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HOUSE BILL NO. 737

Offered January 10, 2024

Prefiled January 9, 2024

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 60.2-821, relating to paid family and medical leave insurance program; notice requirements; civil action.*

Patrons—Sewell, Herring, Tran, Anthony, Askew, Bennett-Parker, Clark, Cole, Convirs-Fowler, Cousins, Delaney, Gardner, Glass, Hayes, Helmer, Henson, Krizek, Maldonado, McClure, Price, Seibold, Shin, Sickles, Simonds, Sullivan and Thomas

Referred to Committee on Labor and Commerce

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 60.2-821, as follows:

CHAPTER 8.

PAID FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.

§ 60.2-800. Definitions.

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

"Application year" means the 12-month period beginning on the first day of the calendar week in which an individual files an application for family and medical leave benefits.

"Armed Forces" means the Armed Forces of the United States, the Reserves of the Armed Forces of the United States, or the Virginia National Guard.

"Board" means the Paid Family and Medical Leave Advisory Board.

"Child" includes a child of any age, including an adult child.

"Covered individual" means any individual who:

1. Either:

a. Meets the minimum monetary eligibility criteria set forth in subdivision A 1 of § 60.2-612; or

b. Is self-employed, elects coverage, and meets the requirements of § 60.2-802;

2. Meets the administrative requirements outlined in this chapter and in regulations; and

3. Submits an application.

"Covered service member" means either (i) a member of the Armed Forces who is (a) undergoing medical treatment, recuperation, or therapy; (b) otherwise in outpatient status; or (c) otherwise on the temporary disability retired list for a serious injury or illness that was incurred by the member in the line of duty while on active duty in the Armed Forces, or a serious injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty, or (ii) a former member of the Armed Forces who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness that was incurred by the member in the line of duty while on active duty in the Armed Forces, or a serious injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty and manifested before or after the member was discharged or released from service.

"Domestic partner" means a person not less than 18 years of age who (i) is dependent upon the covered individual for support as shown by either unilateral dependence or mutual interdependence that is evidenced by a nexus of factors, including (a) common ownership of real or personal property, (b) common householding, (c) children in common, (d) signs of intent to marry, (e) shared budgeting, and (f) the length of the personal relationship with the covered individual, or (ii) has registered as the domestic partner of the covered individual with any registry of domestic partnerships maintained by the employer of either party, or in any state, county, city, town, or village in the United States.

"Employer" has the same meaning as provided in § 60.2-210.

"Family and medical leave benefits" means the benefits provided under the terms of this chapter.

"Family member" means:

1. A biological, adopted, or foster child, a stepchild or legal ward, a child of a domestic partner, or a child to whom the covered individual stands in loco parentis;

2. A biological, adoptive, or foster parent, stepparent, or legal guardian of a covered individual or a covered individual's spouse or domestic partner, or a person who stood in loco parentis when the covered individual or the covered individual's spouse or domestic partner was a minor child;

3. A person to whom the covered individual is legally married under the laws of any state, or a domestic partner of a covered individual; or

57 4. A grandparent, grandchild, or sibling, whether through a biological, foster, adoptive, or step
58 relationship, of the covered individual or the covered individual's spouse or domestic partner.

59 "FMLA" means the federal Family and Medical Leave Act, 29 U.S.C. § 2601 et seq.

60 "Fund" means the Family and Medical Leave Insurance Trust Fund established under § 60.2-805.

61 "Health care provider" means a person licensed under the law of the jurisdiction in which such
62 person practices to provide medical or emergency services, including doctors, nurses, emergency room
63 personnel, and certified midwives.

64 "Military member" means a member of the Armed Forces.

65 "Next of kin" has the meaning ascribed thereto in § 101(17) of the FMLA, 29 U.S.C. § 2611(17).

66 "Qualifying exigency leave" means leave based on a need arising out of a covered individual's family
67 member's active duty service or notice of an impending call or order to active duty in the Armed
68 Forces, including providing for the care or other needs of the military member's child or other family
69 member, making financial or legal arrangements for the military member, attending counseling,
70 attending military events or ceremonies, spending time with the military member during a rest and
71 recuperation leave or following return from deployment, or making arrangements following the death of
72 the military member.

73 "Retaliatory personnel action" means denial of any right guaranteed under this chapter, including
74 any threat, discharge, suspension, demotion, or reduction of hours, any other adverse action against a
75 covered individual for the exercise of any right guaranteed under this chapter, or reporting or
76 threatening to report a covered individual's suspected citizenship or immigration status or the suspected
77 citizenship or immigration status of a family member of the covered individual to a federal, state, or
78 local agency. "Retaliatory personnel action" also includes interference with or punishment for in any
79 manner participating in or assisting an investigation, proceeding, or hearing under this chapter.

80 "Serious health condition" means an illness, injury, impairment, pregnancy, recovery from childbirth,
81 or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical
82 care facility or continuing treatment by a health care provider.

83 "Workweek" means a calendar week.

84 **§ 60.2-801. Paid family and medical leave insurance program.**

85 A. By January 1, 2026, the Commission shall establish and administer a paid family and medical
86 leave insurance program and shall begin collecting contributions as provided in this chapter. By
87 January 1, 2027, the Commission shall begin receiving claims and paying family and medical leave
88 benefits to covered individuals.

89 B. Upon the filing of a claim pursuant to this chapter, the Commission shall notify the employer of
90 such claim within five business days.

91 C. Information contained in the files and records relating to a claimant under this chapter are
92 confidential and not open to public inspection other than to public employees in the performance of
93 their official duties. However, such claimant or an authorized representative of such claimant may
94 review such files and records or receive specific information from such records upon the presentation of
95 such claimant's signed authorization.

96 D. The Commissioner shall adopt regulations as necessary to implement this chapter.

97 **§ 60.2-802. Eligibility for benefits; certification.**

98 A. Beginning January 1, 2027, family and medical leave benefits shall be payable to any covered
99 individual who:

100 1. Because of birth, adoption, or placement through foster care, is caring for a new child during the
101 first year after the birth, adoption, or placement of that child;

102 2. Is caring for a family member with a serious health condition;

103 3. Has a serious health condition that makes the covered individual unable to perform the functions
104 of the position of such individual's employment;

105 4. Is caring for a covered service member who is the covered individual's next of kin or other family
106 member; or

107 5. Is eligible for qualifying exigency leave arising out of the fact that a family member of the
108 covered individual is on active duty, or has been notified of an impending call or order to active duty,
109 in the Armed Forces.

110 B. A claim for family and medical leave benefits shall include one of the following supporting
111 certifications:

112 1. For a claimant seeking family and medical leave benefits due to a serious health condition,
113 certification from a physician or health care provider (i) describing such condition, (ii) stating the date
114 on which such condition commenced and the probable duration of such condition, (iii) including a
115 statement that such claimant is unable to perform job functions due to such condition, and (iv) including
116 other appropriate medical facts as required by the Commission.

117 2. For a claimant seeking family and medical leave benefits due to the serious health condition of a
118 family member, certification from a physician or health care provider (i) describing such condition, (ii)

119 stating the date on which such condition commenced and the probable duration of such condition, (iii)
 120 including a statement that such condition requires such claimant to care for such family member and an
 121 estimated duration of such care, and (iv) including other appropriate medical facts as required by the
 122 Commission.

123 3. For a claimant seeking family and medical leave benefits due to the birth of a child, certification
 124 in the form of either (i) such child's birth certificate or (ii) another document issued by a health care
 125 provider or physician stating such child's birth date.

126 4. For a claimant seeking family and medical leave benefits due to the placement of a child with
 127 such claimant for adoption or foster care, certification in the form of a document issued by such child's
 128 health care provider or physician, an adoption or foster care agency involved in such placement, or by
 129 other individuals as determined by the Commission that verifies the occurrence and date of such
 130 placement.

131 5. For a claimant seeking family and medical leave benefits for qualifying exigency leave,
 132 certification including (i) a copy of the family member's active-duty orders, (ii) other documentation
 133 issued by the Armed Forces, or (iii) other documentation as permitted by the Commission.

134 6. For a claimant seeking family and medical leave benefits in order to care for a family member
 135 who is a covered service member, certification including (i) the date on which the serious health
 136 condition commenced, (ii) the probable duration of the condition, (iii) the appropriate medical facts
 137 within the knowledge of the health care provider as required by the Commission, (iv) a statement that
 138 the claimant is needed to care for the family member, (v) an estimate of the amount of time that the
 139 claimant is needed to care for the family member, and (vi) an attestation by the claimant that the health
 140 condition is connected to the covered service member's military service as required by this chapter.

141 C. Any medical or health information required under this section shall be confidential and shall not
 142 be disclosed except with permission from the claimant providing such information unless disclosure is
 143 otherwise required by law. Nothing in this section shall be construed to require a claimant to provide as
 144 certification any information from a health care provider that would be in violation of § 32.1-127.1:03,
 145 § 1177 of the Social Security Act, 42 U.S.C. § 1320d-6, or the regulations promulgated under § 264(c)
 146 of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191.

147 **§ 60.2-803. Duration of benefits.**

148 A. Family and medical leave benefits shall be payable under § 60.2-801 for a maximum of 12 weeks
 149 in an application year for any covered individual.

150 B. Family and medical leave benefits shall be payable to a covered individual starting the first
 151 calendar day in an application year that such covered individual meets the eligibility requirements of
 152 § 60.2-802.

153 C. The first payment of family and medical leave benefits shall be made to a covered individual
 154 within two weeks of when such covered individual files an initial claim pursuant to this chapter, and
 155 subsequent payments shall be made every two weeks thereafter.

156 **§ 60.2-804. Amount of benefits.**

157 A. A covered individual's weekly benefit amount shall be 80 percent of such covered individual's
 158 weekly wages during the 12 months preceding such covered individual's initial claim filing, or 80
 159 percent of such covered individual's average weekly wages during the time such covered individual
 160 worked if less than 12 months, subject to the maximum specified in subsection C.

161 B. A covered individual's minimum weekly benefit amount shall not be less than \$100 per week
 162 except that if such covered individual's average weekly wage is less than \$100 per week, the weekly
 163 benefit amount shall be such covered individual's full wage.

164 C. A covered individual's maximum weekly benefit amount shall be 80 percent of the state average
 165 weekly wage, as defined in subsection B of § 65.2-500. By September 30 of each year, the Commission
 166 shall adjust the maximum weekly benefit to reflect any changes in such state average weekly wage. The
 167 adjusted maximum weekly benefit amount shall take effect on the following January 1.

168 D. No family and medical leave benefits shall be payable for less than eight hours of family and
 169 medical leave taken in one workweek.

170 **§ 60.2-805. Family and Medical Leave Insurance Trust Fund; appropriation prohibition;**
 171 **reimbursement.**

172 A. There is hereby created in the state treasury a special nonreverting fund to be known as the
 173 Family and Medical Leave Insurance Trust Fund. The Fund shall be established on the books of the
 174 Comptroller. All payroll contributions remitted pursuant to this chapter, all funds appropriated for the
 175 purposes of the Fund, and any gifts, donations, grants, bequests, and other funds shall be paid into the
 176 state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the
 177 Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of
 178 each fiscal year shall not revert to the general fund but shall remain in the Fund.

179 B. Moneys in the Fund shall be used solely for the payment of benefits under the paid family and

180 medical leave insurance program established by the Commission pursuant to this chapter, the
181 administration of such program, and any start-up costs associated with such program, including general
182 fund reimbursement as provided in subsection D.

183 C. The General Assembly shall not appropriate or transfer any of the payroll contributions remitted
184 to the Fund for any purpose other than purposes provided for in this section.

185 D. Any moneys appropriated and expended from the general fund for the purposes of establishing the
186 paid family and medical leave insurance program shall be reimbursed from the Fund to the general
187 fund by January 1, 2032.

188 E. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants
189 issued by the Comptroller upon written request signed by the Commissioner or his designee.

190 **§ 60.2-806. Contributions.**

191 A. Payroll contributions to the Fund shall be authorized in order to finance the payment of benefits
192 under and the administration of the paid family and medical leave insurance program.

193 B. Beginning on January 1, 2026, each employer shall remit to the Fund contributions in the form
194 and manner determined by the Commission. No later than October 1, 2025, and annually thereafter, the
195 Commissioner shall fix the contribution rate for the coming calendar year in the manner described in
196 this subsection, taking into account the reimbursement requirement provided for in subsection D of §
197 60.2-805. For calendar years 2026 and 2027, the Commissioner shall fix such contribution rate based
198 on sound actuarial principles. For calendar year 2028 and thereafter, the Commissioner shall first
199 certify and publish the following information:

200 1. The total amount of family and medical leave benefits paid by the Commission during the previous
201 fiscal year;

202 2. The total amount remaining in the Fund at the close of such fiscal year;

203 3. The total amount equal to 140 percent of the previous fiscal year's expenditure for family and
204 medical leave benefits paid and for the administration of the paid family and medical leave insurance
205 program;

206 4. The amount by which the total amount remaining in the Fund at the close of the previous fiscal
207 year is less than or greater than 140 percent of the previous fiscal year's expenditure for family and
208 medical leave benefits paid and for the administration of the paid family and medical leave insurance
209 program; and

210 5. The amount by which the contribution rate shall be adjusted to ensure that the Fund shall
211 maintain or achieve an annualized amount of not less than 140 percent of the previous fiscal year's
212 expenditure for family and medical leave benefits paid and for the administration of the paid family and
213 medical leave insurance program. The contribution rate adjustment, if any, made as the result of the
214 Commissioner's certification and report under this subsection shall supersede the rate previously set
215 forth and shall become effective on January 1 of the following calendar year.

216 C. A self-employed individual electing coverage under § 60.2-815 shall be responsible for the
217 employer's share of contributions set forth in subsection B on that individual's income from
218 self-employment.

219 D. Each employer of more than 10 employees shall (i) deduct from each employee's wages an
220 amount equal to 50 percent, or such lesser percentage as may be agreed upon by such employer and
221 employee, of the contribution required per employee pursuant to subsection B and (ii) remit the full
222 contribution required per employee pursuant to subsection B to the Commission for deposit into the
223 Fund.

224 E. Each employer of 10 or fewer employees shall deduct from each employee's wages an amount
225 equal to 50 percent of the contribution per employee required of an employer of more than 10
226 employees pursuant to subsection B. Such employer of 10 or fewer employees shall remit such deducted
227 amount to the Commission for deposit into the Fund and shall not be required to make additional
228 contributions.

229 F. Contributions under this section shall not be required for an employee's wages or an individual's
230 income from self-employment above the contribution and benefit base limit established annually by the
231 federal Social Security Administration for purposes of the federal Old-Age, Survivors, and Disability
232 Insurance Benefits program limits pursuant to 42 U.S.C. § 430.

233 **§ 60.2-807. Reduced leave schedule.**

234 A. A covered individual shall have the option to receive paid family and medical leave benefits on an
235 intermittent or reduced leave schedule in which all of the leave authorized under this chapter is not
236 taken sequentially. Family and medical leave benefits for an intermittent or reduced leave schedule shall
237 be prorated.

238 B. Such covered individual shall make a reasonable effort to schedule paid family and medical leave
239 taken pursuant to this section so as not to unduly disrupt the operations of such covered individual's
240 employer. Such covered individual shall provide such employer with prior notice of the schedule on
241 which such covered individual will be taking the leave, to the extent practicable. Paid family and

medical leave taken pursuant to this section shall not result in a reduction of the total amount of leave to which a covered individual is entitled beyond the amount of leave actually taken.

§ 60.2-808. Leave and employment protection; remedies.

A. Any covered individual who receives family and medical leave benefits shall, upon the expiration of such leave, be entitled to restoration by the employer to the position held by such covered individual when such leave commenced, or to a position with equivalent seniority, status, employment benefits, pay, and other terms and conditions of employment, including fringe benefits and service credits, to which the covered individual had been entitled at the commencement of such leave.

B. During any leave taken pursuant to this chapter, an employer shall maintain any health care benefits to which a covered individual was entitled prior to taking such leave, and such covered individual shall continue to pay his share of the cost of health care benefits as required prior to the commencement of the leave.

C. Any employer that violates this section or § 60.2-809 shall be liable to any affected covered individual for:

1. Damages equal to:

a. The amount of:

(1) Any wages, salary, employment benefits, or other compensation denied or lost to such covered individual due to the violation; or

(2) In a case in which wages, salary, employment benefits, or other compensation has not been denied or lost to the covered individual, any actual monetary losses sustained by the covered individual due to the violation, such as the cost of providing care, up to a sum equal to 12 weeks of wages or salary for the covered individual;

b. Interest on the amount described in subdivision a, calculated at the legal rate; and

c. An additional amount as liquidated damages equal to the sum of the amount described in subdivision a and the interest described in subdivision b, except that if an employer who has violated this section or § 60.2-809 proves to the satisfaction of the court that the act or omission that violated this section or § 60.2-809 was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this section or § 60.2-809, such court may reduce the amount of the liability to the amount and interest determined under subdivisions a and b, respectively; and

2. Such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

D. The court in an action to recover such damages or equitable relief prescribed in subsection C shall, in addition to any judgment awarded to the plaintiff, allow reasonable attorney fees, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

E. Except as provided in subsection F, an action may be brought for a violation of this section or § 60.2-809 not later than two years after the date of the last event constituting the alleged violation for which the action is brought.

F. In the case of such action brought for a willful violation of this section or § 60.2-809, such action may be brought within three years of the date of the last event constituting the alleged violation for which such action is brought.

§ 60.2-809. Retaliatory personnel actions prohibited.

A. No employer or other person shall interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this chapter.

B. No employer, employment agency, employee organization, or other person shall take retaliatory personnel action or otherwise discriminate against an individual due to such individual's lawful exercise of rights protected under this chapter. Such rights include the right to request, file for, apply for, or use benefits provided for under this chapter; the right to communicate to the employer or any other person or entity that such individual (i) intends to file a claim, a complaint with the Commission or a court, or an appeal, or (ii) has testified in, intends to testify in, or has otherwise assisted in any investigation, hearing, or proceeding under this chapter; the right to inform any person about any employer's alleged violation of this chapter; and the right to inform any individual of the individual's rights under this chapter.

C. It is unlawful for an employer's absence control policy to count paid family and medical leave taken under this chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

D. Protections of this section shall apply to any person who mistakenly but in good faith alleges a violation of this chapter.

E. This section shall be enforced as provided in subsections C through F of § 60.2-808.

§ 60.2-810. Coordination of benefits.

A. Leave taken with wage replacement under this chapter that also qualifies as leave under the FMLA shall run concurrently with leave taken under the FMLA.

303 B. An employer may require that payments made pursuant to this chapter be made concurrently or
304 otherwise coordinated with payments made or leave allowed under the terms of disability or family care
305 leave under a collective bargaining agreement or employer policy. Such employer shall give employees
306 written notice of this requirement.

307 C. Nothing in this chapter shall be construed to limit or reduce an employer's obligation to comply
308 with a collective bargaining agreement, an employer policy, or any other provision of law requiring
309 more generous leave.

310 D. An individual's right to leave under this chapter shall not be diminished by a collective
311 bargaining agreement entered into or renewed, or an employer policy adopted or retained, after
312 January 1, 2025. Any agreement by an individual to waive the individual's rights under this chapter is
313 void as against public policy.

314 **§ 60.2-811. Notice requirements.**

315 A. An employer shall provide written notice as prescribed in this subsection to each employee upon
316 hiring and annually thereafter. An employer shall also provide such written notice to an employee when
317 such employee requests leave pursuant to this chapter or when the employer acquires knowledge of an
318 employee's intent to take leave that may meet the eligibility requirements of § 60.2-802. Such notice
319 shall include (i) a statement of an employee's right to family and medical leave benefits pursuant to this
320 chapter and the terms under which such benefits may be used; (ii) the amount of family and medical
321 leave benefits available; (iii) the procedure for filing a claim for family and medical leave benefits; (iv)
322 a statement of the right to job protection and benefits continuation under § 60.2-808; (v) a statement
323 that discrimination and retaliatory personnel actions against a person for requesting, applying for, or
324 using family and medical leave benefits are prohibited under § 60.2-809; and (vi) a statement that the
325 employee has a right to file a complaint for a violation of this chapter. An employer shall also display
326 and maintain a poster provided by the Commission in a conspicuous place accessible to employees at
327 the employer's place of business that contains the information required by this section in English,
328 Spanish, and any language that is the first language spoken by at least five percent of the employer's
329 workforce. The Commissioner may adopt regulations to establish additional requirements concerning the
330 means by which employers shall provide such notice.

331 B. An employee seeking to take leave under the provisions of this chapter shall notify his employer
332 as soon as practicable.

333 **§ 60.2-812. Appeals.**

334 A. The Commissioner shall establish a system for appeals in the case of a denial of a claim for
335 family and medical leave benefits. In establishing such system, the Commissioner may utilize any and all
336 procedures and appeals mechanisms established under this title.

337 B. Judicial review of any decision with respect to family and medical leave benefits shall be
338 permitted in a court of competent jurisdiction after a party aggrieved thereby has exhausted all
339 administrative remedies established by the Commissioner.

340 C. The Commissioner shall implement procedures to ensure confidentiality of all information related
341 to any claims filed or appeals taken to the maximum extent permitted by applicable laws.

342 **§ 60.2-813. Enforcement.**

343 A. Contributions required by the provisions of § 60.2-806 that are unpaid on the date on which they
344 are due and payable, as prescribed by the Commissioner under this chapter, shall bear interest at the
345 rate of one and one-half percent per month from and after such date until payment plus accrued interest
346 is received by the Commission. Interest collected pursuant to this chapter shall be paid into the Fund.
347 An employer who fails to timely remit a contribution or any portion thereof under § 60.2-806 shall be
348 solely responsible for the interest due under this section.

349 B. If, after notice, any employer defaults in any payment of contributions or interest, the amount due
350 shall be collected by civil action in the name of the Commissioner. The employer adjudged in default
351 shall pay the fees and costs of such action. Civil actions brought under this chapter to collect
352 contributions or interest or any penalty from an employer shall be heard by the court at the earliest
353 possible date. Such civil actions may be brought against any officer, employee, or agent of a
354 corporation or partnership in his individual, personal capacity when that person willfully fails to cause
355 the employer to pay the appropriate contributions or interest and he had the authority to do so. No
356 person shall be subject to this section unless it is proved that such person (i) knew of the failure or
357 attempt to make such payment and (ii) had authority to prevent such failure or attempt. In addition to
358 the foregoing remedies, the Commissioner shall have such other remedies as are available to the State
359 Tax Commissioner and county and city treasurers for the collection of taxes generally. The
360 Commissioner is authorized to compromise, settle, and adjust any contributions, including interest, or
361 any penalty assessed against any employer where in the judgment of the Commissioner the best interests
362 of the Commonwealth will be promoted or served. The Commissioner may in such cases accept in full
363 settlement of the contributions assessed an amount less than that assessed.

364 C. When an unsatisfied execution has been returned by an officer, and the employer against whom

the judgment has been obtained on which the execution was issued continues in default of payment of contributions, or any portion thereof, such employer may be enjoined from operating and doing business in the Commonwealth until such contributions have been paid. The Circuit Court of the City of Richmond shall have exclusive original jurisdiction to grant such injunction upon the complaint of the Commissioner. Notice of the time and place when the application for the injunction will be made shall be served on the employer and a copy of the bill of complaint shall be served with the notice.

§ 60.2-814. Erroneous payments and disqualification for benefits.

A. An individual shall be disqualified from family and medical leave benefits for one year if the individual is determined by the Commissioner to have willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this chapter.

B. If family and medical leave benefits are paid erroneously or as a result of willful misrepresentation, or if a claim for family and medical leave benefits is rejected after benefits are paid, the Commission may seek repayment of benefits from the recipient. The Commissioner shall exercise his discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

§ 60.2-815. Elective coverage.

A. A self-employed person, including a sole proprietor, partner, or joint venturer, may elect coverage under this chapter for an initial period of not less than three years. The self-employed person shall file a notice of election in writing with the Commissioner, as required by the Commission. Such election shall become effective on the date such notice is filed, provided that such self-employed person agrees to supply any information concerning income that the Commission deems necessary.

B. A self-employed person who has elected coverage may withdraw from coverage within 30 days after the end of the three-year period of coverage, or at such other times as the Commissioner may prescribe by rule, by filing written notice with the Commissioner, such withdrawal to take effect not sooner than 30 days after filing such notice.

§ 60.2-816. Private employer plans; exemption from contributions.

A. Employers may apply to the Commission for approval to meet their obligations under this chapter through a private plan. The Commission may approve such private plan if the Commission determines that such private plan:

1. Confers all of the same rights, protections, and benefits provided to covered individuals under this chapter, including:

a. The provision of family and medical leave benefits for all purposes specified in subsection A of § 60.2-802;

b. The provision of family and medical leave benefits for the maximum number of weeks required in § 60.2-803 per application year;

c. The provision of family and medical leave benefits as specified in subdivision A 2 § 60.2-802 for a covered individual caring for any family member;

d. The provision of family and medical leave benefits as specified in subdivision A 3 § 60.2-802 for a covered individual with a serious health condition;

e. A wage replacement rate for all family and medical leave benefits that equals or exceeds the rate required by subdivision A of § 60.2-804;

f. A maximum weekly family and medical leave benefit amount that equals or exceeds the amount specified in subdivision C of § 60.2-804 and a minimum weekly family and medical leave benefit amount that equals or exceeds the amount specified in subdivision B of § 60.2-804;

g. The provision of family and medical leave benefits on an intermittent basis as specified in § 60.2-807;

h. No additional conditions or restrictions on family and medical leave benefits, or leave taken in accordance with such benefits, beyond those explicitly authorized by this chapter or regulations issued pursuant to this chapter;

i. The provision of family and medical leave benefits to any employee covered under such private plan who would otherwise be eligible for such benefits pursuant to this chapter; and

j. An employee contribution amount that does not exceed the amount such employee would otherwise contribute for family and medical leave benefits pursuant to § 60.2-806.

2. Complies with the following provisions:

a. Such private plan shall provide family and medical leave benefits for all eligible employees throughout the course of their employment;

b. If such private plan is in the form of self-insurance, the employer shall furnish a bond to the Commonwealth in a form, amount, and manner determined by the Commission; and

c. If such plan is in the form of a third-party provider of insurance, the forms of the policy must be issued by an insurer approved by the Commission.

426 *B. The Commission shall withdraw approval for an employer's private plan pursuant to subsection A*
427 *if such employer violates the terms or conditions of such private plan, including by:*

- 428 *a. Failing to pay benefits;*
429 *b. Failing to pay benefits timely and in a manner consistent with the provisions of this chapter;*
430 *c. Failing to maintain an adequate surety bond;*
431 *d. Misusing private plan money;*
432 *e. Failing to submit reports or comply with other requirements or terms set by the Commission; or*
433 *f. Failing to comply with this chapter or regulations promulgated pursuant to this chapter.*

434 *C. An employee covered by a private plan approved under this section shall retain all applicable*
435 *rights provided in §§ 60.2-808 and 60.2-809.*

436 *D. A contested determination or denial of family and medical leave insurance benefits by a private*
437 *plan is subject to appeal before the Commission and any court of competent jurisdiction pursuant to*
438 *§ 60.2-812.*

439 *E. The Commission shall establish a fine structure for employers and entities offering private plans*
440 *that violate this section. The Commission shall transfer any fines collected pursuant to this subsection to*
441 *the state treasurer for deposit into the Fund. The Commission shall establish a process for the*
442 *determination, assessment, and appeal of fines under this subsection.*

443 *F. The Commission shall annually determine the total amount expended by the Commission for costs*
444 *arising from the administration of private plans. Each employer offering a private plan pursuant to this*
445 *section shall reimburse the Commission for the costs arising out of the private plans in the amount,*
446 *form, and manner determined by the Commission.*

447 **§ 60.2-817. Federal income tax.**

448 *If the Internal Revenue Service determines that family and medical leave benefits under this chapter*
449 *are subject to federal income tax, the Commission shall advise any covered individual filing a new claim*
450 *for family and medical leave benefits, at the time of filing such claim, that:*

- 451 *1. The Internal Revenue Service has determined that benefits are subject to federal income tax;*
452 *2. Requirements exist pertaining to estimated tax payments;*
453 *3. The individual may elect to have federal income tax deducted and withheld from the individual's*
454 *payment of benefits in the amount specified in the federal Internal Revenue Code; and*
455 *4. The individual is permitted to change a previously elected withholding status.*

456 **§ 60.2-818. Reports.**

457 *By April 1, 2028, and annually thereafter, the Commission shall report to the General Assembly on*
458 *projected and actual program participation by purpose listed in § 60.2-802, gender of beneficiaries, race*
459 *and ethnicity of beneficiaries, age of beneficiaries, amount of benefits paid to beneficiaries per week,*
460 *premium rates, fund balances, outreach efforts, and, for leaves taken under subdivision A 2 of*
461 *§ 60.2-802, family members for whom leave was taken to provide care.*

462 **§ 60.2-819. Public education.**

463 *The Commission shall develop and conduct a public education campaign to inform workers and*
464 *employers regarding the availability of family and medical leave benefits. Such campaign shall include*
465 *multiple ways to communicate to employers and employees about the new benefit system and leave*
466 *rights, contributions, timeline, and eligibility requirements. Such campaign shall be an ongoing function*
467 *of the Commission for the duration of the paid family and medical leave insurance program. In*
468 *conducting and planning such campaign, the Commission shall consult with the Paid Family and*
469 *Medical Leave Advisory Board established in § 60.2-821 and work with other stakeholders, including*
470 *chambers of commerce, trade associations, nonprofit organizations, and labor unions, to develop and*
471 *implement a statewide communication strategy. Such campaign shall also include targeted outreach and*
472 *education for small businesses. Outreach information shall be available in English, Spanish, Korean,*
473 *Tagalog, Vietnamese, Urdu, Arabic, and other languages spoken by more than five percent of the*
474 *Commonwealth's population.*

475 **§ 60.2-820. Sharing technology.**

476 *The Commission is encouraged to use state data collection and technology to the extent possible and*
477 *to integrate the provisions of this chapter with existing state policies.*

478 **§ 60.2-821. Paid Family and Medical Leave Advisory Board.**

479 *A. The Paid Family and Medical Leave Advisory Board (the Board) is established as an advisory*
480 *board, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of*
481 *the Board is to report to and advise the Commissioner on the implementation and administration of this*
482 *chapter.*

483 *B. The Board shall have a total membership of 15 members that shall consist of two legislative*
484 *members and 13 nonlegislative citizen members. Members shall be appointed as follows: one member of*
485 *the Senate, to be appointed by the Senate Committee on Rules; one member of the House of Delegates,*
486 *to be appointed by the Speaker of the House of Delegates; one nonlegislative citizen member to be*
487 *appointed by the Senate Committee on Rules; one nonlegislative citizen member to be appointed by the*

488 *Speaker of the House of Delegates; and 11 nonlegislative citizen members to be appointed by the*
489 *Governor, one of whom shall be a representative of the Virginia Chamber of Commerce, one of whom*
490 *shall be a representative of Main Street Alliance of Virginia, one of whom shall be a representative of*
491 *the AFL-CIO, one of whom shall be a representative of the SEIU Virginia 512, one of whom shall be a*
492 *representative of Campaign for Family Friendly Economy, Virginia, one of whom shall be a*
493 *representative of AARP, one of whom shall be a representative of Voices for Virginia's Children, one of*
494 *whom shall be a representative of an organization that advocates on behalf of people with disabilities,*
495 *one of whom shall be a representative of an organization that advocates for people with serious health*
496 *conditions, one of whom shall have skill, knowledge, and experience in family and medical leave*
497 *programs, and one of whom shall be an attorney advocating for the rights, benefits, and opportunities of*
498 *employees.*

499 *Nonlegislative citizen members of the Board shall be citizens of the Commonwealth. Legislative*
500 *members of the Board shall serve terms coincident with their terms of office.*

501 *C. Nonlegislative citizen members shall be appointed for a term of four years. Appointments to fill*
502 *vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled*
503 *in the same manner as the original appointments. No nonlegislative citizen member shall serve more*
504 *than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill*
505 *a vacancy shall not constitute a term in determining the member's eligibility for reappointment.*

506 *D. The Board shall elect a chairman and vice-chairman from among its membership. A majority of*
507 *the members shall constitute a quorum. The meetings of the Board shall be held at the call of the*
508 *chairman, but no less than four times a year.*

509 *E. Legislative members of the Board shall receive such compensation as provided in § 30-19.12.*
510 *Nonlegislative citizen members of the Board shall not receive compensation but shall be reimbursed for*
511 *all reasonable and necessary expenses incurred in the performance of their duties as provided in*
512 *§§ 2.2-2813 and 2.2-2825.*

513 **2. That the Virginia Employment Commission shall promulgate all rules and regulations necessary**
514 **for implementation of this act by July 1, 2025.**