

SENATE BILL 539

K3

0lr1111
CF 0lr1110

By: **Senators Hayes, Elfreth, Augustine, Beidle, Benson, Feldman, Guzzone, King, Lee, Patterson, Peters, Smith, Washington, and Young**

Introduced and read first time: January 30, 2020

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Family and Medical Leave Insurance Program –**
3 **Establishment**

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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; 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 2019 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 2019 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 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 6–226(a)(2)(ii)121. and 122.
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

BY adding to
Article – State Finance and Procurement
Section 6–226(a)(2)(ii)123.
Annotated Code of Maryland
(2015 Replacement Volume and 2019 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 AN APPLICATION FOR BENEFITS.

(C) “BENEFITS” MEANS THE MONEY PAYABLE UNDER THIS TITLE TO A

1 COVERED INDIVIDUAL.

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

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

8 (F) "DEPARTMENT" MEANS THE MARYLAND DEPARTMENT OF LABOR.

9 (G) "DIVISION" MEANS THE DIVISION OF UNEMPLOYMENT INSURANCE
10 ESTABLISHED UNDER § 8-302 OF THIS ARTICLE.

11 (H) "EMPLOYER" MEANS A PERSON OR GOVERNMENTAL ENTITY THAT
12 EMPLOYS AT LEAST ONE INDIVIDUAL IN THE STATE.

13 (I) "FAMILY MEMBER" MEANS:

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

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

18 (3) A CHILD FOR WHOM THE COVERED INDIVIDUAL STANDS IN LOCO
19 PARENTIS, REGARDLESS OF THE CHILD'S AGE;

20 (4) A BIOLOGICAL PARENT, AN ADOPTIVE PARENT, A FOSTER PARENT,
21 OR A STEPPARENT OF THE COVERED INDIVIDUAL OR OF THE COVERED INDIVIDUAL'S
22 SPOUSE;

23 (5) THE LEGAL GUARDIAN OF THE COVERED INDIVIDUAL;

24 (6) AN INDIVIDUAL WHO ACTED AS A PARENT OR STOOD IN LOCO
25 PARENTIS TO THE COVERED INDIVIDUAL OR THE COVERED INDIVIDUAL'S SPOUSE
26 WHEN THE COVERED INDIVIDUAL OR THE COVERED INDIVIDUAL'S SPOUSE WAS A
27 MINOR;

28 (7) THE SPOUSE OF THE COVERED INDIVIDUAL;

29 (8) A BIOLOGICAL GRANDPARENT, AN ADOPTED GRANDPARENT, A

1 FOSTER GRANDPARENT, OR A STEPGRANDPARENT OF THE COVERED INDIVIDUAL;

2 (9) A BIOLOGICAL GRANDCHILD, AN ADOPTED GRANDCHILD, A
3 FOSTER GRANDCHILD, OR A STEPGRANDCHILD OF THE COVERED INDIVIDUAL; OR

4 (10) A BIOLOGICAL SIBLING, AN ADOPTED SIBLING, A FOSTER SIBLING,
5 OR A STEPSIBLING OF THE COVERED INDIVIDUAL.

6 (J) "FUND" MEANS THE FAMILY AND MEDICAL LEAVE INSURANCE FUND
7 ESTABLISHED UNDER § 8.3-501 OF THIS TITLE.

8 (K) "GOVERNMENTAL ENTITY" HAS THE MEANING STATED IN § 8-101 OF
9 THIS ARTICLE.

10 (L) "NEXT OF KIN" MEANS THE NEAREST BLOOD RELATIVE.

11 (M) "PROGRAM" MEANS THE FAMILY AND MEDICAL LEAVE INSURANCE
12 PROGRAM ESTABLISHED UNDER § 8.3-301 OF THIS TITLE.

13 (N) "QUALIFYING EXIGENCY" MEANS ANY OF THE FOLLOWING REASONS
14 FOR WHICH LEAVE MAY BE NEEDED BY A FAMILY MEMBER OF A SERVICE MEMBER:

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

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

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

23 (4) TO MAKE FINANCIAL AND LEGAL ARRANGEMENTS FOR THE
24 SERVICE MEMBER'S ABSENCE OR BECAUSE OF THE ABSENCE;

25 (5) TO ATTEND COUNSELING THAT:

26 (I) IS NEEDED DUE TO THE ACTIVE DUTY OR CALL TO ACTIVE
27 DUTY STATUS OF THE SERVICE MEMBER; AND

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

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

4 **(7) TO ATTEND POSTDEPLOYMENT ACTIVITIES INCLUDING**
5 **REINTEGRATION SERVICES FOR A PERIOD OF 90 DAYS IMMEDIATELY FOLLOWING**
6 **THE TERMINATION OF ACTIVE STATUS;**

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

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

12 **(10) BECAUSE OF ANY OTHER ISSUES THAT ARISE OUT OF ACTIVE DUTY**
13 **OR A CALL TO ACTIVE DUTY THAT AN EMPLOYER AND COVERED EMPLOYEE AGREE**
14 **SHOULD BE COVERED.**

15 **(O) “SECRETARY” MEANS THE SECRETARY OF LABOR.**

16 **(P) (1) “SERIOUS HEALTH CONDITION” MEANS AN ILLNESS, AN INJURY,**
17 **AN IMPAIRMENT, OR A PHYSICAL OR MENTAL CONDITION THAT INVOLVES:**

18 **(I) INPATIENT CARE IN A HOSPITAL, HOSPICE, OR RESIDENTIAL**
19 **HEALTH CARE FACILITY;**

20 **(II) CONTINUED TREATMENT BY A LICENSED HEALTH CARE**
21 **PROVIDER; OR**

22 **(III) CONTINUED TREATMENT OR SUPERVISION AT HOME BY A**
23 **LICENSED HEALTH CARE PROVIDER OR OTHER COMPETENT INDIVIDUAL UNDER**
24 **THE SUPERVISION OF A LICENSED HEALTH CARE PROVIDER.**

25 **(2) “SERIOUS HEALTH CONDITION” INCLUDES AN ILLNESS, AN**
26 **INJURY, AN IMPAIRMENT, OR A PHYSICAL OR MENTAL CONDITION DESCRIBED IN**
27 **PARAGRAPH (1) OF THIS SUBSECTION THAT CONTINUES OVER AN EXTENDED**
28 **PERIOD OF TIME AND REQUIRES INTERMITTENT TREATMENT.**

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

1 (1) THE UNITED STATES ARMED FORCES;

2 (2) A RESERVE COMPONENT OF THE UNITED STATES ARMED FORCES;

3 OR

4 (3) THE NATIONAL GUARD OF ANY STATE.

5 (R) “TREATMENT” INCLUDES:

6 (1) EXAMINATIONS OR TESTING TO DETERMINE THE EXTENT TO
7 WHICH A SERIOUS HEALTH CONDITION EXISTS OR PERSISTS;

8 (2) ONGOING OR PERIODIC EVALUATIONS OF THE SERIOUS HEALTH
9 CONDITION; AND

10 (3) ACTUAL TREATMENT BY A HEALTH CARE PROVIDER.

11 8.3–102.

12 (A) THIS SECTION DOES NOT APPLY TO THE DISCLOSURE OF INFORMATION
13 TO:

14 (1) A PUBLIC EMPLOYEE IN THE PERFORMANCE OF THE PUBLIC
15 EMPLOYEE’S OFFICIAL DUTIES;

16 (2) THE INDIVIDUAL TO WHOM THE INFORMATION RELATES; OR

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

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

23 SUBTITLE 2. SCOPE OF TITLE.

24 8.3–201.

25 (A) (1) A SELF-EMPLOYED INDIVIDUAL MAY ELECT TO PARTICIPATE IN
26 THE PROGRAM BY FILING A WRITTEN NOTICE OF ELECTION WITH THE SECRETARY
27 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, 2020.

(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.

1 **THERE IS A FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.**

2 **8.3-302.**

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

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

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

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

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

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

18 **SUBTITLE 4. ADMINISTRATION.**

19 **8.3-401.**

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

23 **8.3-402.**

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

27 **8.3-403.**

28 **(A) THE SECRETARY SHALL:**

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

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

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

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

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

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

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

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

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

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

27 **(II) THE PROBABLE DURATION OF THE SERIOUS HEALTH**
28 **CONDITION;**

29 **(III) THE APPROPRIATE FACTS RELATED TO THE SERIOUS**
30 **HEALTH CONDITION WITHIN THE KNOWLEDGE OF THE LICENSED HEALTH CARE**
31 **PROVIDER;**

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

5 2. FOR A CLAIM FOR BENEFITS UNDER § 8.3–302(3) OF
6 THIS TITLE, A STATEMENT THAT THE COVERED INDIVIDUAL IS UNABLE TO PERFORM
7 THE FUNCTIONS OF THE COVERED INDIVIDUAL’S POSITION; AND

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

10 (3) THE SECRETARY SHALL ESTABLISH STANDARDS IN REGULATION
11 FOR THE CERTIFICATION OF CLAIMS FOR BENEFITS UNDER § 8.3–302(5) OF THIS
12 TITLE.

13 (D) (1) THE SECRETARY MAY USE A PORTION OF THE FUNDS PAID UNDER
14 § 8.3–601 OF THIS TITLE OR OTHER AVAILABLE FUNDING TO PAY FOR AND CARRY
15 OUT THE REQUIREMENTS UNDER SUBSECTION (A)(4) OF THIS SECTION.

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

19 8.3–404.

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

21 (1) CONDUCT AN INVESTIGATION UNDER THIS TITLE, ON THE
22 SECRETARY’S OWN INITIATIVE OR ON RECEIPT OF A WRITTEN COMPLAINT;

23 (2) ADMINISTER AN OATH;

24 (3) CERTIFY TO AN OFFICIAL ACT;

25 (4) TAKE A DEPOSITION;

26 (5) ISSUE A SUBPOENA FOR THE ATTENDANCE OF A WITNESS TO
27 TESTIFY OR THE PRODUCTION OF BOOKS, CORRESPONDENCE, MEMORANDA,
28 PAPERS, OR OTHER RECORDS; AND

29 (6) BRING A CIVIL ACTION IN THE COUNTY WHERE THE VIOLATION
30 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:

(I) THE PUBLIC EDUCATION PROGRAM; AND

(II) ANY COSTS ASSOCIATED WITH THE INITIAL

1 IMPLEMENTATION AND ONGOING ADMINISTRATION OF THIS TITLE.

2 8.3-505.

3 A CHECK THAT THE STATE TREASURER ISSUES TO PAY BENEFITS OR
4 REFUNDS SHALL:

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

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

7 (3) BE COUNTERSIGNED BY AN AUTHORIZED AGENT.

8 8.3-506.

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

11 SUBTITLE 6. CONTRIBUTIONS.

12 8.3-601.

13 (A) BEGINNING JANUARY 1, 2021, EACH EMPLOYEE OF AN EMPLOYER,
14 EACH EMPLOYER, AND EACH SELF-EMPLOYED INDIVIDUAL PARTICIPATING IN THE
15 PROGRAM SHALL CONTRIBUTE TO THE FUND.

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

19 (II) THE TOTAL RATE OF CONTRIBUTION ESTABLISHED UNDER
20 SUBPARAGRAPH (I) OF THIS PARAGRAPH:

21 1. MAY NOT EXCEED 0.5% OF AN EMPLOYEE'S WAGES;

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

24 3. SHALL BE SHARED EQUALLY BY EMPLOYERS AND
25 EMPLOYEES; AND

26 4. SHALL BE SUFFICIENT TO FUND THE BENEFITS
27 PAYABLE UNDER THIS TITLE.

1 **(2) EACH EMPLOYER SHALL CONTRIBUTE AN AMOUNT EQUAL TO 50%**
2 **OF THE TOTAL RATE OF CONTRIBUTION FOR EACH EMPLOYEE EMPLOYED BY THE**
3 **EMPLOYER.**

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

6 **(II) THE EMPLOYER OF THE EMPLOYEE SHALL DEDUCT THE**
7 **CONTRIBUTION REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH FROM**
8 **THE WAGES OF THE EMPLOYEE.**

9 **(4) EACH SELF-EMPLOYED INDIVIDUAL PARTICIPATING IN THE**
10 **PROGRAM SHALL:**

11 **(I) PAY CONTRIBUTIONS DURING EACH YEAR THAT THE**
12 **SELF-EMPLOYED INDIVIDUAL PARTICIPATES IN THE PROGRAM; AND**

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

15 **SUBTITLE 7. BENEFITS.**

16 **8.3-701.**

17 **(A) BEGINNING JULY 1, 2022, A COVERED INDIVIDUAL TAKING LEAVE FROM**
18 **EMPLOYMENT MAY SUBMIT A CLAIM FOR BENEFITS TO:**

19 **(1) CARE FOR A NEWBORN CHILD OR A CHILD NEWLY PLACED FOR**
20 **ADOPTION, FOSTER CARE, OR KINSHIP CARE WITH THE COVERED INDIVIDUAL**
21 **DURING THE FIRST YEAR AFTER THE BIRTH, ADOPTION, OR PLACEMENT;**

22 **(2) CARE FOR A FAMILY MEMBER WITH A SERIOUS HEALTH**
23 **CONDITION;**

24 **(3) ATTEND TO A SERIOUS HEALTH CONDITION THAT RESULTS IN THE**
25 **COVERED INDIVIDUAL BEING UNABLE TO PERFORM THE FUNCTIONS OF THE**
26 **COVERED INDIVIDUAL'S POSITION;**

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

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

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

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

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

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

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

20 **8.3-702.**

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

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

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

28 **(II) BECOMES ELIGIBLE FOR BENEFITS UNDER §**
29 **8.3-701(A)(1), (2), (4), OR (5) OF THIS SUBTITLE.**

30 **(B) IF A COVERED INDIVIDUAL TAKES LEAVE FOR WHICH THE COVERED**
31 **INDIVIDUAL IS RECEIVING BENEFITS UNDER THIS TITLE, THE LEAVE SHALL RUN**
32 **CONCURRENTLY WITH ELIGIBLE LEAVE THAT MAY BE TAKEN BY THE COVERED**

1 INDIVIDUAL UNDER THE FEDERAL FAMILY AND MEDICAL LEAVE ACT.

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

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

9 8.3-703.

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

16 8.3-704.

17 (A) FOR THE PURPOSES OF THIS SECTION:

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

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

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

27 (I) IF THE COVERED INDIVIDUAL'S AVERAGE WEEKLY WAGE IS
28 65% OR LESS OF THE STATE AVERAGE WEEKLY WAGE, 90% OF THE COVERED
29 INDIVIDUAL'S AVERAGE WEEKLY WAGE;

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

1 1. 90% OF THE COVERED INDIVIDUAL’S AVERAGE
2 WEEKLY WAGE UP TO 65% OF THE STATE AVERAGE WEEKLY WAGE; AND

3 2. 50% OF THE COVERED INDIVIDUAL’S AVERAGE
4 WEEKLY WAGE THAT IS GREATER THAN 65% OF THE STATE AVERAGE WEEKLY WAGE;
5 OR

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

8 1. THE AMOUNT REQUIRED TO MAKE UP THE
9 DIFFERENCE BETWEEN THE WAGES PAID TO THE COVERED INDIVIDUAL WHILE THE
10 COVERED INDIVIDUAL IS TAKING PARTIALLY PAID LEAVE AND THE FULL WAGES
11 NORMALLY PAID TO THE COVERED INDIVIDUAL; AND

12 2. IF THE COVERED INDIVIDUAL’S AVERAGE WEEKLY
13 WAGE IS GREATER THAN 65% OF THE STATE AVERAGE WEEKLY WAGE, THE SUM OF:

14 A. 90% OF THE COVERED INDIVIDUAL’S AVERAGE
15 WEEKLY WAGE UP TO 65% OF THE STATE AVERAGE WEEKLY WAGE; AND

16 B. 50% OF THE COVERED INDIVIDUAL’S AVERAGE
17 WEEKLY WAGE THAT IS GREATER THAN 65% OF THE STATE AVERAGE WEEKLY WAGE.

18 (2) THE WEEKLY BENEFIT AMOUNT PAYABLE UNDER PARAGRAPH (1)
19 OF THIS SUBSECTION:

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

21 (II) MAY NOT EXCEED:

22 1. FOR THE 12-MONTH PERIOD BEGINNING JULY 1,
23 2022, \$1,000; AND

24 2. FOR THE 12-MONTH PERIOD BEGINNING JULY 1,
25 2023, AND EACH SUBSEQUENT 12-MONTH PERIOD, THE AMOUNT DETERMINED AND
26 ANNOUNCED BY THE SECRETARY UNDER PARAGRAPH (3) OF THIS SUBSECTION.

27 (3) (I) IN THIS PARAGRAPH, “CONSUMER PRICE INDEX” MEANS
28 THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE
29 WASHINGTON–ARLINGTON–ALEXANDRIA, DC–VA–MD–WV METROPOLITAN AREA
30 OR A SUCCESSOR INDEX PUBLISHED BY THE FEDERAL BUREAU OF LABOR
31 STATISTICS.

(II) EXCEPT AS PROVIDED IN SUBPARAGRAPH (IV) OF THIS PARAGRAPH, FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2023, AND EACH SUBSEQUENT 12-MONTH PERIOD, THE MAXIMUM WEEKLY BENEFIT AMOUNT SHALL BE INCREASED BY THE AMOUNT, ROUNDED TO THE NEAREST CENT, THAT EQUALS THE PRODUCT OF:

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

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

(III) BEGINNING MARCH 1, 2023, AND ON EACH SUBSEQUENT SEPTEMBER 1, THE SECRETARY SHALL DETERMINE AND ANNOUNCE:

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

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

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

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

(D) THE DIVISION SHALL:

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

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

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

3 **(4) MAKE SUBSEQUENT PAYMENTS EVERY 2 WEEKS UNTIL THE**
4 **BENEFIT PERIOD ENDS.**

5 **8.3-705.**

6 **(A) IF THE INTERNAL REVENUE SERVICE DETERMINES THAT BENEFITS**
7 **PAID UNDER THIS SUBTITLE ARE SUBJECT TO FEDERAL INCOME TAX, AT THE TIME**
8 **A COVERED INDIVIDUAL FILES A NEW CLAIM FOR BENEFITS, THE DIVISION SHALL**
9 **NOTIFY THE COVERED INDIVIDUAL THAT:**

10 **(1) THE INTERNAL REVENUE SERVICE HAS DETERMINED THAT THE**
11 **BENEFITS ARE SUBJECT TO FEDERAL INCOME TAX;**

12 **(2) THERE ARE REQUIREMENTS REGARDING ESTIMATED TAX**
13 **PAYMENTS;**

14 **(3) THE COVERED INDIVIDUAL MAY ELECT TO HAVE FEDERAL**
15 **INCOME TAX DEDUCTED AND WITHHELD FROM THE BENEFITS THAT THE COVERED**
16 **INDIVIDUAL RECEIVES UNDER THIS TITLE AT THE RATE SPECIFIED IN THE**
17 **INTERNAL REVENUE CODE; AND**

18 **(4) THE COVERED INDIVIDUAL IS ALLOWED TO CHANGE A**
19 **PREVIOUSLY ELECTED WITHHOLDING STATUS.**

20 **(B) (1) IF A COVERED INDIVIDUAL ELECTS TO HAVE FEDERAL INCOME**
21 **TAX DEDUCTED AND WITHHELD UNDER SUBSECTION (A)(3) OF THIS SECTION, THE**
22 **DIVISION SHALL DEDUCT AND WITHHOLD AN AMOUNT AT THE RATE SPECIFIED IN**
23 **THE INTERNAL REVENUE CODE IN A MANNER REQUIRED BY THE INTERNAL**
24 **REVENUE SERVICE.**

25 **(2) IF THE DIVISION DEDUCTS AND WITHHOLDS FEDERAL INCOME**
26 **TAX UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE AMOUNT DEDUCTED AND**
27 **WITHHELD SHALL REMAIN IN THE FUND UNTIL IT IS TRANSFERRED TO THE**
28 **INTERNAL REVENUE SERVICE AS A PAYMENT OF INCOME TAX.**

29 **8.3-706.**

30 **(A) AN EMPLOYER MAY SATISFY THE REQUIREMENTS OF THIS TITLE**
31 **THROUGH A PRIVATE EMPLOYER PLAN CONSISTING OF EMPLOYER PROVIDED**
32 **BENEFITS, INSURANCE, OR A COMBINATION OF BOTH IF THE PRIVATE EMPLOYER**

1 PLAN IS OFFERED TO ALL OF THE EMPLOYER'S ELIGIBLE EMPLOYEES AND MEETS
2 OR EXCEEDS THE RIGHTS, PROTECTIONS, AND BENEFITS PROVIDED TO A COVERED
3 EMPLOYEE UNDER THIS TITLE.

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

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

10 **8.3-707.**

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

16 **8.3-708.**

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

23 **SUBTITLE 8. NOTICE TO EMPLOYEES.**

24 **8.3-801.**

25 (A) AN EMPLOYER SHALL PROVIDE WRITTEN NOTICE TO EACH EMPLOYEE
26 OF THE RIGHTS AND DUTIES OF AN EMPLOYEE UNDER THIS TITLE AT THE TIME OF
27 HIRE AND ANNUALLY THEREAFTER.

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

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

3 **(I) THE RIGHT OF AN ELIGIBLE EMPLOYEE TO RECEIVE**
4 **PROGRAM BENEFITS UNDER THIS TITLE;**

5 **(II) THE PROCEDURE FOR FILING A CLAIM FOR BENEFITS;**

6 **(III) AN ELIGIBLE EMPLOYEE'S RESPONSIBILITIES WITH**
7 **RESPECT TO PROVIDING NOTIFICATION PRIOR TO THE COMMENCEMENT OF LEAVE**
8 **AND ANY PENALTIES FOR FAILING TO DO SO;**

9 **(IV) THE RIGHT OF AN EMPLOYEE TO FILE A COMPLAINT FOR**
10 **ALLEGED VIOLATIONS OF THIS TITLE;**

11 **(V) THE RIGHT OF AN ELIGIBLE EMPLOYEE TO JOB**
12 **PROTECTION; AND**

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

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

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

18 **8.3-901.**

19 **(A) IF AN INDIVIDUAL WILLFULLY MAKES A FALSE STATEMENT OR**
20 **MISREPRESENTATION REGARDING A MATERIAL FACT OR WILLFULLY FAILS TO**
21 **REPORT A MATERIAL FACT TO OBTAIN BENEFITS UNDER THIS TITLE, THE**
22 **INDIVIDUAL IS DISQUALIFIED FROM RECEIVING BENEFITS FOR 1 YEAR.**

23 **(B) IF AN EMPLOYER WILLFULLY MAKES OR CAUSES TO BE MADE A FALSE**
24 **STATEMENT OR WILLFULLY FAILS TO REPORT A MATERIAL FACT REGARDING A**
25 **CLAIM FOR BENEFITS BY AN EMPLOYEE, THE EMPLOYER IS SUBJECT TO A CIVIL**
26 **PENALTY UP TO \$1,000 FOR EACH OCCURRENCE.**

27 **(C) AN EMPLOYER MAY NOT WILLFULLY:**

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

29 **(2) TAKE DEDUCTIONS FROM THE WAGES OF AN EMPLOYEE TO PAY**

1 ANY PORTION OF THE EMPLOYER CONTRIBUTIONS DUE FROM THE EMPLOYER.

2 **8.3-902.**

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

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

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

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

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

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

16 **8.3-903.**

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

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

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

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

26 **8.3-904.**

27 A PERSON MAY NOT DISCHARGE, DEMOTE, OR OTHERWISE DISCRIMINATE OR
28 TAKE ADVERSE ACTION AGAINST A COVERED INDIVIDUAL BECAUSE THE COVERED
29 INDIVIDUAL HAS:

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

3 (2) INQUIRED ABOUT THE RIGHTS AND RESPONSIBILITIES UNDER
4 THIS TITLE;

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

7 (4) TESTIFIED OR INTENDS TO TESTIFY OR OTHERWISE HAS ASSISTED
8 IN A PROCEEDING UNDER THIS TITLE.

9 **8.3–905.**

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

14 (2) A COMPLAINT UNDER THIS SUBSECTION MAY ALSO SEEK
15 APPROPRIATE RELIEF INCLUDING REINSTATEMENT OR THE HIRING OF EMPLOYEES
16 WITH OR WITHOUT BACK PAY.

17 (B) THIS SECTION DOES NOT DEPRIVE A PRIVATE RIGHT OR CAUSE OF
18 ACTION TO ANY EMPLOYEE FOR VIOLATIONS OF § 8.3–904 OF THIS SUBTITLE OR §
19 8.3–707 OF THIS TITLE.

20 **8.3–906.**

21 (A) (1) NOTWITHSTANDING ANY ADMINISTRATIVE REMEDY AVAILABLE
22 UNDER § 8.3–905 OF THIS SUBTITLE, AN EMPLOYEE MAY BRING AN ACTION AGAINST
23 AN EMPLOYER FOR VIOLATIONS OF § 8.3–904 OF THIS SUBTITLE OR § 8.3–707 OR §
24 8.3–708 OF THIS TITLE TO RECOVER LOST WAGES AND DAMAGES EQUAL TO THE
25 AMOUNT OF WAGES, SALARY, EMPLOYMENT BENEFITS, OR OTHER COMPENSATION
26 DENIED OR LOST, AND APPROPRIATE PUNITIVE DAMAGES.

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

30 (B) ON A FINDING THAT AN EMPLOYEE IS ENTITLED TO JUDGMENT IN AN
31 ACTION UNDER SUBSECTION (A) OF THIS SECTION, THE COURT SHALL ALLOW

1 AGAINST THE EMPLOYER REASONABLE ATTORNEY'S FEES AND OTHER COSTS.

2 8.3-907.

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

5 (2) THE SECRETARY MAY USE THE PROCEDURES UNDER § 8-806 OF
6 THIS ARTICLE FOR THE SYSTEM REQUIRED UNDER PARAGRAPH (1) OF THIS
7 SUBSECTION.

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

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

15 SUBTITLE 10. SHORT TITLE.

16 8.3-1001.

17 THIS TITLE MAY BE CITED AS THE MARYLAND FAMILY AND MEDICAL LEAVE
18 INSURANCE PROGRAM.

19 Article – State Finance and Procurement

20 6-226.

21 (a) (2) (i) Notwithstanding any other provision of law, and unless
22 inconsistent with a federal law, grant agreement, or other federal requirement or with the
23 terms of a gift or settlement agreement, net interest on all State money allocated by the
24 State Treasurer under this section to special funds or accounts, and otherwise entitled to
25 receive interest earnings, as accounted for by the Comptroller, shall accrue to the General
26 Fund of the State.

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

29 121. the Markell Hendricks Youth Crime Prevention and
30 Diversion Parole Fund; [and]

31 122. the Federal Government Shutdown Employee Assistance

1 Loan Fund; AND

2 **123. THE FAMILY AND MEDICAL LEAVE INSURANCE**
3 **FUND.**

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

8 SECTION 3. AND BE IT FURTHER ENACTED, That, on or before October 1, 2020,
9 the Secretary of Labor shall adopt regulations as required under § 8.3–403 of the Labor and
10 Employment Article, as enacted by Section 1 of this Act.

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

15 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect June
16 1, 2020.