELF-EMPLOYED INDIVIDUAL PARTICIPATING IN THE
13 PROGRAM SHALL:

14 (I) PAY CONTRIBUTIONS DURING EACH YEAR THAT THE
15 SELF-EMPLOYED INDIVIDUAL PARTICIPATES IN THE PROGRAM; AND

16 (II) CONTRIBUTE AN AMOUNT EQUAL TO THE TOTAL RATE OF
17 CONTRIBUTION ESTABLISHED UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION.

18 SUBTITLE 7. BENEFITS.

19 8.3-701.

20 (A) BEGINNING JULY 1, 2023, A COVERED INDIVIDUAL TAKING LEAVE FROM
21 EMPLOYMENT MAY SUBMIT A CLAIM FOR BENEFITS TO:

22 (1) CARE FOR A NEWBORN CHILD OR A CHILD NEWLY PLACED FOR
23 ADOPTION, FOSTER CARE, OR KINSHIP CARE WITH THE COVERED INDIVIDUAL
24 DURING THE FIRST YEAR AFTER THE BIRTH, ADOPTION, OR PLACEMENT;

25 (2) CARE FOR A FAMILY MEMBER WITH A SERIOUS HEALTH
26 CONDITION;

27 (3) ATTEND TO A SERIOUS HEALTH CONDITION THAT RESULTS IN THE
28 COVERED INDIVIDUAL BEING UNABLE TO PERFORM THE FUNCTIONS OF THE
29 COVERED INDIVIDUAL'S POSITION;

(4) CARE FOR A SERVICE MEMBER WITH A SERIOUS HEALTH CONDITION RESULTING FROM MILITARY SERVICE WHO IS THE COVERED INDIVIDUAL'S NEXT OF KIN; OR

(5) ATTEND TO A QUALIFYING EXIGENCY ARISING OUT OF THE DEPLOYMENT OF A SERVICE MEMBER WHO IS A FAMILY MEMBER OF THE COVERED INDIVIDUAL.

(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A COVERED INDIVIDUAL MAY TAKE THE LEAVE FOR WHICH THE INDIVIDUAL IS ELIGIBLE FOR BENEFITS UNDER SUBSECTION (A) OF THIS SECTION ON AN INTERMITTENT LEAVE SCHEDULE.

(2) IF LEAVE IS TAKEN ON AN INTERMITTENT LEAVE SCHEDULE, THE COVERED INDIVIDUAL SHALL:

(I) MAKE A REASONABLE EFFORT TO SCHEDULE THE INTERMITTENT LEAVE IN A MANNER THAT DOES NOT UNDULY DISRUPT THE OPERATIONS OF THE EMPLOYER; AND

(II) PROVIDE THE EMPLOYER WITH REASONABLE AND PRACTICABLE PRIOR NOTICE OF THE REASON FOR WHICH THE INTERMITTENT LEAVE IS NECESSARY.

(3) IF LEAVE IS TAKEN ON AN INTERMITTENT LEAVE SCHEDULE, AN EMPLOYER MAY NOT REDUCE THE TOTAL AMOUNT OF LEAVE TO WHICH THE COVERED INDIVIDUAL IS ENTITLED BEYOND THE AMOUNT OF LEAVE ACTUALLY TAKEN.

8.3-702.

(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A COVERED INDIVIDUAL MAY NOT RECEIVE MORE THAN 12 WEEKS OF BENEFITS IN AN APPLICATION YEAR.

(2) A COVERED INDIVIDUAL MAY RECEIVE AN ADDITIONAL 12 WEEKS OF BENEFITS IF THE COVERED INDIVIDUAL DURING THE SAME APPLICATION YEAR:

(I) RECEIVED BENEFITS BECAUSE THE COVERED INDIVIDUAL WAS ELIGIBLE FOR BENEFITS UNDER § 8.3-701(A)(3) OF THIS SUBTITLE; AND

(II) BECOMES ELIGIBLE FOR BENEFITS UNDER § 8.3-701(A)(1), (2), (4), OR (5) OF THIS SUBTITLE.

(B) IF A COVERED INDIVIDUAL TAKES LEAVE FOR WHICH THE COVERED INDIVIDUAL IS RECEIVING BENEFITS UNDER THIS TITLE, THE LEAVE SHALL RUN CONCURRENTLY WITH ELIGIBLE LEAVE THAT MAY BE TAKEN BY THE COVERED INDIVIDUAL UNDER THE FEDERAL FAMILY AND MEDICAL LEAVE ACT.

(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN INDIVIDUAL RECEIVING BENEFITS UNDER TITLE 8 OF THIS ARTICLE OR WAGE REPLACEMENT BENEFITS UNDER TITLE 9 OF THIS ARTICLE IS NOT ELIGIBLE TO RECEIVE BENEFITS UNDER THIS TITLE.

(2) AN INDIVIDUAL RECEIVING COMPENSATION FOR A PERMANENT PARTIAL DISABILITY UNDER TITLE 9 OF THIS ARTICLE MAY BE ELIGIBLE FOR BENEFITS UNDER THIS TITLE.

8.3-703.

(A) AN EMPLOYER MAY ALLOW A COVERED INDIVIDUAL TO USE PAID VACATION, PAID SICK LEAVE, OR OTHER PAID TIME OFF UNDER AN EMPLOYER POLICY IN ADDITION TO THE BENEFITS AVAILABLE UNDER THIS TITLE TO REPLACE THE COVERED INDIVIDUAL'S WAGES UP TO 100% OF THE COVERED INDIVIDUAL'S WEEKLY WAGE DURING THE PERIOD OF LEAVE FOR WHICH BENEFITS ARE RECEIVED UNDER THIS TITLE.

(B) AN EMPLOYER CONTRIBUTING TO THE FUND MAY REQUIRE A COVERED INDIVIDUAL WHO RECEIVES BENEFITS UNDER THIS TITLE TO USE THOSE BENEFITS CONCURRENTLY WITH FAMILY OR MEDICAL LEAVE BENEFITS PROVIDED UNDER AN EMPLOYER POLICY.

8.3-704.

(A) FOR THE PURPOSES OF THIS SECTION:

(1) THE COVERED INDIVIDUAL'S AVERAGE WEEKLY WAGE SHALL BE CALCULATED AS THE TOTAL WAGES RECEIVED BY THE COVERED INDIVIDUAL OVER THE LAST 680 HOURS FOR WHICH THE COVERED INDIVIDUAL WAS PAID DIVIDED BY THE NUMBER OF WEEKS WORKED; AND

(2) THE STATE AVERAGE WEEKLY WAGE SHALL BE THE WAGE CALCULATED UNDER § 9-603 OF THIS ARTICLE.

(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE WEEKLY BENEFIT AMOUNT PAYABLE TO A COVERED INDIVIDUAL UNDER THIS TITLE SHALL

1 BE:

2 (I) IF THE COVERED INDIVIDUAL'S AVERAGE WEEKLY WAGE IS
3 65% OR LESS OF THE STATE AVERAGE WEEKLY WAGE, 90% OF THE COVERED
4 INDIVIDUAL'S AVERAGE WEEKLY WAGE;

5 (II) IF THE COVERED INDIVIDUAL'S AVERAGE WEEKLY WAGE IS
6 GREATER THAN 65% OF THE STATE AVERAGE WEEKLY WAGE, THE SUM OF:

7 1. 90% OF THE COVERED INDIVIDUAL'S AVERAGE
8 WEEKLY WAGE UP TO 65% OF THE STATE AVERAGE WEEKLY WAGE; AND

9 2. 50% OF THE COVERED INDIVIDUAL'S AVERAGE
10 WEEKLY WAGE THAT IS GREATER THAN 65% OF THE STATE AVERAGE WEEKLY WAGE;
11 OR

12 (III) IF THE COVERED INDIVIDUAL IS TAKING PARTIALLY PAID
13 LEAVE, THE LESSER OF:

14 1. THE AMOUNT REQUIRED TO MAKE UP THE
15 DIFFERENCE BETWEEN THE WAGES PAID TO THE COVERED INDIVIDUAL WHILE THE
16 COVERED INDIVIDUAL IS TAKING PARTIALLY PAID LEAVE AND THE FULL WAGES
17 NORMALLY PAID TO THE COVERED INDIVIDUAL; AND

18 2. IF THE COVERED INDIVIDUAL'S AVERAGE WEEKLY
19 WAGE IS GREATER THAN 65% OF THE STATE AVERAGE WEEKLY WAGE, THE SUM OF:

20 A. 90% OF THE COVERED INDIVIDUAL'S AVERAGE
21 WEEKLY WAGE UP TO 65% OF THE STATE AVERAGE WEEKLY WAGE; AND

22 B. 50% OF THE COVERED INDIVIDUAL'S AVERAGE
23 WEEKLY WAGE THAT IS GREATER THAN 65% OF THE STATE AVERAGE WEEKLY WAGE.

24 (2) THE WEEKLY BENEFIT AMOUNT PAYABLE UNDER PARAGRAPH (1)
25 OF THIS SUBSECTION:

26 (I) SHALL BE AT LEAST \$50; AND

27 (II) MAY NOT EXCEED:

28 1. FOR THE 12-MONTH PERIOD BEGINNING JULY 1,
29 2023, \$1,000; AND

1 **2. FOR THE 12-MONTH PERIOD BEGINNING JULY 1,**
2 **2024, AND EACH SUBSEQUENT 12-MONTH PERIOD, THE AMOUNT DETERMINED AND**
3 **ANNOUNCED BY THE SECRETARY UNDER PARAGRAPH (3) OF THIS SUBSECTION.**

4 **(3) (I) IN THIS PARAGRAPH, “CONSUMER PRICE INDEX” MEANS**
5 **THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE**
6 **WASHINGTON–ARLINGTON–ALEXANDRIA, DC–VA–MD–WV METROPOLITAN AREA**
7 **OR A SUCCESSOR INDEX PUBLISHED BY THE FEDERAL BUREAU OF LABOR**
8 **STATISTICS.**

9 **(II) EXCEPT AS PROVIDED IN SUBPARAGRAPH (IV) OF THIS**
10 **PARAGRAPH, FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2024, AND EACH**
11 **SUBSEQUENT 12-MONTH PERIOD, THE MAXIMUM WEEKLY BENEFIT AMOUNT SHALL**
12 **BE INCREASED BY THE AMOUNT, ROUNDED TO THE NEAREST CENT, THAT EQUALS**
13 **THE PRODUCT OF:**

14 **1. THE MAXIMUM WEEKLY BENEFIT AMOUNT IN EFFECT**
15 **FOR THE IMMEDIATELY PRECEDING 12-MONTH PERIOD; AND**

16 **2. THE ANNUAL PERCENT GROWTH IN THE CONSUMER**
17 **PRICE INDEX FOR THE IMMEDIATELY PRECEDING 12-MONTH PERIOD, AS**
18 **DETERMINED BY THE SECRETARY UNDER SUBPARAGRAPH (III)1 OF THIS**
19 **PARAGRAPH.**

20 **(III) BEGINNING MARCH 1, 2024, AND ON EACH SUBSEQUENT**
21 **SEPTEMBER 1, THE SECRETARY SHALL DETERMINE AND ANNOUNCE:**

22 **1. THE ANNUAL PERCENT GROWTH, IF ANY, IN THE**
23 **CONSUMER PRICE INDEX BASED ON THE MOST RECENT 12-MONTH PERIOD FOR**
24 **WHICH DATA ARE AVAILABLE ON SEPTEMBER 1; AND**

25 **2. THE MAXIMUM WEEKLY BENEFIT AMOUNT EFFECTIVE**
26 **FOR THE 12-MONTH PERIOD BEGINNING THE IMMEDIATELY FOLLOWING JULY 1.**

27 **(IV) IF THERE IS A DECLINE OR NO GROWTH IN THE CONSUMER**
28 **PRICE INDEX, THE MAXIMUM WEEKLY BENEFIT AMOUNT SHALL REMAIN THE SAME**
29 **AS THE AMOUNT THAT WAS IN EFFECT FOR THE PRECEDING 12-MONTH PERIOD.**

30 **(C) AN INCREASE IN THE WEEKLY BENEFIT AMOUNT UNDER SUBSECTION**
31 **(B)(3) OF THIS SECTION APPLIES ONLY TO A CLAIM FOR BENEFITS FILED AFTER THE**
32 **DATE THE INCREASE BECOMES EFFECTIVE.**

33 **(D) THE DIVISION SHALL:**

1 (1) NOTIFY THE EMPLOYER OF A COVERED INDIVIDUAL WITHIN 5
2 BUSINESS DAYS AFTER THE COVERED INDIVIDUAL FILES A CLAIM FOR BENEFITS
3 UNDER THIS TITLE;

4 (2) APPROVE OR DENY THE CLAIM AND NOTIFY THE COVERED
5 INDIVIDUAL WITHIN 10 BUSINESS DAYS AFTER THE COVERED INDIVIDUAL FILES THE
6 CLAIM;

7 (3) MAKE THE FIRST PAYMENT OF BENEFITS TO A COVERED
8 INDIVIDUAL WITHIN 5 BUSINESS DAYS AFTER THE CLAIM IS APPROVED; AND

9 (4) MAKE SUBSEQUENT PAYMENTS EVERY 2 WEEKS UNTIL THE
10 BENEFIT PERIOD ENDS.

11 **8.3-705.**

12 (A) IF THE INTERNAL REVENUE SERVICE DETERMINES THAT BENEFITS
13 PAID UNDER THIS SUBTITLE ARE SUBJECT TO FEDERAL INCOME TAX, AT THE TIME
14 A COVERED INDIVIDUAL FILES A NEW CLAIM FOR BENEFITS, THE DIVISION SHALL
15 NOTIFY THE COVERED INDIVIDUAL THAT:

16 (1) THE INTERNAL REVENUE SERVICE HAS DETERMINED THAT THE
17 BENEFITS ARE SUBJECT TO FEDERAL INCOME TAX;

18 (2) THERE ARE REQUIREMENTS REGARDING ESTIMATED TAX
19 PAYMENTS;

20 (3) THE COVERED INDIVIDUAL MAY ELECT TO HAVE FEDERAL
21 INCOME TAX DEDUCTED AND WITHHELD FROM THE BENEFITS THAT THE COVERED
22 INDIVIDUAL RECEIVES UNDER THIS TITLE AT THE RATE SPECIFIED IN THE
23 INTERNAL REVENUE CODE; AND

24 (4) THE COVERED INDIVIDUAL IS ALLOWED TO CHANGE A
25 PREVIOUSLY ELECTED WITHHOLDING STATUS.

26 (B) (1) IF A COVERED INDIVIDUAL ELECTS TO HAVE FEDERAL INCOME
27 TAX DEDUCTED AND WITHHELD UNDER SUBSECTION (A)(3) OF THIS SECTION, THE
28 DIVISION SHALL DEDUCT AND WITHHOLD AN AMOUNT AT THE RATE SPECIFIED IN
29 THE INTERNAL REVENUE CODE IN A MANNER REQUIRED BY THE INTERNAL
30 REVENUE SERVICE.

31 (2) IF THE DIVISION DEDUCTS AND WITHHOLDS FEDERAL INCOME

TAX UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE AMOUNT DEDUCTED AND WITHHELD SHALL REMAIN IN THE FUND UNTIL IT IS TRANSFERRED TO THE INTERNAL REVENUE SERVICE AS A PAYMENT OF INCOME TAX.

8.3-706.

(A) AN EMPLOYER MAY SATISFY THE REQUIREMENTS OF THIS TITLE THROUGH A PRIVATE EMPLOYER PLAN CONSISTING OF EMPLOYER-PROVIDED BENEFITS, INSURANCE, OR A COMBINATION OF BOTH IF THE PRIVATE EMPLOYER PLAN IS OFFERED TO ALL OF THE EMPLOYER'S ELIGIBLE EMPLOYEES AND MEETS OR EXCEEDS THE RIGHTS, PROTECTIONS, AND BENEFITS PROVIDED TO A COVERED EMPLOYEE UNDER THIS TITLE.

(B) A PRIVATE EMPLOYER PLAN SHALL BE FILED WITH THE DIVISION FOR APPROVAL.

(C) AN EMPLOYER THAT PROVIDES COVERED EMPLOYEES WITH A PRIVATE EMPLOYER PLAN AND AN EMPLOYEE THAT IS COVERED BY A PRIVATE EMPLOYER PLAN ARE EXEMPT FROM THE CONTRIBUTIONS REQUIRED UNDER SUBTITLE 6 OF THIS TITLE.

8.3-707.

IF A COVERED INDIVIDUAL RECEIVES BENEFITS UNDER THIS TITLE OR TAKES LEAVE FROM WORK FOR WHICH BENEFITS MAY BE PAID UNDER THIS TITLE, THE EMPLOYER OF THE COVERED INDIVIDUAL SHALL, ON THE EXPIRATION OF THE LEAVE, RESTORE THE COVERED INDIVIDUAL TO AN EQUIVALENT POSITION OF EMPLOYMENT.

8.3-708.

IF A COVERED INDIVIDUAL IS RECEIVING BENEFITS UNDER THIS TITLE OR IS TAKING LEAVE FOR WHICH BENEFITS MAY BE PAID UNDER THIS TITLE, THE EMPLOYER OF THE COVERED INDIVIDUAL SHALL CONTINUE ANY EMPLOYMENT BENEFITS IN THE SAME MANNER AS REQUIRED UNDER TITLE 3, SUBTITLE 12 OF THIS ARTICLE FOR THE TIME PERIOD THAT THE COVERED INDIVIDUAL IS ABSENT FROM WORK OR RECEIVING BENEFITS UNDER THIS TITLE.

SUBTITLE 8. NOTICE TO EMPLOYEES.

8.3-801.

(A) AN EMPLOYER SHALL PROVIDE WRITTEN NOTICE TO EACH EMPLOYEE

1 OF THE RIGHTS AND DUTIES OF AN EMPLOYEE UNDER THIS TITLE AT THE TIME OF
2 HIRE AND ANNUALLY THEREAFTER.

3 (B) (1) WHEN AN EMPLOYEE REQUESTS LEAVE UNDER THIS TITLE, OR
4 WHEN AN EMPLOYER KNOWS THAT AN EMPLOYEE'S LEAVE MAY BE FOR A REASON
5 UNDER § 8.3-302 OF THIS TITLE, THE EMPLOYER SHALL NOTIFY THE EMPLOYEE OF
6 THE EMPLOYEE'S ELIGIBILITY TO TAKE LEAVE FOR WHICH BENEFITS MAY BE PAID
7 UNDER THIS TITLE WITHIN 5 BUSINESS DAYS.

8 (2) THE NOTICE PROVIDED UNDER PARAGRAPH (1) OF THIS
9 SUBSECTION SHALL INCLUDE:

10 (I) THE RIGHT OF AN ELIGIBLE EMPLOYEE TO RECEIVE
11 PROGRAM BENEFITS UNDER THIS TITLE;

12 (II) THE PROCEDURE FOR FILING A CLAIM FOR BENEFITS;

13 (III) AN ELIGIBLE EMPLOYEE'S RESPONSIBILITIES WITH
14 RESPECT TO PROVIDING NOTIFICATION PRIOR TO THE COMMENCEMENT OF LEAVE
15 AND ANY PENALTIES FOR FAILING TO DO SO;

16 (IV) THE RIGHT OF AN EMPLOYEE TO FILE A COMPLAINT FOR
17 ALLEGED VIOLATIONS OF THIS TITLE;

18 (V) THE RIGHT OF AN ELIGIBLE EMPLOYEE TO JOB
19 PROTECTION; AND

20 (VI) A DESCRIPTION OF THE PROHIBITED ACTS, PENALTIES, AND
21 COMPLAINT PROCEDURES UNDER SUBTITLE 9 OF THIS TITLE.

22 (C) THE NOTICES REQUIRED UNDER THIS SUBTITLE SHALL BE PROVIDED IN
23 ACCORDANCE WITH REGULATIONS ADOPTED BY THE SECRETARY.

24 **SUBTITLE 9. PROHIBITED ACTS; PENALTIES.**

25 **8.3-901.**

26 (A) IF AN INDIVIDUAL WILLFULLY MAKES A FALSE STATEMENT OR
27 MISREPRESENTATION REGARDING A MATERIAL FACT OR WILLFULLY FAILS TO
28 REPORT A MATERIAL FACT TO OBTAIN BENEFITS UNDER THIS TITLE, THE
29 INDIVIDUAL IS DISQUALIFIED FROM RECEIVING BENEFITS FOR 1 YEAR.

30 (B) IF AN EMPLOYER WILLFULLY MAKES OR CAUSES TO BE MADE A FALSE

1 STATEMENT OR WILLFULLY FAILS TO REPORT A MATERIAL FACT REGARDING A
2 CLAIM FOR BENEFITS BY AN EMPLOYEE, THE EMPLOYER IS SUBJECT TO A CIVIL
3 PENALTY OF UP TO \$1,000 FOR EACH OCCURRENCE.

4 (C) AN EMPLOYER MAY NOT WILLFULLY:

5 (1) FAIL OR REFUSE TO PAY CONTRIBUTIONS TO THE FUND; OR

6 (2) TAKE DEDUCTIONS FROM THE WAGES OF AN EMPLOYEE TO PAY
7 ANY PORTION OF THE EMPLOYER CONTRIBUTIONS DUE FROM THE EMPLOYER.

8 8.3-902.

9 (A) THE DIVISION MAY SEEK REPAYMENT OF BENEFITS FROM AN
10 INDIVIDUAL WHO RECEIVED BENEFITS UNDER THIS TITLE IF:

11 (1) THE BENEFITS WERE PAID ERRONEOUSLY OR AS A RESULT OF
12 WILLFUL MISREPRESENTATION BY THE INDIVIDUAL; OR

13 (2) A CLAIM FOR BENEFITS UNDER THIS TITLE IS REJECTED AFTER
14 THE BENEFITS WERE PAID.

15 (B) THE SECRETARY MAY WAIVE IN WHOLE OR IN PART THE REPAYMENT OF
16 BENEFITS UNDER SUBSECTION (A) OF THIS SECTION IF:

17 (1) THE ERROR IN PAYMENT WAS NOT DUE TO ANY FALSE STATEMENT,
18 NONDISCLOSURE OF MATERIAL FACT, OR MISREPRESENTATION BY A COVERED
19 INDIVIDUAL; OR

20 (2) THE REPAYMENT WOULD BE AGAINST EQUITY AND GOOD
21 CONSCIENCE OR ADMINISTRATIVE EFFICIENCY.

22 8.3-903.

23 IF AN EMPLOYER FAILS TO PAY THE CONTRIBUTIONS DUE TO THE FUND, THE
24 SECRETARY MAY, IN ACCORDANCE WITH § 8.3-404 OF THIS TITLE:

25 (1) ASSESS THE AMOUNT OF CONTRIBUTIONS AND INTEREST DUE;

26 (2) MAKE AN ADDITIONAL ASSESSMENT IN AN AMOUNT NOT TO
27 EXCEED TWO TIMES THE CONTRIBUTIONS WITHHELD, AS A PENALTY FOR FAILURE
28 TO PAY THE CONTRIBUTIONS DUE; AND

1 **(3) ORDER AN AUDIT OF THE EMPLOYER FOR THE IMMEDIATELY**
2 **FOLLOWING FISCAL YEAR TO INVESTIGATE AND DETERMINE COMPLIANCE WITH**
3 **THIS TITLE AND TITLES 3, 8, AND 9 OF THIS ARTICLE.**

4 **8.3–904.**

5 **A PERSON MAY NOT DISCHARGE, DEMOTE, OR OTHERWISE DISCRIMINATE OR**
6 **TAKE ADVERSE ACTION AGAINST A COVERED INDIVIDUAL BECAUSE THE COVERED**
7 **INDIVIDUAL HAS:**

8 **(1) FILED FOR, APPLIED FOR, OR RECEIVED BENEFITS, OR TAKEN**
9 **FAMILY OR MEDICAL LEAVE FOR WHICH BENEFITS MAY BE PAID UNDER THIS TITLE;**

10 **(2) INQUIRED ABOUT THE RIGHTS AND RESPONSIBILITIES UNDER**
11 **THIS TITLE;**

12 **(3) COMMUNICATED TO THE PERSON AN INTENT TO FILE A CLAIM, A**
13 **COMPLAINT, OR AN APPEAL UNDER THIS TITLE; OR**

14 **(4) TESTIFIED OR INTENDS TO TESTIFY OR OTHERWISE HAS ASSISTED**
15 **IN A PROCEEDING UNDER THIS TITLE.**

16 **8.3–905.**

17 **(A) (1) AN EMPLOYEE ALLEGING A VIOLATION OF THIS SUBTITLE MAY**
18 **FILE A COMPLAINT WITH THE SECRETARY TO RECOVER LOST WAGES AND DAMAGES**
19 **EQUAL TO THE AMOUNT OF WAGES, SALARY, EMPLOYMENT BENEFITS, OR OTHER**
20 **COMPENSATION DENIED OR LOST, AND APPROPRIATE PUNITIVE DAMAGES.**

21 **(2) A COMPLAINT UNDER THIS SUBSECTION MAY ALSO SEEK**
22 **APPROPRIATE RELIEF INCLUDING REINSTATEMENT OR THE HIRING OF EMPLOYEES**
23 **WITH OR WITHOUT BACK PAY.**

24 **(B) THIS SECTION DOES NOT DEPRIVE A PRIVATE RIGHT OR CAUSE OF**
25 **ACTION TO ANY EMPLOYEE FOR VIOLATIONS OF § 8.3–904 OF THIS SUBTITLE OR §**
26 **8.3–707 OF THIS TITLE.**

27 **8.3–906.**

28 **(A) (1) NOTWITHSTANDING ANY ADMINISTRATIVE REMEDY AVAILABLE**
29 **UNDER § 8.3–905 OF THIS SUBTITLE, AN EMPLOYEE MAY BRING AN ACTION AGAINST**
30 **AN EMPLOYER FOR VIOLATIONS OF § 8.3–904 OF THIS SUBTITLE OR § 8.3–707 OR §**
31 **8.3–708 OF THIS TITLE TO RECOVER LOST WAGES AND DAMAGES EQUAL TO THE**

1 AMOUNT OF WAGES, SALARY, EMPLOYMENT BENEFITS, OR OTHER COMPENSATION
2 DENIED OR LOST, AND APPROPRIATE PUNITIVE DAMAGES.

3 (2) AN ACTION UNDER THIS SUBSECTION MAY SEEK INJUNCTIVE AND
4 OTHER APPROPRIATE EQUITABLE RELIEF INCLUDING REINSTATEMENT OR THE
5 HIRING OF EMPLOYEES WITH OR WITHOUT BACK PAY.

6 (B) ON A FINDING THAT AN EMPLOYEE IS ENTITLED TO JUDGMENT IN AN
7 ACTION UNDER SUBSECTION (A) OF THIS SECTION, THE COURT SHALL ALLOW
8 AGAINST THE EMPLOYER REASONABLE ATTORNEY'S FEES AND OTHER COSTS.

9 8.3-907.

10 (A) (1) THE SECRETARY SHALL ESTABLISH A SYSTEM FOR APPEALS BY
11 COVERED INDIVIDUALS IN THE CASE OF DENIAL OF BENEFITS UNDER THIS TITLE.

12 (2) THE SECRETARY MAY USE THE PROCEDURES UNDER § 8-806 OF
13 THIS ARTICLE FOR THE SYSTEM REQUIRED UNDER PARAGRAPH (1) OF THIS
14 SUBSECTION.

15 (B) JUDICIAL REVIEW OF ANY DECISION WITH RESPECT TO BENEFITS
16 UNDER THIS TITLE SHALL BE ALLOWED IN A COURT OF COMPETENT JURISDICTION
17 AFTER AN AGGRIEVED PARTY HAS EXHAUSTED ALL ADMINISTRATIVE REMEDIES
18 ESTABLISHED BY THE SECRETARY UNDER THIS TITLE.

19 (C) THE SECRETARY SHALL IMPLEMENT PROCEDURES TO ENSURE
20 CONFIDENTIALITY OF ALL INFORMATION RELATED TO ANY CLAIMS FILED OR
21 APPEALS TAKEN TO THE MAXIMUM EXTENT ALLOWED BY LAW.

22 SUBTITLE 10. SHORT TITLE.

23 8.3-1001.

24 THIS TITLE MAY BE CITED AS THE MARYLAND FAMILY AND MEDICAL LEAVE
25 INSURANCE PROGRAM.

26 Article – State Finance and Procurement

27 6-226.

28 (a) (2) (i) Notwithstanding any other provision of law, and unless
29 inconsistent with a federal law, grant agreement, or other federal requirement or with the
30 terms of a gift or settlement agreement, net interest on all State money allocated by the
31 State Treasurer under this section to special funds or accounts, and otherwise entitled to

1 receive interest earnings, as accounted for by the Comptroller, shall accrue to the General
2 Fund of the State.

3 (ii) The provisions of subparagraph (i) of this paragraph do not apply
4 to the following funds:

5 122. the Racing and Community Development Financing Fund;
6 [and]

7 123. the Racing and Community Development Facilities Fund;
8 AND

9 124. THE FAMILY AND MEDICAL LEAVE INSURANCE
10 FUND.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
12 apply only prospectively and may not be applied or interpreted to have any effect on or
13 application to any collective bargaining agreement entered into before the effective date of
14 this Act.

15 SECTION 3. AND BE IT FURTHER ENACTED, That, on or before October 1, 2021,
16 the Secretary of Labor shall adopt regulations as required under § 8.3–403 of the Labor and
17 Employment Article, as enacted by Section 1 of this Act.

18 SECTION 4. AND BE IT FURTHER ENACTED, That it is the intent of the General
19 Assembly that, to the extent permissible under federal law, existing employees and
20 resources of the Division of Unemployment Insurance be used to carry out the provisions
21 of this Act.

22 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect June
23 1, 2021.