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S. 337

To provide paid family and medical leave benefits to certain individuals, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7 (legislative day, FEBRUARY 6), 2017

Mrs. GILLIBRAND (for herself, Mr. BROWN, Mr. BOOKER, Ms. HIRONO, Mr. MARKEY, Mr. MERKLEY, Mr. SCHATZ, Mr. WHITEHOUSE, Ms. BALDWIN, Mr. REED, Mr. BLUMENTHAL, Ms. WARREN, Mr. DURBIN, Mr. SANDERS, Mr. MURPHY, Mr. UDALL, Mr. SCHUMER, Ms. KLOBUCHAR, Mr. FRANKEN, Mrs. FEINSTEIN, Ms. HEITKAMP, Mrs. MURRAY, Mr. VAN HOLLEN, Mr. LEAHY, Ms. DUCKWORTH, Mr. MENENDEZ, and Ms. HARRIS) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To provide paid family and medical leave benefits to certain individuals, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘‘Family and Medical Insurance Leave Act’’ or the ‘‘FAMILY Act’’.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) In more than two-thirds of families with children, all adults in the household work. Six in ten family caregivers report working at jobs unrelated to their care responsibilities and more than half report working full time. Without paid family and medical leave, many workers are unable to take time away from work to care for newborn children, ill or aging parents and relatives, or themselves.

(2) Both women and men need to be able to take time off work to participate in the care of their children, in the care of seriously ill family members, and to address their own serious health conditions. Yet, a mere 14 percent of workers in the United States have access to paid family leave through their employers, and fewer than 40 percent have access to short-term disability insurance provided by their employer to use for their own illnesses.

(3) Many workers cannot afford to take unpaid time off work to provide care. According to the Department of Labor, nearly half of workers who qualified for leave under the Family and Medical Leave Act of 1993 (FMLA) in 2011 were unable to take the leave because they could not afford to take time off without pay. Six in ten workers who took partially paid or unpaid leave reported difficulty making

ends meet; half of these workers were forced to cut their leaves short due to financial constraints.

(4) Only 14 percent of all workers had access to paid family leave in 2016 and it was available to only 4 percent of people working in the lowest paying jobs. Workers who lack paid family and medical leave face lost wages or even job loss when they miss work because of their own illness or to care for an ill child or parent. In this way, access to paid family and medical leave plays a critical role in families' efforts to maintain employment and economic security.

(5) Caregiving has a high value but also comes at a high cost for family caregivers. Working families in the United States lose an estimated $20,600,000,000 in wages each year due to lack of access to paid family and medical leave.

(6) The estimated value of unpaid family care provided in 2013 was $470,000,000,000. Family caregivers face financial, physical and emotional hardships, and in many cases their careers, incomes, and retirement security suffer because of their family responsibilities.

(7) The average worker age 50 and older who leaves the workforce to care for an elderly parent loses more than $300,000 in earnings and retire-

ment income. Working caregivers should not have to risk their family's economic security to fulfill their caregiving obligations.

(8) The population aged 65 and over is expected to double over the next few decades. The number of people with chronic conditions is expected to reach nearly 160,000,000 by 2020. Many of these individuals will at some point require family care, and for older workers still in the workforce, many will need time off at some point to address serious health conditions.

(9) Ensuring working family caregivers have paid family leave to care for ailing elders could drive down Medicare costs by decreasing recurrences of ailments and re-admittance into hospitals.

(10) Many workers are forced to quickly return to work after the birth or arrival of a child because they have no access to paid family and medical leave. Only half of new mothers take paid leave of any duration after the birth of their first child, and among women with less than a high school education the figure is less than 20 percent—a rate that has not changed in half a century.

(11) When new mothers have no choice but to return to work without taking leave, children can ex-

perience a variety of negative outcomes including higher rates of infant mortality, lower rates of breastfeeding, lower rates of immunization, and a higher incidence of maternal physical and mental health concerns. California's paid family leave insurance program, which has been in effect since 2004, has increased the number of weeks of leave that women take after childbirth, with larger effects among women in jobs that do not provide paid leave.

(12) A nationwide paid family and medical leave program would address the persistent sex discrimination in the utilization of leave benefits and reduce the disparity between women and men regarding who takes time off from work to fulfill caregiving duties. This disparity is driven in part by the fact that men continue to be paid more than women, and, as a result, it often makes more economic sense for women in two-parent families to take unpaid leave and forgo their lower salary.

(13) Many men would like to be more involved in caregiving and report greater work-family conflict than ever before. In California, men's use of the State's paid family leave insurance program to care for a new child has more than doubled since the program's implementation. In Rhode Island, the most

recent State to implement a State paid leave program, men took leave at higher rates in the program's first year than other State programs' first year.

(14) High-profile companies are increasingly recognizing the importance of providing paid leave to their workers, regardless of gender, and updating their leave policies to reflect the reality that both men and women need paid leave.

(15) Paid family and medical leave promotes families' financial security and independence, increases worker retention, and promotes savings for taxpayers. Women who take paid leave after a child's birth are more likely to be in the labor force in the 9 to 12 months after a child's birth and to earn higher wages in the year following their child's birth. Both men and women who take paid leave after a child's birth are less likely to receive food stamps and public assistance in the year following a child's birth.

(16) Without paid medical leave, workers who are ill or injured may return to work before being fully recovered, thus making them susceptible to a relapse or recurrence, and potentially placing additional burdens on the health care system. When a

job requires physical stamina or ability, individuals who return to work too early may put themselves or others in jeopardy.

(17) A social insurance model of providing paid family leave pioneered by the States of California, New Jersey, and Rhode Island has worked well for workers, their families, and employers. The overwhelming majority of California employers report that the State's program had a positive or neutral effect on their business. When workers can care for themselves and their loved ones, employers experience positive impacts.

(18) According to the Department of Labor's 2012 survey on the FMLA, more than four times as many worksites covered by the FMLA reported positive effects on employee productivity, absenteeism, turnover, career advancement and morale, as well as the business' profitability, as reported negative effects.

(19) Californians have filed more than 2,100,000 claims to leave to care for a family member or bond with a new child over more than a decade. In New Jersey, more than 217,000 claims have been filed over the more than 6 years of the program's existence, and in Rhode Island, nearly

13,000 claims were filed in the programs first two years. These claims represent valuable care for new children and seriously ill loved ones.

(20) Social Security is the Nation's primary social insurance system, with the most complete record of workers' earnings history. It provides retirement assistance and disability benefits currently and, since its creation in 1934, the programs the Social Security Administration administers have been updated multiple times to reflect the changing needs of the population, families and the workforce. The system needs to be changed again now—with appropriate investments to meet the agency's needs—to reflect today's realities.

(21) Researchers at Brandeis University estimate that, following enactment of this Act, the share of families falling into financial hardship (earnings below 200 percent of the Federal poverty line) as a result of taking 12 weeks of unpaid leave would be reduced by more than three-fourths.

(b) PURPOSE.—It is the purpose of this Act—

(1) to help working families, including single working parents and dual-earner families, afford to take time away from work to provide care for a family member and be good workers;

(2) to provide workers with a reasonable level of wage replacement during time away from work for a serious health condition, for the birth or adoption of a child, for the care of a child, spouse, or parent who has a serious health condition, for the care of an injured servicemember, or for qualifying exigencies arising from the deployment of a servicemember;

(3) to address sex discrimination, promote the goal of equal employment opportunity for women and men, and to provide relief when employers violate the law; and

(4) to accomplish the purposes described in paragraphs (1), (2), and (3) in a manner that accommodates the legitimate interests of employers.

SEC. 3. DEFINITIONS.

In this Act, the following definitions apply:

(1) CAREGIVING DAY.—The term ''caregiving day'' means, with respect to an individual, a calendar day in which the individual engaged in qualified caregiving.

(2) COMMISSIONER.—The term ''Commissioner'' means the Commissioner of Social Security.

(3) DEPUTY COMMISSIONER.—The term ''Deputy Commissioner'' means the Deputy Commissioner

who heads the Office of Paid Family and Medical Leave established under section 4(a).

(4) ELIGIBLE INDIVIDUAL.—The term ''eligible individual'' means an individual who is entitled to a benefit under section 5 for a particular month, upon filing an application for such benefit for such month.

(5) INITIAL WAITING PERIOD.—The term ''initial waiting period'' means a period beginning with the first caregiving day of an individual occurring during the individual's benefit period and ending after the earlier of—

(A) the fifth caregiving day of the individual occurring during the benefit period; or

(B) the month preceding the first month in the benefit period during which occur not less than 15 caregiving days of the individual.

(6) QUALIFIED CAREGIVING.—The term ''qualified caregiving'' means any activity engaged in by an individual, other than regular employment, for a reason for which an eligible employee would be entitled to leave under subparagraphs (A) through (E) of paragraph (1) of section 102(a) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)).

(7) SELF-EMPLOYMENT INCOME.—The term ''self-employment income'' has the same meaning as

such term in section 211(b) of such Act (42 U.S.C. 411(b)).

(8) STATE.—The term ‘‘State’’ means any State of the United States or the District of Columbia or any territory or possession of the United States.

(9) WAGES.—The term ‘‘wages’’, except as such term is used in subsection (h)(2) of section 5, has the same meaning as such term in section 209 of the Social Security Act (42 U.S.C. 409).

(10) 60-DAY LIMITATION PERIOD.—The term ‘‘60-day limitation period’’ means a period—

(A) beginning with the first caregiving day of an individual occurring during the individual's benefit period and after the expiration of the individual's 5-day waiting period, if applicable; and

(B) ending with the 60th caregiving day of the individual occurring during the benefit period and after the expiration of the 5-day waiting period,

disregarding any caregiving day of the individual occurring during any month in the benefit period after the first 20 caregiving days of the individual occurring during such month.

SEC. 4. OFFICE OF PAID FAMILY AND MEDICAL LEAVE.

(a) ESTABLISHMENT OF OFFICE.—There is established within the Social Security Administration an office to be known as the Office of Paid Family and Medical Leave. The Office shall be headed by a Deputy Commissioner who shall be appointed by the Commissioner.

(b) RESPONSIBILITIES OF DEPUTY COMMISSIONER.—The Commissioner, acting through the Deputy Commissioner, shall be responsible for—

(1) hiring personnel and making employment decisions with regard to such personnel;

(2) issuing such regulations as may be necessary to carry out the purposes of this Act;

(3) entering into cooperative agreements with other agencies and departments to ensure the efficiency of the administration of the program;

(4) determining eligibility for family and medical leave insurance benefits under section 5;

(5) determining benefit amounts for each month of such eligibility and making timely payments of such benefits to entitled individuals in accordance with such section;

(6) establishing and maintaining a system of records relating to the administration of such section;

(7) preventing fraud and abuse relating to such benefits;

(8) providing information on request regarding eligibility requirements, the claims process, benefit amounts, maximum benefits payable, notice requirements, nondiscrimination rights, confidentiality, coordination of leave under this Act and other laws, collective bargaining agreements, and employer policies;

(9) annually providing employers a notice informing employees of the availability of such benefits;

(10) annually making available to the public a report that includes the number of individuals who received such benefits, the purposes for which such benefits were received, and an analysis of utilization rates of such benefits by gender, race, ethnicity, and income levels; and

(11) tailoring culturally and linguistically competent education and outreach toward increasing utilization rates of benefits under such section.

(c) AVAILABILITY OF DATA.—The Commissioner shall make available to the Deputy Commissioner such data as the Commissioner determines necessary to enable the Deputy Commissioner to effectively carry out the responsibilities described in subsection (b).

SEC. 5. FAMILY AND MEDICAL LEAVE INSURANCE BENEFIT PAYMENTS.

(a) IN GENERAL.—Every individual who—

(1) is insured for disability insurance benefits (as determined under section 223(c) of the Social Security Act (42 U.S.C. 423(c))) at the time such individual's application is filed;

(2) has earned income from employment during the 12 months prior to the month in which the application is filed;

(3) has filed an application for a family and medical leave insurance benefit in accordance with subsection (d); and

(4) was engaged in qualified caregiving, or anticipates being so engaged, during the period that begins 90 days before the date on which such application is filed or within 30 days after such date,

shall be entitled to such a benefit for each month in the benefit period specified in subsection (c), not to exceed 60 caregiving days per benefit period.

(b) BENEFIT AMOUNT.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the benefit amount to which

an individual is entitled under this section for a month shall be an amount equal to the greater of—

(A) the lesser of $1/18$ of the wages and self-employment income of the individual for the calendar year in which such wages and self-employment income are the highest among the most recent three calendar years, or the maximum benefit amount determined under paragraph (2); or

(B) the minimum benefit amount determined under paragraph (2),

multiplied by the quotient (not greater than 1) obtained by dividing the number of caregiving days of the individual in such month by 20.

(2) ANNUAL INCREASE OF MAXIMUM AND MINIMUM BENEFIT AMOUNTS.—

(A) For individuals who initially become eligible for family and medical leave insurance benefits in the first full calendar year after the date of enactment of this Act, the maximum monthly benefit amount and the minimum monthly benefit amount shall be $4,000 and $580, respectively.

(B) For individuals who initially become eligible for family and medical leave insurance benefits in any calendar year after such first full calendar year the maximum benefit amount and the minimum benefit amount shall be, respectively, the product of the corresponding amount determined with respect to the first calendar year under subparagraph (A) and the quotient obtained by dividing—

(i) the national average wage index (as defined in section 209(k)(1) of the Social Security Act (42 U.S.C. 409(k)(1))) for the second calendar year preceding the first calendar year for which the determination is made, by

(ii) the national average wage index (as so defined) for 2017.

(3) LIMITATIONS ON BENEFITS PAID.—

(A) NONPAYABLE WAITING PERIOD.—Any calendar day during an individual's benefit period which occurs before the expiration of an initial waiting period shall not be taken into account under this subsection as a caregiving day of the individual.

(B) LIMITATION ON TOTAL BENEFITS PAID.—Any calendar day during an individual's benefit period which occurs after the expiration of a 60-day limitation period shall not be taken into account under this subsection as a caregiving day of the individual.

(4) REDUCTION IN BENEFIT AMOUNT ON ACCOUNT OF RECEIPT OF CERTAIN BENEFITS.—A benefit under this section for a month shall be reduced by the amount, if any, in certain benefits (as determined under regulations issued by the Commissioner) as may be otherwise received by an individual. For purposes of the preceding sentence, certain benefits include—

(A) periodic benefits on account of such individual's total or partial disability under a workmen's compensation law or plan of the United States or a State; and

(B) periodic benefits on account of an individual's employment status under an unemployment law or plan of the United States or a State.

(5) COORDINATION OF BENEFIT AMOUNT WITH CERTAIN STATE BENEFITS.—A benefit received under this section shall be coordinated, in a manner determined by regulations issued by the Commissioner, with the periodic benefits received from temporary disability insurance or family leave insurance

programs under any law or plan of a State, a political subdivision (as that term is used in section 218(b)(2) of the Social Security Act (42 U.S.C. 418(b)(2))), or an instrumentality of two or more States (as that term is used in section 218(g) of such Act of the Social Security Act (42 U.S.C. 418(g))).

(c) BENEFIT PERIOD.—

(1) IN GENERAL.—Except as provided in paragraph (2), the benefit period specified in this subsection shall begin on the 1st day of the 1st month in which the individual meets the criteria specified in paragraphs (1), (2), and (3) of subsection (a), and shall end on the date that is 365 days after the 1st day of the benefit period.

(2) RETROACTIVE BENEFITS.—In the case of an application for benefits under this section for qualified caregiving in which the individual was engaged at any time during the 90-day period preceding the date on which such application is submitted, the benefit period specified in this subsection shall begin on the later of—

(A) the 1st day of the 1st month in which the individual engaged in such qualified caregiving; or

(B) the 1st day of the 1st month that begins during such 90-day period,

and shall end on the date that is 365 days after the 1st day of the benefit period.

(d) APPLICATION.—An application for a family and medical leave insurance benefit shall include—

(1) a statement that the individual was engaged in qualified caregiving, or anticipates being so engaged, during the period that begins 90 days before the date on which the application is submitted or within 30 days after such date;

(2) if the qualified caregiving described in the statement in paragraph (1) is engaged in by the individual because of a serious health condition of the individual or a relative of the individual, a certification, issued by the health care provider treating such serious health condition, that affirms the information specified in paragraph (1) and contains such information as the Commissioner shall specify in regulations, which shall be no more than the information that is required to be stated under section 103(b) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613(b));

(3) if such qualified caregiving is engaged in by the individual for any other authorized reason, a cer-

tification, issued by a relevant authority determined under regulations issued by the Commissioner, that affirms the circumstances giving rise to such reason; and

(4) an attestation from the applicant that his or her employer has been provided with written notice of the individual's intention to take family or medical leave, if the individual has an employer, or to the Commissioner in all other cases.

(e) INELIGIBILITY; DISQUALIFICATION.—

(1) INELIGIBILITY FOR BENEFIT.—An individual shall be ineligible for a benefit under this section for any month for which the individual is entitled to—

(A) disability insurance benefits under section 223 of the Social Security Act (42 U.S.C. 423) or a similar permanent disability program under any law or plan of a State or political subdivision or instrumentality of a State (as such terms are used in section 218 of the Social Security Act (42 U.S.C. 418));

(B) monthly insurance benefits under section 202 of such Act (42 U.S.C. 402) based on such individual's disability (as defined in section 223(d) of such Act (42 U.S.C. 423(d))); or

(C) benefits under title XVI of such Act (42 U.S.C. 1381 et seq.) based on such individual's status as a disabled individual (as determined under section 1614 of such Act (42 U.S.C. 1382c)).

(2) DISQUALIFICATION.—An individual who has been convicted of a violation under section 208 of the Social Security Act (42 U.S.C. 408) or who has been found to have used false statements to secure benefits under this section, shall be ineligible for benefits under this section for a 1-year period following the date of such conviction.

(f) REVIEW OF ELIGIBILITY AND BENEFIT PAYMENT DETERMINATIONS.—

(1) ELIGIBILITY DETERMINATIONS.—

(A) IN GENERAL.—The Commissioner shall provide notice to an individual applying for benefits under this section of the initial determination of eligibility for such benefits, and the estimated benefit amount for a month in which one caregiving day of the individual occurs, as soon as practicable after the application is received.

(B) REVIEW.—An individual may request review of an initial adverse determination with respect to such application at any time before the end of the 20-day period that begins on the date notice of such determination is received, except that such 20-day period may be extended for good cause. As soon as practicable after the individual requests review of the determination, the Commissioner shall provide notice to the individual of a final determination of eligibility for benefits under this section.

(2) BENEFIT PAYMENT DETERMINATIONS.—

(A) IN GENERAL.—The Commissioner shall make any monthly benefit payment to an individual claiming benefits for a month under this section, or provide notice of the reason such payment will not be made if the Commissioner determines that the individual is not entitled to payment for such month, not later than 20 days after the individual's monthly benefit claim report for such month is received. Such monthly report shall be filed with the Commissioner not later than 15 days after the end of each month.

(B) REVIEW.—If the Commissioner determines that payment will not be made to an individual for a month, or if the Commissioner determines that payment shall be made based on a number of caregiving days in the month inconsistent with the number of caregiving days in the monthly benefit claim report of the individual for such month, the individual may request review of such determination at any time before the end of the 20-day period that begins on the date notice of such determination is received, except that such 20-day period may be extended for good cause. Not later than 20 days after the individual requests review of the determination, the Commissioner shall provide notice to the individual of a final determination of payment for such month, and shall make payment to the individual of any additional amount not included in the initial payment to the individual for such month to which the Commissioner determines the individual is entitled.

(3) BURDEN OF PROOF.—An application for benefits under this section and a monthly benefit claim report of an individual shall each be presumed to be true and accurate, unless the Commissioner demonstrates by a preponderance of the evidence that information contained in the application is false.

(4) DEFINITION OF MONTHLY BENEFIT CLAIM REPORT.—For purposes of this subsection, the term ''monthly benefit claim report'' means, with respect to an individual for a month, the individual's report to the Commissioner of the number of caregiving days of the individual in such month, which shall be filed no later than 15 days after the end of each month.

(5) REVIEW.—All final determinations of the Commissioner under this subsection shall be reviewable according to the procedures set out in section 205 of the Social Security Act (42 U.S.C. 405).

(g) RELATIONSHIP WITH STATE LAW; EMPLOYER BENEFITS.—

(1) IN GENERAL.—This section does not preempt or supercede any provision of State or local law that authorizes a State or local municipality to provide paid family and medical leave benefits similar to the benefits provided under this section.

(2) GREATER BENEFITS ALLOWED.—Nothing in this Act shall be construed to diminish the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan that provides greater paid

leave or other leave rights to employees than the rights established under this Act.

(h) PROHIBITED ACTS; ENFORCEMENT.—

(1) IN GENERAL.—It shall be unlawful for any person to discharge or in any other manner discriminate against an individual because the individual has applied for, indicated an intent to apply for, or received family and medical leave insurance benefits.

(2) CIVIL ACTION BY AN INDIVIDUAL.—

(A) LIABILITY.—Any person who violates paragraph (1) shall be liable to any individual employed by such person who is affected by the violation—

(i) for damages equal to the sum of—

(I) the amount of—

(aa) any wages, salary, employment benefits, or other compensation denied or lost to such individual by reason of the violation; or

(bb) in a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the individual, any actual monetary losses sustained by the individual as a direct result of the violation, such as the cost of providing care, up to a sum equal to 60 calendar days of wages or salary for the individual;

(II) the interest on the amount described in subclause (I) calculated at the prevailing rate; and

(III) an additional amount as liquidated damages equal to the sum of the amount described in subclause (I) and the interest described in subclause (II), except that if a person who has violated paragraph (1) proves to the satisfaction of the court that the act or omission which violated paragraph (1) was in good faith and that the person had reasonable grounds for believing that the act or omission was not a violation of paragraph (1), such court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under subclauses (I) and (II), respectively; and

(ii) for such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(B) RIGHT OF ACTION.—An action to recover the damages or equitable relief prescribed in subparagraph (A) may be maintained against any person in any Federal or State court of competent jurisdiction by any individual for and on behalf of—

(i) the individual; or

(ii) the individual and other individuals similarly situated.

(C) FEES AND COSTS.—The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(D) LIMITATIONS.—The right provided by subparagraph (B) to bring an action by or on behalf of any individual shall terminate—

(i) on the filing of a complaint by the Commissioner in an action under paragraph (5) in which restraint is sought of any further delay in the payment of the amount described in subparagraph (A)(I) to such individual by the person responsible under subparagraph (A) for the payment; or

(ii) on the filing of a complaint by the Commissioner in an action under paragraph (3) in which a recovery is sought of the damages described in subparagraph (A)(I) owing to an individual by a person liable under subparagraph (A),

unless the action described in clause (i) or (ii) is dismissed without prejudice on motion of the Commissioner.

(3) ACTION BY THE COMMISSIONER.—

(A) CIVIL ACTION.—The Commissioner may bring an action in any court of competent jurisdiction to recover the damages described in paragraph (2)(A)(I).

(B) SUMS RECOVERED.—Any sums recovered by the Commissioner pursuant to subparagraph (A) shall be held in a special deposit account and shall be paid, on order of the Commissioner, directly to each individual affected.

Any such sums not paid to an individual because of inability to do so within a period of 3 years shall be deposited into the Federal Family and Medical Leave Insurance Trust Fund.

(4) LIMITATION.—

(A) IN GENERAL.—An action may be brought under this subsection not later than 3 years after the date of the last event constituting the alleged violation for which the action is brought.

(B) COMMENCEMENT.—An action brought by the Commissioner under this subsection shall be considered to be commenced on the date when the complaint is filed.

(5) ACTION FOR INJUNCTION BY COMMISSIONER.—The district courts of the United States shall have jurisdiction, for cause shown, in an action brought by the Commissioner—

(A) to restrain violations of paragraph (1), including the restraint of any withholding of payment of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due to an individual; or

(B) to award such other equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(i) SPECIAL RULE FOR RAILROAD EMPLOYEES.—For purposes of subsection (a)(1), an individual shall be deemed to be insured for disability insurance benefits if the individual would be so insured if the individual's service as an employee (as defined in the section 1(b) of the Railroad Retirement Act of 1974) after December 31, 1936, were included within the meaning of the term ''employment'' for purposes of title II of the Social Security Act (42 U.S.C. 401 et seq.).

(j) DETERMINATION OF WHETHER AN ACTIVITY CONSTITUTES QUALIFIED CAREGIVING.—

(1) IN GENERAL.—For purposes of determining whether an activity engaged in by an individual constitutes qualified caregiving under this section—

(A) the term ''spouse'' (as used in section 102(a) of the Family and Medical Leave Act (29 U.S.C. 2612(a))) includes the individual's domestic partner; and

(B) the term ''son or daughter'' (as used in such section) includes a son or daughter (as defined in section 101 of such Act) of the individual's domestic partner.

(2) DOMESTIC PARTNER.—

(A) IN GENERAL.—For purposes of paragraph (1), the term "domestic partner", with respect to an individual, means another individual with whom the individual is in a committed relationship.

(B) COMMITTED RELATIONSHIP DEFINED.—The term "committed relationship" means a relationship between two individuals (each at least 18 years of age) in which each individual is the other individual's sole domestic partner and both individuals share responsibility for a significant measure of each other's common welfare. The term includes any such relationship between two individuals, including individuals of the same sex, that is granted legal recognition by a State or political subdivision of a State as a marriage or analogous relationship, including a civil union or domestic partnership.

(k) APPLICABILITY OF CERTAIN SOCIAL SECURITY ACT PROVISIONS.—The provisions of sections 204, 205, 206, and 208 of the Social Security Act shall apply to benefit payments authorized by and paid out pursuant to this section in the same way that such provisions apply to benefit payments authorized by and paid out pursuant to title II of such Act.

(l) EFFECTIVE DATE FOR APPLICATIONS.—Applications described in this section may be filed beginning 18 months after the date of enactment of this Act.

SEC. 6. ESTABLISHMENT OF FAMILY AND MEDICAL LEAVE INSURANCE TRUST FUND.

(a) IN GENERAL.—There is hereby created on the books of the Treasury of the United States a trust fund to be known as the ''Federal Family and Medical Leave Insurance Trust Fund''. The Federal Family and Medical Leave Insurance Trust Fund shall consist of such gifts and bequests as may be made as provided in section 201(i)(1) of the Social Security Act (42 U.S.C. 401(i)(1)) and such amounts as may be appropriated to, or deposited in, the Federal Family and Medical Leave Insurance Trust Fund as provided in this section.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to the Federal Family and Medical Leave Insurance Trust Fund out of moneys in the Treasury not otherwise appropriated—

(A) for the first three fiscal years beginning after the date of enactment of this Act, such sums as may be necessary for the Commissioner to administer the office established under section 4 and pay the benefits under section 5;

(B) 100 percent of the taxes imposed by sections 3101(c) and 3111(c) of the Internal Revenue Code of 1986 with respect to wages (as defined in section 3121 of such Code) reported to the Secretary of the Treasury pursuant to subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such sections to such wages;

(C) 100 percent of the taxes imposed by section 1401(c) of such Code with respect to self-employment income (as defined in section 1402 of such Code) reported to the Secretary of the Treasury on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such section to such self-employment income; and

(D) 100 percent of the taxes imposed by sections 3201(c), 3211(c), and 3221(c) of such Code with respect to compensation (as defined in section 3231 of such Code) reported to the

Secretary of the Treasury on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such sections to such compensation.

(2) REPAYMENT OF INITIAL APPROPRIATION.—Amounts appropriated pursuant to subparagraph (A) of paragraph (1) shall be repaid to the Treasury of the United States not later than 10 years after the first appropriation is made pursuant to such subparagraph.

(3) TRANSFER TO TRUST FUND.—The amounts described in paragraph (2) shall be transferred from time to time from the general fund in the Treasury to the Federal Family and Medical Leave Insurance Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in such paragraph, paid to or deposited into the Treasury. Proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were inconsistent with the taxes specified in such paragraph.

(c) MANAGEMENT OF TRUST FUND.—The provisions of subsections (c), (d), (e), (f), (i), and (m) of section 201 of the Social Security Act (42 U.S.C. 401) shall apply with respect to the Federal Family and Medical Leave Insurance Trust Fund in the same manner as such provisions apply to the Federal Old-Age and Survivors Insurance Trust Fund and the Disability Insurance Trust Fund.

(d) BENEFITS PAID FROM TRUST FUND.—Benefit payments required to be made under section 5 shall be made only from the Federal Family and Medical Leave Insurance Trust Fund.

(e) ADMINISTRATION.—There are authorized to be made available for expenditure, out of the Federal Family and Medical Leave Insurance Trust Fund, such sums as may be necessary to pay the costs of the administration of section 5, including start-up costs, technical assistance, outreach, education, evaluation, and reporting.

(f) PROHIBITION.—No funds from the Social Security Trust Fund or appropriated to the Social Security Administration to administer Social Security programs may be used for Federal Family and Medical Leave Insurance benefits or administration set forth under this Act.

SEC. 7. INTERNAL REVENUE CODE PROVISIONS.

(a) IN GENERAL.—

(1) EMPLOYEE CONTRIBUTION.—Section 3101 of the Internal Revenue Code of 1986 is amended—

(A) by redesignating subsection (c) as subsection (d), and

(B) by inserting after subsection (b) the following:

"(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

"(1) IN GENERAL.—In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the applicable percentage of the wages (as defined in section 3121(a)) received by the individual with respect to employment (as defined in section 3121(b)).

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means 0.2 percent in the case of wages received in any calendar year.".

(2) EMPLOYER CONTRIBUTION.—Section 3111 of such Code is amended—

(A) by redesignating subsections (c) through (e) as subsections (d) through (f), respectively, and

(B) by inserting after subsection (b) the following:

"(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

"(1) IN GENERAL.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the applicable percentage of the wages (as defined in section 3121(a)) paid by the employer with respect to employment (as defined in section 3121(b)).

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means 0.2 percent in the case of wages paid in any calendar year.".

(3) SELF-EMPLOYMENT INCOME CONTRIBUTION.—

(A) IN GENERAL.—Section 1401 of such Code is amended—

(i) by redesignating subsection (c) as subsection (d), and

(ii) by inserting after subsection (b) the following:

"(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

"(1) IN GENERAL.—In addition to other taxes, there is hereby imposed for each taxable year, on the self-employment income of every individual, a tax equal to the applicable percentage of the amount of the self-employment income for such taxable year.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means 0.4 percent in the case of self-employment income in any taxable year.".

(B) EXCLUSION OF CERTAIN NET EARNINGS FROM SELF-EMPLOYMENT.—Section 1402(b)(1) of such Code is amended by striking "tax imposed by section 1401(a)" and inserting "taxes imposed by subsections (a) and (c) of section 1401".

(b) RAILROAD RETIREMENT TAX ACT.—

(1) EMPLOYEE CONTRIBUTION.—Section 3201 of such Code is amended—

(A) by redesignating subsection (c) as subsection (d), and

(B) by inserting after subsection (b) the following:

"(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

"(1) IN GENERAL.—In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the applicable percentage of the compensation received during any calendar year by such employee for services rendered by such employee.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means 0.2 percent in the case of compensation received in any calendar year.".

(2) EMPLOYEE REPRESENTATIVE CONTRIBUTION.—Section 3211 of such Code is amended—

(A) by redesignating subsection (c) as subsection (d), and

(B) by inserting after subsection (b) the following:

"(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

"(1) IN GENERAL.—In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the applicable percentage of the compensation received during any calendar year by such employee representative for services rendered by such employee representative.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means 0.2 percent in the case of compensation received in any calendar year.".

(3) EMPLOYER CONTRIBUTION.—Section 3221 of such Code is amended—

(A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and

(B) by inserting after subsection (b) the following:

"(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

"(1) IN GENERAL.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the applicable percentage of the compensation paid during any calendar year by such employer for services rendered to such employer.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means 0.2 percent in the case of compensation paid in any calendar year.".

(c) CONFORMING AMENDMENTS.—

(1) Section 6413(c) of the Internal Revenue Code of 1986 is amended—

(A) in paragraph (1)—

(i) by inserting ", section 3101(c)," after "by section 3101(a)"; and

(ii) by striking "both" and inserting "each"; and

(B) in paragraph (2), by inserting "or 3101(c)" after "3101(a)" each place it appears.

(2) Section 15(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(a)) is amended by inserting "(other than sections 3201(c), 3211(c), and 3221(c))" before the period at the end.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 120 days after the date of the enactment of this Act.

SEC. 8. REGULATIONS.

The Commissioner, in consultation with the Secretary of Labor, shall prescribe regulations necessary to carry out this Act. In developing such regulations, the Commissioner shall consider the input from a volunteer advisory body comprised of not more than 15 individuals, including experts in the relevant subject matter and officials charged with implementing State paid family and medical leave insurance programs. The Commissioner shall take such programs into account when proposing regulations. Such individuals shall be appointed as follows:

(1) Five individuals to be appointed by the President.

(2) Three individuals to be appointed by the majority leader of the Senate.

(3) Two individuals to be appointed by the minority leader of the Senate.

(4) Three individuals to be appointed by the Speaker of the House of Representatives.

(5) Two individuals to be appointed by the minority leader of the House of Representatives.

SEC. 9. GAO STUDY.

Not later than 3 years after the date of enactment of this Act, the Comptroller General shall submit to Congress a report on family and medical leave insurance benefits paid under section 5 for any month during the 1-year period beginning on January 1, 2019. The report shall include the following:

(1) An identification of the total number of applications for such benefits filed for any month during such 1-year period, and the average number of days occurring in the period beginning on the date on which such an application is received and ending on the date on which the initial determination of eligibility with respect to the application is made.

(2) An identification of the total number of requests for review of an initial adverse determination of eligibility for such benefits made during such 1-year period, and the average number of days occurring in the period beginning on the date on which such review is requested and ending on the date on which the final determination of eligibility with respect to such review is made.

(3) An identification of the total number of monthly benefit claim reports for such benefits filed during such 1-year period, and the average number of days occurring in the period beginning on the

date on which such a claim report is received and ending on the date on which the initial determination of eligibility with respect to the claim report is made.

(4) An identification of the total number of requests for review of an initial adverse determination relating to a monthly benefit claim report for such benefits made during such 1-year period, and the average number of days occurring in the period beginning on the date on which such review is requested and ending on the date on which the final determination of eligibility with respect to such review is made.

(5) An identification of any excessive delay in any of the periods described in paragraphs (1) through (4), and a description of the causes for such delay.

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