

26107639D

HOUSE BILL NO. 1207

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations

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

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

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

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

80 2. In addition to the above requirement, no premium rate change applicable to individual accident and
81 sickness insurance policies, subscriber contracts of health services plans, dental or optometric services plans,
82 or fraternal benefit contracts providing individual accident and sickness coverage as authorized in
83 § 38.2-4116 shall be used unless the premium rate change has been approved in writing by the Commission.
84 No premium rate change applicable to individual or group Medicare supplement policies shall be used unless
85 the premium rate change has been approved in writing by the Commission.

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

89 1. Does not comply with the laws of the Commonwealth;

90 2. Has any title, heading, backing or other indication of the contents of any or all of its provisions that is
91 likely to mislead the policyholder, contract holder or certificate holder; or

92 3. Contains any provisions that encourage misrepresentation or are misleading, deceptive or contrary to
93 the public policy of the Commonwealth.

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

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

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

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

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

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

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

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

131 **§ 38.2-1800. Definitions.**

132 As used in this chapter:

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

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

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

144 "Dental plan organization authority" means the authority in the Commonwealth to sell, solicit, or
 145 negotiate dental benefit contracts on behalf of dental plan organizations licensed under Chapter 61
 146 (§ 38.2-6100 et seq.).

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

149 "Filed" means received by the Commission.

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

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

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

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

163 "License" means a document issued by the Commission authorizing an individual or business entity to act
 164 as an insurance producer for the lines of authority specified in the document. Except as provided in
 165 § 38.2-1833, the license itself does not create any authority, actual, apparent or inherent, in the licensee to
 166 represent, commit, or bind an insurer.

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

171 "Life and annuities insurance agent" means an agent licensed in the Commonwealth to sell, solicit, or
 172 negotiate life insurance and annuity contracts as defined in §§ 38.2-102, 38.2-103, 38.2-104, 38.2-105.1,
 173 38.2-106, and 38.2-107.1, respectively, ~~and~~ *private* family leave insurance as defined in § 38.2-107.2, ~~and~~
 174 *paid family and medical leave insurance as defined in § 38.2-107.3* on behalf of insurers licensed in the
 175 Commonwealth.

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

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

184 credit life insurance and credit accident and sickness insurance, but only to the extent authorized in Chapter
185 37.1 (§ 38.2-3717 et seq.); (ii) credit involuntary unemployment insurance as defined in § 38.2-122.1; (iii)
186 credit property insurance, as defined in § 38.2-122.2; (iv) mortgage accident and sickness insurance; (v)
187 mortgage redemption insurance; (vi) mortgage guaranty insurance; and (vii) any other form of insurance
188 offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit
189 obligation and that the Commission specifically determines may be sold, solicited, or negotiated by those
190 holding a limited lines credit insurance agent license. Each insurer that sells, solicits or negotiates any of the
191 coverages set forth in this definition shall provide to each individual whose duties will include selling,
192 soliciting or negotiating such coverages a program of instruction that may, at the discretion of the
193 Commission, be submitted for approval by the Commission or reviewed by the Commission subsequent to its
194 implementation.

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

202 "Limited lines property and casualty agent" means an individual or business entity authorized by the
203 Commission whose license authority to sell, solicit, or negotiate is limited to the following, or any other type
204 of authority that the Commission may deem it necessary to recognize for the purposes of complying with
205 § 38.2-1836: home protection insurance authority; legal services insurance authority; mutual assessment
206 property and casualty insurance authority; ocean marine insurance authority; pet accident, sickness and
207 hospitalization insurance authority; portable electronics insurance authority; self storage insurance authority;
208 and travel insurance. Unless otherwise defined, "limited lines property and casualty insurance" shall not
209 include life insurance, health insurance, property insurance, casualty insurance, private family leave
210 insurance, *paid family and medical leave insurance*, and title insurance.

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

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

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

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

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

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

233 2. Liability coverage sold to the renter in excess of the rental company's obligations under § 38.2-2204,
234 38.2-2205, or Title 46.2, as applicable;

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

238 4. Roadside assistance and emergency sickness protection programs; and

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

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

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

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

249 "NAIC" means the National Association of Insurance Commissioners.

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

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

257 "Optometric services authority" means the authority in the Commonwealth to sell, solicit, or negotiate
258 optometric services plan contracts on behalf of optometric services plans licensed under Chapter 45
259 (§ 38.2-4500 et seq.).

260 "Personal lines agent" means an agent licensed in the Commonwealth to sell, solicit, or negotiate
261 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,
262 38.2-126, 38.2-129, 38.2-130, and 38.2-131 for transactions involving insurance primarily for personal,
263 family, or household needs rather than for business or professional needs.

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

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

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

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

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

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

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

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

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

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

305 "Surety bail bondsman" means a person licensed as a surety bail bondsman pursuant to Article 11
306 (§ 9.1-185 et seq.) of Chapter 1 of Title 9.1.

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

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

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

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

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

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

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

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

324 CHAPTER 8.

325 PAID FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.

326 § 60.2-800. Definitions.

327 *As used in this chapter, unless the context requires a different meaning:*

328 "Armed Forces" means the Armed Forces of the United States, the Reserves of the Armed Forces of the
329 United States, or the Virginia National Guard.

330 "Benefit year" means the period of 52 calendar weeks beginning the start date of leave, except that the
331 benefit year shall be 53 weeks if filing of a new valid claim would result in overlapping any quarter of the
332 base period of a previously filed new claim.

333 "Board" means the Paid Family and Medical Leave Advisory Board.

334 "Child" includes a child of any age, including an adult child.

335 "Commission" means the Virginia Employment Commission, unless otherwise specified.

336 "Commissioner" means the Commissioner of the Virginia Employment Commission, unless otherwise
337 specified.

338 "Covered individual" means any individual other than an employee of the Commonwealth who:

339 1. Either:

340 a. Meets the minimum monetary eligibility criteria set forth in subdivision A 1 of § 60.2-612; or

341 b. Is self-employed, elects coverage, and meets the requirements of § 60.2-802;

342 2. Meets the administrative requirements outlined in this chapter and in regulations; and

343 3. Submits an application.

344 "Covered service member" means either (i) a member of the Armed Forces who is (a) undergoing medical
345 treatment, recuperation, or therapy; (b) otherwise in outpatient status; or (c) otherwise on the temporary
346 disability retired list for a serious injury or illness that was incurred by the member in the line of duty while
347 on active duty in the Armed Forces, or a serious injury or illness that existed before the beginning of the
348 member's active duty and was aggravated by service in the line of duty, or (ii) a former member of the Armed
349 Forces who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness that was
350 incurred by the member in the line of duty while on active duty in the Armed Forces, or a serious injury or
351 illness that existed before the beginning of the member's active duty and was aggravated by service in the line
352 of duty and manifested before or after the member was discharged or released from service.

353 "Domestic partner" means a person not younger than 18 years of age who (i) is dependent upon the
354 covered individual for support as shown by either unilateral dependence or mutual interdependence that is
355 evidenced by a nexus of factors, including (a) common ownership of real or personal property, (b) common
356 householding, (c) children in common, (d) signs of intent to marry, (e) shared budgeting, and (f) the length of
357 the personal relationship with the covered individual, or (ii) has registered as the domestic partner of the
358 covered individual with any registry of domestic partnerships maintained by the employer of either party, or
359 in any state, county, city, town, or village in the United States.

360 "Employer" has the same meaning as provided in § 60.2-210, except that, for the purposes of this chapter,
361 "employer" does not include the Commonwealth.

362 "Family and medical leave benefits" means the benefits provided under the terms of this chapter.

363 "Family member" means:

364 1. A biological, adopted, or foster child, a stepchild or legal ward, a child of a domestic partner, or a
365 child to whom the covered individual stands in loco parentis;

366 2. A biological, adoptive, or foster parent, stepparent, or legal guardian of a covered individual or a
367 covered individual's spouse or domestic partner, or a person who stood in loco parentis when the covered
368 individual or the covered individual's spouse or domestic partner was a minor child;

369 3. A person to whom the covered individual is legally married under the laws of any state, or a domestic

370 partner of a covered individual;

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

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

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

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

377 "Health care provider" means a person licensed under the law of the jurisdiction in which such person
378 practices to provide medical or emergency services, including any person defined as a health care provider
379 under § 32.1-276.3, emergency room personnel, licensed clinical social workers, and other providers
380 permitted by the Commissioner.

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

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

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

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

396 "Safety services" means:

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

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

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

404 4. Services from a victim services provider; and

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

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

410 "Workweek" means a calendar week.

411 **§ 60.2-801. Paid family and medical leave insurance program.**

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

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

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

426 D. The Commissioner shall adopt regulations as necessary to implement this chapter, including (i) a
427 process for receiving claims filed under this chapter, (ii) the form of any application, (iii) the timeline and
428 process for providing notice of a claim to an employer, (iv) the timeline and process for making initial claim
429 determinations, (v) the timeline and process for requesting information prior to any decision on a claim being
430 rendered, and (vi) the process and requirements for certification as described in subsection B of § 60.2-802,
431 as well as a timeline for such certification.

432 **§ 60.2-802. Eligibility for benefits; certification.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

476 7. For a claimant seeking family and medical leave benefits to seek safety services, a certification
477 including information as required by the Commissioner.

478 C. A self-employed individual electing coverage within 26 weeks of becoming self-employed will be
479 eligible to receive benefits without a waiting period. A self-employed individual who elects coverage after 26
480 weeks shall be eligible for benefits after a waiting period of 52 weeks before such benefits shall be paid.

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

487 **§ 60.2-803. Duration of benefits.**

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

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

492 C. The first payment of family and medical leave benefits shall be made to a covered individual no later
493 than two weeks after (i) the Commission has approved an initial claim pursuant to this chapter or (ii) the

494 duration of leave pursuant to an approved claim pursuant to this chapter has commenced, whichever occurs
495 later. Subsequent payments shall be made at least every two weeks thereafter.

496 **§ 60.2-804. Amount of benefits.**

497 A. A covered individual's weekly benefit amount shall be 80 percent of such covered individual's average
498 weekly wages during the base period as defined in § 60.2-204, or 80 percent of such covered individual's
499 average weekly wages during the quarters such covered individual worked if less than five quarters, subject
500 to the maximum specified in subsection D.

501 B. For a self-employed person electing coverage under § 60.2-815, the weekly benefit amount shall be 80
502 percent of such covered individual's net earnings during the base period as defined in § 60.2-204, or 80
503 percent of such covered individual's average weekly wages during the quarters such covered individual
504 worked if less than five quarters, subject to the maximum specified in subsection D.

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

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

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

514 **§ 60.2-805. Family and Medical Leave Insurance Trust Fund; appropriation prohibition;
515 reimbursement.**

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

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

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

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

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

533 **§ 60.2-806. Contributions.**

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

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

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

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

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

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

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

556 *employee pursuant to subsection B to the Commission for deposit into the Fund.*

557 *E. Each employer of 10 or fewer employees shall deduct from each employee's wages an amount equal to*
 558 *50 percent of the contribution per employee required of an employer of more than 10 employees pursuant to*
 559 *subsection B. Such employer of 10 or fewer employees shall remit such deducted amount to the Commission*
 560 *for deposit into the Fund and shall not be required to make additional contributions.*

561 *F. Deductions under this section shall not cause an employee's wage, after the deduction, to fall below the*
 562 *rate required to be paid to the employee by any applicable statute, regulation, rule, or ordinance. This*
 563 *subsection shall not be construed to reduce any employee's rights, benefits, protections, or privileges under*
 564 *this chapter.*

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

569 **§ 60.2-807. Reduced leave schedule.**

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

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

580 **§ 60.2-808. Leave and employment protection; remedies.**

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

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

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

593 *1. Damages equal to:*

594 *a. The amount of:*

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

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

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

602 *c. An additional amount as liquidated damages equal to the sum of the amount described in subdivision a*
 603 *and the interest described in subdivision b, except that if an employer who has violated this section or*
 604 *§ 60.2-809 proves to the satisfaction of the court that the act or omission that violated this section or*
 605 *§ 60.2-809 was in good faith and that the employer had reasonable grounds for believing that the act or*
 606 *omission was not a violation of this section or § 60.2-809, such court may reduce the amount of the liability*
 607 *to the amount and interest determined under subdivisions a and b, respectively; and*

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

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

612 *E. Except as provided in subsection F, an action may be brought for a violation of this section or*
 613 *§ 60.2-809 not later than two years after the date of the last event constituting the alleged violation for which*
 614 *the action is brought.*

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

618 G. The Commissioner of Labor and Industry or the Attorney General may investigate any alleged
619 violation of this section with the consent of an employee or interested third party, or at the discretion of the
620 Commissioner or Attorney General based on reasonable and good-faith belief of wage violations. The
621 Commissioner of Labor and Industry or Attorney General may institute administrative or court proceedings
622 to remedy any alleged violation of this section and may seek and collect any remedies available under this
623 section. Any such damages shall be paid as restitution to any affected employee entitled thereto. In the course
624 of an investigation, the Commissioner, the Attorney General, or their designees may issue subpoenas and
625 enter the employer's premises to review records.

626 **§ 60.2-809. Retaliatory personnel actions prohibited.**

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

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

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

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

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

643 **§ 60.2-810. Coordination of benefits; applicability of chapter.**

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

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

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

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

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

659 **§ 60.2-811. Notice requirements.**

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

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

677 **§ 60.2-812. Appeals.**

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

680 *and appeals mechanisms established under this title.*

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

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

686 **§ 60.2-813. Enforcement.**

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

693 *B. If, after notice, any employer defaults in any payment of contributions or interest, the amount due shall*
 694 *be collected by civil action in the name of the Commissioner. The employer adjudged in default shall pay the*
 695 *fees and costs of such action. Civil actions brought under this chapter to collect contributions or interest or*
 696 *any penalty from an employer shall be heard by the court at the earliest possible date. Such civil actions may*
 697 *be brought against any officer, employee, or agent of a corporation or partnership in his individual, personal*
 698 *capacity when that person willfully fails to cause the employer to pay the appropriate contributions or*
 699 *interest and he had the authority to do so. No person shall be subject to this section unless it is proved that*
 700 *such person (i) knew of the failure or attempt to make such payment and (ii) had authority to prevent such*
 701 *failure or attempt. In addition to the foregoing remedies, the Commissioner shall have such other remedies as*
 702 *are available to the Tax Commissioner and county and city treasurers for the collection of taxes generally.*
 703 *The Commissioner is authorized to compromise, settle, and adjust any contributions, including interest, or*
 704 *any penalty assessed against any employer where in the judgment of the Commissioner the best interests of*
 705 *the Commonwealth will be promoted or served. The Commissioner may in such cases accept in full settlement*
 706 *of the contributions assessed an amount less than that assessed.*

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

714 **§ 60.2-814. Erroneous payments and disqualification for benefits.**

715 *A. An individual shall be disqualified from family and medical leave benefits for three years if the*
 716 *individual is determined by the Commissioner to have willfully made a false statement or misrepresentation*
 717 *regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this chapter.*

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

723 **§ 60.2-815. Elective coverage.**

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

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

733 **§ 60.2-816. Private employer plans; exemption from contributions.**

734 *A. Employers may apply to the Commission for approval to meet their obligations under this chapter*
 735 *through a private plan. The Commission may approve such private plan if the Commission determines that*
 736 *such private plan:*

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

739 *a. The provision of family and medical leave benefits for all purposes specified in subsection A of*
 740 *§ 60.2-802;*

741 *b. The provision of family and medical leave benefits for the maximum number of weeks required in*

742 § 60.2-803 per benefit year;

743 c. The provision of family and medical leave benefits as specified in subdivision A 3 § 60.2-802 for a

744 covered individual with a serious health condition;

745 d. A wage replacement rate for all family and medical leave benefits that equals or exceeds the rate

746 required by subsection A of § 60.2-804;

747 e. A maximum weekly family and medical leave benefit amount that equals or exceeds the amount

748 specified in subsection D of § 60.2-804 and a minimum weekly family and medical leave benefit amount that

749 equals or exceeds the amount specified in subsection C of § 60.2-804;

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

751 g. No additional conditions or restrictions on family and medical leave benefits, or leave taken in

752 accordance with such benefits, beyond those explicitly authorized by this chapter or regulations issued

753 pursuant to this chapter;

754 h. The provision of family and medical leave benefits to any employee covered under such private plan

755 who would otherwise be eligible for such benefits pursuant to this chapter; and

756 i. An employee contribution amount that does not exceed the amount such employee would otherwise

757 contribute for family and medical leave benefits pursuant to § 60.2-806.

758 2. Complies with the following provisions:

759 a. Such private plan shall provide family and medical leave benefits for all eligible employees throughout

760 the course of their employment;

761 b. If such private plan is in the form of self-insurance, the employer shall furnish a bond to the

762 Commonwealth in a form, amount, and manner determined by the Commission; and

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

764 by an insurer approved by the Commission.

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

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

767 a. Failing to pay benefits;

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

769 c. Failing to maintain an adequate surety bond;

770 d. Misusing private plan money;

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

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

773 C. An employee covered by a private plan approved under this section shall retain all applicable rights

774 provided in §§ 60.2-808 and 60.2-809.

775 D. A contested determination or denial of family and medical leave insurance benefits by a private plan is

776 subject to appeal before the Commission and any court of competent jurisdiction pursuant to § 60.2-812.

777 E. The Commission shall establish a fine structure for employers and entities offering private plans that

778 violate this section. The Commission shall transfer any fines collected pursuant to this subsection to the state

779 treasurer for deposit into the Fund. The Commission shall establish a process for the determination,

780 assessment, and appeal of fines under this subsection.

781 F. The Commission shall annually determine the total amount expended by the Commission for costs

782 arising from the administration of private plans. Each employer offering a private plan pursuant to this

783 section shall reimburse the Commission for the costs arising out of the private plans in the amount, form, and

784 manner determined by the Commission.

785 G. The Commission and the State Corporation Commission shall establish rules, processes for data

786 sharing, and a memorandum of understanding related to their respective roles in implementing the approval

787 of coverage pursuant to this section, authorizing products, and requiring filings related to private family

788 leave insurance, paid family and medical leave, group disability, and individual or group accident and

789 sickness policies.

790 **§ 60.2-817. Federal income tax treatment.**

791 If the Internal Revenue Service determines that family and medical leave benefits under this chapter are

792 subject to federal income tax, the Commission shall advise any covered individual filing a new claim for

793 family and medical leave benefits, at the time of filing such claim, that:

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

795 2. Requirements exist pertaining to estimated tax payments;

796 3. The individual may elect to have federal income tax deducted and withheld from the individual's

797 payment of benefits in the amount specified in the federal Internal Revenue Code; and

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

799 **§ 60.2-818. Reports; public dashboard.**

800 By April 1, 2030, and annually thereafter, the Commission shall report to the General Assembly on

801 projected and actual program participation by purpose listed in § 60.2-802, gender of beneficiaries, race and

802 ethnicity of beneficiaries, age of beneficiaries, amount of benefits paid to beneficiaries per week, premium

803 rates, fund balances, outreach efforts, and, for leaves taken under subdivision A 2 of § 60.2-802, family

804 *members for whom leave was taken to provide care.*

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

810 **§ 60.2-819. Public education.**

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

823 **§ 60.2-820. Sharing technology.**

824 *The Commission is encouraged to use state data collection and technology to the extent possible and to*
 825 *integrate the provisions of this chapter with existing state policies. To the extent permitted by law, the*
 826 *Commonwealth may make relevant data sources from state agencies available to the Commission for the*
 827 *purposes of implementing the provisions of this chapter to increase the efficiency of eligibility and benefit*
 828 *determinations under this chapter.*

829 **§ 60.2-821. Paid Family and Medical Leave Advisory Board.**

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

833 *B. The Board shall have a total membership of 18 members that shall consist of five legislative members*
 834 *and 13 nonlegislative citizen members. Members shall be appointed as follows: two members of the Senate,*
 835 *to be appointed by the Senate Committee on Rules; three members of the House of Delegates, to be appointed*
 836 *by the Speaker of the House of Delegates; three nonlegislative citizen members to be appointed by the Senate*
 837 *Committee on Rules; two nonlegislative citizen members to be appointed by the Speaker of the House of*
 838 *Delegates; and eight nonlegislative citizen members to be appointed by the Governor, one of whom shall be a*
 839 *representative of the business community, one of whom shall be a representative of a small business, one of*
 840 *whom shall be a representative of a labor union, one of whom shall be a representative of an advocacy*
 841 *organization focused on economic issues impacting children and families, one of whom shall be a*
 842 *representative of an organization that advocates on behalf of people with serious health conditions or*
 843 *disabilities, one of whom shall be a public technology expert or a technical advisor on information*
 844 *technology and data for the Commonwealth, one of whom shall be a human-centered design expert, and one*
 845 *of whom shall have skill, knowledge, and experience in family and medical leave programs.*

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

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

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

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

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

862 **3. That by January 1, 2029, the Department of Human Resource Management (the Department) shall**
 863 **modify the Commonwealth's policies relating to family and medical leave pursuant to subsection C of**
 864 **§ 60.2-801 of the Code of Virginia, as created by this act. In modifying such policies, the Department**
 865 **shall not reduce any existing leave or benefits available to an employee of the Commonwealth that are**

866 more generous than the leave and benefits provided under the paid family and medical leave insurance
867 program, as created by this act. The Governor shall (i) if necessary, submit legislation to the General
868 Assembly to codify any such updates to DHRM policies, and (ii) include any necessary funding to
869 support such updates to DHRM policies in the budget bill submitted for the 2026 - 2028 or 2028 - 2030
870 biennium pursuant to § 2.2-1509 of the Code of Virginia.