

SENATE BILL 485

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By: **Senator Hayes**

Introduced and read first time: January 23, 2024

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Family and Medical Leave Insurance Program – Modifications**

3 FOR the purpose of modifying provisions of law governing application, administration, and
4 enforcement of the Family and Medical Leave Insurance Program, including
5 provisions related to the payment of contributions, the calculation of the average
6 weekly wage, the submission of claims for benefits, the application of the Program
7 to self-employed individuals, the satisfaction of Program requirements through
8 private employer plans or insurance, and the use of contributions or other funding
9 by the Secretary of Labor; and generally relating to the Family and Medical Leave
10 Insurance Program.

11 BY repealing and reenacting, without amendments,
12 Article – Labor and Employment
13 Section 8.3–101(a)
14 Annotated Code of Maryland
15 (2016 Replacement Volume and 2023 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Labor and Employment
18 Section 8.3–101(d) and (r), 8.3–102, 8.3–201(b)(1), 8.3–302, 8.3–403(a) and (d),
19 8.3–601(a)(1), (b), and (c)(1), 8.3–701(a)(1), 8.3–703(a) and (b)(3), 8.3–705,
20 8.3–903, 8.3–905(a) and (b), and 8.3–906
21 Annotated Code of Maryland
22 (2016 Replacement Volume and 2023 Supplement)

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

25 **Article – Labor and Employment**

26 8.3–101.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(a) In this title the following words have the meanings indicated.

(d) “Covered employee” means an employee who has worked at least 680 hours **PERFORMING SERVICES UNDER EMPLOYMENT LOCATED IN THE STATE** over the [12-month period] **FOUR MOST RECENTLY COMPLETED CALENDAR QUARTERS FOR WHICH QUARTERLY REPORTS HAVE BEEN REQUIRED** immediately preceding the date on which leave is to begin.

(r) “Wages” means all compensation that is due for employment that is:

(1) for an employee[:

(i) an hourly wage or a salary;

(ii) a commission;

(iii) compensatory pay;

(iv) severance pay;

(v) standby pay;

(vi) a tip or gratuity;

(vii) holiday or vacation pay; or

(viii) any other paid leave, including sick leave, that is paid to the employee entirely by the employer], **WAGES AS DEFINED IN § 8–101 OF THIS ARTICLE;** or

(2) for a self-employed individual[,]:

(I) self-employment income, as defined in 26 U.S.C. § 1402(b); **OR**

(II) **INCOME, PAY, OR LEAVE LISTED UNDER ITEM (1) OF THIS SUBSECTION THAT IS EARNED FROM A C CORPORATION OR AN S CORPORATION IF THE INCOME, PAY, OR LEAVE IS PAID TO THE OWNER WHO IS THE SOLE EMPLOYEE OF A C CORPORATION OR AN S CORPORATION.**

8.3–102.

(a) (1) This subsection does not apply to the disclosure of information to:

(i) a public employee in the performance of the public employee’s official duties;

(ii) the individual to whom the information relates; [or]

(iii) if an authorized representative has the signed authorization of the individual to whom the information relates, the authorized representative; **OR**

(IV) EMPLOYERS WHOSE EMPLOYEES HAVE FILED CLAIMS WITH THE DEPARTMENT FOR THE PURPOSE OF CLAIMS ADMINISTRATION.

(2) An employee of the Department may not disclose **PERSONAL IDENTIFYING** information relating to:

(I) an individual who has applied for or received benefits under this title;

(II) AN INDIVIDUAL WHOSE EMPLOYMENT DATA HAS BEEN SUBMITTED TO THE DEPARTMENT BY THE INDIVIDUAL'S EMPLOYER UNDER THIS TITLE; OR

(III) A SELF-EMPLOYED INDIVIDUAL WHO SUBMITTED DATA TO THE DEPARTMENT UNDER THIS TITLE.

(b) This title preempts the authority of a local jurisdiction to enact a law on or after June 1, 2022, that establishes a paid family and medical leave insurance program for employees of an employer other than the local jurisdiction.

8.3–201.

(b) (1) A self-employed individual **WHO IS A RESIDENT OF THE STATE** 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.

8.3–302.

The purpose of the Program is to provide temporary benefits to a covered individual who is taking leave from employment:

(1) (i) to care for or bond with a child of the covered individual during the first year after the child's birth; or

(ii) during the process through which a child is being placed with the covered individual through foster care, kinship care, or adoption and to care for and bond with the child during the first year after the placement;

(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] **FOR WHOM** the covered [individual's] **INDIVIDUAL IS** 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.

8.3–403.

(a) The Secretary, in consultation with other State agencies and relevant stakeholders, 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 any of the following occurs:

1. an employee files an electronic application regarding a claim for benefits;

2. an employee's paper application regarding a claim for benefits is processed;

3. a determination regarding a claim for benefits is made;

4. an appeal for a determination regarding a claim for benefits is filed; or

5. a change is made to a determination regarding a claim for benefits; and

(ii) notices of elections by self-employed individuals for benefits under § 8.3–201 of this title;

(3) ESTABLISH PROCEDURES AND FORMS FOR ELECTRONIC FILING OF REPORTS, NOTICES, AND OTHER REQUIRED DOCUMENTS BY EMPLOYERS;

~~[(3)]~~ (4) use information-sharing and integration technology to facilitate the disclosure of relevant information or records needed for the administration of this title; and

1 [(4)] **(5)** subject to subsection (d) of this section, carry out a public
2 education program.

3 (d) (1) The Secretary may use a portion of the funds paid under § 8.3–601 of
4 this title or other available funding to:

5 **(I)** pay for and carry out the requirements under subsection [(a)(4)]
6 **(A)(5)** of this section; OR

7 **(II) ISSUE GRANTS.**

8 (2) Materials used in the public education program required under
9 subsection [(a)(4)] **(A)(5)** of this section shall be made available in English and Spanish.

10 8.3–601.

11 (a) (1) Beginning [October 1, 2024] **JULY 1, 2025**, each employee of an
12 employer, each employer with 15 or more employees, and each self-employed individual
13 participating in the Program shall contribute to the Fund.

14 (b) (1) Subject to subsection (a)(2) of this section, on or before [October 1, 2023]
15 **FEBRUARY 1, 2024**, the Secretary shall set the total rate of contribution based on
16 available cost analyses of the Program.

17 (2) The rate set under paragraph (1) of this subsection shall be in effect for
18 the period from [October 1, 2024] **JULY 1, 2025**, to June 30, 2026, both inclusive.

19 (c) (1) On or before November 15 each year, beginning in [2025] **2026**, the
20 Secretary shall conduct a cost analysis of the Program that is focused on the cost of
21 maintaining solvency and paying benefits to covered individuals that will be used to
22 determine the appropriate total rate of contribution to the Fund.

23 8.3–701.

24 (a) (1) Subject to paragraph (2) of this subsection, beginning [January] **JULY**
25 1, 2026, a covered individual taking leave from employment may submit a claim for
26 benefits:

27 (i) 1. to care for a newborn child of the covered individual during
28 the first year after the child's birth; or

29 2. because a child is being placed for adoption, foster care, or
30 kinship care with the covered individual or to care for or bond with the child during the
31 first year after the placement;

32 (ii) to care for a family member with a serious health condition;

(iii) to attend to a serious health condition that results in the covered individual being unable to perform the functions of the covered individual's position;

(iv) to care for a service member with a serious health condition resulting from military service [who is] **FOR WHOM** the covered [individual's] **INDIVIDUAL IS** next of kin; or

(v) to attend to a qualifying exigency arising out of the deployment of a service member who is a family member of the covered individual.

8.3–703.

(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] **IN THE HIGHEST OF THE PREVIOUS FOUR COMPLETED CALENDAR QUARTERS FOR WHICH QUARTERLY REPORTS HAVE BEEN REQUIRED, DIVIDED BY 13**; and

(2) the State average weekly wage shall be the wage calculated under § 9–603 of this article.

(b) (3) The weekly benefit amount payable under paragraph (1) of this subsection:

(i) shall be at least \$50; and

(ii) may not exceed:

1. for the [12–month] **6–MONTH** period beginning [January] **JULY 1, 2026, \$1,000**; and

2. for the 12–month period beginning January 1, 2027, and each subsequent 12–month period, the amount determined and announced by the Secretary under paragraph (4) of this subsection.

8.3–705.

(a) (1) An employer **AUTHORIZED BY THE SECRETARY** may satisfy the requirements of this title through a private employer plan consisting of employer–provided benefits[, **OR** insurance through an insurer that holds a certificate of authority issued by the Maryland Insurance Commissioner[, or a combination of both] if the private employer plan is [offered] **PROVIDED** 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.

(2) (i) To determine the benefit amount under a private employer plan, the weekly benefit amount shall be based on the average weekly wage earned from the employer sponsoring the private employer plan.

(ii) Notwithstanding subparagraph (i) of this paragraph, if an individual has worked less than 680 hours for the employer sponsoring the private employer plan, the weekly benefit amount shall be based on the average weekly wage under § 8.3–703(a) of this subtitle.

(iii) This subsection may not be construed to prevent a private employer plan from providing a benefit that is greater than that provided in § 8.3–703(a) of this subtitle.

(b) (1) A private employer plan shall be filed with the Department for approval.

(2) (I) THE SECRETARY SHALL ESTABLISH REASONABLE CRITERIA FOR DETERMINING WHICH EMPLOYERS ARE AUTHORIZED TO MEET THE REQUIREMENTS OF THIS TITLE THROUGH EMPLOYER–PROVIDED BENEFITS.

(II) THE CRITERIA ESTABLISHED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY INCLUDE THE EMPLOYER’S:

- 1. NUMBER OF EMPLOYEES;**
- 2. CAPITALIZATION;**
- 3. BONDEDNESS; AND**
- 4. STATUS AS A GOVERNMENT EMPLOYER.**

(3) THE DEPARTMENT MAY ADOPT REGULATIONS THAT ESTABLISH FEES UNDER THIS SECTION.

(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.

(d) An employer that provides a private employer plan may not deduct from an employee more than [the maximum] **50% OF THE** contribution amount set by the Department **UNDER § 8.3–601(B) OF THIS TITLE.**

8.3–903.

If an employer **OR A SELF-EMPLOYED INDIVIDUAL** fails to pay the contributions due to the Fund, the Secretary may, in accordance with § 8.3–404 of this title:

(1) assess the amount of contributions and interest due;

(2) make an additional assessment in an amount not to exceed two times the contributions withheld, as a penalty for failure to pay the contributions due; and

(3) order an audit of the employer for the immediately following fiscal year to investigate and determine compliance with this title and Titles 3, 8, and 9 of this article.

8.3–905.

(a) If an employee **OR THE DEPARTMENT** believes that an employer, **A SELF-EMPLOYED INDIVIDUAL, OR AN INSURER** has violated this title **OR REGULATIONS ADOPTED BY THE DEPARTMENT UNDER THIS TITLE**, the employee **OR THE DEPARTMENT** may file a written complaint with the [Secretary] **SECRETARY'S DESIGNEE**.

(b) (1) Within 90 days after the receipt of a written complaint, the [Secretary] **SECRETARY'S DESIGNEE** shall conduct an investigation and attempt to resolve the issue informally through mediation.

(2) (i) If the [Secretary] **SECRETARY'S DESIGNEE** is unable to resolve an issue through mediation during the period stated in paragraph (1) of this subsection and the [Secretary] **SECRETARY'S DESIGNEE** determines that an employer has violated this subtitle, the [Secretary] **SECRETARY'S DESIGNEE** shall issue an order.

(ii) An order issued under subparagraph (i) of this paragraph:

1. shall describe the violation;

2. shall direct, if appropriate, the recovery of lost wages and damages equal to the amount of wages, salary, employment benefits, or other compensation denied or lost, and any actual economic damages;

3. may, in the Secretary's discretion, seek reinstatement or the hiring of employees with or without back pay; and

4. may, in the [Commissioner's] discretion **OF THE SECRETARY'S DESIGNEE**, assess a civil penalty of up to \$1,000 for each employee for whom the employer is not in compliance with this title.

(3) The actions taken under paragraphs (1) and (2) of this subsection are subject to the hearing and notice requirements of Title 10, Subtitle 2 of the State Government Article.

1 8.3–906.

2 (a) (1) (i) The Secretary shall establish a system for appeals by covered
3 individuals regarding determinations of benefit amounts, benefit durations, and denials of
4 benefits under this title.

5 (ii) A covered individual must file an appeal under subparagraph (i)
6 of this paragraph within 30 days after the determination is made or benefits are denied,
7 unless good cause can be shown for the delay.

8 (iii) **IF A COVERED INDIVIDUAL PREVAILS IN AN APPEAL OF AN**
9 **ADVERSE DECISION OF AN EMPLOYER OR INSURER, THE DEPARTMENT MAY ASSESS**
10 **THE DEPARTMENT’S COSTS OF THE APPEAL AGAINST THE EMPLOYER OR INSURER.**

11 (2) The Secretary may use the procedures under § 8–806 of this article for
12 the system required under paragraph (1) of this subsection.

13 (b) Judicial review of any decision with respect to benefits under this title shall
14 be allowed in a court of competent jurisdiction after an aggrieved party has exhausted all
15 administrative remedies established by the Secretary under this title.

16 (c) The Secretary shall implement procedures to ensure confidentiality of all
17 information related to any claims filed or appeals taken to the maximum extent allowed by
18 law.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2024.