
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

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AND DALEY, AUGUST 16, 2019

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, AUGUST 16, 2019

AN ACT

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

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

19 CHAPTER 1

20 PRELIMINARY PROVISIONS

21 Section 101. Short title.

22 This act shall be known and may be cited as the Pennsylvania
23 Family and Medical Leave Insurance Act.

24 Section 102. Legislative intent.

25 The General Assembly finds and declares as follows:

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

28 (2) Paid family and medical leave insurance has a
29 positive impact on economic stability and ensures competitive
30 viability for all businesses, but particularly smaller

1 businesses.

2 (3) The establishment of a paid family and medical leave
3 insurance program is essential to public health, safety and
4 welfare.

5 Section 103. Definitions.

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

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

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

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

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

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

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

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

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

29 "Covered service member." A current or former member of the
30 armed forces of the United States, including a current or former

1 member of a reserve component of the armed forces of the United
2 States or the Pennsylvania National Guard, who meets any of the
3 following requirements:

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

6 (2) Is otherwise in outpatient status.

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

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

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

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

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

26 "Family and Medical Leave Act of 1993." The Family and
27 Medical Leave Act of 1993 (Public Law 103-3, 29 U.S.C. § 2601 et
28 seq.).

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

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

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

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

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

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

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

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

23 "Serious health condition." An illness, injury, impairment,
24 pregnancy, recovery from childbirth or physical or mental
25 condition as defined at section 101(11) of the Family and
26 Medical Leave Act of 1993 (Public Law 103-3, 29 U.S.C. §
27 2611(11)).

28 "Statewide average weekly wage." The average amount of
29 weekly wages as determined by the department on an annual basis
30 for each calendar year pursuant to the Workers' Compensation

1 Act, which shall be posted on the department's publicly
2 accessible Internet website.

3 CHAPTER 3

4 FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

5 Section 301. Family and Medical Leave Insurance Program.

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

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

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

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

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

30 (f) Cooperation among departments.--To properly effectuate

1 the provisions of this act, all departments and agencies under
2 the jurisdiction of the Governor shall fully cooperate with the
3 department and provide assistance and support as needed to
4 ensure the timely and efficient delivery of benefits under this
5 act.

6 Section 302. Powers and duties of department.

7 (a) Administration of act.--The department shall be
8 responsible for the administration of this act and the fund.

9 (b) Powers and duties.--To fulfill its responsibilities
10 under this act, the department shall have the following powers
11 and duties:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (2) Is caring for a family member with a serious health
11 condition.

12 (3) Has a serious health condition, including pregnancy,
13 that renders the covered individual unable to perform the
14 functions of the individual's position.

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

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

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

29 (d) Medical certification.--A covered individual shall
30 obtain a medical certification confirming a serious health

1 condition under subsection (a) (2) and (3) that justify the
2 filing of a claim and the receipt of benefits under this act and
3 shall make that information available to the department on the
4 form prescribed by the department. Any completed medical
5 certification form regarding a covered individual shall be
6 entitled to the protections of the Health Insurance Portability
7 and Accountability Act of 1996 (Public Law 104-191, 110 Stat.
8 1936).

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

14 Section 304. Duration of benefits.

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

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

21 (c) Total maximum duration.--The duration of leave under
22 subsections (a) and (b) combined cannot exceed a total number of
23 20 weeks in any one application year regardless of reason.

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

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

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

30 (e) Payment of benefits.--After the initial payment of

1 benefits, subsequent payments shall be made semimonthly
2 thereafter for the duration of the approved leave.

3 Section 305. Amount of benefits.

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

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

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

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

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

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

25 Section 306. Contributions.

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

29 (b) Commencement of payroll contributions.--Payroll
30 contributions into the fund for the purpose of financing the

1 program shall commence at least one year prior to the payment of
2 any benefits from the fund to covered individuals.

3 (c) Calculation of payroll contributions.--The amount
4 payable through employee payroll contributions shall be set at
5 0.588% of an individual employee's wages to initiate payments
6 into the program. Every two years thereafter, the department
7 shall evaluate and determine the amount of payroll contributions
8 and maximum employee contribution necessary to finance and
9 adequately support the program. The payroll contribution rate
10 shall be posted on the department's publicly accessible Internet
11 website.

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

15 (e) Penalty for failure to withhold.--An employer who fails
16 to withhold payroll contributions in accordance with this act
17 shall be subject to those penalties enforceable through the act
18 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
19 1971, for failure to properly withhold wages for income tax and
20 sales and use tax purposes.

21 Section 307. Reduced leave schedule.

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

29 (b) Impact on duration of leave.--Nonsequential leave taken
30 under this section shall not result in a reduction in the total

1 amount of family and medical leave to which a covered individual
2 is entitled beyond the amount of leave actually taken.

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

6 Section 308. Employment protections.

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

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

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

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

1 (1) Applying for or using benefits provided under this
2 act.

3 (2) Communicating to the employer or any other person or
4 entity an intent to file and act on a claim, a complaint or
5 an appeal with the department or a court of competent
6 jurisdiction.

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

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

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

20 Section 309. Coordination of benefits.

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

26 (b) Coordination with collective bargaining agreement or
27 employer policy.--An employer may require that benefits payment
28 under this act be made concurrently or otherwise coordinated
29 with any payment made or leave allowed under the terms of a
30 disability or family care leave provision contained in a

1 collective bargaining agreement or employer policy. The employer
2 must give employees written notice of this requirement.

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

6 (1) A collective bargaining agreement.

7 (2) An employer policy.

8 (3) Any other Federal or State law.

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

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

21 CHAPTER 5

22 ADMINISTRATION AND PROCEDURES

23 Section 501. Notice.

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

28 (b) Employer acknowledgment of leave request.--Using the
29 form prepared by the department under section 302, an employer
30 shall provide written acknowledgment to an employee when the

1 employee requests leave under this act. The acknowledgment shall
2 include:

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

5 (2) The amount of benefits.

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

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

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

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

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

23 (d) Employee notice to employer.--When the need for leave is
24 known to the employee in advance, the employee shall provide
25 written or verbal notice to the employer of the need and
26 schedule for taking leave at least 15 days prior to taking it.
27 The employee shall make a reasonable effort to schedule leave in
28 a manner that does not unduly disrupt the operations of the
29 employer. For all other absences, the employee shall notify the
30 employer as soon as practicable if the need arises immediately

1 before or after the employee has reported for work.

2 Section 502. Erroneous payments and disqualification for
3 benefits.

4 (a) Employee disqualification.--A covered individual is
5 disqualified from receiving benefits for one year if the
6 individual is determined by the department to have willfully
7 made a false statement or misrepresentation regarding a material
8 fact, or willfully failed to report a material fact, to obtain
9 benefits under this act.

10 (b) Erroneous payment of benefits.--If benefits are paid
11 erroneously or as a result of willful misrepresentation, or if a
12 claim is subsequently rejected after benefits are paid, the
13 department may seek repayment of benefits from the recipient.
14 Section 503. Elective coverage.

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

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

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

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

27 (b) Withdrawal from coverage.--A self-employed person who
28 has elected coverage may withdraw from coverage within 30 days
29 after the end of the three-year period of coverage, or at other
30 times as the department may prescribe. Upon filing written

1 notice with the department, the self-employed person's
2 withdrawal from coverage shall take effect no later than 30 days
3 after filing the notice of withdrawal.

4 Section 504. Violations.

5 An employer who violates the requirements of section 308, 309
6 or 501 shall be subject to the penalties set forth in section
7 107 of the Family and Medical Leave Act of 1993.

8 Section 505. Judicial review.

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

14 Section 506. Family and Medical Leave Insurance Fund.

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

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

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

26 (d) Limitations on fund.--

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

30 (2) The fund may only be used for the program authorized

1 under this act. Money in the fund cannot be transferred or
2 diverted to any other purpose by administrative action.

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

6 Section 507. Annual report.

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

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

16 (2) Beneficiary gender for leaves taken.

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

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

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

24 (6) Account balances.

25 (7) The scope and success of outreach efforts.

26 (8) Recommendations for improvements to the program.

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

30 Section 508. Public education.

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

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

15 Section 509. Regulations.

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

19 CHAPTER 21

20 MISCELLANEOUS PROVISIONS

21 Section 2101. Effective date.

22 This act shall take effect in 180 days.