

26105567D

HOUSE BILL NO. 1207

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on _____)

(Patron Prior to Substitute—Delegate Sewell)

A BILL to amend and reenact §§ 38.2-107.2, 38.2-135, 38.2-316, and 38.2-1800 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-107.3 and 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 §§ 38.2-107.2, 38.2-135, 38.2-316, and 38.2-1800 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-107.3 and by adding in Title 60.2 a chapter numbered 8, consisting of sections numbered 60.2-800 through 60.2-821, as follows:

§ 38.2-107.2. Private family leave insurance.

"~~Family~~ "Private family leave insurance" means an insurance policy issued to an employer related to a benefit program provided to an employee to pay for a percentage or portion of the employee's income loss due to (i) the birth of a child or adoption of a child by the employee; (ii) placement of a child with the employee for foster care; (iii) care of a family member of the employee who has a serious health condition; or (iv) circumstances arising out of the fact that the employee's family member who is a service member is on active duty or has been notified of an impending call or order to active duty. ~~Family~~ Private family leave insurance may be written as an amendment or rider to a group disability income policy, included in a group disability income policy, or written as a separate group insurance policy purchased by an employer. No employer shall be deemed to fulfill its obligations under the paid family and medical leave insurance program (§ 60.2-800 et seq.) through a private family leave insurance policy unless the Virginia Employment Commission determines that such policy, in combination with a temporary disability insurance policy issued to such employer, meets the minimum requirements necessary for approval pursuant to § 60.2-816.

§ 38.2-107.3. Paid family and medical leave insurance.

"Paid family and medical leave insurance" means an insurance policy issued to an employer that meets the minimum requirements necessary for approval pursuant to § 60.2-816 to qualify as a private plan through which such employer may fulfill its obligations under the paid family and medical leave insurance program (§ 60.2-800 et seq.), as determined by the Virginia Employment Commission.

The Commission and the Virginia Employment Commission shall establish rules, processes for data sharing, and a memorandum of understanding related to their respective roles in implementing the approval of coverage pursuant to this section, authorizing products, and requiring filings related to private family leave insurance, paid family and medical leave, group disability, and individual or group accident and sickness policies.

§ 38.2-135. Classes of insurance companies may be licensed to write.

Except as otherwise provided in this title and subject to any conditions and restrictions imposed therein, any insurer licensed to transact the business of insurance in the Commonwealth, other than life insurers and title insurers, may be licensed to write one or more of the classes of insurance enumerated in Article 2 (§ 38.2-101 et seq.) of this chapter that it is authorized under its charter to write, except life insurance, industrial life insurance, credit life insurance, variable life insurance, modified guaranteed life insurance, annuities, variable annuities, modified guaranteed annuities, and title insurance. An insurer licensed to write life insurance shall not be licensed to write any additional class of insurance except modified guaranteed life insurance, variable life insurance, annuities, modified guaranteed annuities, variable annuities, credit life insurance, credit accident and sickness insurance, accident and sickness insurance, industrial life insurance, ~~and private family leave insurance, and paid family and medical leave insurance.~~ An insurer licensed to write title insurance shall not be licensed to write any additional class of insurance. However, any life insurer that has been licensed to write and has been actively engaged in writing life insurance and any additional class of insurance set out in Article 2 (§ 38.2-101 et seq.) of this chapter continuously during a period of 20 years immediately preceding July 1, 1952, may continue to be licensed to write those classes of insurance. No company shall write any class of insurance unless it has a current annual license from the Commission to do so.

§ 38.2-316. Policy forms to be filed with Commission; notice of approval or disapproval; exceptions.

A. No policy of life insurance, industrial life insurance, variable life insurance, modified guaranteed life insurance, group life insurance, *private family leave insurance, paid family and medical leave insurance,* accident and sickness insurance, or group accident and sickness insurance; no annuity, modified guaranteed annuity, pure endowment, variable annuity, group annuity, group modified guaranteed annuity, or group

variable annuity contract; no health services plan, legal services plan, dental or optometric services plan, or health maintenance organization contract; no dental plan organization dental benefit contract; and no fraternal benefit certificate nor any certificate or evidence of coverage issued in connection with such policy, contract, or plan issued or issued for delivery in Virginia shall be delivered or issued for delivery in the Commonwealth unless a copy of the form has been filed with the Commission. In addition to the above requirement, no policy of accident and sickness insurance ~~or~~, *private family leave insurance, or paid family and medical leave insurance* shall be delivered or issued for delivery in the Commonwealth unless the rate manual showing rates, rules, and classification of risks applicable thereto has been filed with the Commission.

B. Except as provided in this section, no application form shall be used with the policy or contract and no rider or endorsement shall be attached to or printed or stamped upon the policy or contract unless the form of such application, rider or endorsement has been filed with the Commission. No individual certificate and no enrollment form shall be used in connection with any group life insurance policy, group accident and sickness insurance policy, group annuity contract, group variable annuity contract, *group private family leave insurance policy*, or group *paid family and medical leave insurance policy* unless the form for the certificate and enrollment form have been filed with the Commission.

C. 1. None of the policies, contracts, and certificates specified in subsection A shall be delivered or issued for delivery in the Commonwealth and no applications, enrollment forms, riders, and endorsements shall be used in connection with the policies, contracts, and certificates unless the forms thereof have been approved in writing by the Commission as conforming to the requirements of this title and not inconsistent with law.

2. In addition to the above requirement, no premium rate change applicable to individual accident and sickness insurance policies, subscriber contracts of health services plans, dental or optometric services plans, or fraternal benefit contracts providing individual accident and sickness coverage as authorized in § 38.2-4116 shall be used unless the premium rate change has been approved in writing by the Commission. No premium rate change applicable to individual or group Medicare supplement policies shall be used unless the premium rate change has been approved in writing by the Commission.

D. The Commission may disapprove or withdraw approval of the form of any policy, contract or certificate specified in subsection A, or of any application, enrollment form, rider or endorsement, if the form:

1. Does not comply with the laws of the Commonwealth;
2. Has any title, heading, backing or other indication of the contents of any or all of its provisions that is likely to mislead the policyholder, contract holder or certificate holder; or
3. Contains any provisions that encourage misrepresentation or are misleading, deceptive or contrary to the public policy of the Commonwealth.

E. Within 30 days after the filing of any form requiring approval, the Commission shall notify the organization filing the form of its approval or disapproval of the form which has been filed, and, in the event of disapproval, its reason therefor. The Commission, at its discretion, may extend for up to an additional 30 days the period within which it shall approve or disapprove the form. Any form received but neither approved nor disapproved by the Commission shall be deemed approved at the expiration of the 30 days if the period is not extended, or at the expiration of the extended period, if any; however, no organization shall use a form deemed approved under the provisions of this section until the organization has filed with the Commission a written notice of its intent to use the form together with a copy of the form and the original transmittal letter thereof. The notice shall be filed in the offices of the Commission at least 10 days prior to the organization's use of the form.

F. If the Commission proposes to withdraw approval previously given or deemed given to the form of any policy, contract or certificate, or of any application, rider or endorsement, it shall notify the insurer in writing at least 15 days prior to the proposed effective date of withdrawal giving its reasons for withdrawal.

G. Any insurer or fraternal benefit society aggrieved by the disapproval or withdrawal of approval of any form may proceed as indicated in § 38.2-1926.

H. This section shall not apply to any special rider or endorsement on any policy, except an accident and sickness insurance policy that relates only to the manner of distribution of benefits or to the reservation of rights and benefits under such policy, and that is used at the request of the individual policyholder, contract holder or certificate holder.

I. The Commission may exempt any categories of such policies, contracts, and certificates and any applicable rate manuals from (i) the filing requirements, (ii) the approval requirements of this section, or (iii) both such requirements. The Commission may modify such requirements, subject to such limitations and conditions which the Commission finds appropriate. In promulgating an exemption, the Commission may consider the nature of the coverage, the person or persons to be insured or covered, the competence of the buyer or other parties to the contract, and other criteria the Commission considers relevant.

J. In lieu of complying with the requirements of subsections A, B, and C, any legal services organization operating, conducting, or administering a legal services plan may provide the Commission with an informational filing regarding a subscription contract, enrollment form, rider, or endorsement used by the

legal services organization in connection with a legal services plan offered in the Commonwealth together with written notice of its intent to use the form. Upon providing such informational filing and notice, the legal services organization may use the subscription contract, enrollment form, rider, or endorsement without its prior approval by the Commission. This subsection shall not limit the authority of the Commission to review a legal services plan and any subscription contract, enrollment form, rider, or endorsement used in connection therewith and to disapprove the use of such form for any of the grounds set forth in subsection D.

K. Pursuant to the authority granted by § 38.2-223, the Commission may promulgate such rules and regulations as it may deem necessary to set standards for policy and other form submissions required by this section or § 38.2-3501.

§ 38.2-1800. Definitions.

As used in this chapter:

"Agent," "insurance agent," "producer," or "insurance producer," when used without qualification, means an individual or business entity that sells, solicits, or negotiates contracts of insurance or annuity in the Commonwealth.

"Appointed agent," "appointed insurance agent," "appointed producer," or "appointed insurance producer," when used without qualification, means an individual or business entity licensed in the Commonwealth to sell, solicit, or negotiate contracts of insurance or annuity of the classes authorized within the scope of such license and who is appointed by a company licensed in the Commonwealth to sell, solicit, or negotiate on its behalf contracts of insurance of the classes authorized within the scope of such license and, if authorized by the company, may collect premiums on those contracts.

"Business entity" means a partnership, limited partnership, limited liability company, corporation, or other legal entity other than a sole proprietorship.

"Dental plan organization authority" means the authority in the Commonwealth to sell, solicit, or negotiate dental benefit contracts on behalf of dental plan organizations licensed under Chapter 61 (§ 38.2-6100 et seq.).

"Dental services authority" means the authority in the Commonwealth to sell, solicit, or negotiate dental services plan contracts on behalf of dental services plans licensed under Chapter 45 (§ 38.2-4500 et seq.).

"Filed" means received by the Commission.

"Health agent" means an agent licensed in the Commonwealth to sell, solicit, or negotiate insurance as defined in §§ 38.2-107.2, ~~38.2-108, and through~~ 38.2-109, and including contracts issued by insurers, health services plans, health maintenance organizations, dental services plans, optometric services plans, and dental plan organizations licensed in the Commonwealth.

"Home protection insurance authority" means the authority in the Commonwealth to sell, solicit, or negotiate home protection insurance as defined in § 38.2-129 on behalf of insurers licensed in the Commonwealth.

"Home state" means the District of Columbia and any state or territory of the United States, except Virginia, or any province of Canada, in which an insurance producer maintains such person's principal place of residence or principal place of business and is licensed by that jurisdiction to act as a resident insurance producer.

"Legal services insurance authority" means the authority in the Commonwealth to sell, solicit, or negotiate legal services insurance as defined in § 38.2-127 on behalf of insurers licensed in the Commonwealth.

"License" means a document issued by the Commission authorizing an individual or business entity to act as an insurance producer for the lines of authority specified in the document. Except as provided in § 38.2-1833, the license itself does not create any authority, actual, apparent or inherent, in the licensee to represent, commit, or bind an insurer.

"Licensed agent," "licensed insurance agent," "licensed producer," or "licensed insurance producer," when used without qualification, means an individual or business entity licensed in the Commonwealth to sell, solicit, or negotiate contracts of insurance or annuity of the classes authorized within the scope of such license.

"Life and annuities insurance agent" means an agent licensed in the Commonwealth to sell, solicit, or negotiate life insurance and annuity contracts as defined in §§ 38.2-102, 38.2-103, 38.2-104, 38.2-105.1, 38.2-106, and 38.2-107.1, respectively, ~~and private family leave insurance as defined in § 38.2-107.2, and paid family and medical leave insurance as defined in § 38.2-107.3~~ on behalf of insurers licensed in the Commonwealth.

"Limited burial insurance authority" means the authority in the Commonwealth to sell, solicit, or negotiate burial insurance society membership where the certificates of membership are used solely to fund preneed funeral contracts on any individual, on behalf of insurers licensed under Chapter 40 (§ 38.2-4000 et seq.); or to represent an association referred to in § 38.2-3318.1, limited to soliciting members of that association for association group life insurance certificates where the funds are used solely to fund preneed funeral contracts.

"Limited lines credit insurance agent" means an agent licensed in the Commonwealth whose authority is restricted to selling, soliciting, or negotiating, on behalf of insurers licensed in the Commonwealth, one or more of the following coverages to individuals through a master, corporate, group or individual policy: (i)

credit life insurance and credit accident and sickness insurance, but only to the extent authorized in Chapter 37.1 (§ 38.2-3717 et seq.); (ii) credit involuntary unemployment insurance as defined in § 38.2-122.1; (iii) credit property insurance, as defined in § 38.2-122.2; (iv) mortgage accident and sickness insurance; (v) mortgage redemption insurance; (vi) mortgage guaranty insurance; and (vii) any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation and that the Commission specifically determines may be sold, solicited, or negotiated by those holding a limited lines credit insurance agent license. Each insurer that sells, solicits or negotiates any of the coverages set forth in this definition shall provide to each individual whose duties will include selling, soliciting or negotiating such coverages a program of instruction that may, at the discretion of the Commission, be submitted for approval by the Commission or reviewed by the Commission subsequent to its implementation.

"Limited lines life and health agent" means an individual or business entity authorized by the Commission whose license authority to sell, solicit, or negotiate is limited to the following, or any other type of authority that the Commission may deem it necessary to recognize for the purposes of complying with § 38.2-1836: dental services authority; limited burial insurance authority; mutual assessment life and health insurance authority; optometric services authority; and dental plan organization authority. Limited lines life and health insurance shall not include life insurance, health insurance, property insurance, casualty insurance, private family leave insurance, *paid family and medical leave insurance*, and title insurance.

"Limited lines property and casualty agent" means an individual or business entity authorized by the Commission whose license authority to sell, solicit, or negotiate is limited to the following, or any other type of authority that the Commission may deem it necessary to recognize for the purposes of complying with § 38.2-1836: home protection insurance authority; legal services insurance authority; mutual assessment property and casualty insurance authority; ocean marine insurance authority; pet accident, sickness and hospitalization insurance authority; portable electronics insurance authority; self storage insurance authority; and travel insurance. Unless otherwise defined, "limited lines property and casualty insurance" shall not include life insurance, health insurance, property insurance, casualty insurance, private family leave insurance, *paid family and medical leave insurance*, and title insurance.

"Mortgage accident and sickness insurance authority" means the authority in the Commonwealth to sell, solicit, or negotiate mortgage accident and sickness insurance on behalf of insurers licensed in the Commonwealth.

"Mortgage guaranty insurance authority" means the authority in the Commonwealth to sell, solicit, or negotiate mortgage guaranty insurance on behalf of insurers licensed in the Commonwealth.

"Mortgage redemption insurance authority" means the authority in the Commonwealth to sell, solicit, or negotiate mortgage redemption insurance on behalf of insurers licensed in the Commonwealth. As used in this chapter, "mortgage redemption insurance" means a nonrenewable, nonconvertible, decreasing term life insurance policy written in connection with a mortgage transaction for a period of time coinciding with the term of the mortgage. The initial sum shall not exceed the amount of the indebtedness outstanding at the time the insurance becomes effective, rounded up to the next \$1,000.

"Motor vehicle rental contract enroller" means an unlicensed hourly or salaried employee of a motor vehicle rental company that is in the business of providing primarily private motor vehicles to the public under a rental agreement for a period of less than six months, and receives no direct or indirect commission from the insurer, the renter or the vehicle rental company.

"Motor vehicle rental contract insurance agent" means a person who (i) is a selling agent of a motor vehicle rental company that is in the business of providing primarily private passenger motor vehicles to the public under a rental agreement for a period of less than six months and (ii) whose license in the Commonwealth is restricted to selling, soliciting, or negotiating only the following insurance coverages, and solely in connection with and incidental to the rental contract:

1. Personal accident insurance that provides benefits in the event of accidental death or injury occurring during the rental period;

2. Liability coverage sold to the renter in excess of the rental company's obligations under § 38.2-2204, 38.2-2205, or Title 46.2, as applicable;

3. Personal effects insurance that provides coverages for the loss of or damage to the personal effects of the renter and other vehicle occupants while such personal effects are in or upon the rental vehicle during the rental period;

4. Roadside assistance and emergency sickness protection programs; and

5. Other travel-related or vehicle-related insurance coverage that a motor vehicle rental company offers in connection with and incidental to the rental of vehicles.

The term "motor vehicle rental contract insurance agent" does not include motor vehicle rental contract enrollers.

"Mutual assessment life and health insurance authority" means the authority in the Commonwealth to sell, solicit, or negotiate mutual assessment life and accident and sickness insurance on behalf of insurers licensed under Chapter 39 (§ 38.2-3900 et seq.), but only to the extent permitted under § 38.2-3919.

"Mutual assessment property and casualty insurance authority" means the authority in the Commonwealth to sell, solicit, or negotiate mutual assessment property and casualty insurance on behalf of insurers licensed under Chapter 25 (§ 38.2-2500 et seq.), but only to the extent permitted under § 38.2-2525.

"NAIC" means the National Association of Insurance Commissioners.

"Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

"Ocean marine insurance authority" means the authority in the Commonwealth to sell, solicit, or negotiate those classes of insurance classified in § 38.2-126, except those classes specifically classified as inland marine insurance, on behalf of insurers licensed in the Commonwealth.

"Optometric services authority" means the authority in the Commonwealth to sell, solicit, or negotiate optometric services plan contracts on behalf of optometric services plans licensed under Chapter 45 (§ 38.2-4500 et seq.).

"Personal lines agent" means an agent licensed in the Commonwealth to sell, solicit, or negotiate insurance as defined in §§ 38.2-110 through 38.2-114, 38.2-116, 38.2-117, 38.2-118, 38.2-124, 38.2-125, 38.2-126, 38.2-129, 38.2-130, and 38.2-131 for transactions involving insurance primarily for personal, family, or household needs rather than for business or professional needs.

"Pet accident, sickness and hospitalization insurance authority" means the authority in the Commonwealth to sell, solicit, or negotiate pet accident, sickness and hospitalization insurance on behalf of insurers licensed in the Commonwealth.

"Property and casualty insurance agent" means an agent licensed in the Commonwealth to sell, solicit, or negotiate both personal and commercial lines of insurance as defined in §§ 38.2-107.2, 38.2-107.3, 38.2-110 through 38.2-122.2, and 38.2-124 through 38.2-134 on behalf of insurers licensed in the Commonwealth.

"Resident" means (i) an individual residing in Virginia; (ii) an individual residing outside of Virginia whose principal place of business is in Virginia, who is able to demonstrate to the satisfaction of the Commission that the laws of his home state prevent him from obtaining a resident agent license in that state, and who affirmatively chooses to qualify as and be treated as a resident of Virginia for purposes of licensing and continuing education, both in Virginia and in the state in which the individual resides, if applicable; (iii) a partnership duly formed and recorded in Virginia; (iv) a corporation incorporated and existing under the laws of Virginia; (v) a limited liability company organized and existing under the laws of Virginia; or (vi) a foreign business entity that is not licensed as a resident agent in any other jurisdiction, and that demonstrates to the satisfaction of the Commission that its principal place of business is within the Commonwealth of Virginia.

"Restricted nonresident health agent" means a nonresident agent whose license authority in his home state does not include all of the authority granted under a health agent license in Virginia. The license issued to such agent shall authorize the agent to sell, solicit, or negotiate in Virginia, on behalf of insurers licensed in Virginia, only those kinds or classes of insurance for which the agent is authorized in his home state.

"Restricted nonresident life and annuities agent" means a nonresident agent whose license authority in his home state does not include all of the authority granted under a life and annuities agent license in Virginia. The license issued to such agent shall authorize the agent to sell, solicit, or negotiate in Virginia, on behalf of insurers licensed in Virginia, only those kinds or classes of insurance for which the agent is authorized in his home state.

"Restricted nonresident personal lines agent" means a nonresident agent whose license authority in his home state does not include all of the authority granted under a personal lines agent license in Virginia. The license issued to such agent shall authorize the agent to sell, solicit, or negotiate in Virginia, on behalf of insurers licensed in Virginia, only those kinds or classes of insurance for which the agent is authorized in his home state.

"Restricted nonresident property and casualty agent" means a nonresident agent whose license authority in his home state does not include all of the authority granted under a property and casualty agent license in Virginia. The license issued to such agent shall authorize the agent to sell, solicit, or negotiate in Virginia, on behalf of insurers licensed in Virginia, only those kinds or classes of insurance for which the agent is authorized in his home state.

"Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.

"Settlement agent" means a person licensed as a title insurance agent and registered with the Virginia State Bar pursuant to Chapter 10 (§ 55.1-1000 et seq.) of Title 55.1.

"Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular class of insurance from one or more insurers.

"Surety bail bondsman" means a person licensed as a surety bail bondsman pursuant to Article 11 (§ 9.1-185 et seq.) of Chapter 1 of Title 9.1.

"Surplus lines broker" means a person licensed pursuant to Article 5.1 (§ 38.2-1857.1 et seq.) of this

chapter, and who is thereby authorized to engage in the activities set forth in Chapter 48 (§ 38.2-4805.1 et seq.).

"Terminate" means the cancellation of the relationship between an insurance producer and the insurer, or the termination of an insurance producer's authority to transact insurance.

"Title insurance agent" means an agent licensed in the Commonwealth to sell, solicit, or negotiate title insurance, and performing all of the services set forth in § 38.2-4601.1, on behalf of title insurance companies licensed under Chapter 46 (§ 38.2-4600 et seq.).

"Uniform Application" means the current version of the NAIC Uniform Application for resident and nonresident producer licensing.

"Uniform Business Entity Application" means the current version of the NAIC Uniform Business Entity Application for resident and nonresident business entities.

"Variable contract agent" means an agent licensed in the Commonwealth to sell, solicit, or negotiate variable life insurance and variable annuity contracts on behalf of insurers licensed in the Commonwealth.

"Viatical settlement broker" means a person licensed pursuant to Chapter 60 (§ 38.2-6000 et seq.), in accordance with Article 6.1 (§ 38.2-1865.1 et seq.) of this chapter, and who is thereby authorized to engage in the activities set forth in Chapter 60 (§ 38.2-6000 et seq.).

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 younger 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.

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

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

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

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

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

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

"Safety services" means:

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

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

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

4. Services from a victim services provider; and

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

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

"Workweek" means a calendar week.

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

A. By January 1, 2028, the Commission shall establish and administer a paid family and medical leave insurance program. By July 1, 2028, the Commission shall begin collecting contributions as provided in this chapter. By January 1, 2029, the Commission shall begin receiving claims and paying family and medical leave benefits to covered individuals.

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

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

D. The Commissioner shall adopt regulations as necessary to implement this chapter, including (i) a process for receiving claims filed under this chapter, (ii) the form of any application, (iii) the timeline and process for providing notice of a claim to an employer, (iv) the timeline and process for making initial claim determinations, and (v) the timeline and process for requesting information prior to any decision on a claim being rendered.

§ 60.2-802. Eligibility for benefits; certification.

A. Beginning January 1, 2029, family and medical leave benefits shall be payable to any covered individual who:

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

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

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

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

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

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

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

1. For a claimant seeking family and medical leave benefits due to a serious health condition, certification from a physician or health care provider (i) describing such condition, (ii) stating the date on which such condition commenced or is expected to commence and the probable duration of such condition, (iii) including a statement that such claimant is unable to perform job functions due to such condition, and (iv) including other appropriate medical facts as required by the Commission. Such certification shall be provided between 60 days prior to and 90 days after the start date of leave.

2. For a claimant seeking family and medical leave benefits due to the serious health condition of a family member, certification from a physician or health care provider (i) describing such condition, (ii) stating the date on which such condition commenced or is expected to commence and the probable duration of such condition, (iii) including a statement that such condition requires such claimant to care for such family member and an estimated duration of such care, and (iv) including other appropriate medical facts as required by the Commission. Such certification shall be provided between 60 days prior to and 90 days after the start date of leave.

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

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

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

6. For a claimant seeking family and medical leave benefits in order to care for a family member who is a covered service member, certification including (i) the date on which the serious health condition commenced or is expected to commence, (ii) the probable duration of the condition, (iii) the appropriate medical facts within the knowledge of the health care provider as required by the Commission, (iv) a statement that the claimant is needed to care for the family member, (v) an estimate of the amount of time that the claimant is needed to care for the family member, and (vi) an attestation by the claimant that the health condition is connected to the covered service member's military service as required by this chapter. Such certification shall be provided between 60 days prior to and 90 days after the start date of leave.

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

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

§ 60.2-803. Duration of benefits.

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

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

C. The first payment of family and medical leave benefits shall be made to a covered individual no later than two weeks after (i) the Commission has approved an initial claim pursuant to this chapter or (ii) the duration of leave pursuant to an approved claim pursuant to this chapter has commenced, whichever occurs later. Subsequent payments shall be made at least every two weeks thereafter.

§ 60.2-804. Amount of benefits.

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

12 months, subject to the maximum specified in subsection C.

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

C. A covered individual's maximum weekly benefit amount shall be 100 percent of the state average weekly wage, as described in subsection B of § 65.2-500. By September 30 of each year, the Commission shall adjust the maximum weekly benefit to reflect any changes in such state average weekly wage. The adjusted maximum weekly benefit amount shall take effect on the following January 1.

D. Claims pursuant to this chapter shall be payable for at least eight hours of family and medical leave accrued in one workweek unless the Commission sets a lower threshold.

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

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

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

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

D. Any moneys provided in the appropriation act for the purposes of establishing the paid family and medical leave insurance program shall be repaid from the Fund to the general fund by January 1, 2034.

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

§ 60.2-806. Contributions.

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

B. Beginning on July 1, 2028, each employer shall remit to the Fund contributions in the form and manner determined by the Commission. No later than October 1, 2027, and annually thereafter, the Commissioner shall fix the contribution rate for the coming calendar year in the manner described in this subsection, taking into account the repayment requirement provided for in subsection D of § 60.2-805. For calendar years 2028 and 2029, the Commissioner shall fix such contribution rate based on sound actuarial principles. For calendar year 2030 and thereafter, the Commissioner shall first certify and publish the following information:

1. The total amounts of the previous fiscal year's expenditures for (i) family and medical leave benefits paid and (ii) the administration of the paid family and medical leave insurance program;

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

3. The amount by which the contribution rate shall be adjusted to ensure that the projected balance of the Fund as a percentage of total program expenditures does not fall below 40 percent. The contribution rate adjustment, if any, made as the result of the Commissioner's certification and report under this subsection shall supersede the rate previously set forth and shall become effective on January 1 of the following calendar year.

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

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

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

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

§ 60.2-807. Reduced leave schedule.

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

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

566 **§ 60.2-808. Leave and employment protection; remedies.**

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

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

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

579 1. Damages equal to:

580 a. The amount of:

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

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

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

588 c. An additional amount as liquidated damages equal to the sum of the amount described in subdivision a
589 and the interest described in subdivision b, except that if an employer who has violated this section or
590 § 60.2-809 proves to the satisfaction of the court that the act or omission that violated this section or
591 § 60.2-809 was in good faith and that the employer had reasonable grounds for believing that the act or
592 omission was not a violation of this section or § 60.2-809, such court may reduce the amount of the liability
593 to the amount and interest determined under subdivisions a and b, respectively; and

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

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

598 E. Except as provided in subsection F, an action may be brought for a violation of this section or
599 § 60.2-809 not later than two years after the date of the last event constituting the alleged violation for which
600 the action is brought.

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

604 **§ 60.2-809. Retaliatory personnel actions prohibited.**

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

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

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

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

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

§ 60.2-810. Coordination of benefits; applicability of chapter.

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

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

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

D. No provision of this chapter shall apply to an employer or employee as such terms are defined in 45 U.S.C. § 351.

E. An individual's right to leave under this chapter shall not be diminished by a collective bargaining agreement entered into or renewed, or an employer policy adopted or retained, after January 1, 2027. Any agreement by an individual to waive the individual's rights under this chapter is void as against public policy.

§ 60.2-811. Notice requirements.

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

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

§ 60.2-812. Appeals.

A. The Commissioner shall establish a system for appeals within 90 days of a denial of a claim for family and medical leave benefits. In establishing such system, the Commissioner may utilize any and all procedures and appeals mechanisms established under this title.

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

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

§ 60.2-813. Enforcement.

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

B. If, after notice, any employer defaults in any payment of contributions or interest, the amount due shall be collected by civil action in the name of the Commissioner. The employer adjudged in default shall pay the fees and costs of such action. Civil actions brought under this chapter to collect contributions or interest or any penalty from an employer shall be heard by the court at the earliest possible date. Such civil actions may be brought against any officer, employee, or agent of a corporation or partnership in his individual, personal capacity when that person willfully fails to cause the employer to pay the appropriate contributions or interest and he had the authority to do so. No person shall be subject to this section unless it is proved that such person (i) knew of the failure or attempt to make such payment and (ii) had authority to prevent such failure or attempt. In addition to the foregoing remedies, the Commissioner shall have such other remedies as

680 are available to the Tax Commissioner and county and city treasurers for the collection of taxes generally.
681 The Commissioner is authorized to compromise, settle, and adjust any contributions, including interest, or
682 any penalty assessed against any employer where in the judgment of the Commissioner the best interests of
683 the Commonwealth will be promoted or served. The Commissioner may in such cases accept in full settlement
684 of the contributions assessed an amount less than that assessed.

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

692 **§ 60.2-814. Erroneous payments and disqualification for benefits.**

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

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

701 **§ 60.2-815. Elective coverage.**

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

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

711 **§ 60.2-816. Private employer plans; exemption from contributions.**

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

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

717 a. The provision of family and medical leave benefits for all purposes specified in subsection A of
718 § 60.2-802;

719 b. The provision of family and medical leave benefits for the maximum number of weeks required in
720 § 60.2-803 per application year;

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

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

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

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

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

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

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

736 2. Complies with the following provisions:

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

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

741 c. If such plan is in the form of a third-party provider of insurance, the forms of the policy must be issued

by an insurer approved by the Commission.

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

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

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

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

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

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

G. The Commission and the State Corporation Commission shall establish rules, processes for data sharing, and a memorandum of understanding related to their respective roles in implementing the approval of coverage pursuant to this section, authorizing products, and requiring filings related to private family leave insurance, paid family and medical leave, group disability, and individual or group accident and sickness policies.

§ 60.2-817. Federal income tax treatment.

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

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

§ 60.2-818. Reports; public dashboard.

By April 1, 2030, and annually thereafter, the Commission shall report to the General Assembly on projected and actual program participation by purpose listed in § 60.2-802, gender of beneficiaries, race and ethnicity of beneficiaries, age of beneficiaries, amount of benefits paid to beneficiaries per week, premium rates, fund balances, outreach efforts, and, for leaves taken under subdivision A 2 of § 60.2-802, family members for whom leave was taken to provide care.

The Commission shall develop and continually update a publicly accessible online dashboard with information including the number of claims filed and approved and the average times for claim approval, in the aggregate and divided by the purpose for which leave is requested, and additional information as the Commission deems appropriate. The dashboard shall be developed and launched no later than the date on which family and medical leave benefits are first paid pursuant to this chapter.

§ 60.2-819. Public education.

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

§ 60.2-820. Sharing technology.

The Commission is encouraged to use state data collection and technology to the extent possible and to integrate the provisions of this chapter with existing state policies. To the extent permitted by law, the

804 Commonwealth may make relevant data sources from state agencies available to the Commission for the
805 purposes of implementing the provisions of this chapter to increase the efficiency of eligibility and benefit
806 determinations under this chapter.

807 **§ 60.2-821. Paid Family and Medical Leave Advisory Board.**

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

811 B. The Board shall have a total membership of 18 members that shall consist of five legislative members
812 and 13 nonlegislative citizen members. Members shall be appointed as follows: two members of the Senate,
813 to be appointed by the Senate Committee on Rules; three members of the House of Delegates, to be appointed
814 by the Speaker of the House of Delegates; three nonlegislative citizen members to be appointed by the Senate
815 Committee on Rules; two nonlegislative citizen members to be appointed by the Speaker of the House of
816 Delegates; and eight nonlegislative citizen members to be appointed by the Governor, one of whom shall be a
817 representative of the business community, one of whom shall be a representative of a small business, one of
818 whom shall be a representative of a labor union, one of whom shall be a representative of an advocacy
819 organization focused on economic issues impacting children and families, one of whom shall be a
820 representative of an organization that advocates on behalf of people with serious health conditions or
821 disabilities, one of whom shall be a public technology expert or a technical advisor on information
822 technology and data for the Commonwealth, one of whom shall be a human-centered design expert, and one
823 of whom shall have skill, knowledge, and experience in family and medical leave programs.

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

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

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

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

838 **2. That the Virginia Employment Commission shall promulgate all rules and regulations necessary for**
839 **implementation of this act by July 1, 2028.**

840 **3. That by January 1, 2029, the Department of Human Resource Management (the Department) shall**
841 **modify the Commonwealth's policies relating to family and medical leave pursuant to subsection C of**
842 **§ 60.2-801 of the Code of Virginia, as created by this act. In modifying such policies, the Department**
843 **shall not reduce any existing leave or benefits available to an employee of the Commonwealth that are**
844 **more generous than the leave and benefits provided under the paid family and medical leave insurance**
845 **program, as created by this act.**