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SENATE BILL NO. 373

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 21, 2024)

(Patron Prior to Substitute—Senator Boysko)

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.

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 is not an exempt individual and 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, except that, for the purposes of this chapter, "employer" does not include the employer of a state employee or employee of a local school division. A locality shall be considered an employer for purposes of this chapter for all of their employees who are not local officers.

"Exempt individual" means a state employee, a local officer, or an employee of a local school division.

"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

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

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

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

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

"Local officer" means the treasurer, commissioner of the revenue, attorney for the Commonwealth, clerk of a circuit court, sheriff of any county or city, regional jail superintendent or regional jail officer, or local director of finance, or deputy or employee of any such officer.

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

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

"Regional average weekly wage" means that amount determined by the Virginia Employment Commission to be the average weekly wage paid workers in the planning district in which the worker is located. The "regional average weekly wage" shall be determined without regard to any fringe benefits.

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

"Planning district" means a planning district established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2.

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

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

"State employee" means all persons employed by the Commonwealth or a public institution of higher education to provide services, including both salaried and wage employees, whether employed full time or part time.

"Workweek" means a calendar week.

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

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

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

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

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

§ 60.2-802. Eligibility for benefits; certification.

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

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

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

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

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

5. Is eligible for qualifying exigency leave arising out of the fact that a family member of the

covered individual is on active duty, or has been notified of an impending call or order to active duty, in the Armed Forces.

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

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

2. For a claimant seeking family and medical leave benefits due to the serious health condition of a family member, certification from a physician or health care provider (i) describing such condition, (ii) stating the date on which such condition commenced and the probable duration of such condition, (iii) including a statement that such condition requires such claimant to care for such family member and an estimated duration of such care, and (iv) including other appropriate medical facts as required by the Commission.

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

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

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

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

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

§ 60.2-803. Duration of benefits.

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

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

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

§ 60.2-804. Amount of benefits.

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

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

C. A covered individual's maximum weekly benefit amount shall be 80 percent of the regional average weekly wage. By September 30 of each year, the Commission shall adjust the maximum weekly benefit to reflect any changes in such regional average weekly wage. The adjusted maximum weekly benefit amount shall take effect on the following January 1.

D. No family and medical leave benefits shall be payable for less than eight hours of family and

183 *medical leave taken in one workweek.*

184 **§ 60.2-805. Family and Medical Leave Insurance Trust Fund; appropriation prohibition;**
185 **reimbursement.**

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

193 *B. Moneys in the Fund shall be used solely for the payment of benefits under the paid family and*
194 *medical leave insurance program established by the Commission pursuant to this chapter, the*
195 *administration of such program, and any start-up costs associated with such program.*

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

198 *D. Any funds borrowed for start-up costs of the paid family and medical leave insurance program*
199 *shall be repaid by the Fund to the general fund. Until such borrowings have been repaid in full, no*
200 *moneys from the Fund may be disbursed to provide benefits to covered individuals under such program.*

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

203 **§ 60.2-806. Contributions.**

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

206 *B. Beginning on January 1, 2026, each employer shall remit to the Fund contributions in the form*
207 *and manner determined by the Commission. The Commission shall require employers to remit such*
208 *contributions for each paycheck paid to an employee. No later than October 1, 2025, and annually*
209 *thereafter, the Commissioner shall fix the contribution rate for the coming calendar year in the manner*
210 *described in this subsection, taking into account the reimbursement requirement provided for in*
211 *subsection D of § 60.2-805. For calendar years 2026 and 2027, the Commissioner shall fix such*
212 *contribution rate based on sound actuarial principles. For calendar year 2028 and thereafter, the*
213 *Commissioner shall first certify and publish the following information:*

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

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

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

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

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

230 *C. A self-employed individual electing coverage under § 60.2-815 shall be responsible for 100*
231 *percent of the contribution per employee required of an employer of more than 10 employees pursuant*
232 *to subsection B on that individual's income from self-employment.*

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

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

243 *F. Contributions under this section shall not be required for an employee's wages or an individual's*
244 *income from self-employment above the contribution and benefit base limit established annually by the*

federal Social Security Administration for purposes of the federal Old-Age, Survivors, and Disability Insurance Benefits program limits pursuant to 42 U.S.C. § 430.

§ 60.2-807. Reduced leave schedule.

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

B. Such covered individual shall make a reasonable effort to schedule paid family and medical leave taken pursuant to this section so as not to unduly disrupt the operations of such covered individual's employer. Such covered individual shall provide such employer with prior notice of the schedule on 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 eight 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

306 violation of this chapter; and the right to inform any individual of the individual's rights under this
307 chapter.

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

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

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

314 **§ 60.2-810. Coordination of benefits.**

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

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

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

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

328 **§ 60.2-811. Notice requirements.**

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

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

347 **§ 60.2-812. Appeals.**

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

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

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

356 **§ 60.2-813. Enforcement.**

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

363 B. If, after notice, any employer defaults in any payment of contributions or interest, the amount due
364 shall be collected by civil action in the name of the Commissioner. The employer adjudged in default
365 shall pay the fees and costs of such action. Civil actions brought under this chapter to collect
366 contributions or interest or any penalty from an employer shall be heard by the court at the earliest
367 possible date. Such civil actions may be brought against any officer, employee, or agent of a

corporation or partnership in his individual, personal capacity when that person willfully fails to cause the employer to pay the appropriate contributions or interest and he had the authority to do so. No person shall be subject to this section unless it is proved that such person (i) knew of the failure or attempt to make such payment and (ii) had authority to prevent such failure or attempt. In addition to the foregoing remedies, the Commissioner shall have such other remedies as are available to the State Tax Commissioner and county and city treasurers for the collection of taxes generally. The Commissioner is authorized to compromise, settle, and adjust any contributions, including interest, or any penalty assessed against any employer where in the judgment of the Commissioner the best interests of the Commonwealth will be promoted or served. The Commissioner may in such cases accept in full settlement of the contributions assessed an amount less than that assessed.

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;

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

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

433 2. Complies with the following provisions:

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

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

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

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

442 a. Failing to pay benefits;

443 b. Failing to pay benefits timely and in a manner consistent with the provisions of this chapter;

444 c. Failing to maintain an adequate surety bond;

445 d. Misusing private plan money;

446 e. Failing to submit reports or comply with other requirements or terms set by the Commission; or

447 f. Failing to comply with this chapter or regulations promulgated pursuant to this chapter.

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

450 D. A contested determination or denial of family and medical leave insurance benefits by a private
451 plan is subject to appeal before the Commission and any court of competent jurisdiction pursuant to
452 § 60.2-812.

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

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

461 **§ 60.2-817. Federal income tax.**

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

465 1. The Internal Revenue Service has determined that benefits are subject to federal income tax;

466 2. Requirements exist pertaining to estimated tax payments;

467 3. The individual may elect to have federal income tax deducted and withheld from the individual's
468 payment of benefits in the amount specified in the federal Internal Revenue Code; and

469 4. The individual is permitted to change a previously elected withholding status.

470 **§ 60.2-818. Reports.**

471 By April 1, 2028, and annually thereafter, the Commission shall report to the General Assembly on
472 projected and actual program participation by purpose listed in § 60.2-802, gender of beneficiaries, race
473 and ethnicity of beneficiaries, age of beneficiaries, amount of benefits paid to beneficiaries per week,
474 premium rates, fund balances, outreach efforts, and, for leaves taken under subdivision A 2 of
475 § 60.2-802, family members for whom leave was taken to provide care.

476 **§ 60.2-819. Public education.**

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

489 **§ 60.2-820. Sharing technology.**

490 The Commission is encouraged to use state data collection and technology to the extent possible and

to integrate the provisions of this chapter with existing state policies.

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

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

B. The Board shall have a total membership of 15 members that shall consist of two legislative members and 13 nonlegislative citizen members. Members shall be appointed as follows: one member of the Senate, to be appointed by the Senate Committee on Rules; one member of the House of Delegates, to be appointed by the Speaker of the House of Delegates; one nonlegislative citizen member to be appointed by the Senate Committee on Rules; one nonlegislative citizen member to be appointed by the Speaker of the House of Delegates; and 11 nonlegislative citizen members to be appointed by the Governor, one of whom shall be a representative of the Virginia Chamber of Commerce, one of whom shall be a representative of Main Street Alliance of Virginia, one of whom shall be a representative of the AFL-CIO, one of whom shall be a representative of the SEIU Virginia 512, one of whom shall be a representative of Campaign for Family Friendly Economy, Virginia, one of whom shall be a representative of AARP, one of whom shall be a representative of Voices for Virginia's Children, one of whom shall be a representative of an organization that advocates on behalf of people with disabilities, one of whom shall be a representative of an organization that advocates for people with serious health conditions, one of whom shall have skill, knowledge, and experience in family and medical leave programs, and one of whom shall be an attorney advocating for the rights, benefits, and opportunities of employees.

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

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

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

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

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

3. That the Family and Medical Leave Insurance Trust Fund (the Fund) established by § 60.2-805 of the Code of Virginia, as created by this act, shall receive a non-interest-bearing treasury loan in an amount provided in the appropriation act, which shall be used to (i) establish the paid family and medical leave insurance program established by § 60.2-801 of the Code of Virginia, as created by this act, and (ii) conduct the study and assessment required by the fourth enactment of this act. The Secretary of Finance and the Commissioner of the Virginia Employment Commission shall approve disbursements from funds provided by this treasury loan prior to expenditure of funds. Borrowings from such treasury loan shall be repaid by the Fund to the general fund. Until such borrowings have been repaid in full, no moneys from the Fund may be disbursed to provide benefits to covered individuals under the paid family and medical leave insurance program established by § 60.2-801 of the Code of Virginia, as created by this act.

4. That the Virginia Employment Commission (the Commission), in collaboration with the Department of Human Resource Management, the Compensation Board, the Virginia Department of Education, and the Department of Planning and Budget, shall update its November 2021 Virginia Paid Family and Medical Leave study, as authorized by Item 111 of Chapter 1289 of the Acts of Assembly of 2020, to include an assessment of the budgetary impacts of extending application of the benefits provided by the first enactment of this act to exempt individuals, as that term is defined in § 60.2-800 of the Code of Virginia, as created by this act, while maintaining the benefits provided in § 2.2-1210 of the Code of Virginia for state employees. Such assessment shall also examine (i) the number of exempt individuals that would receive expanded family and medical leave benefits; (ii) the budgetary impact and salary impact associated with providing each type of benefit to each class of employee described in clause (i); and (iii) the budgetary impact on state direct aid to public education. The Commission shall submit the updated study to the

552 Chairmen of the House Committee on Appropriations and the Senate Committee on Finance and
553 Appropriations on or before December 1, 2024. The Commission may, upon completion of the
554 updated study, submit legislation to the General Assembly to (a) expand the paid family and
555 medical leave program provided by the first enactment of this act to exempt individuals and (b)
556 establish an expanded state employee benefit program consisting of similar benefits to a private
557 employer plan as is described in § 60.2-816 of the Code of Virginia, as created by this act, while
558 maintaining the benefits currently provided in § 2.2-1210 of the Code of Virginia for state
559 employees.