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SENATE BILL NO. 1122

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on January 21, 2025)

(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 other than an employee of the Commonwealth 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 Commonwealth.

"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;

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; or

5. Any individual whose close association with a covered individual is the equivalent of a family relationship.

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

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

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

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

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

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

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

79 "Safety services" means:

80 1. Legal or law-enforcement assistance or remedies to ensure the health and safety of an individual,
81 including preparing for and participating in protective order proceedings or other civil or criminal legal
82 proceedings related to domestic violence, harassment, sexual assault, or stalking;

83 2. Medical treatment or recovery services for injuries caused by domestic violence, harassment, sexual
84 assault, or stalking;

85 3. Counseling from a licensed mental health professional relating to an experience of domestic violence,
86 harassment, sexual assault, or stalking;

87 4. Services from a victim services provider; and

88 5. Relocation and home security services to ensure the safety of an individual who has experienced
89 domestic violence, harassment, sexual assault, or stalking.

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

93 "Workweek" means a calendar week.

94 **§ 60.2-801. Paid family and medical leave insurance program.**

95 A. By January 1, 2027, the Commission shall establish and administer a paid family and medical leave
96 insurance program and shall begin collecting contributions as provided in this chapter. By January 1, 2028,
97 the Commission shall begin receiving claims and paying family and medical leave benefits to covered
98 individuals.

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

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

106 D. The Department of Human Resource Management shall adopt rules to ensure that its policies relating
107 to family and medical leave for employees of the Commonwealth, including parental leave under § 2.2-1210,
108 provide employees of the Commonwealth with leave benefits equal to or greater than the leave benefits
109 provided to a covered individual under the paid family and medical leave insurance program pursuant to this
110 chapter, including as described in subdivision A 1 of § 60.2-816.

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

112 **§ 60.2-802. Eligibility for benefits; certification.**

113 A. Beginning January 1, 2028, family and medical leave benefits shall be payable to any covered
114 individual who:

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

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

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

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

121 member;

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

125 6. Is seeking safety services for the covered individual or a family member.

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

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

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

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

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

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

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

155 7. For a claimant seeking family and medical leave benefits to seek safety services, a signed statement by
156 the covered individual certifying that such benefits are required.

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

163 **§ 60.2-803. Duration of benefits.**

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

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

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

171 **§ 60.2-804. Amount of benefits.**

172 A. A covered individual's weekly benefit amount shall be 80 percent of such covered individual's average
173 weekly wages during the 12 months preceding such covered individual's initial claim filing, or 80 percent of
174 such covered individual's average weekly wages during the time such covered individual worked if less than
175 12 months, subject to the maximum specified in subsection C.

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

179 C. A covered individual's maximum weekly benefit amount shall be 120 percent of the state average
180 weekly wage, as defined in subsection B of § 65.2-500. By September 30 of each year, the Commission shall
181 adjust the maximum weekly benefit to reflect any changes in such state average weekly wage. The adjusted

182 *maximum weekly benefit amount shall take effect on the following January 1.*

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

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

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

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

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

200 *D. Any moneys provided in the appropriation act for the purposes of establishing the paid family and*
 201 *medical leave insurance program shall be repaid from the Fund to the general fund by January 1, 2033.*

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

204 **§ 60.2-806. Contributions.**

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

207 *B. Beginning on January 1, 2027, each employer shall remit to the Fund contributions in the form and*
 208 *manner determined by the Commission. No later than October 1, 2026, and annually thereafter, the*
 209 *Commissioner shall fix the contribution rate for the coming calendar year in the manner described in this*
 210 *subsection, taking into account the repayment requirement provided for in subsection D of § 60.2-805. For*
 211 *calendar years 2027 and 2028, the Commissioner shall fix such contribution rate based on sound actuarial*
 212 *principles. For calendar year 2029 and thereafter, the Commissioner shall first certify and publish the*
 213 *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 medical*
 218 *leave benefits paid and for the administration of the paid family and medical leave insurance program;*

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

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

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

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

234 *E. Each employer of 10 or fewer employees shall deduct from each employee's wages an amount equal to*
 235 *50 percent of the contribution per employee required of an employer of more than 10 employees pursuant to*
 236 *subsection B. Such employer of 10 or fewer employees shall remit such deducted amount to the Commission*
 237 *for deposit into the Fund and shall not be required to make additional contributions.*

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

242 **§ 60.2-807. Reduced leave schedule.**

243 *A. A covered individual shall have the option to receive paid family and medical leave benefits on an*

244 intermittent or reduced leave schedule in which all of the leave authorized under this chapter is not taken
245 sequentially. Family and medical leave benefits for an intermittent or reduced leave schedule shall be
246 prorated.

247 B. Such covered individual shall make a reasonable effort to schedule paid family and medical leave
248 taken pursuant to this section so as not to unduly disrupt the operations of such covered individual's
249 employer. Such covered individual shall provide such employer with prior notice of the schedule on which
250 such covered individual will be taking the leave, to the extent practicable. Paid family and medical leave
251 taken pursuant to this section shall not result in a reduction of the total amount of leave to which a covered
252 individual is entitled beyond the amount of leave actually taken.

253 **§ 60.2-808. Leave and employment protection; remedies.**

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

259 B. During any leave taken pursuant to this chapter, an employer shall maintain any health care benefits to
260 which a covered individual was entitled prior to taking such leave as if the covered individual had continued
261 working continuously from the date such covered individual commenced the leave until the date such covered
262 individual returns from leave, and such covered individual shall continue to pay his share of the cost of
263 health care benefits as required prior to the commencement of the leave.

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

266 1. Damages equal to:

267 a. The amount of:

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

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

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

275 c. An additional amount as liquidated damages equal to the sum of the amount described in subdivision a
276 and the interest described in subdivision b, except that if an employer who has violated this section or §
277 60.2-809 proves to the satisfaction of the court that the act or omission that violated this section or §
278 60.2-809 was in good faith and that the employer had reasonable grounds for believing that the act or
279 omission was not a violation of this section or § 60.2-809, such court may reduce the amount of the liability
280 to the amount and interest determined under subdivisions a and b, respectively; and

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

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

285 E. Except as provided in subsection F, an action may be brought for a violation of this section or §
286 60.2-809 not later than two years after the date of the last event constituting the alleged violation for which
287 the action is brought.

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

291 **§ 60.2-809. Retaliatory personnel actions prohibited.**

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

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

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

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

306 violation of this chapter.

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

308 **§ 60.2-810. Coordination of benefits.**

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

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

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

318 D. An individual's right to leave under this chapter shall not be diminished by a collective bargaining
319 agreement entered into or renewed, or an employer policy adopted or retained, after January 1, 2026. Any
320 agreement by an individual to waive the individual's rights under this chapter is void as against public
321 policy.

322 **§ 60.2-811. Notice requirements.**

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

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

340 **§ 60.2-812. Appeals.**

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

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

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

349 **§ 60.2-813. Enforcement.**

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

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

367 interest, or any penalty assessed against any employer where in the judgment of the Commissioner the best
 368 interests of the Commonwealth will be promoted or served. The Commissioner may in such cases accept in
 369 full settlement of the contributions assessed an amount less than that assessed.

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

377 **§ 60.2-814. Erroneous payments and disqualification for benefits.**

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

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

386 **§ 60.2-815. Elective coverage.**

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

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

396 **§ 60.2-816. Private employer plans; exemption from contributions.**

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

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

402 a. The provision of family and medical leave benefits for all purposes specified in subsection A of §
 403 60.2-802;

404 b. The provision of family and medical leave benefits for the maximum number of weeks required in §
 405 60.2-803 per application year;

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

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

410 e. A maximum weekly family and medical leave benefit amount that equals or exceeds the amount
 411 specified in subsection C of § 60.2-804 and a minimum weekly family and medical leave benefit amount that
 412 equals or exceeds the amount specified in subsection B of § 60.2-804;

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

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

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

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

421 2. Complies with the following provisions:

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

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

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

428 B. The Commission shall withdraw approval for an employer's private plan pursuant to subsection A if

429 *such employer violates the terms or conditions of such private plan, including by:*

430 *a. Failing to pay benefits;*

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

432 *c. Failing to maintain an adequate surety bond;*

433 *d. Misusing private plan money;*

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

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

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

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

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

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

448 **§ 60.2-817. Federal income tax treatment.**

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

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

453 *2. Requirements exist pertaining to estimated tax payments;*

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

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

457 **§ 60.2-818. Reports; public dashboard.**

458 *By April 1, 2029, and annually thereafter, the Commission shall report to the General Assembly on*
 459 *projected and actual program participation by purpose listed in § 60.2-802, gender of beneficiaries, race and*
 460 *ethnicity of beneficiaries, age of beneficiaries, amount of benefits paid to beneficiaries per week, premium*
 461 *rates, fund balances, outreach efforts, and, for leaves taken under subdivision A 2 of § 60.2-802, family*
 462 *members for whom leave was taken to provide care.*

463 *By July 1, 2026, the Commission shall develop and continually update a publicly accessible online*
 464 *dashboard with information including the number of claims filed and approved and the average times for*
 465 *claim approval, in the aggregate and divided by the purpose for which leave is requested, and additional*
 466 *information as the Commission deems appropriate.*

467 **§ 60.2-819. Public education.**

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

481 **§ 60.2-820. Sharing technology.**

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

484 **§ 60.2-821. Paid Family and Medical Leave Advisory Board.**

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

488 *B. The Board shall have a total membership of 15 members that shall consist of four legislative members*
 489 *and 11 nonlegislative citizen members. Members shall be appointed as follows: two members of the Senate,*

490 to be appointed by the Senate Committee on Rules; two members of the House of Delegates, to be appointed
 491 by the Speaker of the House of Delegates; three nonlegislative citizen members to be appointed by the Senate
 492 Committee on Rules; two nonlegislative citizen members to be appointed by the Speaker of the House of
 493 Delegates; and six nonlegislative citizen members to be appointed by the Governor, one of whom shall be a
 494 representative of the business community, one of whom shall be a representative of a small business, one of
 495 whom shall be a representative of a labor union, one of whom shall be a representative of an advocacy
 496 organization focused on economic issues impacting children and families, one of whom shall be a
 497 representative of an organization that advocates on behalf of people with serious health conditions or
 498 disabilities, and one of whom shall have skill, knowledge, and experience in family and medical leave
 499 programs.

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

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

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

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

514 **2. That the Virginia Employment Commission shall promulgate all rules and regulations necessary for
 515 implementation of this act by July 1, 2026.**

516 **3. That by January 1, 2026, the Department of Human Resource Management (the Department) shall
 517 modify the Commonwealth's policies relating to family and medical leave pursuant to subsection D of §
 518 60.2-801 of the Code of Virginia, as created by this act. In modifying such policies, the Department
 519 shall not reduce any existing leave or benefits available to an employee of the Commonwealth that are
 520 more generous than the leave and benefits provided under the paid family and medical leave insurance
 521 program, as created by this act. The Governor shall include any necessary funding to support such
 522 modifications in "The Budget Bill" submitted for the 2026-2028 biennium pursuant to § 2.2-1509 of the
 523 Code of Virginia.**