INTRODUCED BY LAUGHLIN, COLLETT, MUTH, FONTANA, FARNESE, HUGHES, TARTAGLIONE, SCHWANK, KILLION, BLAKE, KEARNEY, YUDICHAK AND LEACH, JULY 8, 2019

REFERRED TO LABOR AND INDUSTRY, JULY 8, 2019

AN ACT

Establishing the Pennsylvania Family and Medical Leave Insurance Program and the Family and Medical Leave Insurance Fund; conferring powers and imposing duties on the Department of Labor and Industry; and imposing penalties.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

CHAPTER 1

PRELIMINARY PROVISIONS

Section 101. Short title.
This act shall be known and may be cited as the Pennsylvania Family and Medical Leave Insurance Act.

Section 102. Legislative intent.
The General Assembly finds and declares as follows:

(1) Paid family and medical leave insurance promotes the physical and emotional health of children and their families.

(2) Paid family and medical leave insurance has a positive impact on economic stability and ensures competitive viability for all businesses, but particularly smaller businesses.
The establishment of a paid family and medical leave insurance program is essential to public health, safety and welfare.

Section 103. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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

"Benefits." The monetary allowances payable to a covered individual as family and medical leave insurance during an approved family and medical leave under the program in accordance with this act.

"Claim." The filing of a written application with the department for the receipt of benefits.

"Covered individual." An employee, or a self-employed person who elects coverage pursuant to section 503, who meets the following requirements, as applicable:

(1) Is currently employed in this Commonwealth or is previously employed in this Commonwealth within 120 days of separation from employment.

(2) Meets the employment and income eligibility requirements set forth in section 303.

(3) Meets the requirements of this act as to the receipt of benefits.

(4) Submits a claim that is approved by the department.

"Covered service member." A current or former member of the armed forces of the United States, including a current or former member of a reserve component of the armed forces of the United States.
States or the Pennsylvania National Guard, who meets any of the following requirements:

(1) Is undergoing medical treatment, recuperation or therapy.

(2) Is otherwise in outpatient status.

(3) Is on the temporary disability retired list for a serious injury or illness incurred in the line of duty on active duty in the armed forces of the United States or a serious injury or illness that existed before the beginning of the member's active duty that was aggravated by service in the line of duty on active duty in the armed forces of the United States, a reserve component of the armed forces of the United States or the Pennsylvania National Guard.

"Department." The Department of Labor and Industry of the Commonwealth.

"Employee." An individual who makes payroll contributions pursuant to this act and is employed by an employer doing business in this Commonwealth.

"Employer." An employer as defined in section 103 of the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act.

"Family." Anyone related by blood to the second degree of consanguinity or any individual whose close association with the employee is the equivalent of an immediate family relationship.


"Family and medical leave insurance." Benefits approved and payable to covered individuals under the program.

"Fund." The Family and Medical Leave Insurance Fund
established under section 506.

"Health care provider." A health care center or a person, including a corporation, university or other educational institution licensed or approved by the Commonwealth to provide health care or professional medical services as a physician, a certified nurse midwife, a podiatrist, a hospital, a nursing home or a birth center.

"Leave." The allotted amount of time approved by the department for the receipt of benefits pursuant to this act.

"Medical certification." Written certification from a health care provider on a form prepared by the department that verifies the serious health condition prompting the filing of a claim and receipt of benefits by a covered individual pursuant to this act.

"Program." The Pennsylvania Family and Medical Leave Insurance Program established under section 301.

"Qualifying exigency leave." Leave for the family member of a military member for the purposes specified in 29 CFR 825.126 (relating to leave because of a qualifying exigency).

"Secretary." The Secretary of Labor and Industry of the Commonwealth.

"Serious health condition." An illness, injury, impairment, pregnancy, recovery from childbirth or physical or mental condition as defined at section 101(11) of the Family and Medical Leave Act of 1993 (Public Law 103-3, 29 U.S.C. § 2611(11)).

"Statewide average weekly wage." The average amount of weekly wages as determined by the department on an annual basis for each calendar year pursuant to the Workers' Compensation Act, which shall be posted on the department's publicly
accessibile Internet website.

CHAPTER 3

FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

Section 301. Family and Medical Leave Insurance Program.

(a) Establishment of program.--Within one year of the effective date of this section, the department shall establish the Pennsylvania Family and Medical Leave Insurance Program. No later than two years following establishment of the program, the department shall pay family and medical leave insurance benefits as specified in this act.

(b) Required documentation.--The department shall establish reasonable procedures and forms for filing a claim under this act, the documentation necessary to support a claim and any certification required from a health care provider for proof of a serious health condition.

(c) Notice of approved claim.--In addition to the notice provided to an employer by an employee under section 501(d), the department shall notify the employer within five business days of an approved claim for benefits under this act.

(d) Information sharing.--Information sharing and integration technology to facilitate the disclosure of relevant information or records shall be used as practicable subject to consent and disclosure requirements under State law.

(e) Confidentiality.--Information contained in the files and records pertaining to an individual filing a claim under this act are confidential and shall not be open to public inspection other than to public employees in the performance of their official duties.

(f) Cooperation among departments.--To properly effectuate the provisions of this act, all departments and agencies under 20190SB0580PN1087 - 6 -
the jurisdiction of the Governor shall fully cooperate with the
department and provide assistance and support as needed to
ensure the timely and efficient delivery of benefits under this
act.

Section 302. Powers and duties of department.

(a) Administration of act.--The department shall be
responsible for the administration of this act and the fund.
(b) Powers and duties.--To fulfill its responsibilities
under this act, the department shall have the following powers
and duties:

(1) To calculate and set the amount of benefits payable
to a covered individual as set forth in section 305 initially
and on a semiannual basis thereafter.

(2) To provide information to employees and employers on
the amount to be deducted as employee payroll contributions
as set forth in section 306 initially and every two years
thereafter.

(3) To develop and prepare the written notices that
employers must distribute and provide to their employers
pursuant to section 501. The form of these notices shall be
posted on the department's publicly accessible Internet
website.

(4) To prepare and provide the medical certification
form referenced in section 303(d) on the department's
publicly accessible Internet website.

(5) To prepare and provide the necessary forms for
filing and acknowledging a benefits claim and for providing
notice of benefits approval to both employers and covered
individual employees.

(6) To develop the abstract for employer posting of
notice in the workplace under section 501, which shall be
available on the department's publicly accessibly Internet
website.

(7) To prepare and provide the employee complaint form
on the department's publicly accessible Internet website.

(8) To develop any and all forms necessary to ensure
implementation of this act.

(9) To develop procedures to investigate and resolve
complaints under this act.

(10) To conduct an ongoing public outreach campaign to
inform employers and employees about the availability of the
program and the process for filing a benefits claim.

(11) To promulgate regulations as necessary to
administer this act.

(12) To issue an annual report under section 507.

(c) Enforcement of act.--The secretary shall establish a
system for appeals in the case of a denial of family and medical
leave insurance benefits and all violations assessed under this
act. In establishing the appeals system, the department may
utilize procedures and appeals mechanisms established under the
act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1),
known as the Unemployment Compensation Law. Procedures to ensure
confidentiality of all information related to any claims filed
or appeals taken shall be implemented in accordance with
applicable laws.

(d) Establishment of task force.--The department shall form
a task force composed of advocates and business leaders to
assist in the implementation of the program and to ensure
effective public outreach and enforcement of this act.

Section 303. Eligibility for family and medical leave insurance
benefits.

(a) Basis for receipt of benefits.--No later than two years following establishment of the program, benefits under this act shall be payable to a covered individual who files an approved claim based on any of the following:

(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, including pregnancy, that renders the covered individual unable to perform the functions of the individual's position.

(4) Is caring for a covered service member due to a qualifying exigency leave in accordance with the terms of the Family and Medical Leave Act of 1993.

(b) Employment and income eligibility requirements.--To be eligible to file a benefits claim, a covered individual must have worked at least 18 weeks and earned at least $2,718 in income during the 12-month period prior to submitting a claim. The earned income rate established in this subsection shall be adjusted annually by the department based on the Pennsylvania Unemployment Insurance Financial Eligibility Rules.

(c) Filing of benefits claim.--An individual seeking benefits under this act shall submit a claim to the department providing the required documentation to support a claim for benefits, including any necessary medical certification.

(d) Medical certification.--A covered individual shall obtain a medical certification confirming a serious health condition under subsection (a)(2) and (3) that justify the
filing of a claim and the receipt of benefits under this act and
shall make that information available to the department on the
form prescribed by the department. Any completed medical
certification form regarding a covered individual shall be
entitled to the protections of the Health Insurance Portability
1936).

(e) Adjudication of claim.--Upon receipt of all necessary
documentation to support a claim for benefits from a covered
individual, the department shall make a determination of
eligibility for benefits under this act within no more than five
business days.

Section 304. Duration of benefits.

(a) Maximum leave duration of 20 weeks.--The maximum number
of weeks during which benefits are payable under section 303(a)
(1) or (3) in an application year is 20 weeks.

(b) Maximum leave duration of 12 weeks.--The maximum number
of weeks during which benefits are payable under section 303(a)
(2) or (4) in an application year is 12 weeks.

(c) Total maximum duration.--The duration of leave under
subsections (a) and (b) combined cannot exceed a total number of
20 weeks in any one application year regardless of reason.

(d) Initial payment of benefits.--The first payment of
benefits shall be made to a covered individual no later than one
week:

(1) after the claim is filed and approved by the
department; or

(2) from the date the leave is scheduled to commence.

(e) Payment of benefits.--After the initial payment of
benefits, subsequent payments shall be made semimonthly
thereafter for the duration of the approved leave.

Section 305. Amount of benefits.

(a) Calculation of benefits.--The benefits payable to a covered individual shall be calculated as follows:

(1) the portion of a covered individual's average weekly wage that is equal to or less than 50% of the Statewide average weekly wage shall be replaced at a rate of 90%; and

(2) the portion of a covered individual's average weekly wage that exceeds 50% of the Statewide average weekly wage shall be replaced at a rate of 50%.

(b) Limitation.--In no case shall the weekly benefits payable to a covered individual be more than the Statewide average weekly wage.

(c) Adjustment of benefits calculation.--The department shall adjust the maximum family and medical leave insurance benefit cap established in subsection (a) annually based on the Statewide average weekly wage and shall transmit notice of the revised family and medical leave insurance benefit rates to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin on an annual basis.

(d) Limit on taking of benefits and nonsequential leave.--Under this section and section 307, benefits are not payable for less than eight hours of leave taken in one work week.

Section 306. Contributions.

(a) Payment into the program.--All persons employed in this Commonwealth shall be required to contribute to the program for the purpose of financing the program.

(b) Commencement of payroll contributions.--Payroll contributions into the fund for the purpose of financing the program shall commence at least one year prior to the payment of
any benefits from the fund to covered individuals.

(c) Calculation of payroll contributions.--The amount payable through employee payroll contributions shall be set at 0.588% of an individual employee's wages to initiate payments into the program. Every two years thereafter, the department shall evaluate and determine the amount of payroll contributions and maximum employee contribution necessary to finance and adequately support the program. The payroll contribution rate shall be posted on the department's publicly accessible Internet website.

(d) Notification to employers.--The department shall notify the Department of Revenue to advise employers of the amount payable through employee payroll calculations.

(e) Penalty for failure to withhold.--An employer who fails to withhold payroll contributions in accordance with this act shall be subject to those penalties enforceable through the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, for failure to properly withhold wages for income tax and sales and use tax purposes.

Section 307. Reduced leave schedule.

(a) Taking of nonsequential leave.--A covered individual shall be entitled to utilize one-half of the leave authorized under section 304, at the option of the covered individual, to take leave on an intermittent or reduced leave schedule in which all of the leave authorized under this act is not taken sequentially. Family and medical leave insurance benefits for intermittent or reduced leave schedules shall be prorated.

(b) Impact on duration of leave.--Nonsequential leave taken under this section shall not result in a reduction in the total amount of family and medical leave to which a covered individual
is entitled beyond the amount of leave actually taken.

(c) Total amount of leave allowed.—Nothing in this section shall be construed to enable a covered individual to take more leave than allowed under section 304.

Section 308. Employment protections.

(a) Restoration of employment position.—Any covered individual who exercises a claim for benefits shall, upon the expiration of that leave, be restored by the employer to the position previously held by the covered individual when the leave commenced, or to a position with equivalent seniority, status, employment benefits, pay and other terms and conditions of employment.

(b) Health care benefits maintained.—For the duration of a leave approved under this act, the employer shall maintain any health care benefits the covered individual had prior to taking leave as if the covered individual had continued in employment continuously from the date leave was commenced until the date the leave terminates. A covered individual shall continue to pay the covered individual's share of the cost of health benefits as required prior to the commencement of the leave.

(c) Interference with benefits.—It shall be unlawful for an employer or any other person to interfere with, restrain or deny the exercise of, or the attempt to exercise, any protection afforded under this act.

(d) Retaliation prohibited.—An employer, temporary help company, employment agency, employee organization or other person shall not take retaliatory personnel action or otherwise discriminate against a person because the person took any action in accordance with this act, including:

(1) Applying for or using benefits provided under this act.
(2) Communicating to the employer or any other person or entity an intent to file and act on a claim, a complaint or an appeal with the department or a court of competent jurisdiction.

(e) Consideration of absence.--It shall be unlawful for an employer to count leave taken under this act as an absence that may lead to or result in a retaliatory personnel action.

(f) Good faith protection.--Protections under this section shall apply to any person who mistakenly but in good faith alleges a violation of this act.

(g) Definition.--As used in this section, the term "retaliatory personnel action" includes any threat, discipline, discharge, suspension, demotion, reduction of hours or any other adverse action taken against an employee for exercising the rights and protections afforded by this act. The term shall also include interference with or punishment for participating in or acting on a complaint or appeal under this act.

Section 309. Coordination of benefits.

(a) Leave concurrent with Federal law.--Leave taken with wage replacement under this act that also qualifies as leave under the Family and Medical Leave Act of 1993 shall run concurrently with leave taken under the Family and Medical Leave Act of 1993.

(b) Coordination with collective bargaining agreement or employer policy.--An employer may require that benefits payment under this act be made concurrently or otherwise coordinated with any payment made or leave allowed under the terms of a disability or family care leave provision contained in a collective bargaining agreement or employer policy. The employer
must give employees written notice of this requirement.

(c) Employer's obligation.--This act does not diminish an
employer's obligation to comply with any of the following that
provide more generous leave:

(1) A collective bargaining agreement.
(2) An employer policy.
(3) Any other Federal or State law.

(d) Prohibition on subsequent collective bargaining
agreement or employer policy.--An individual's right to leave
and the payment of benefits under this act may not be diminished
by a collective bargaining agreement entered into or renewed, or
an employer policy adopted or retained, after the effective date
of this section. Any agreement by an individual to waive the
individual's rights under this act is void as against public
policy.

(e) Impact on Workers' Compensation Act.--Nothing in this
act shall be construed to impact the provisions of the act of
June 2, 1915 (P.L.736, No.338), known as the Workers'
Compensation Act, with regard to work-related injuries.

CHAPTER 5
ADMINISTRATION AND PROCEDURES

Section 501. Notice.

(a) Employer notice to employees.--Upon initial hiring of an
employee, and annually thereafter, an employer shall provide
written notice of the requirements of this act using the notices
prepared and posted by the department under section 302.

(b) Employer acknowledgment of leave request.--Using the
form prepared by the department under section 302, an employer
shall provide written acknowledgment to an employee when the
employee requests leave under this act. The acknowledgment shall
include:

(1) An explanation of the employee's right to benefits under this act and the terms for its use.

(2) The amount of benefits.

(3) The procedure for filing a benefits claim with the department.

(4) Provisions on job protection and benefits continuation under section 308.

(5) The prohibition on employer discrimination and retaliatory personnel action against a person for requesting, applying for or using leave as provided in section 308.

(6) The employee's ability to file a complaint for violations of this act.

(c) Public display of notice.--Using the abstract for employer posting available on the department's publicly accessible Internet website, an employer shall display and maintain a poster in a conspicuous place accessible to employees at the employer's place of business that contains the information required by this section in English and Spanish, with consideration to the inclusion of other significant languages spoken in the workplace.

(d) Employee notice to employer.--When the need for leave is known to the employee in advance, the employee shall provide written or verbal notice to the employer of the need and schedule for taking leave at least 15 days prior to taking it. The employee shall make a reasonable effort to schedule leave in a manner that does not unduly disrupt the operations of the employer. For all other absences, the employee shall notify the employer as soon as practicable if the need arises immediately before or after the employee has reported for work.
Section 502. Erroneous payments and disqualification for benefits.

(a) Employee disqualification.--A covered individual is disqualified from receiving benefits for one year if the individual is determined by the department 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 act.

(b) Erroneous payment of benefits.--If benefits are paid erroneously or as a result of willful misrepresentation, or if a claim is subsequently rejected after benefits are paid, the department may seek repayment of benefits from the recipient.

Section 503. Elective coverage.

(a) Self-employed option.--A self-employed person, including a sole proprietor, partner or participant in a joint venture, may elect coverage under this act for an initial period of not less than three years upon meeting all of the following requirements:

   (1) Filing a notice of election in writing with the department, which will become effective on the date of filing the notice.

   (2) Supplying all income information that the department deems necessary.

   (3) Compliance with all eligibility, employment and income requirements set forth in section 303.

(b) Withdrawal from coverage.--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 other times as the department may prescribe. Upon filing written notice with the department, the self-employed person's

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withdrawal from coverage shall take effect no later than 30 days after filing the notice of withdrawal.

Section 504. Violations.

An employer who violates the requirements of section 308, 309 or 501 shall be subject to the penalties set forth in section 107 of the Family and Medical Leave Act of 1993.

Section 505. Judicial review.

Judicial review of any decision regarding the denial of benefits or an appeal of any violation of this act shall be permitted in a court of competent jurisdiction after a party aggrieved thereby has exhausted all administrative remedies established by the department.

Section 506. Family and Medical Leave Insurance Fund.

(a) Fund established.--The Family and Medical Leave Insurance Fund is established as a special nonlapsing fund in the State Treasury.

(b) Deposit of money.--Money from employee payroll contributions paid under section 306 and any financial penalties imposed under this act shall be deposited into the account and used by the department for the administration of the program and the payment of benefits to covered individuals.

(c) Continuing appropriation.--All money deposited in the fund and all interest accrued is appropriated to the department on a continuing basis to provide benefits under this act.

(d) Limitations on fund.--

(1) No administrative action shall prevent the deposit of money into the fund in the fiscal year in which the money is received.

(2) The fund may only be used for the program authorized under this act. Money in the fund cannot be transferred or
diverted to any other purpose by administrative action.

(e) Other deposits.--The department may deposit into the
fund any other funds received for the purposes set forth in this
act.

Section 507. Annual report.

(a) Annual report.--Beginning in 2023, and each year
thereafter, the department shall submit a report to the chair
and minority chair of the Labor and Industry Committee of the
Senate and to the chair and minority chair of the Labor and
Industry Committee of the House of Representatives no later than
September 1 that includes:

(1) Actual program participation by category as
delineated in paragraph (2), including total number of leaves
taken.

(2) Beneficiary gender for leaves taken.

(3) Types of family members for whom leave was taken to
provide care.

(4) Premium rate calculations for the current and
previous calendar year and projected rate calculations for
the next three calendar years.

(5) Projected program participation over the next three
calendar years.

(6) Account balances.

(7) The scope and success of outreach efforts.

(8) Recommendations for improvements to the program.

(b) Public posting of annual report.--The department shall
make the report available on its publicly accessible Internet
website. Monthly data should also be made available online.

Section 508. Public education.

(a) Outreach campaign.--The department shall conduct a
public education campaign to inform workers and employers regarding the availability of family and medical leave benefits under this act. The department may allocate at least $500,000 of the money collected for the program in a given year to pay for the public education program. Outreach information shall be available in English, Spanish and other languages as determined by the department.

(b) Community outreach.--The department may utilize outreach money to identify and assist appropriate community organizations in educating hard-to-reach populations or industries, including low-income workers, workers and employers in industries that do not typically provide paid family leave and workers and employers whose primary language is not English.

Section 509. Regulations.

The department shall promulgate regulations as necessary to implement and administer this act. Final form regulations shall be promulgated no later than September 1, 2021.

CHAPTER 21

MISCELLANEOUS PROVISIONS

Section 2101. Effective date.

This act shall take effect in 180 days.