K3 4lr2323 CF SB 485

By: Delegates Qi, Boafo, Fennell, Foley, A. Johnson, Kaufman, Lehman, Patterson, Pruski, Simmons, Taveras, and Wu

Introduced and read first time: January 24, 2024

Assigned to: Economic Matters

A BILL ENTITLED

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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:

Article - Labor and Employment

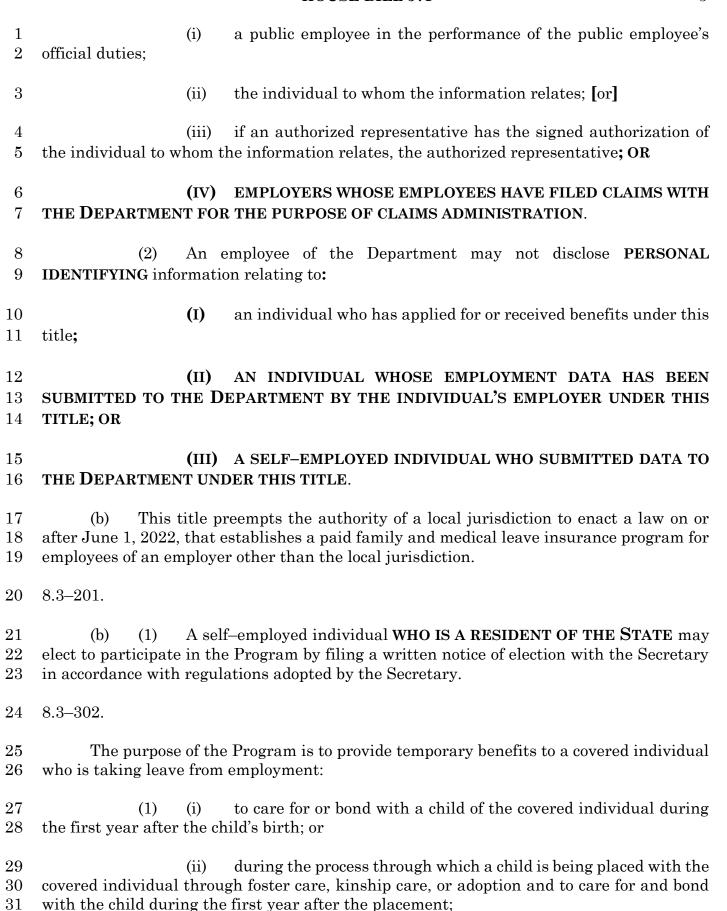


8.3–101. 1 2 In this title the following words have the meanings indicated. (a) "Covered employee" means an employee who has worked at least 680 hours 3 (d) PERFORMING SERVICES UNDER EMPLOYMENT LOCATED IN THE STATE over the 4 [12-month period] FOUR MOST RECENTLY COMPLETED CALENDAR QUARTERS FOR 5 WHICH QUARTERLY REPORTS HAVE BEEN REQUIRED immediately preceding the date 6 on which leave is to begin. 7 8 (r) "Wages" means all compensation that is due for employment that is: 9 (1) for an employee : 10 (i) an hourly wage or a salary; 11 (ii) a commission; 12 (iii) compensatory pay; 13 (iv) severance pay; 14 standby pay; (v) 15 (vi) a tip or gratuity; 16 (vii) holiday or vacation pay; or 17 (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; 18 19 20 **(2)** for a self-employed individual[,]: 21**(I)** self-employment income, as defined in 26 U.S.C. § 1402(b); OR 22INCOME, PAY, OR LEAVE LISTED UNDER ITEM (1) OF THIS (II) SUBSECTION THAT IS EARNED FROM A C CORPORATION OR AN S CORPORATION IF 23 THE INCOME, PAY, OR LEAVE IS PAID TO THE OWNER WHO IS THE SOLE EMPLOYEE 24OF A C CORPORATION OR AN S CORPORATION. 25

26 8.3–102.

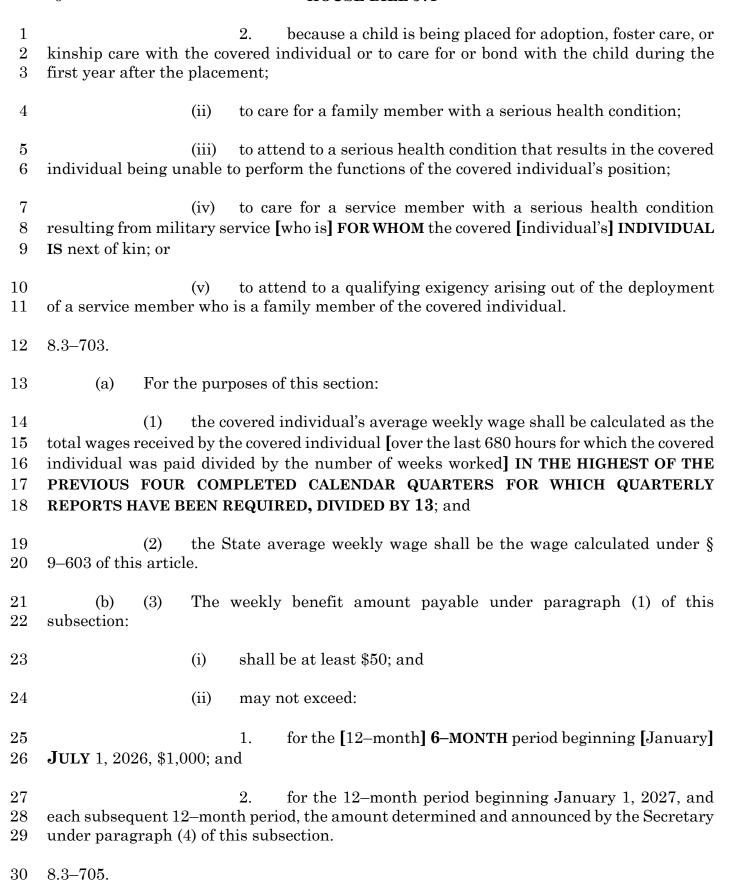
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(a) (1) This subsection does not apply to the disclosure of information to:

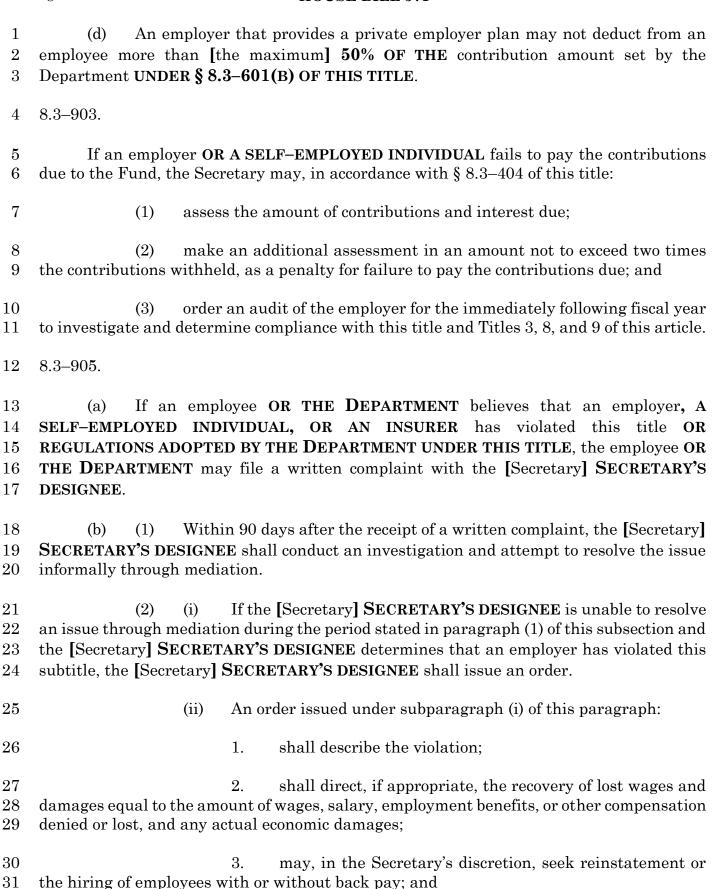


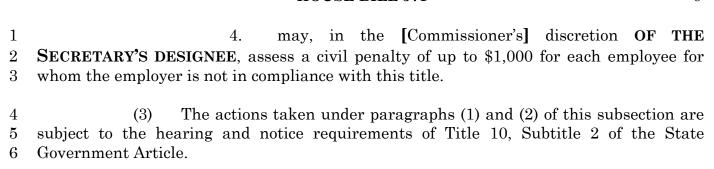
- 1 to care for a family member with a serious health condition; (2)2 because the covered individual has a serious health condition that 3 results in the covered individual being unable to perform the functions of the covered 4 individual's position; 5 to care for a service member [who is] FOR WHOM the covered **(4)** 6 [individual's] INDIVIDUAL IS next of kin; or 7 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 9 8.3 - 403.10 The Secretary, in consultation with other State agencies and relevant 11 stakeholders, shall: 12 subject to subsection (b) of this section, adopt regulations necessary to carry out this title; 13 14 (2)establish procedures and forms for filing claims for benefits, including: 15 procedures for notifying an employer within 5 business days after 16 any of the following occurs: 17 1. an employee files an electronic application regarding a claim for benefits: 18 an employee's paper application regarding a claim for 19 2.20 benefits is processed; 213. a determination regarding a claim for benefits is made; 22 4. an appeal for a determination regarding a claim for 23 benefits is filed; or 24 5. a change is made to a determination regarding a claim for benefits; and 2526 (ii) notices of elections by self-employed individuals for benefits 27 under § 8.3–201 of this title;
- 28 (3) ESTABLISH PROCEDURES AND FORMS FOR ELECTRONIC FILING 29 OF REPORTS, NOTICES, AND OTHER REQUIRED DOCUMENTS BY EMPLOYERS;

- 1 **[**(3)**] (4)** use information—sharing and integration technology to facilitate 2 the disclosure of relevant information or records needed for the administration of this title; 3 and
- 4 **[**(4)**] (5)** subject to subsection (d) of this section, carry out a public 5 education program.
- 6 (d) (1) The Secretary may use a portion of the funds paid under § 8.3–601 of 7 this title or other available funding to:
- 8 (I) pay for and carry out the requirements under subsection [(a)(4)] 9 (A)(5) of this section; OR
- 10 (II) ISSUE GRANTS.
- 11 (2) Materials used in the public education program required under subsection [(a)(4)] (A)(5) of this section shall be made available in English and Spanish.
- 13 8.3–601.
- 14 (a) (1) Beginning [October 1, 2024] **JULY 1, 2025**, each employee of an employer, each employer with 15 or more employees, and each self-employed individual participating in the Program shall contribute to the Fund.
- 17 (b) (1) Subject to subsection (a)(2) of this section, on or before [October 1, 2023]
 18 **FEBRUARY 1, 2024**, the Secretary shall set the total rate of contribution based on
 19 available cost analyses of the Program.
- 20 (2) The rate set under paragraph (1) of this subsection shall be in effect for the period from [October 1, 2024] **JULY 1, 2025**, to June 30, 2026, both inclusive.
- 22 (c) (1) On or before November 15 each year, beginning in [2025] **2026**, the Secretary shall conduct a cost analysis of the Program that is focused on the cost of maintaining solvency and paying benefits to covered individuals that will be used to determine the appropriate total rate of contribution to the Fund.
- 26 8.3–701.
- 27 (a) (1) Subject to paragraph (2) of this subsection, beginning [January] JULY 28 1, 2026, a covered individual taking leave from employment may submit a claim for 29 benefits:
- 30 (i) 1. to care for a newborn child of the covered individual during 31 the first year after the child's birth; or



- 1 An employer AUTHORIZED BY THE SECRETARY may satisfy the (a) 2 requirements of this title through a private employer plan consisting of employer-provided 3 benefits [,] OR insurance through an insurer that holds a certificate of authority issued by 4 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 5 6 the rights, protections, and benefits provided to a covered employee under this title. 7 (2)To determine the benefit amount under a private employer plan, 8 the weekly benefit amount shall be based on the average weekly wage earned from the 9 employer sponsoring the private employer plan. 10 (ii) Notwithstanding subparagraph (i) of this paragraph, if an 11 individual has worked less than 680 hours for the employer sponsoring the private 12 employer plan, the weekly benefit amount shall be based on the average weekly wage under $\S 8.3-703(a)$ of this subtitle. 13 14 This subsection may not be construed to prevent a private (iii) 15 employer plan from providing a benefit that is greater than that provided in § 8.3–703(a) 16 of this subtitle. A private employer plan shall be filed with the Department for 17 **(1)** (b) 18 approval. 19 **(2) (I)** THE SECRETARY SHALL ESTABLISH REASONABLE CRITERIA 20 FOR DETERMINING WHICH EMPLOYERS ARE AUTHORIZED TO MEET REQUIREMENTS OF THIS TITLE THROUGH EMPLOYER-PROVIDED BENEFITS. 2122(II) THE CRITERIA ESTABLISHED UNDER SUBPARAGRAPH (I) OF 23 THIS PARAGRAPH MAY INCLUDE THE EMPLOYER'S: 241. NUMBER OF EMPLOYEES; 252. **CAPITALIZATION;** 26 3. **BONDEDNESS; AND** 274. STATUS AS A GOVERNMENT EMPLOYER.
- 28 (3) THE DEPARTMENT MAY ADOPT REGULATIONS THAT ESTABLISH 29 FEES UNDER THIS SECTION.
- 30 (c) An employer that provides covered employees with a private employer plan 31 and an employee that is covered by a private employer plan are exempt from the 32 contributions required under Subtitle 6 of this title.





- 7 8.3–906.
- 8 (a) (1) (i) The Secretary shall establish a system for appeals by covered 9 individuals regarding determinations of benefit amounts, benefit durations, and denials of 10 benefits under this title.
- 11 (ii) A covered individual must file an appeal under subparagraph (i) 12 of this paragraph within 30 days after the determination is made or benefits are denied, 13 unless good cause can be shown for the delay.
- 14 (III) IF A COVERED INDIVIDUAL PREVAILS IN AN APPEAL OF AN
 15 ADVERSE DECISION OF AN EMPLOYER OR INSURER, THE DEPARTMENT MAY ASSESS
 16 THE DEPARTMENT'S COSTS OF THE APPEAL AGAINST THE EMPLOYER OR INSURER.
- 17 (2) The Secretary may use the procedures under § 8–806 of this article for the system required under paragraph (1) of this subsection.
- 19 (b) Judicial review of any decision with respect to benefits under this title shall 20 be allowed in a court of competent jurisdiction after an aggrieved party has exhausted all 21 administrative remedies established by the Secretary under this title.
- 22 (c) The Secretary shall implement procedures to ensure confidentiality of all information related to any claims filed or appeals taken to the maximum extent allowed by law.
- SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2024.