

HOUSE BILL 496

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By: ~~Delegates Wilson, Valderrama~~ Delegates Valderrama, Wilson, and Kelly

Introduced and read first time: January 21, 2022

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 10, 2022

CHAPTER _____

1 AN ACT concerning

2 ~~Labor and Employment~~ Commission on the Establishment of a Family and
3 Medical Leave Insurance Program ~~—Establishment~~

4 FOR the purpose of establishing the Commission on the Establishment of a Family and
5 Medical Leave Insurance Program in the Maryland Department of Labor to provide
6 certain benefits to individuals who take leave from employment for certain purposes;
7 establishing the Division of Family and Medical Leave Insurance in the Department
8 to administer the Program; establishing the Family and Medical Leave Insurance
9 Fund as a special, nonlapsing fund; requiring, beginning on a certain date, certain
10 employees, employers, and self-employed individuals to contribute to the Fund in a
11 certain manner; requiring the Division, under certain circumstances, to deduct and
12 withhold a certain amount from benefits paid; authorizing certain employees to bring
13 a certain action against certain employers for certain violations of this Act under
14 certain circumstances; requiring the Secretary of Labor to establish a system of
15 appeals for certain covered individuals; requiring that certain judicial review be
16 allowed after a certain aggrieved party has exhausted certain administrative
17 remedies; requiring interest earnings of the Fund to be credited to the Fund; to study
18 and make recommendations for establishing a Family Medical Leave and Insurance
19 Program in the State; providing that the intent of the General Assembly is to
20 establish a certain statutory framework for a family medical leave and insurance
21 program in the State that is effective not later than a certain date; and generally
22 relating to the Family and Medical Leave Insurance Program a State family and
23 medical leave insurance program.

24 ~~BY adding to~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



~~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 2021 Supplement)~~

~~BY repealing and reenacting, without amendments,~~

~~Article — State Finance and Procurement~~

~~Section 6—226(a)(2)(i)~~

~~Annotated Code of Maryland~~

~~(2021 Replacement Volume)~~

~~BY repealing and reenacting, with amendments,~~

~~Article — State Finance and Procurement~~

~~Section 6—226(a)(2)(ii) 144. and 145.~~

~~Annotated Code of Maryland~~

~~(2021 Replacement Volume)~~

~~BY adding to~~

~~Article — State Finance and Procurement~~

~~Section 6—226(a)(2)(ii) 146.~~

~~Annotated Code of Maryland~~

~~(2021 Replacement Volume)~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

That ~~the Laws of Maryland read as follows:~~

(a) There is a Commission on the Establishment of a Family Medical Leave and Insurance Program.

(b) The purpose of the Commission is to study and make recommendations for establishing a Family Medical Leave and Insurance Program in the State.

(c) The Commission consists of the following members:

(1) two members of the Senate, appointed by the President of the Senate;

(2) two members of the House of Delegates, appointed by the Speaker of the House of Delegates;

(3) the Secretary of Labor, or the Secretary’s designee;

(4) the State Treasurer, or the State Treasurer’s designee;

(5) the Comptroller, or the Comptroller’s designee;

1 (6) one representative of the National Federation of Independent Business,
2 designated by the President of the National Federation of Independent Business;

3 (7) one representative of the Maryland Chamber of Commerce, designated
4 by the President of the Maryland Chamber of Commerce;

5 (8) one representative of the Maryland Retailers Association, designated
6 by the President of the Maryland Retailers Association; and

7 (9) the following members, appointed jointly by the President of the Senate
8 and the Speaker of the House of Delegates:

9 (i) one representative from a national organization with expertise
10 in the implementation of family medical and leave insurance programs in other states;

11 (ii) one representative from a private sector labor union;

12 (iii) one representative of a community organization that advocates
13 for working families; and

14 (iv) one economist.

15 (d) The President of the Senate and the Speaker of the House of Delegates shall
16 appoint cochair of the Commission from among its members as follows:

17 (i) one cochair from the Senate, appointed by the President of the Senate;
18 and

19 (ii) one cochair from the House of Delegates, appointed by the Speaker of
20 the House of Delegates.

21 (e) The Maryland Department of Labor and the Department of Legislative
22 Services jointly shall provide staff for the Commission.

23 (f) A member of the Commission:

24 (1) may not receive compensation as a member of the Commission; but

25 (2) is entitled to reimbursement of expenses under the Standard State
26 Travel Regulations, as provided in the State budget.

27 (g) The Commission shall study and make recommendations on establishing a
28 Family Medical Leave and Insurance Program in the State, including recommendations
29 regarding:

(1) when employers and employees should begin making contributions to fund the Program so that benefits under the Program are able to begin being paid not later than January 1, 2024;

(2) the appropriate cost sharing formula between employers and employees for making contributions to fund the Program, including various formulas that range between a cost share of:

(i) 1. 75% paid by employers; and

2. 25% paid by employees; and

(ii) 1. 25% paid by employers; and

2. 75% paid by employees;

(3) to what extent, if any, the cost shared between employers and employees should affect or determine the leave benefits provided to employees under the Program, including whether the proportion of the cost shared should impact who approves employees to take leave under the Program;

(4) any oversight mechanisms for the Program;

(5) the appropriate eligibility criteria for an individual to qualify for leave benefits under the Program;

(6) the appropriate duration for which an individual may receive leave benefits under the Program;

(7) the cost, efficiency, and benefits of the Maryland Department of Labor issuing a request for proposals seeking the services of an outside contractor for the following:

(i) premium collection;

(ii) claims administration;

(iii) data management;

(iv) fraud control;

(v) marketing and advertising; or

(vi) implementing any other elements of the Program;

(8) the minimum time an individual should be employed with the individual's employer before qualifying for leave benefits under the Program; and

(9) any other relevant aspects of family medical and leave insurance programs as determined by the Commission.

(h) In conducting the study and making recommendations under subsection (g) of this section, the Commission shall consider:

(1) how other states have established family medical leave and insurance programs; and

(2) the results from an actuarial analysis regarding sustainable funding levels.

(i) The Commission shall contract with any consultants necessary to carry out this section.

(j) On or before December 1, 2022, the Commission shall report its findings and recommendations to the Governor and, in accordance with § 2-1257 of the State Government Article, the General Assembly.

~~Article—Labor and Employment~~

~~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 COVERED INDIVIDUAL.~~

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

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

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

~~(G) "DIVISION" MEANS THE DIVISION OF FAMILY AND MEDICAL LEAVE INSURANCE.~~

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

~~(I) "FAMILY MEMBER" MEANS:~~

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

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

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

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

~~(5) THE LEGAL GUARDIAN OF THE COVERED INDIVIDUAL OR THE WARD OF THE COVERED INDIVIDUAL OR OF THE COVERED INDIVIDUAL'S SPOUSE;~~

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

~~(7) THE SPOUSE OF THE COVERED INDIVIDUAL;~~

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

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

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

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

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

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

~~(M) "PROGRAM" MEANS THE FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM ESTABLISHED UNDER § 8-301 OF THIS TITLE.~~

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

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

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

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

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

~~(5) TO ATTEND COUNSELING THAT:~~

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

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

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

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

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

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

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

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

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

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

~~(H) CONTINUED TREATMENT BY A LICENSED HEALTH CARE PROVIDER; OR~~

~~(HH) CONTINUED TREATMENT OR SUPERVISION AT HOME BY A LICENSED HEALTH CARE PROVIDER OR OTHER COMPETENT INDIVIDUAL UNDER THE SUPERVISION OF A LICENSED HEALTH CARE PROVIDER.~~

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

~~(Q) "SERVICE MEMBER" MEANS AN INDIVIDUAL WHO IS AN ACTIVE DUTY OR FORMER MEMBER OF:~~

~~(1) THE UNITED STATES ARMED FORCES;~~

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

~~OR~~

~~(3) THE NATIONAL GUARD OF ANY STATE.~~

~~(R) "TREATMENT" INCLUDES:~~

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

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

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

~~8.3-102.~~

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

~~(1) A PUBLIC EMPLOYEE IN THE PERFORMANCE OF THE PUBLIC
EMPLOYEE'S OFFICIAL DUTIES;~~

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

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

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

~~SUBTITLE 2. SCOPE OF TITLE.~~

~~8.3-201.~~

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

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

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

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

~~(3) IF THE SELF-EMPLOYED INDIVIDUAL DOES NOT WISH TO RENEW
PARTICIPATION IN THE PROGRAM UNDER PARAGRAPH (2) OF THIS SUBSECTION,~~

~~WITHIN 30 DAYS BEFORE THE PARTICIPATION PERIOD EXPIRES, THE SELF-EMPLOYED INDIVIDUAL SHALL NOTIFY THE SECRETARY IN WRITING OF THE SELF-EMPLOYED INDIVIDUAL'S WITHDRAWAL FROM THE PROGRAM.~~

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

~~§.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.~~

~~§.3-203.~~

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

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

~~SUBTITLE 3. ESTABLISHMENT OF THE DIVISION AND PROGRAM.~~

~~§.3-301.~~

~~(A) THERE IS A DIVISION OF FAMILY AND MEDICAL LEAVE INSURANCE IN THE DEPARTMENT.~~

~~(B) THE DIVISION OF FAMILY AND MEDICAL LEAVE INSURANCE SHALL PERFORM ANY FUNCTIONS THAT THE SECRETARY ASSIGNS TO IT TO CARRY OUT THIS TITLE.~~

~~(C) (1) (i) IN ACCORDANCE WITH THE PROVISIONS OF THE STATE PERSONNEL AND PENSIONS ARTICLE, THE SECRETARY MAY EMPLOY THE STAFF NECESSARY TO CARRY OUT THIS TITLE.~~

~~(ii) IN ACCORDANCE WITH THE STATE BUDGET, THE SECRETARY MAY SET THE COMPENSATION OF AN EMPLOYEE UNDER THIS SUBSECTION IN A POSITION THAT:~~

~~1. IS UNIQUE TO THE DEPARTMENT;~~

~~2. REQUIRES SPECIFIC SKILLS OR EXPERIENCE TO
PERFORM THE DUTIES OF THE POSITION; AND~~

~~3. DOES NOT REQUIRE THE EMPLOYEE TO PERFORM
FUNCTIONS THAT ARE COMPARABLE TO FUNCTIONS PERFORMED IN OTHER UNITS
OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.~~

~~(III) THE SECRETARY OF BUDGET AND MANAGEMENT, IN
CONSULTATION WITH THE SECRETARY, SHALL DETERMINE THE POSITIONS FOR
WHICH THE SECRETARY MAY SET COMPENSATION UNDER SUBPARAGRAPH (II) OF
THIS PARAGRAPH.~~

~~(IV) SUBJECT TO OTHER APPLICABLE PROVISIONS OF THIS
TITLE, THE SECRETARY MAY APPOINT EMPLOYEES AND SET THEIR POWERS AND
DUTIES AS NECESSARY TO CARRY OUT THIS TITLE.~~

~~(2) THE SECRETARY SHALL DETERMINE WHETHER AN EMPLOYEE
WHO HANDLES MONEY FOR THE DEPARTMENT UNDER THIS TITLE SHOULD BE
COVERED UNDER A BOND.~~

~~(3) (I) THE SECRETARY SHALL PRINT:~~

~~1. THIS TITLE;~~

~~2. EACH ANNUAL REPORT THAT THE SECRETARY
SUBMITS TO THE GOVERNOR; AND~~

~~3. ANY OTHER MATERIAL THAT THE SECRETARY
CONSIDERS RELEVANT AND SUITABLE.~~

~~(II) ON REQUEST BY ANY PERSON, THE SECRETARY SHALL GIVE
THE PERSON A COPY OF:~~

~~1. ANY MATERIAL THAT THE SECRETARY PRINTS UNDER
THIS SUBSECTION; AND~~

~~2. THE CURRENT REGULATIONS ADOPTED TO CARRY
OUT THIS TITLE.~~

~~8.3 302.~~

~~(A) THERE IS A FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.~~

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

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

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

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

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

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

~~SUBTITLE 4. ADMINISTRATION.~~

~~§.3-401.~~

~~THIS TITLE SHALL BE ADMINISTERED UNDER THE SUPERVISION OF THE SECRETARY BY THE DIVISION OF FAMILY AND MEDICAL LEAVE INSURANCE ESTABLISHED UNDER § 8.3-301 OF THIS TITLE.~~

~~§.3-402.~~

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

~~§.3-403.~~

~~(A) THE SECRETARY SHALL:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(3) THE SECRETARY SHALL ESTABLISH STANDARDS IN REGULATION FOR THE CERTIFICATION OF CLAIMS FOR BENEFITS UNDER § 8.3 302(B)(5) OF THIS TITLE.~~

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

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

~~8.3 404.~~

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

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

~~(2) ADMINISTER AN OATH;~~

~~(3) CERTIFY TO AN OFFICIAL ACT;~~

~~(4) TAKE A DEPOSITION;~~

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

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

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

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

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

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

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

~~§.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.~~

~~§.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.~~

~~§.3-501.~~

~~THERE IS A FAMILY AND MEDICAL LEAVE INSURANCE FUND.~~

~~§.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.~~

~~§.3-503.~~

~~(A) THE FUND CONSISTS OF:~~

~~(1) EMPLOYEE CONTRIBUTIONS REQUIRED UNDER § 8.3-601 OF THIS TITLE;~~

~~(2) SELF-EMPLOYED INDIVIDUAL CONTRIBUTIONS REQUIRED UNDER § 8.3-601 OF THIS TITLE;~~

~~(3) EMPLOYER CONTRIBUTIONS REQUIRED UNDER § 8.3 601 OF THIS TITLE;~~

~~(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~~

~~(H) ANY COSTS ASSOCIATED WITH THE INITIAL IMPLEMENTATION AND ONGOING ADMINISTRATION OF THIS TITLE.~~

~~8.3 505.~~

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

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

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

~~(3) BE COUNTERSIGNED BY AN AUTHORIZED AGENT.~~

~~8.3 506.~~

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

~~SUBTITLE 6. CONTRIBUTIONS.~~

~~8.3 601.~~

~~(A) BEGINNING JANUARY 1, 2023, 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.~~

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

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

~~1. MAY NOT EXCEED 1.0% OF AN EMPLOYEE'S WAGES;~~

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

~~3. EXCEPT AS PROVIDED UNDER PARAGRAPH (3)(I)2 OF
THIS SUBSECTION, SHALL BE SHARED EQUALLY BY EMPLOYERS AND EMPLOYEES;
AND~~

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

~~(2) (I) EACH EMPLOYER WITH 15 OR MORE EMPLOYEES SHALL
CONTRIBUTE AN AMOUNT EQUAL TO 50% OF THE TOTAL RATE OF CONTRIBUTION
FOR EACH EMPLOYEE EMPLOYED BY THE EMPLOYER.~~

~~(II) 1. FOR THE PURPOSE OF DETERMINING WHETHER AN
EMPLOYER IS REQUIRED TO CONTRIBUTE, THE NUMBER OF EMPLOYEES OF AN~~

~~EMPLOYER SHALL BE DETERMINED BY CALCULATING THE AVERAGE MONTHLY
NUMBER OF EMPLOYEES EMPLOYED BY THE EMPLOYER DURING THE IMMEDIATELY
PRECEDING 12-MONTH PERIOD.~~

~~2. EACH EMPLOYEE OF AN EMPLOYER SHALL BE
INCLUDED IN THE CALCULATION MADE UNDER SUBSUBPARAGRAPH 1 OF THIS
SUBPARAGRAPH WITHOUT REGARD TO WHETHER THE EMPLOYEE IS A FULL-TIME,
PART-TIME, TEMPORARY, OR SEASONAL EMPLOYEE OR WOULD BE ELIGIBLE FOR
BENEFITS UNDER THIS TITLE.~~

~~(3) (i) 1. EACH EMPLOYEE OF AN EMPLOYER WITH 15 OR MORE
EMPLOYEES SHALL CONTRIBUTE AN AMOUNT EQUAL TO 50% OF THE TOTAL RATE
OF CONTRIBUTION.~~

~~2. EACH EMPLOYEE OF AN EMPLOYER WITH LESS THAN
15 EMPLOYEES SHALL CONTRIBUTE AN AMOUNT PROPORTIONALLY EQUAL TO THE
AMOUNT CONTRIBUTED BY AN EMPLOYEE UNDER SUBSUBPARAGRAPH 1 OF THIS
SUBPARAGRAPH.~~

~~(H) THE EMPLOYER OF THE EMPLOYEE SHALL DEDUCT THE
CONTRIBUTION REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH FROM
THE WAGES OF THE EMPLOYEE.~~

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

~~(i) PAY CONTRIBUTIONS DURING EACH YEAR THAT THE
SELF-EMPLOYED INDIVIDUAL PARTICIPATES IN THE PROGRAM; AND~~

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

~~SUBTITLE 7. BENEFITS.~~

~~8.3-701.~~

~~(A) BEGINNING JULY 1, 2024, A COVERED INDIVIDUAL TAKING LEAVE FROM
EMPLOYMENT MAY SUBMIT A CLAIM FOR BENEFITS TO:~~

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

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

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

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

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

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

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

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

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

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

~~8.3-702.~~

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

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

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

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

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

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

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

~~§.3-703.~~

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

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

~~§.3-704.~~

~~(A) FOR THE PURPOSES OF THIS SECTION:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(II) MAY NOT EXCEED:~~

~~1. FOR THE 12 MONTH PERIOD BEGINNING JULY 1, 2024, \$1,000; AND~~

~~2. FOR THE 12 MONTH PERIOD BEGINNING JULY 1, 2025, AND EACH SUBSEQUENT 12 MONTH PERIOD, THE AMOUNT DETERMINED AND ANNOUNCED BY THE SECRETARY UNDER PARAGRAPH (3) OF THIS SUBSECTION.~~

~~(3) (i) IN THIS PARAGRAPH, "CONSUMER PRICE INDEX" MEANS THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE WASHINGTON ARLINGTON ALEXANDRIA, DC VA MD WV METROPOLITAN AREA OR A SUCCESSOR INDEX PUBLISHED BY THE FEDERAL BUREAU OF LABOR STATISTICS.~~

~~(ii) EXCEPT AS PROVIDED IN SUBPARAGRAPH (iv) OF THIS PARAGRAPH, FOR THE 12 MONTH PERIOD BEGINNING JULY 1, 2025, 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 PERCENTAGE 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, 2025, AND ON EACH SUBSEQUENT SEPTEMBER 1, THE SECRETARY SHALL DETERMINE AND ANNOUNCE:~~

~~1. THE ANNUAL PERCENTAGE 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;~~

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

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

~~8.3 705.~~

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

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

~~(2) THERE ARE REQUIREMENTS REGARDING ESTIMATED TAX PAYMENTS;~~

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

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

~~(B) (1) IF A COVERED INDIVIDUAL ELECTS TO HAVE FEDERAL INCOME TAX DEDUCTED AND WITHHELD UNDER SUBSECTION (A)(3) OF THIS SECTION, THE DIVISION SHALL DEDUCT AND WITHHOLD AN AMOUNT AT THE RATE SPECIFIED IN~~

~~THE INTERNAL REVENUE CODE IN A MANNER REQUIRED BY THE INTERNAL REVENUE SERVICE.~~

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

~~§.3-706.~~

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

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

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

~~§.3-707.~~

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

~~§.3-708.~~

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

~~SUBTITLE 8. NOTICE TO EMPLOYEES.~~

~~8.3-801.~~

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

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

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

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

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

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

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

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

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

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

~~SUBTITLE 9. PROHIBITED ACTS; PENALTIES.~~

~~8.3-901.~~

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

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

~~(C) AN EMPLOYER MAY NOT WILLFULLY:~~

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

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

~~§.3-902.~~

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

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

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

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

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

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

~~§.3-903.~~

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

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

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

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

~~§.3-904.~~

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

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

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

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

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

~~§.3-905.~~

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

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

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

~~§.3-906.~~

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

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

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

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

~~8.3-907.~~

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

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

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

~~(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.~~

~~SUBTITLE 10. SHORT TITLE.~~

~~8.3-1001.~~

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

~~Article State Finance and Procurement~~

~~6-226.~~

~~(a) (2) (i) Notwithstanding any other provision of law, and unless inconsistent with a federal law, grant agreement, or other federal requirement or with the terms of a gift or settlement agreement, not interest on all State money allocated by the State Treasurer under this section to special funds or accounts, and otherwise entitled to~~

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

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

~~144. the Health Equity Resource Community Reserve Fund;~~
~~[and]~~

~~145. the Access to Counsel in Evictions Special Fund; AND~~

~~146. THE FAMILY AND MEDICAL LEAVE INSURANCE FUND.~~

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

~~SECTION 3. AND BE IT FURTHER ENACTED, That, on or before October 1, 2022, the Secretary of Labor shall adopt regulations as required under § 8.3-403 of the Labor and Employment Article, as enacted by Section 1 of this Act it is the intent of the General Assembly that \$25,000,000 be set aside in the fiscal year 2023 budget to support the work of the Commission on the Establishment of a Family Medical Leave and Insurance Program, as enacted by Section 1 of this Act, and any other changes necessary for the Maryland Department of Labor to prepare for the implementation of a Family Medical Leave and Insurance Program.~~

SECTION ~~4~~ 3. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that the statutory framework establishing a Family Medical Leave and Insurance Program in the State shall:

(1) ~~general funds be loaned to the Family and Medical Leave Insurance Fund by July 1, 2023, in an amount sufficient to supplement contributions and provide funding for costs to administer the Family and Medical Leave Insurance Program; and~~

~~(2) any funds loaned to the Family and Medical Leave Insurance Fund be repaid to the General Fund by the Secretary of Labor as soon as the Fund receives enough contributions to become self-sustaining~~ be effective not later than June 1, 2023;

(2) include, to the extent practicable, the findings and recommendations of the Commission on the Family Medical Leave and Insurance Program, as enacted by Section 1 of this Act;

(3) enable individuals to receive benefits under the Program by June 1, 2024;

1 (4) require employers and employees to share in the cost of contributions
2 to fund the Program; and

3 (5) generally provide temporary benefits to certain individuals who take
4 leave from employment for family– and medical–related reasons.

5 SECTION ~~5~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 June 1, 2022. Section 2 of this Act shall remain effective for a period of 1 year and 1 month
7 and, at the end of June 30, 2023, this Act, with no further action required by the General
8 Assembly, shall be abrogated and of no further force and effect.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.