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**SENATE BILL NO. 736**

Offered January 10, 2018

Prefiled January 10, 2018

A *BILL to amend the Code of Virginia by adding in Title 60.2 a chapter numbered 8, consisting of sections numbered 60.2-800 through 60.2-814, relating to a paid family leave program; funding.*

Patron—Favola

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Title 60.2 a chapter numbered 8, consisting of sections numbered 60.2-800 through 60.2-814, as follows:**

**CHAPTER 8.**

**PAID FAMILY LEAVE PROGRAM.**

**§ 60.2-800. Definitions.**

*As used in this chapter, unless the context requires a different meaning:*

*"Benefit period" means a 365-day period established as provided in § 60.2-802.*

*"Caregiving day" means, with respect to an individual, a calendar day in which the individual engaged in qualified caregiving.*

*"Eligible individual" means an individual who:*

*1. Resides in and is employed in the Commonwealth;*

*2. Is insured for disability insurance benefits as determined under § 223(c) of the Social Security Act, 42 U.S.C. § 423(c), at the time the individual files with his employer for approval to take a caregiving day; and*

*3. Has earned income from employment during the 12 months prior to the month in which the application for approval to take a caregiving day is filed with his employer.*

*"Employer" means an employer, as defined in § 60.2-210, with more than an average of 50 employees for the previous 12 months.*

*"Fund" means the Paid Family Leave Fund established pursuant to § 60.2-811.*

*"Paid family leave benefit" means the wage replacement payments provided under this chapter, in such amounts as the Commissioner establishes by regulation as provided in § 60.2-813, to an employee who takes leave from employment in order to provide qualified caregiving.*

*"Program" means the paid family leave program established pursuant to this chapter.*

*"Qualified caregiving" means any activity engaged in by an individual, other than regular employment, for a reason for which an eligible individual would be entitled to leave under subparagraphs (A) through (E) of paragraph (1) of § 102(a) of the Family and Medical Leave Act of 1993, 29 U.S.C. § 2612(a).*

**§ 60.2-801. Paid family leave benefit payments.**

*To the extent that sufficient moneys in the Fund are available for such purpose, every eligible individual may apply to the Commission for a paid family leave benefit under which the individual shall be entitled to payment for each caregiving day in a benefit period, not to exceed 30 caregiving days per benefit period.*

**§ 60.2-802. Benefit period.**

*A benefit period shall begin on the first day of the first month in which the individual meets the criteria specified in the definition of eligible individual in § 60.2-800 and shall end on the date that is 365 days after the first day of the benefit period.*

**§ 60.2-803. Application for benefits.**

*An application filed with the Commission seeking a paid family leave 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 subdivision 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 subdivision 1 and contains such information as the Commission 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*

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

61 4. An attestation from the applicant that his employer has been provided with written notice of the  
62 individual's intention to take leave for the sole purpose of engaging in qualified caregiving, if the  
63 individual has an employer.

64 **§ 60.2-804. Ineligibility; disqualification.**

65 A. An individual shall be ineligible for a benefit under this section for any month for which the  
66 individual is entitled to benefits under § 202 or 223 of the Social Security Act, 42 U.S.C. § 402 or 423,  
67 or benefits under title XVI of the Social Security Act, 42 U.S.C. § 1381 et seq., based on such  
68 individual's status as a disabled individual as determined under § 1614 of the Social Security Act, 42  
69 U.S.C. § 1382c.

70 B. An individual who has been convicted of a violation under § 208 of the Social Security Act, 42  
71 U.S.C. § 408, or who has been found to have used false statements to secure benefits under this chapter,  
72 shall be ineligible for benefits under this section for a one-year period following the date of such  
73 conviction.

74 **§ 60.2-805. Review of eligibility and benefit payment determinations.**

75 A. The Commission shall provide notice to an individual applying for a paid family leave benefit  
76 under this chapter of the initial determination of eligibility for such benefits, and the estimated benefit  
77 amount for a month in which one caregiving day of the individual occurs, as soon as practicable after  
78 the application is received.

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

84 C. The Commission shall make any monthly benefit payment to an individual claiming benefits for a  
85 month under this chapter, or provide notice of the reason such payment will not be made if the  
86 Commissioner determines that the individual is not entitled to payment for such month, not later than 20  
87 days after the individual's monthly benefit claim report for such month is received. Such monthly report  
88 shall be filed with the Commission not later than 15 days after the end of each month.

89 D. If the Commission determines that payment will not be made to an individual for a month, or if  
90 the Commission determines that payment shall be made based on a number of caregiving days in the  
91 month inconsistent with the number of caregiving days in the monthly benefit claim report of the  
92 individual for such month, the individual may request review of such determination at any time before  
93 the end of the 20-day period that begins on the date notice of such determination is received, except  
94 that such 20-day period may be extended for good cause. Not later than 20 days after the individual  
95 requests review of the determination, the Commission shall provide notice to the individual of a final  
96 determination of payment for such month and shall make payment to the individual of any additional  
97 amount not included in the initial payment to the individual for such month to which the Commission  
98 determines the individual is entitled.

99 E. An application for benefits under this chapter and a monthly benefit claim report of an individual  
100 shall each be presumed to be true and accurate, unless the Commission demonstrates by a  
101 preponderance of the evidence that information contained in the application is false.

102 F. As used in this section, "monthly benefit claim report" means, with respect to an individual for a  
103 month, the individual's report to the Commission of the number of caregiving days the individual took in  
104 such month, which shall be filed no later than 15 days after the end of each month.

105 G. All final determinations of the Commission under this section shall be reviewable according to the  
106 procedures in the Administrative Process Act (§ 2.2-4000 et seq.).

107 **§ 60.2-806. Relationship with employer benefits.**

108 Nothing in this chapter shall be construed to diminish the obligation of an employer to comply with  
109 any contract, collective bargaining agreement, or employment benefit program or plan that provides  
110 greater paid leave or other leave rights to employees than the rights established under this chapter.

111 **§ 60.2-807. Prohibited conduct; enforcement.**

112 A. No person shall discharge or in any other manner discriminate against an individual because the  
113 individual has applied for, indicated an intent to apply for, or received paid family leave benefits under  
114 this chapter.

115 B. A person who is discharged or otherwise discriminated against in violation of subsection A may  
116 bring an action in a circuit court having jurisdiction over the employer or person who allegedly  
117 discharged or otherwise discriminated against the employee in violation of this section. The court shall  
118 have jurisdiction, for cause shown, to restrain violations and order appropriate relief, including actual  
119 damages and attorney fees to successful claimants and the rehiring or reinstatement of the employee,  
120 with back pay plus interest at the judgment rate as provided in § 6.2-302.

**§ 60.2-808. Powers and duties.**

*The Commissioner shall have the following powers and duties:*

- 1. To promulgate regulations relative to the operation of the Program;*
- 2. To create all necessary applications and certificates to fulfill the purposes of this chapter;*
- 3. To disseminate information regarding the Program to employers and carry out a public education program to inform employees and employers about the availability of benefits under the Program; and*
- 4. To inform employees of the benefits available under the Program. The Commissioner shall require each employer to post and maintain information regarding the Program.*

**§ 60.2-809. Fraud and misrepresentation of benefits; penalty.**

*If the Commissioner finds that any employee falsely certifies any information provided to the Commission in order to obtain family leave insurance benefits, with the intent to defraud, the Commissioner shall assess a penalty against the employee in the amount of 25 percent of the benefits paid as a result of the false certification.*

**§ 60.2-810. Receipt of federal funds.**

*To the extent that funds are made available by the federal government under Title III of the Social Security Act (42 U.S.C. § 501 et seq.), or otherwise for such purpose, the expenses of administering this chapter shall be paid from those funds, provided that this section shall not be considered to permit any expenditure of funds from the employment security administration account contrary to applicable law. In the event that the Social Security Act is amended to permit funds granted under Title III to be used to pay expenses of administering a family leave program, then from and after the effective date of that amendment, the expenses of administering this chapter shall be paid out of the employment security administration account or any other account or fund in which funds granted under Title III are deposited.*

**§ 60.2-811. Paid Family Leave Fund.**

*A. There is hereby created in the state treasury a special nonreverting fund to be known as the Paid Family Leave Fund. The Fund shall be established on the books of the Comptroller. All assessments and other moneys required by this chapter to be paid to the Fund and collected by the Commission, and any interest or earnings upon any moneys or property belonging to the Fund shall, promptly upon collection, be paid into the state treasury and credited to the Fund. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of paying paid family leave benefits to individuals as provided pursuant to this chapter or for administration of the Fund. Refunds may be paid from the Fund. Paid family leave benefits shall not be paid from any source other than the Fund.*

*B. Moneys shall be requisitioned from the Fund solely for the payment of paid family leave benefits and in accordance with regulations prescribed by the Commission. All benefits shall be paid through public employment offices provided for in this title.*

*C. All payments and disbursements from the Fund shall be made by the State Treasurer upon warrants of the Comptroller issued upon vouchers signed by the Commissioner or by such other person as the Commissioner may designate for that purpose.*

**§ 60.2-812. Employee and employer tax assessed; collection.**

*A. In addition to other taxes, there shall be imposed on the income of every individual a tax equal to a percentage of the wages received by the individual with respect to employment.*

*B. 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 a percentage of the wages paid in any calendar year by the employer with respect to their employment.*

*C. Employers shall report, collect, and remit to the Commission any tax assessed pursuant to this chapter in the manner that employers are required to report, collect, and remit taxes pursuant to Articles 2 (§ 60.2-511 et seq.) and 3 (§ 60.2-519 et seq.) of Chapter 5.*

*D. The percentage rate of the taxes assessed under subsections A and B shall be established by regulation adopted by the Commissioner. The percentage rate of the taxes shall be established at a level sufficient to provide wage replacement payments to eligible individuals taking caregiving days at levels that are comparable to wage replacement benefits established under Article 2 (§ 60.2-601 et seq.) of Chapter 6.*

*E. All taxes assessed pursuant to this chapter withheld by any employer from employees in accordance with the provisions of this chapter, and all assessments payable by any employer, shall constitute a trust fund for the Commonwealth until paid to the Commissioner. That trust shall be enforceable against (i) the employer; (ii) any officer, agent, servant, or employee of any corporate employer responsible for either the withholding or payment, or both, of the assessment; and (iii) any person receiving any part of the Fund without consideration, or knowing that the employer or any officer, agent, servant, or employee of any corporate employer is committing a breach of trust.*

182       **§ 60.2-813. Paid family leave benefit amount.**

183       The amount of the paid family leave benefit for which an eligible individual is eligible under the  
184 Program shall be established by regulation adopted by the Commissioner. The wage replacement  
185 payments for eligible individuals taking caregiving days shall be established at levels that are  
186 comparable to wage replacement benefits established under Article 2 (§ 60.2-601 et seq.) of Chapter 6.

187       **§ 60.2-814. Application of other provisions, mutatis mutandis.**

188       The provisions of §§ 60.2-206, 60.2-500, 60.2-508, 60.2-509, and 60.2-514, Article 3 (§ 60.2-519 et  
189 seq.) of Chapter 5, §§ 60.2-600, 60.2-605, 60.2-606, 60.2-608, 60.2-608.1, 60.2-608.2, 60.2-614,  
190 60.2-615, and 60.2-616, and Articles 5 (§ 60.2-619 et seq.) and 6 (§ 60.2-632 et seq.) of Chapter 6 shall  
191 apply to this chapter, mutatis mutandis, except as provided in this chapter and except that whenever the  
192 term (i) "benefit" is used in the sections, the term shall include money payments payable to an employee  
193 with respect to paid family leave benefits provided pursuant to this chapter and (ii) "taxes" is used in  
194 the sections, the term shall include taxes payable pursuant to § 60.2-812. The Commissioner shall  
195 promulgate regulations to interpret and clarify the applicability of the provisions of §§ 60.2-206,  
196 60.2-500, 60.2-508, 60.2-509, and 60.2-514, Article 3 (§ 60.2-519 et seq.) of Chapter 5, §§ 60.2-600,  
197 60.2-605, 60.2-606, 60.2-608, 60.2-608.1, 60.2-608.2, 60.2-614, 60.2-615, and 60.2-616, and Articles 5  
198 (§ 60.2-619 et seq.) and 6 (§ 60.2-632 et seq.) of Chapter 6 to the provisions of this chapter.

199       **2. That the Commissioner of the Virginia Employment Commission shall promulgate regulations**  
200 **to establish the percentage rate of the taxes described in subsection D of § 60.2-812 of the Code of**  
201 **Virginia as added by this act and the paid family leave benefit amount described in § 60.2-813 as**  
202 **added by this act to be effective within 280 days of the enactment of this enactment.**

203       **3. That the provisions of the first enactment of this act shall become effective on the July 1 that**  
204 **follows the Commissioner of the Virginia Employment Commission's adoption of final regulations**  
205 **pursuant to the second enactment of this act.**