Report of the Task Force to Study Family and Medical Leave Insurance

Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland

December 1, 2017

Contributing Staff

Writers
Laura H. Atas
Heather N. Ruby
David A. Smulski

Reviewer
Tami D. Burt

Other Staff Who Contributed to This Report
Brett A. Ogden

For further information concerning this document contact:

Library and Information Services
Office of Policy Analysis
Department of Legislative Services
90 State Circle
Annapolis, Maryland 21401

Baltimore Area: 410-946-5400 ● Washington Area: 301-970-5400
Other Areas: 1-800-492-7122, Extension 5400
TTY: 410-946-5401 ● 301-970-5401
TTY users may also use the Maryland Relay Service
to contact the General Assembly.

Email: libr@mlis.state.md.us
Home Page: http://mgaleg.maryland.gov

THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401-1991

Task Force to Study Family and Medical Leave Insurance

December 1, 2017

Members of the General Assembly

Ladies and Gentlemen:

Chapter 678 of 2016 established the Task Force to Study Family and Medical Leave Insurance. The task force's primary purposes are to, in consultation with appropriate State and local agencies and community organizations, study existing family and medical leave programs in other states and the District of Columbia, review specified family and medical leave program implementation studies and reports, and receive public testimony from relevant stakeholders.

To meet its charge, the task force met six times beginning in November 2016 through November 2017. During the meetings, the task force endeavored to fulfill its charge as specified in Chapter 678. Included in this report are:

- an overview of paid family and medical leave;
- summaries of the task force meetings;
- descriptions of other states family and medical leave programs;
- an overview of the cost of implementing a family and medical leave program in Maryland; and
- components of a potential family and medical leave program in Maryland.

We would like to thank the members of the task force for participation in this complex matter. We would also like to acknowledge the cooperation and assistance provided by staff, advocates, business groups, governmental officials, and the public throughout the process.

Sincerely,

Senator Brian J. Feldman
Senate Co-chair

Delegate Ariana B. Kelly
House Co-chair

BJF:ABK/DAS:HNR/bao

Maryland General Assembly
Task Force to Study Family and Medical Leave Insurance
2017 Interim Membership Roster

Senator Brian J. Feldman (Senate Chair)
Delegate Ariana B. Kelly (House Chair)

Ex-Officio Members

Bernadette Benik
Sarah Dufresne
Nicole Harvey
Matthew Helminiak
Judith Vaughan-Prather

Appointed Members

Tammy Bresnahan
Cindy Carter
Sarah Fleisch Fink
Jeffrey Hayes
Clinton Macsherry
Ruth Martin
Edward Steinberg
DeLinda Hastie Washington
Caryn York

Committee Staff

Laura Atas
Heather Ruby
David Smulski

Support Staff

Brett Ogden

Contents

Chapter 1. Overview of Paid Family and Medical Leave

During the past several years, legislation has been considered by state legislatures, including the Maryland General Assembly, that would establish some sort of paid family and medical leave program. Paid family and medical leave is distinguished from paid sick leave in that the former is longer term leave for an employee's medical issue, for the birth or adoption of a child, or to care for a family member. Paid sick leave is a benefit offered to employees for shorter term medical conditions. Paid sick leave generally means that leave may be taken with no break in an employee's compensation. Most government entities and many larger businesses offer some sort of paid sick leave to their full-time, permanent employees. While some workers have no access to paid sick leave, far fewer have access to paid family and medical leave, meaning that in the event of the need for an extended leave, the employee does not receive pay and may only receive up to 12 weeks of leave without pay if their employer is covered under the federal Family and Medical Leave Act (FMLA). The employee may be fired for taking leave if the employer is not covered under FMLA.

Paid family and medical leave offers some type of income replacement to eligible employees over a longer period of time. Currently, California, New Jersey, New York, Rhode Island, Washington, and the District of Columbia have paid family and medical leave laws, although New York, Washington, and the District of Columbia have yet to be fully implemented. In addition, businesses have increasingly begun to offer paid family and medical leave to their employees. The details of several of the state programs are presented in a subsequent chapter of this report.

In Maryland, during the 2016 session, legislation was introduced that would have established the Family and Medical Leave Insurance (FAMLI) Program. The program's purpose would have been to provide temporary benefits to an employee taking partially paid or unpaid leave to:

- care for a newborn child or child placed for adoption or foster care with the employee;
- care for a family member with a serious health condition;
- recover from an employee's own serious health condition;
- care for an employee's next of kin who is a service member; or
- deal with a qualifying exigency because of the deployment of a family member.

The program would have been administered by the Division of Unemployment Insurance within the Department of Labor, Licensing, and Regulation.

Leave Available to Maryland Residents

The proposed FAMLI Program would have given Maryland employees an additional option for family and medical leave. Currently, certain employees in Maryland may access the federal FMLA. FMLA requires covered employers to provide eligible employees with up to 12 work weeks of unpaid leave during any 12-month period for:

- the birth and care of an employee's newborn child;
- the adoption or placement of a child with an employee for foster care;
- the care for an immediate family member (spouse, child, or parent) with a serious health condition;
- medical leave when the employee is unable to work due to a serious health condition; or
- any qualifying circumstance arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" in some cases, the leave could increase to 26 work weeks.

Generally, an FMLA-covered employer is an entity engaged in commerce that employs at least 50 employees. Public agencies and public or private elementary or secondary schools are considered to be covered employers regardless of the number of individuals they employ. An eligible employee is an individual employed by a covered employer who has been employed for at least 12 months; however, the months may be nonconsecutive months. Among other criteria, the individual must have been employed for at least 1,250 hours of service during the 12-month period.

A Maryland law, the Flexible Leave Act, requires that a private-sector employer who provides paid leave to its employees must allow an employee to use earned paid leave to care for immediate family members with an illness. Family members include a child, spouse, or parent. An employer is considered a person that employs 15 or more individuals and is engaged in a business, industry, profession, trade, or other enterprise in the State, including a person who acts directly or indirectly in the interest of another employer. State and local governments are not included. Employees who earn more than one type of paid leave from their employers may elect the type and amount of paid leave to be used in caring for their immediate family members. An employer is prohibited from taking action against an employee who exercises the rights granted or against an employee who files a complaint, testifies against, or assists in an action brought against the employer for a violation of these provisions.

Another Maryland law, the Parental Leave Act, requires businesses with 15 to 49 employees to provide employees with unpaid parental leave benefits. An eligible employee may take unpaid parental leave up to a total of six weeks in a 12-month period for the birth, adoption, or foster placement of a child. During parental leave, the employer must maintain existing coverage for a group health plan and, in specified circumstances, may recover the premium if the employee fails to return to work. The law does not apply to State and local governments. Similar to FMLA, to be eligible for the unpaid parental leave, an employee must have worked for the employer for at least one year and for 1,250 hours in the previous 12 months. An eligible employee does not include an independent contractor or an individual who is employed at a work site at which the employer employs fewer than 15 employees if the total number of employees employed by that employer within 75 miles of the work site is also fewer than 15. An eligible employee has to provide the employer with a 30-day prior notice of parental leave. However, prior notice is not required if the employee takes leave because of a premature birth, unexpected adoption, or unexpected foster placement.

State and local governments generally offer expansive leave to their employees. For example, State of Maryland employees have access to accrued vacation and sick leave, personal leave, and earned compensatory leave. Government employees are also entitled to unpaid leave under FMLA.

Task Force to Study Family and Medical Leave Insurance

Although the legislation as introduced did not pass in the General Assembly, the legislation was amended to establish the Task Force to Study Family and Medical Leave Insurance. Chapters 677 and 678 of 2016 established the task force and required the task force, in consultation with appropriate State and local agencies and community organizations, to study existing FAMLI programs in other states and the District of Columbia, review specified FAMLI implementation studies and a report, and receive public testimony from relevant stakeholders. The legislation specified the membership of the task force and required it to report findings and recommendations to the General Assembly by December 1, 2017. The task force was required to make recommendations on:

- the development of a State social insurance program that provides short-term benefits to eligible employees who lose wages due to specified reasons; and
- the design of an employee-funded FAMLI pool.

In addition, the Commission for Women was required to apply for any available federal funding that may be used by the task force to carry out its duties. The Commission for Women did so but did not receive any funding.

Chapter 2. Summary of Task Force Meetings

The Task Force to Study Family and Medical Leave Insurance (FAMLI) met six times. The purpose of each meeting was to meet the specific requirements of the task force specified under Chapters 677 and 678 of 2016. The task force was required to:

- study FAMLI programs in other states and the District of Columbia, including fund stability, benefit structure, and revenue structure;
- review the 2016 FAMLI implementation studies from Connecticut, Minnesota, and Montgomery County in Maryland;
- review the 2013 *Report on the Task Force to Study Temporary Disability Insurance Programs*; and
- receive public testimony from relevant stakeholders.

It should be noted that the November 3, 2016 and December 13, 2016 meetings occurred prior to the state of Washington enacting a FAMLI program.

November 3, 2016 Meeting

During the first meeting, the task force heard a summary of its charge from Department of Legislative Services staff, as specified in Chapters 677 and 678. Consistent with one of its charges, the task force next heard a presentation on the 2013 *Report on the Task Force to Study Temporary Disability Insurance Programs and the Process for Assisting Individuals with Disabilities at Local Departments of Social Services* (temporary disability insurance (TDI) task force) from staff of the Maryland Insurance Administration (MIA) and staff from the Department of Human Services (DHS).

Staff from MIA and DHS reported that the TDI task force was formed by Chapter 394 of 2013 and issued a report in December 2013. The TDI task force was charged with studying:

- the full complement of benefits available under State and federal law to workers and recently unemployed individuals in Maryland who become disabled due to an illness or injury not related to work;
- the wage replacement benefits available to a worker or a recently unemployed individual in Maryland who becomes disabled due to an illness or injury not related to work;

- the availability and sufficiency of wage replacement benefits available to workers and recently unemployed individuals in Maryland who become disabled due to cancer not related to work;

- the exclusivity and exhaustion of benefit standards that limit the level or extent of benefits that may be received by a worker or a recently unemployed individual in Maryland who becomes disabled due to an illness or injury not related to work; and

- essential features of TDI programs in other jurisdictions.

While there is no State TDI program, employees in Maryland may be eligible for the Family and Medical Leave Act (FMLA). There are three types of disability insurance that are available through the private insurance market. Plans may be purchased for specified diseases or critical illness, hospital confinement, or injury as a result of an accident. Five states (California, Hawaii, New Jersey, New York, and Rhode Island) have TDI programs. Disability benefits in all five states are limited to individuals who are temporarily unable to work due to illness or disability and are ineligible for workers' compensation.

The TDI task force recommended that the State consider further study of existing state models, with a focus on the costs of developing and administering a TDI program and the impact on employees and employers. The TDI task force also recommended that the State explore establishing a TDI pilot program, when sufficient general funds are available, and specified the details of the pilot program.

December 13, 2016 Meeting

The second meeting focused on FAMLI programs in other states and a review of the implementation study from Montgomery County. Ms. Sarah Fleisch Fink of the National Partnership for Women & Families gave a presentation on State Paid Family and Medical Leave Programs. Ms. Fink reported that 87% of workers lack paid family leave, that 60% do not have paid medical leave, and that working families lose billions of dollars because of no access to paid family and medical leave. California, New Jersey, and Rhode Island have a FAMLI program, and New York will have paid family leave beginning in 2018. The four states added a paid family leave program onto existing TDI programs. The District of Columbia also passed legislation establishing a FAMLI program.

Key elements of state FAMLI programs include defining family member, length of leave, wage replacement, eligibility, funding levels, job protection, and non-retaliation provisions. All of the state programs include parental, family caregiving, and personal medical leaves. Ms. Fink next provided specific details of each state program, which are covered in a subsequent chapter in this report. The presentation concluded with additional considerations for any state exploring the establishment of a FAMLI program. If the family and medical leave program is insurance-based, then all employers should be included. Other considerations include minimum increments of leave and waiting periods before leave can be taken by an employee, and whether to allow self-employed individuals to participate. Ms. Fink concluded by relaying that FAMLI programs work in the states with an existing program, and employees and businesses benefit from the programs.

Dr. Jeffrey Hayes of the Institute for Women's Policy Research reported on the Montgomery County FAMLI feasibility study. Montgomery County received a grant from the U.S. Department of Labor to research a FAMLI program. The purpose of the grant was to estimate the use and costs of family leave for employees in the county. The research included a range of policy designs based on state programs or legislative proposals from the states. The model used was a simulation model that produces simulated outcomes for different types of programs. Simulations were run using California's program, the District of Columbia's proposal, recent legislation introduced in Maryland, Montgomery County's model, the New Jersey program, Rhode Island's program, and a proposal from Colorado. The model showed results for number of individuals receiving benefits, the weeks that benefits were received, the cost of the benefit, and the total cost. For example, under legislation proposed in Maryland, the total number of individuals that could access the benefit was 155,579, the value of the average weekly benefit was $538, and the total cost was $702.7 million.

Regarding Montgomery County, which may be considering a FAMLI program, the reason why more local jurisdictions do not have programs covering private-sector employees is that counties do not have an unemployment insurance (UI) system like the states, and counties tend to have less involvement in payroll taxes.

June 6, 2017 Meeting

During the third meeting, the task force heard:

- an update on programs in other jurisdictions;
- a description of Rhode Island's TDI/Temporary Caregiver Insurance (TCI) Program;
- a summary of studies and considerations for Maryland; and
- from representatives of various business interest groups.

Ms. Fink updated the task force on other state FAMLI programs. Ms. Fink reported that there are three states (California, New Jersey, and Rhode Island) with FAMLI programs. New York has had a TDI program for decades and is implementing a paid family leave component. A FAMLI program in the District of Columbia was enacted in 2017 and will be paid for using payroll contributions. The three existing state programs started as TDI programs and subsequently added a FAMLI component. California, New Jersey, and Rhode Island added a program in 2004, 2009, and 2014, respectively. In the first half of 2017, four state legislatures passed legislation regarding some type of family medical leave. Virginia expanded paid leave for state workers and expanded paid maternity leave for state workers to cover paid paternity leave and adoption. Indiana urged the study of a paid family leave program. In Montana, legislation passed that expanded medical care savings accounts, and in Iowa, legislation passed requiring a study of paid leave.

Mr. Ray Pepin of the Rhode Island Department of Labor and Training provided an overview of the Rhode Island TDI/TCI Program. Mr. Pepin reported that Rhode Island was the first state to create a TDI program in 1942. TDI in Rhode Island may be applied for online or by mail. Mr. Pepin proceeded to describe the Rhode Island TDI program and the recently added TCI program in detail. Again, existing state programs are described in detail in a subsequent chapter. The integrity of the Rhode Island program is maintained by having three registered nurses and a consulting physician to monitor cases. Approximately 425,000 to 440,000 workers in Rhode Island pay into the fund through a payroll tax, and most workers are covered with some exceptions, including state employees. While TDI benefits are not taxed, TCI benefits are subject to taxation. The presentation concluded with statistics from the TCI program, including 22% of applicants where for TCI benefits, most claims (77%) were for bonding with a child, and with an average claim of $531 per week.

Dr. Shanna Pearson-Merkowitz, from the University of Rhode Island, summarized various studies of FAMLI programs, including the Rhode Island TCI program. Dr. Pearson-Merkowitz reported on the economic effects of taking paid leave through public paid family leave programs. Of those individuals taking leave, 93.0% are more likely to have a job 9 to 12 months after the birth of a child, 54.0% are more likely to report higher wages one year after birth, 39.0% are less likely to go on public assistance after birth, and 40.0% are less likely to receive food stamps. Regarding data from Rhode Island, 28.6% of leave takers reported an increase in personal income. Businesses tend to redistribute work to cover employees out on paid family leave; some businesses use temporary hires, and others put work on hold. Regarding employer satisfaction with the TCI program, over 60.0% of Rhode Island employers favored the program, 25.0% opposed it, and 15.0% had “no attitude.” Employers who oppose FAMLI programs tend to be employers with employees who have not taken it. Studies generally show that FAMLI programs improve morale, profitability, productivity, and turnover. To gain the effects of maximum economic impact from a FAMLI program, a state should develop a wage replacement system that protects the lowest wage workers.

The meeting concluded with comments from representatives of various business interest groups. Mr. Mike O’Halloran of the National Federation of Independent Businesses commented that of its members, when polled, over 90% said they did not support an employee-paid insurance program. Small businesses have special concerns and needs, and there would still be costs to employers. Large businesses already offer leave programs, but small businesses cannot do the same thing if there is a public program that relies on employee and employer contributions.

Ms. Maddy Voytek of the Maryland Retailers Association commented that coupled with other leave mandates, employees will be able to layer many leave policies together, and combined with FMLA, could have access to five months of leave. An employee-paid fund is not voluntary and creates a new tax on employees. In a *Washington Post* poll taken last year when the District of Columbia was working on a FAMLI program, employees overwhelmingly supported the concept but not the reality of paying for it. There is also no guarantee that employers would not be required to pay into the fund. More information is required to figure out the cost to the State and employers, and what penalties could be imposed.

Mr. Larry Richardson of the Maryland Chamber of Commerce commented that for the Chamber to fully review FAMLI programs, access to existing studies is necessary. There are three general problems with implementing a FAMLI program. The problems include funding, establishing a State-run program that affects private businesses, and a one-size fits all program.

July 25, 2017 Meeting

During the fourth meeting, the task force heard presentations on:

- studies in Connecticut and Minnesota;
- long-term caregiver needs; and
- fund stability, benefit eligibility, and a general update on other state programs.

Ms. Sarah Jane Glynn with the Women's Economic Policy at the Center for American Progress Action Fund presented an overview of a Connecticut study of a potential FAMLI program. Connecticut has not passed legislation, but the state is looking at the potential for administering a program. The states that have a FAMLI program have added on to an existing TDI program. However, having a TDI program is not a necessary precursor; Washington and the District of Columbia have moved forward with a FAMLI program without an existing TDI program. Ms. Glynn reported that a FAMLI program should have a low eligibility threshold to cover vulnerable workers and that all workers should have access to a program. The length of time to take leave should be at least 12 weeks, wage replacement should be high enough to encourage program participation, and a State-run program is preferable.

Connecticut is focusing on 12 weeks of leave with 100% wage replacement. The cash benefits would be paid through a debit card similar to UI benefits. The study recommended that a FAMLI program be developed within the state labor department, using existing agreements with banks similar to UI and that there be procedures for fraud detection. It was estimated that the cost in Connecticut to run a program is about \$13.6 million, including \$7.7 million for initial information technology development, with the rest going to salaries and benefits, overhead/capital needs, and initial outreach and education. The California program is underutilized, so it is better to educate employees on the front-end. Also, a state-run program is more efficient, more cost-effective, and allows for greater control over the program.

Ms. Debra Fitzpatrick of the Center on Women, Gender and Public Policy, Humphrey School of Public Affairs, University of Minnesota reported on a study that was authorized by a Minnesota state law. In the conduct of the study, the center worked with representatives from a number of state agencies. The study was conducted under the assumption that most family medical leave programs are public insurance programs. The study looked into a workers' compensation model initially, but decided on a social insurance model similar to what was proposed in Connecticut. The study recommended that a program offer 12 weeks of leave to conform with FMLA for covered events. In addition, Minnesota should maximize the use of existing infrastructure by trying to piggyback on the state UI program for administrative expertise and to allow employers to provide the same level of benefits; employers would also be allowed to self-insure. A tax ceiling is also recommended because people wanted some sense that taxes would be limited.

The Minnesota study included a simulation model to determine what effects a FAMLI program would have on employees and employers. While the average length of leave increases by around 6%, the cost to employers could decrease by approximately $45 million annually. The overall proportion of uncompensated leave decreases by 40%, and the amount of employer-paid leave could decrease.

Senator Delores G. Kelley and Ms. Dorinda Adams of the Department of Human Services spoke to the task force about the needs of long-term caregivers. Ms. Adams provided anecdotes from survey participants who had experienced problems taking leave to care for family members, many of whom had to leave the workforce entirely. Senator Kelley, who co-chaired the Task Force on Family Caregiving and Long-Term Supports, opened her comments by stating that most existing state FAMLI programs cover episodic situations or military situations and may not address the needs of long-term caregivers. Ways to address the needs of long-term caregivers could include considering the possibility of "respite care" for people to take periodic leave. In addition, job protection makes programs more complex, and regarding low-income workers, many cannot afford to pay the tax or live on the benefit.

The meeting concluded with a presentation on fund stability, benefit eligibility, and a general update on other state programs by Dr. Hayes with the Institute for Women's Policy Research. Dr. Hayes reported that the state of Washington became the fifth state to establish a FAMLI program. Washington initially established a program in 2007, but it was not implemented. A new version was enacted in July 2017, with premium assessment beginning in January 2019, and benefit payments beginning in January 2020. The program covers most workers in the state, and the self-employed may opt-in. Employees may stack medical leave and parental bonding leave and are eligible to take up to 16 to 18 weeks per year. The program will be funded through a combination of employee and employer contributions, and employers with less than 50 employees are excused from paying the employee contribution. The Washington program is not built upon an existing TDI program.

States with existing FAMLI programs pay for FAMLI benefits by collecting a small percentage of a wage base, which is defined differently in each program, via payroll taxes from employees, and in some cases, employers. Each state monitors the amount of benefits being paid under their FAMLI programs at least annually. Projections for future benefits and future program income are compared, and trust fund balances are maintained to be able to cover approximately six months of projected benefit payments. Over time, small increases or decreases in the tax rate are made to ensure that the programs are self-funded and collecting sufficient funds to cover both benefits and costs of administration. Rhode Island has covered the first three years of their TCI benefits without an increase in the TDI tax rate, which was 1.2% on earnings of up to $68,100 in 2017. In 2016, California increased the FAMLI wage replacement rate from 55.0% to 70.0% for low-income earners and to 60.0% for all other wage earners effective in January 2018, which is anticipated to result in higher benefits paid. The California FAMLI tax rate for 2017 is 0.9% on earnings up to $110,902. Even with the higher benefit rates starting in January 2018, next year's tax rate is expected to remain the same, although it may need to be increased in future years to continue as a fully self-funded, solvent benefit program. New Jersey does not release as much data as other states. In addition, separate units administer its TDI program and UI program. New Jersey built up a fund surplus over the years and had withdrawn money for other purposes, but a 2010 referendum disallows the state from diverting funds for other purposes.

Dr. Hayes also relayed how Social Security Disability Insurance (SSDI) relates to FAMLI program benefits. Generally, individuals receiving disability through workers' compensation or who are receiving UI benefits are prohibited from receiving SSDI. Individuals receiving benefits through a FAMLI program could receive SSDI, but individuals on SSDI are encouraged to go back to work, and it is rare that individuals collect both benefits.

September 14, 2017 Meeting

The fifth meeting of the task force consisted of public testimony and a discussion among the task force members of the process for generating recommendations from the task force. Ms. Molly Weston Williamson from A Better Balance was the first public witness. Ms. Williamson relayed that A Better Balance is a national legal advocacy organization that helped New York pass its paid family leave law. The United States is one of only two countries in the world with no paid leave law, and only 14% of workers in the United States receive paid family leave. New mothers are more likely to be employed 9 to 12 months after birth if they are entitled to paid leave, and outcomes are not as positive for children when their parents do not have access to paid leave. In addition, one-third of American households provide care for family members. Three states have family leave programs, and New York, the District of Columbia, and Washington are in the process of implementing programs.

Ms. Williamson reported that paid leave does not hurt businesses. In California, 92.8% of employers reported that paid family leave had a positive effect on employee turnover, and employers also reported positive information on other factors including employee morale. A family leave program also levels the playing field for small businesses. Model legislation that a state should consider for a family leave program includes:

- social insurance structure;
- coverage for military needs, health/personal health needs, bonding with a child, and care for a family member;
- workers receiving enough wage replacement to be able to take leave – at least 67.0% for all workers – and a progressive wage rate for lower wage workers;
- access to at least 12 weeks of leave; and
- job protection.

Mr. Chuck Cook of the AFL-CIO was the second public witness. Mr. Cook read a resolution from the AFL-CIO that recommends the extension of FMLA to all workers and to provide for paid leave for all workers. Three states had labor coalitions that supported paid leave initiatives. In Connecticut, the Working Families Party, a coalition of unions, worked to pass paid leave, but start-up costs of $13 million to $18 million per year and a large budget deficit prevented legislation from passing in 2017. In 2016, the AFL-CIO and other groups worked and passed a bill in the Minnesota Senate, but similar legislation did not receive a hearing in 2017. In New York, a large coalition worked for several years and finally established a FAMLI program for New Yorkers, which was part of the state's budget bill. The AFL-CIO also worked with the District of Columbia and Montgomery County on FAMLI legislation.

Ms. Kimberly Routson of the Job Opportunities Task Force testified that less than 15% of working families have access to paid family leave, and 5% of low-wage workers have access to paid family leave.

Ms. Greta Engle of BB&T stated that the bank owns an insurance brokerage firm that services hundreds of employers. The employers were surveyed, and it was determined that low-wage workers cannot afford the cost of the benefit. Small employers are not required to provide health benefits, but many do provide the benefit. Any penalties for making mistakes will affect employers with fines, and there is no staff with the Department of Labor, Licensing, and Regulation (DLLR) to implement the program; DLLR needs $500,000 or more in start-up funds, which will be passed on to taxpayers. In addition, no one will help employers track different requirements such as sick leave or family leave in different jurisdictions. A TDI program is a better approach when it is state-sponsored, which is the case in California. However, people who work 10 hours per week should not be entitled to the same amount of benefits as full-time workers. Of the five states that have a TDI program, it is unclear what the impact will be of paid sick leave legislation. Ms. Engle further stated that Seattle and San Francisco have union support only because of geography and many unions waived participation in sick leave requirements.

The final public witness was Ms. Diana Phillip with NARAL Pro-Choice Maryland. Ms. Phillip stated that NARAL is committed to parenting with dignity and that paid family leave/bonding is essential to keeping children safe.

The meeting concluded with a discussion among the task force members regarding the process for generating task force recommendations. Mr. Matthew S. Helminiak, Commissioner of Labor and Industry, stated that as a threshold question, the task force should start thinking about who is paying for a program. A program could give employers incentive to improperly classify employees if the program is funded through employer contributions; therefore, the question of who pays should be a priority. Delegate Ariana B. Kelly asked the commissioner if there were challenges with administering the employee protections under Maryland's leave laws. The commissioner subsequently reported that DLLR only received six complaints under the Flexible Leave Act since 2015 and received no complaints under the Parental Leave Act.

Ms. Fink offered that any decision points for a program have to be informed by data analysis; a report might need to include scenarios based on the data that is available. The task force may want to include a menu of options and could use basic modeling similar to the Montgomery County analysis. Mr. Edward Steinberg and Dr. Hayes added that decision points include whether there should be penalties and should State and local government employees be included, respectively. Ms. Judith Vaughan-Prather asked if the task force members could agree that job protection is a necessary part of a program.

The task force briefly discussed elements of the District of Columbia's recently enacted FAMLI program, including who is covered and how the program will be funded. Delegate Kelly stated that a Maryland FAMLI program should include everyone (including caregivers and new parents), provide up to 12 weeks of leave, and cover military deployment.

Chapter 3. Other States' FAMLI Programs

Five states (California, New Jersey, New York, Rhode Island, and Washington), along with the District of Columbia, have enacted paid family and medical leave laws. Hawaii has a temporary disability insurance (TDI) program, but it does not provide paid family leave. California, Hawaii, New Jersey, and Rhode Island have programs that are already implemented, while New York's program takes effect January 2018. The District of Columbia's program takes effect July 2020, and Washington will begin collecting premiums in January 2019, with benefits scheduled to begin in January 2020.

Exhibit 3.1 shows a summary of the paid leave programs in Rhode Island, California, New Jersey, New York, Hawaii, the District of Columbia, and Washington. All these states and the District of Columbia allow leave to be used for a worker's own serious off-the-job illness or injury. All but Hawaii allow a worker to take paid leave to bond with a child within one year of the child's birth or adoption and for family caregiving, and all but Hawaii and New Jersey allow leave to be taken for bonding with a child placed in foster care. New York and Washington also allow leave to be taken to address certain military needs. With the exception of the District of Columbia, workers cover the full cost of family leave, while TDI varies by state. Benefits range from 50% of a worker's average weekly wage in New York (though once the program is fully implemented the rate will be 67%) to 90% of a worker's average weekly wage in Washington and the District of Columbia with a maximum weekly benefit capped at $594 to $1,173 per week. Workers can receive benefits for family leave for 4 to 12 weeks, while leave for one's own health can typically be taken for longer.

Exhibit 3.1
States with a Paid Leave Program

Reasons to Take Paid Leave						
Rhode Island	**California**	**New Jersey**	**New York**	**Hawaii**	**District of Columbia**	**Washington**
Worker's own serious off-the-job illness or injury; bonding with a child; care for a family member with a serious health condition.	Worker's own serious off-the-job illness or injury; bonding with a child; care for a family member with a serious health condition.	Worker's own serious off-the-job illness or injury; bonding with a child; care for a family member with a serious health condition.	Worker's own serious off-the-job illness or injury; bonding with a child; care for a family member with a serious health condition; address certain military family needs.	Worker's own serious off-the-job illness or injury.	Worker's own serious off-the-job illness or injury; bonding with a child; care for a family member with a serious health condition.	Worker's own serious off-the-job illness or injury; bonding with a child; care for a family member with a serious health condition; address certain military family needs.

Who Is Covered?						
Rhode Island	**California**	**New Jersey**	**New York**	**Hawaii**	**District of Columbia**	**Washington**
Employees covered by the state UI law, except for public employees, are covered. Some domestic workers are covered. Public employers can opt-in to coverage, as can some unions covering public workers through the collective bargaining process.	Employees covered by the state UI law, except for most public employees, are covered. Domestic workers are also covered. Those who are self-employed can opt in to coverage. Many public employers can opt-in to coverage but may need to do so through a negotiated agreement with an authorized bargaining unit.	Employees covered by the state UI law are covered, with some exceptions for public-sector employees. Some domestic workers are covered. Most public-sector workers are not covered for a worker's own health, though their employers can opt-in. Public-sector workers are covered for PFL.	Most private-sector employees are covered. Full-time domestic workers are covered. Most employers not required to provide coverage, including many public employers, can opt-in to coverage. Those who are self-employed can opt-in to coverage. Unions covering public workers can opt-in to PFL through the collective bargaining process.	Most employees, including public employees, are covered. Some domestic workers are covered.	All private-sector employees are covered. Those who are self-employed can opt-in to coverage.	All employees, including public employees, are covered. Those who are self-employed can opt-in to coverage.

How Is the Program Funded?						
Rhode Island	**California**	**New Jersey**	**New York**	**Hawaii**	**District of Columbia**	**Washington**
Workers cover the full cost of both TDI and TCI.	Workers cover the full cost of both DI and PFL.	Workers and employers share the cost of TDI. Workers cover the full cost of FLI.	Workers and employers share the cost of TDI. Workers cover the full cost of PFI.	Workers and employers share the cost of TDI.	Employers cover the full cost of UPL.	Workers and employers share the cost of medical leave. Workers cover the full cost of family leave.

Tax Rate						
Rhode Island	**California**	**New Jersey**	**New York**	**Hawaii**	**District of Columbia**	**Washington**
1.2% of wages up to $68,100.	0.9% of wages up to $110,902.	Workers contribute 0.34% of their wages up to $33,500 for TDI and FLI. For TDI, employers contribute a percentage of workers' wages ranging from 0.10% to 0.75%.	TDI: Employers can withhold 0.5% of workers' wages to pay for coverage, up to $0.60/week; employers cover the remaining cost. PFL: The program is funded by a payroll deduction, currently set at 0.126% of wages. This deduction does not apply to wages above $1,305.92/week.	Employers can withhold half the cost of providing coverage from workers' wages to pay for coverage, up to 0.5% of wages or $5.12/week (whichever is lower); employers cover the remaining cost.	0.62% of wages.	0.4% of wages up to the maximum wages subject to taxation for Social Security.

Wage Replacement Rate						
Rhode Island	**California**	**New Jersey**	**New York**	**Hawaii**	**District of Columbia**	**Washington**
Approximately 60% of a worker's average weekly wage.	Effective January 1, 2018, workers will receive between 60% and 70% of their average weekly wage, depending on their income.	Two-thirds of a worker's average weekly wage.	50% of a worker's average weekly wage. When the program is fully phased in in 2021, workers will receive 67% of their average weekly wage for family leave.	58% of a worker's average weekly wage.	90% of a worker's average weekly wage up to an amount equal to 40 times 150% of the DC minimum wage and 50% of a worker's average weekly wage above an amount equal to 40 times 150% of the DC minimum wage.	90% of a worker's average weekly wage up to an amount equal to 50% of the statewide average weekly wage and 50% of a worker's average weekly wage above an amount equal to 50% of the statewide average weekly wage.

Maximum Weekly Benefit						
Rhode Island	**California**	**New Jersey**	**New York**	**Hawaii**	**District of Columbia**	**Washington**
$831/week.	$1,173/week.	$633/week.	$652.96/week for 2018.	$594/week.	Initially $1,000/week.	Initially $1,000/week.

How Long Can a Worker Receive Benefits for Own Health?						
Rhode Island	**California**	**New Jersey**	**New York**	**Hawaii**	**District of Columbia**	**Washington**
30 weeks.	52 weeks.	26 weeks.	26 weeks.	26 weeks.	2 weeks.	12 weeks.

How Long Can a Worker Receive Benefits for Family Leave?						
Rhode Island	**California**	**New Jersey**	**New York**	**Hawaii**	**District of Columbia**	**Washington**
4 weeks.	6 weeks.	6 weeks.	12 weeks.	n/a.	6 weeks; 8 weeks for bonding with a new child.	12 weeks.

DC: District of Columbia
DI: disability insurance
FLI: family leave insurance
PFI: paid family insurance
PFL: paid family leave
TCI: temporary caregiver insurance
TDI: temporary disability insurance
UPL: universal paid leave
UI: unemployment insurance

Source: A Better Balance; Department of Legislative Services

Rhode Island

In 1942, Rhode Island became the first state to enact a TDI program. TDI provides benefit payments to insured Rhode Island workers for up to 30 weeks of unemployment caused by a temporary disability or injury. It protects workers against wage loss resulting from a nonwork-related illness or injury and is funded exclusively by Rhode Island workers. Rhode Island was the third state to provide paid family leave when the temporary caregiver insurance (TCI) program was signed into law on July 11, 2013, which became effective on January 5, 2014. TCI provides 4 weeks of paid leave for the birth, adoption, or fostering of a new child or to care for a family member with a serious health condition. All Rhode Island private-sector workers who pay into the TDI system are eligible for TCI; thus approximately 80% of Rhode Island's workforce is covered. An employee's job is secure while out on caregiver leave.

Benefits range from a minimum of $89 and a maximum of $831 per week (not including the dependency allowance), based on earnings. The current withholding rate as of January 1, 2017, is 1.2% of an employee's first $68,100 in earnings. In 2016, Rhode Island collected almost $190 million in taxes from the TDI program and paid over $181 million in TDI and TCI benefits.

New Jersey

Since its enactment in 1948, the New Jersey Temporary Disability Benefits Law has provided benefits to workers affected by nonwork-related injuries or illnesses. All employers, except local government, for which coverage is optional, are subject to the provisions of this law when their quarterly payrolls are at least $1,000. With the enactment of P.L. 2008, Chapter 17, on May 2, 2008, New Jersey extended the temporary disability benefits program to provide family leave insurance (FLI) benefits for covered individuals bonding with newborn or newly adopted children or caring for seriously ill family members.

The New Jersey FLI Program provides six weeks of benefits to bond with a new child or to care for a family member. For claims beginning January 1, 2016, the weekly benefit rate is two-thirds of an employee's weekly wage, up to $615.00. As of January 1, 2017, the maximum yearly deduction for FLI is $33.50 and is based on 0.1% tax rate of a taxable wage base of $33,500.00. A subject employer is automatically covered under the State Plan for FLI unless it has covered its workers under an approved FLI private plan. In 2016, 32,171 eligible claims were filed, and the program paid $87.9 million in benefits. Under its TDI program, New Jersey had 88,086 eligible claims and paid $415.0 million in benefits in calendar 2016.

California

The State Disability Insurance program was added to the California Unemployment Insurance Code in 1946 to provide disability insurance benefits to workers who suffer a loss of wages due to a nonwork-related illness or injury, or due to pregnancy or childbirth. In 2004, California became the first state in the country to implement a paid family leave program (hereafter, CA-PFL or PFL). CA-PFL provides workers with six weeks of leave, with 55% of usual pay replaced, and with almost universal eligibility among private-sector workers. The program is financed through payroll taxes levied on the employees. To be eligible for the program, individuals are required to have worked at least 300 hours during a "base period" 5 to 18 months before the initiation of the leave. Chapter 5 of 2016 increases the wage replacement rate from 55% to 70% for low-income workers and to 60% for all other workers, effective January 2018. In 2016, 241,814 claims were filed, and the program paid $728.8 million in benefits. In addition, under its TDI program, it had 647,187 claims and paid $5.7 billion in benefits.

Hawaii

The Hawaii TDI law was enacted in 1969, which requires employers to provide partial "wage replacement" insurance coverage to their eligible employees for nonwork-related injury or sickness, including pregnancy. If an employee is unable to work because of an off-the-job injury or sickness and the employee meets the qualifying conditions of the law, the disabled employee will be paid disability or sick leave benefits to partially replace the wages lost. If an employee's average weekly wage is less than $26, the weekly benefit amount is equal to the average weekly wage but not more than $14. If it is $26 or more, the weekly benefit amount is 58% of the average weekly wage rounded to the next higher dollar up to a maximum of $594.00. Wages in excess of $1,023.31 need not be included in the computation of the weekly benefit amount.

New York

New York has a TDI program, which requires a covered employer to provide for the payment of disability benefits to all eligible employees, which includes full-time and part-time employees. The employer may comply by purchasing an approved policy of insurance or by applying to the New York State Workers' Compensation Board for approval as a self-insurer with permission to deposit securities or file a surety bond. A covered employer is authorized to collect from each employee, through payroll deduction, a contribution of one-half of 1% of wages paid, but not in excess of 60 cents per week. However, an employer may waive all employee contributions or, by an accepted employee agreement, arrange for employee contributions in excess of the statutory rate if the amount is reasonably related to the value of the benefits provided. Every covered employer bears the cost of providing benefits in excess of the contributions collected from employees.

Starting January 1, 2018, New York's Paid Family Leave will provide employees with wage replacement and job protection to help them bond with a child, care for a close relative with a serious health condition, or help relieve family pressures when someone is deployed abroad on active military service. Employees are also entitled to be reinstated to their job when their leave ends and to the continuation of their health insurance during their leave.

The benefits of this program initially offer up to 8 weeks of paid leave at 50% of the employee's average weekly wage, up to the maximum benefit of 50% of the New York State average weekly wage. The program will be fully implemented on January 1, 2021, and will offer up to 12 weeks paid leave at 67% of the employee's average weekly wages, up to the maximum benefit of 67% of the New York State average weekly wage.

Washington

In 2007, Washington passed a family leave benefit program, but it was never implemented. In 2017, Washington enacted a new paid family and medical leave law, which will allow employee's leave from work for certain medical reasons, for birth or placement of a child, and for the care of certain family members (including registered domestic partners) who have a serious health condition. Premiums of 0.4% of wages up to $127,200 would start being collected on January 1, 2019, with 63.0% paid by employees and 37.0% paid by the employers. Benefits will begin being distributed on January 1, 2020.

District of Columbia

On December 20, 2016, the Council of the District of Columbia passed the Universal Paid Leave Amendment Act of 2016. An eligible individual may receive up to eight weeks of paid leave within one year of the birth of a child, the placement of a child with an eligible individual for adoption or foster care, or the placement of a child with an eligible individual for whom the eligible individual legally assumes and discharges parental responsibility. An eligible individual may receive up to six weeks of paid leave to care for a family member's serious health condition. The Act broadly defines "family member," and amends the District of Columbia Family and Medical Leave Act to include in its coverage "a foster child." An eligible individual may receive up to two weeks of paid leave to care for his or her own serious health condition.

Chapter 4. Cost of Implementing a Family and Medical Leave Program in Maryland

In order to implement a paid family and medical leave insurance program in Maryland, the State will have to raise sufficient revenues to cover the leave benefits. When setting the contribution rate, consideration should be given to whether to have a ceiling. Rhode Island's Family and Medical Leave Insurance (FAMLI) program assesses wages up to $68,100 at a contribution rate of 1.2%. Comparable revenues can be raised if the contribution rate is lowered and the contribution ceiling is increased, which is the case in California. California's program includes an assessment of 0.9% of wages up to $110,902.

When developing a FAMLI program in Maryland, consideration should be given to the benefits. Many advocates of paid leave believe that benefits should be at least two-thirds of previous wages, while a tiered system would ensure that low-wage workers are able to access the program without overextending the program. If Maryland's FAMLI program had a contribution rate comparable to Rhode Island's or California's FAMLI program, Maryland's FAMLI program would likely support a similar level of benefits as Rhode Island or California, respectively. Rhode Island workers are eligible to receive approximately 60% of a worker's average weekly wage, with a maximum weekly benefit of $833 per week for up to 30 weeks in a 52-week period for one's own health, or up to 4 weeks in a 52-week period for family leave.

California workers are eligible to receive approximately 55.0% of a worker's average weekly wage, with a maximum weekly benefit of $1,173 per week for up to 52 weeks for any period of disability for one's own health, or up to 6 weeks in a 12-month period for family leave. It should be noted that the wage replacement rate for some California workers will be increasing. California currently has an unpaid benefit waiting period of 7 days before an employee is eligible to take leave. Dr. Jeffrey Hayes of the Institute for Women's Policy Research estimates that providing 12 weeks of FAMLI leave with benefits of 66.7% of weekly earnings up to $1,125 would cost $523.3 million, in addition to administrative costs. If 26 weeks of disability and 12 weeks of family leave were provided, the costs would increase to $704.5 million. If a tiered progressive formula was used, costs would increase to $614.3 million for 12 weeks of leave or $833.0 million for 26 weeks of disability and 12 weeks of family leave. If Maryland's FAMLI program was modeled after Washington's program, it would cost an estimated $541.3 million. If Maryland establishes paid leave through an insurance-based system, as has been done in all of the states with existing programs, these costs could be paid through payroll contributions.

The program's fund balance would have to be monitored to ensure adequate funds to cover benefits being claimed. In California, the disability insurance fund balance ranging from 25% to 50% of the prior 12 months of disbursements is generally considered adequate to maintain solvency through typical fluctuations in contributions and disbursements. New Jersey requires the worker temporary disability insurance (TDI) tax rate to be set anew each year at the level needed to raise revenues to equal 120% of anticipated benefit payments and 100% of anticipated administrative cost, minus the remaining balance in the TDI fund from the previous year.

The Department of Labor, Licensing, and Regulation (DLLR) would most likely administer any family and medical leave insurance program because DLLR currently collects payroll taxes for unemployment insurance (UI). However, those funds cannot be used for any purpose other than UI. The Division of UI is 100% federally funded under provisions of the Social Security Act (SSA). The SSA provides that the federal funds can only be used to administer the UI program, and if any funds are used for purposes other than administering the UI program, the funds must be repaid to the federal government.

To implement the FAMLI program, the Division of UI must create a new program without utilizing existing staff. It is assumed that the Division of UI can use existing administrative machinery since California, New Jersey, and Rhode Island are able to use existing administrative machinery to administer their disability and family leave programs. The Division of UI would have to develop a tax structure, payment structure, complaint and investigative structure, and require the imposition of an employee or employer contribution. Thus, implementing a FAMLI program would require a significant increase in personnel resources for the Division of UI. DLLR employees would be needed to set up FAMLI program and once covered employees start claiming benefits, more DLLR employees would be needed to process and investigate claims. In addition, assistant Attorneys General would be needed to enforce civil actions and the Judiciary would experience increased caseloads. Rhode Island has a staffing ratio of one staff to every 683 claims, while California has a staffing ratio of one staff to 707 claims. It is likely that Maryland would need a comparable staffing ratio. Once fully implemented, general fund expenditures could easily exceed $15 million a year for personnel and related costs.

Chapter 5. A Maryland FAMLI Program

Chapters 677 and 678 of 2016 require the Task Force to Study Family and Medical Leave Insurance (FAMLI) to make recommendations on:

- the development of a State social insurance program that provides short-term benefits to eligible employees who lose wages due to specified reasons; and
- the design of an employee-funded FAMLI pool.

The task force heard from different points of view during its meetings. While not all presenters or members of the task force favor the establishment of a FAMLI program in Maryland, a majority believes that a FAMLI program would benefit the State's employees and employers. States have incurred millions of dollars of costs to start a FAMLI program. If Maryland decides to pursue a FAMLI program, it should be understood that there will be a significant cost to the State to implement such a program. Based on the information from other states with a program, and studies of potential FAMLI programs in other states and Montgomery County, if a FAMLI program were to be established in Maryland, the program should consist of the following:

- in order to ensure that a FAMLI program benefits low-wage and part-time workers, all employees, including State and local government employees, earning at least $5,200 over a 12-month period (which is approximately the equivalent of working 520 hours at the State minimum wage of $10.10 per hour) should be entitled to take leave under a FAMLI program;
- all employers should be covered under a FAMLI program, with no opt-out provision, although there should be a provision for independent contractors to opt-in to a FAMLI program;
- an employee returning to work after taking leave should be entitled to be restored to the position of employment held by the employee when the leave began or to an equivalent position, with equivalent benefits, pay, and other terms and conditions of employment, under a FAMLI program, similar to the rights and protections granted under the Maryland Parental Leave Act;
- leave under a FAMLI program should be for an employee's serious health condition, birth or adoption of a child, placement of a child in foster care, military deployment, and for the care of a family member with a serious health condition;

- the definition of family member should be as comprehensive as possible and include a spouse, child, parents, grandparents, grandchildren, siblings, an individual acting as a parent or who stood in loco parentis, and an individual with a legitimate caregiving relationship;

- the FAMLI program should be designed to be self-funded and sustainable and include employee contributions with a tax rate sufficient to cover benefits paid; initial administrative startup costs may have to come from the General Fund;

- to the extent that an employer-funded program is considered, which is outside the charge of this task force, the FAMLI program may consider exploring cost-sharing options between employees and employers by reviewing Washington's experience;

- the FAMLI program should include incentives or assistance to small businesses to help these businesses comply with program requirements and programs to educate employees and employers;

- the amount of leave available under a FAMLI program should be at least 12 weeks to at a minimum conform with the Family and Medical Leave Act;

- in order to ensure that low-income workers can afford to take leave under a FAMLI program, there should be a progressive wage-replacement system of 90% of a worker's average weekly wage up to an amount equal to 50% of the statewide average weekly wage and 50% of a worker's average weekly wage above an amount equal to 50% of the statewide average weekly wage;

- the FAMLI program should be administered by a State agency, most likely the Department of Labor, Licensing, and Regulation, which has experience administering unemployment insurance benefits (a similar type of social insurance program), and consideration should be given to ease the administration of the FAMLI program; and

- administration of the program should have enforcement and penalty provisions, and an employer should be prohibited from retaliating against an employee who exercises rights under a FAMLI program.

Appendix 1

Chapter 678

(House Bill 740)

AN ACT concerning

~~Labor and Employment –~~ Task Force to Study Family and Medical Leave Insurance ~~Program – Establishment~~

FOR the purpose of establishing the Task Force to Study Family and Medical Leave Insurance; providing for the composition, chair, and staffing of the Task Force; requiring that the appointed members of the Task Force be appointed by a certain date; prohibiting a member of the Task Force from receiving certain compensation, but authorizing the reimbursement of certain expenses; requiring the Commission for Women to apply for certain funding; requiring the Task Force to receive certain public testimony and study and make recommendations regarding certain matters; requiring the Task Force to report its findings and recommendations to the General Assembly on or before a certain date; providing for the termination of this Act; ~~establishing the Family and Medical Leave Insurance Program; prohibiting an employee from disclosing certain information; authorizing a self–employed individual to elect to participate in the Program by filing a certain notice with the Secretary of Labor, Licensing, and Regulation; providing that a certain election becomes effective on the date a certain notice is filed; requiring a certain individual to participate in the Program for a certain initial period; authorizing a certain individual to renew participation in the Program for a certain period; requiring a certain individual to notify the Secretary in writing of the individual's withdrawal from the Program within a certain time period; requiring a certain individual to pay a certain contribution rate during a certain period; providing that an employee's right to benefits under this Act may not be diminished by a collective bargaining agreement entered into or renewed or an employer policy adopted or retained after a certain date; providing that a certain agreement is void as against public policy; stating the purpose of the Program; providing for the manner in which the Program is to be administered; providing for the powers and duties of the Secretary under the Program; establishing the Family and Medical Leave Insurance Fund as a special fund; providing for the administration of the Fund; specifying the contents of the Fund; specifying the purposes for which the Fund may be used; requiring, beginning on a certain date, certain employees to pay the Secretary certain contributions; requiring the Secretary to establish in regulation the rate of contribution; requiring the rate of contribution to be sufficient to fund the benefits payable under this Act; requiring, beginning on a certain date, an individual to meet certain conditions to be eligible for benefits; authorizing a covered employee to take certain leave on an intermittent leave schedule; requiring a covered employee who is taking certain leave on an intermittent leave schedule to take certain action; prohibiting an employer from taking certain action if leave is taken on an intermittent leave schedule; providing for the manner in which benefits are to be calculated and paid; requiring the Division of Unemployment Insurance, under certain circumstances, to notify certain individuals of certain information regarding the federal income tax;~~

~~requiring the Division, under certain circumstances, to deduct and withhold a certain amount from benefits paid; providing for the manner in which certain employees who receive benefits are to be treated by employers; establishing certain prohibited acts; authorizing the Division to seek repayment of benefits under certain circumstances; authorizing the Secretary to waive the repayment of benefits under certain circumstances; exempting the Fund from a certain provision of law; providing for the construction and application of this Act; providing that this Act preempts the authority of a local jurisdiction to adopt certain laws, ordinances, rules, and regulations; requiring the Secretary to adopt certain regulations on or before a certain date; defining certain terms; stating the intent of the General Assembly;~~ and generally relating to the <u>Task Force to Study</u> Family and Medical Leave Insurance ~~Program~~.

~~BY repealing and reenacting, with amendments,~~
~~Article – Labor and Employment~~
~~Section 8–302~~
~~Annotated Code of Maryland~~
~~(2008 Replacement Volume and 2015 Supplement)~~

~~BY adding to~~
~~Article – Labor and Employment~~
~~Section 8.3–101 through 8.3–901 to be under the new title "Title 8.3. Family and Medical Leave Insurance Program"~~
~~Annotated Code of Maryland~~
~~(2008 Replacement Volume and 2015 Supplement)~~

~~BY repealing and reenacting, without amendments,~~
~~Article – State Finance and Procurement~~
~~Section 6–226(a)(1) and (2)(i)~~
~~Annotated Code of Maryland~~
~~(2015 Replacement Volume)~~

~~BY repealing and reenacting, with amendments,~~
~~Article – State Finance and Procurement~~
~~Section 6–226(a)(2)(ii)84. and 85.~~
~~Annotated Code of Maryland~~
~~(2015 Replacement Volume)~~

~~BY adding to~~
~~Article – State Finance and Procurement~~
~~Section 6–226(a)(2)(ii)86.~~
~~Annotated Code of Maryland~~
~~(2015 Replacement Volume)~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That ~~the Laws of Maryland read as follows~~:

Appendix 1

(a) There is a Task Force to Study Family and Medical Leave Insurance.

(b) The Task Force consists of the following members:

(1) ~~two members~~ *one member* of the Senate of Maryland, appointed by the President of the Senate;

(2) ~~two members~~ *one member* of the House of Delegates, appointed by the Speaker of the House;

(3) the Commissioner of Labor and Industry, or the Commissioner's designee;

(4) the State Treasurer, or the State Treasurer's designee;

(5) the Comptroller, or the Comptroller's designee;

(6) the Executive Director of the Commission for Women, or the Executive Director's designee; and

(7) the following members, appointed jointly by the Presiding Officers of the General Assembly:

(i) one researcher with expertise in state–run social insurance programs;

(ii) one representative of a community organization that advocates for the needs of infants and children;

(iii) one representative of a community organization that advocates for the needs of seniors;

(iv) one representative of a community organization that advocates for the needs of individuals who suffer from serious health conditions;

(v) one representative of a community organization that advocates for the economic security of mothers;

(vi) one representative of a community organization that advocates for working families;

(vii) one representative from a national organization with expertise in the implementation of family medical and leave insurance programs in other states;

Appendix 1

(viii) one representative of businesses located in the State that employ fewer than 50 employees; and

(ix) one representative of businesses located in the State that employ at least 50 employees.

(c) The appointed members of the Task Force shall be appointed by July 1, 2016.

(d) The Presiding Officers of the General Assembly jointly shall designate the chair of the Task Force.

(e) The Department of Legislative Services shall provide staff for the Task Force.

(f) A member of the Task Force:

(1) may not receive compensation as a member of the Task Force; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(g) The Commission for Women shall apply for any available federal funding that may be used by the Task Force to carry out the duties of the Task Force.

(h) The Task Force, in consultation with the appropriate State and local agencies and community organizations, shall:

(1) study existing family and medical leave insurance programs in other states and the District of Columbia, including fund stability, the benefit structure, and the revenue structure;

(2) review the 2016 family and medical leave insurance implementation studies from Minnesota, Connecticut, and Montgomery County, Maryland;

(3) review the 2013 Report on the Task Force to Study Temporary Disability Insurance Programs;

(4) receive public testimony from relevant stakeholders; and

(5) make recommendations regarding:

(i) the development of a State social insurance program that provides short–term benefits to eligible employees who lose wages due to:

1. an illness or injury that is unrelated to the employee's employment;

2. pregnancy or childbirth;

3. time off work needed to care for a seriously ill child, spouse, or parent;

4. time off work needed to bond with a new child; or

5. time off work needed due to a qualifying exigency arising out of a family member's military deployment; and

(ii) the design of an employee–funded family and medical leave insurance pool, including tax rates and benefits.

(i) On or before December 1, 2017, the Task Force shall report its findings and recommendations to the General Assembly in accordance with § 2–1246 of the State Government Article.

~~**Article – Labor and Employment**~~

~~8–302.~~

~~(a) There is a Division of Unemployment Insurance.~~

~~(b) The Division of Unemployment Insurance shall perform any function that the Secretary assigns to it to carry out this title~~ ~~**AND TITLE 8.3 OF THIS ARTICLE**~~.

~~**TITLE 8.3. FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.**~~

~~**SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.**~~

~~**8.3–101.**~~

~~**(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**~~

~~**(B) "ADOPTED CHILD" MEANS A CHILD ADOPTED BY OR PLACED FOR ADOPTION WITH AN EMPLOYEE OR THE EMPLOYEE'S SPOUSE OR DOMESTIC PARTNER.**~~

~~**(C) "APPLICATION YEAR" MEANS THE 12–MONTH PERIOD BEGINNING ON THE FIRST DAY OF THE CALENDAR WEEK IN WHICH A COVERED EMPLOYEE FILES AN APPLICATION FOR BENEFITS.**~~

~~**(D) "BENEFITS" MEANS THE MONEY PAYABLE UNDER THIS TITLE TO A COVERED EMPLOYEE.**~~

Appendix 1

~~(E) "CHILD" MEANS:~~

~~(1) AN ADOPTED CHILD;~~

~~(2) A BIOLOGICAL CHILD;~~

~~(3) A FOSTER CHILD;~~

~~(4) A LEGAL WARD;~~

~~(5) A STEPCHILD; OR~~

~~(6) A CHILD WITH RESPECT TO WHOM AN INDIVIDUAL STANDS IN LOCO PARENTIS.~~

~~(F) "COVERED EMPLOYEE" MEANS AN EMPLOYEE WHO HAS EARNED AT LEAST $1,800 IN WAGES DURING:~~

~~(1) THE FIRST 4 OF THE LAST 5 COMPLETED CALENDAR QUARTERS IMMEDIATELY PRECEDING THE START OF AN APPLICATION YEAR; OR~~

~~(2) THE 4 MOST RECENTLY COMPLETED CALENDAR QUARTERS IMMEDIATELY PRECEDING THE START OF AN APPLICATION YEAR ONLY IF THE EMPLOYEE APPLYING FOR THE BENEFITS DOES NOT QUALIFY FOR ANY BENEFITS UNDER THIS TITLE USING THE DEFINITION IN ITEM (1) OF THIS SUBSECTION.~~

~~(G) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION.~~

~~(H) "EMPLOYER" MEANS A PERSON OR GOVERNMENTAL ENTITY THAT EMPLOYS AT LEAST ONE INDIVIDUAL IN THE STATE.~~

~~(I) "FAMILY MEMBER" MEANS:~~

~~(1) A CHILD;~~

~~(2) A PARENT;~~

~~(3) A PARENT–IN–LAW;~~

~~(4) A GRANDPARENT OR STEPGRANDPARENT OF AN EMPLOYEE OR THE EMPLOYEE'S SPOUSE OR DOMESTIC PARTNER;~~

~~(5) A GRANDCHILD OR STEPGRANDCHILD OF AN EMPLOYEE OR THE EMPLOYEE'S SPOUSE OR DOMESTIC PARTNER;~~

~~(6) A SPOUSE;~~

~~(7) A DOMESTIC PARTNER;~~

~~(8) A SIBLING;~~

~~(9) THE SPOUSE OR DOMESTIC PARTNER OF A SIBLING; OR~~

~~(10) ANY OTHER INDIVIDUAL RELATED BY BLOOD OR AFFINITY WHOSE CLOSE ASSOCIATION WITH THE EMPLOYEE IS EQUIVALENT TO A FAMILY RELATIONSHIP.~~

~~(J) "FUND" MEANS THE FAMILY AND MEDICAL LEAVE INSURANCE FUND ESTABLISHED UNDER § 8.3–501 OF THIS TITLE.~~

~~(K) "GOVERNMENTAL ENTITY" HAS THE MEANING STATED IN § 8–101 OF THIS ARTICLE.~~

~~(L) "INDIVIDUAL WHO STANDS IN LOCO PARENTIS" MEANS, WHETHER OR NOT A BIOLOGICAL OR LEGAL RELATIONSHIP EXISTS, AN INDIVIDUAL:~~

~~(1) WHO HAS DAY–TO–DAY RESPONSIBILITIES TO CARE FOR AND FINANCIALLY SUPPORT A CHILD; OR~~

~~(2) IN THE CASE OF AN EMPLOYEE OR THE EMPLOYEE'S SPOUSE OR DOMESTIC PARTNER, WHO HAD RESPONSIBILITY FOR THE EMPLOYEE OR THE SPOUSE OR DOMESTIC PARTNER WHEN THE EMPLOYEE OR THE SPOUSE OR DOMESTIC PARTNER WAS A CHILD.~~

~~(M) "NEWBORN CHILD" MEANS A CHILD UNDER THE AGE OF 1 YEAR.~~

~~(N) "NEXT OF KIN" MEANS THE NEAREST BLOOD RELATIVE.~~

~~(O) "PARENT" MEANS:~~

~~(1) AN ADOPTIVE PARENT;~~

~~(2) A BIOLOGICAL PARENT;~~

~~(3) A FOSTER PARENT;~~

~~(4) A LEGAL GUARDIAN;~~

~~(5) A STEPPARENT; OR~~

~~(6) AN INDIVIDUAL WHO STANDS IN LOCO PARENTIS TO AN EMPLOYEE.~~

~~(P) "PARENT–IN–LAW" MEANS:~~

~~(1) THE PARENT OF AN EMPLOYEE'S SPOUSE OR DOMESTIC PARTNER; OR~~

~~(2) AN INDIVIDUAL WHO STANDS IN LOCO PARENTIS TO AN EMPLOYEE'S SPOUSE OR DOMESTIC PARTNER.~~

~~(Q) "PROGRAM" MEANS THE FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.~~

~~(R) "QUALIFYING EXIGENCY" MEANS ANY OF THE FOLLOWING REASONS FOR WHICH LEAVE MAY BE NEEDED BY A FAMILY MEMBER OF A SERVICE MEMBER:~~

~~(1) BECAUSE THE SERVICE MEMBER HAS RECEIVED NOTICE OF DEPLOYMENT WITHIN 7 DAYS BEFORE THE DEPLOYMENT IS TO BEGIN;~~

~~(2) TO ATTEND MILITARY EVENTS AND RELATED ACTIVITIES;~~

~~(3) TO ATTEND CHILD CARE OR SCHOOL ACTIVITIES ONLY BECAUSE THE SERVICE MEMBER IS ON ACTIVE DUTY CALL OR ACTIVE DUTY STATUS;~~

~~(4) TO MAKE FINANCIAL AND LEGAL ARRANGEMENTS FOR THE SERVICE MEMBER'S ABSENCE OR BECAUSE OF THE ABSENCE;~~

~~(5) TO ATTEND COUNSELING THAT:~~

~~(I) IS NEEDED DUE TO THE ACTIVE DUTY OR CALL TO ACTIVE DUTY STATUS OF THE SERVICE MEMBER; AND~~

~~(II) IS PROVIDED BY AN INDIVIDUAL WHO IS NOT A LICENSED HEALTH CARE PROVIDER;~~

~~(6) TO SPEND NO MORE THAN 5 DAYS WITH A SERVICE MEMBER WHO IS ON SHORT–TERM TEMPORARY REST AND RECUPERATION LEAVE DURING THE PERIOD OF DEPLOYMENT;~~

Appendix 1

~~(7) TO ATTEND POSTDEPLOYMENT ACTIVITIES; OR~~

~~(8) BECAUSE OF ANY OTHER ISSUES THAT ARISE OUT OF ACTIVE DUTY OR A CALL TO ACTIVE DUTY THAT AN EMPLOYER AND AN EMPLOYEE AGREE SHOULD BE COVERED.~~

~~(S) "SECRETARY" MEANS THE SECRETARY OF LABOR, LICENSING, AND REGULATION.~~

~~(T) "SERIOUS HEALTH CONDITION" MEANS AN ILLNESS, AN INJURY, AN IMPAIRMENT, OR A PHYSICAL OR MENTAL CONDITION THAT INVOLVES:~~

~~(1) INPATIENT CARE IN A HOSPITAL, HOSPICE, OR RESIDENTIAL HEALTH CARE FACILITY; OR~~

~~(2) CONTINUED TREATMENT BY A LICENSED HEALTH CARE PROVIDER.~~

~~(U) "SERVICE MEMBER" MEANS AN INDIVIDUAL WHO IS AN ACTIVE DUTY MEMBER OF:~~

~~(1) THE UNITED STATES ARMED FORCES;~~

~~(2) A RESERVE COMPONENT OF THE UNITED STATES ARMED FORCES; OR~~

~~(3) THE NATIONAL GUARD OF ANY STATE.~~

~~8.3–102.~~

~~THIS TITLE PREEMPTS THE AUTHORITY OF A LOCAL JURISDICTION TO ADOPT A LAW, AN ORDINANCE, A RULE, OR A REGULATION ESTABLISHING OR IMPLEMENTING A FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.~~

~~8.3–103.~~

~~(A) THIS SECTION DOES NOT APPLY TO THE DISCLOSURE OF INFORMATION TO:~~

~~(1) A PUBLIC EMPLOYEE IN THE PERFORMANCE OF THE PUBLIC EMPLOYEE'S OFFICIAL DUTIES;~~

~~(2) THE INDIVIDUAL TO WHOM THE INFORMATION PERTAINS; OR~~

~~(3) IF AN AUTHORIZED REPRESENTATIVE HAS THE SIGNED AUTHORIZATION OF THE INDIVIDUAL TO WHOM THE INFORMATION PERTAINS, THE AUTHORIZED REPRESENTATIVE.~~

~~(B) AN EMPLOYEE OF THE DEPARTMENT MAY NOT DISCLOSE INFORMATION PERTAINING TO AN INDIVIDUAL WHO HAS APPLIED FOR OR RECEIVED BENEFITS UNDER THIS TITLE.~~

~~SUBTITLE 2. SCOPE OF TITLE.~~

~~8.3–201.~~

~~(A) (1) A SELF–EMPLOYED INDIVIDUAL MAY ELECT TO PARTICIPATE IN THE PROGRAM BY FILING A WRITTEN NOTICE OF ELECTION WITH THE SECRETARY.~~

~~(2) AN ELECTION MADE UNDER PARAGRAPH (1) OF THIS SUBSECTION BECOMES EFFECTIVE ON THE DATE THE WRITTEN NOTICE IS FILED.~~

~~(B) (1) IF A SELF–EMPLOYED INDIVIDUAL ELECTS TO PARTICIPATE IN THE PROGRAM UNDER SUBSECTION (A) OF THIS SECTION, THE INDIVIDUAL SHALL PARTICIPATE FOR AN INITIAL PERIOD OF NOT LESS THAN 3 YEARS.~~

~~(2) ONCE THE INITIAL PARTICIPATION PERIOD EXPIRES, THE SELF–EMPLOYED INDIVIDUAL MAY RENEW PARTICIPATION IN THE PROGRAM FOR A PERIOD OF NOT LESS THAN 1 YEAR.~~

~~(3) IF THE SELF–EMPLOYED INDIVIDUAL DOES NOT WISH TO RENEW PARTICIPATION IN THE PROGRAM UNDER PARAGRAPH (2) OF THIS SUBSECTION, WITHIN 30 DAYS BEFORE THE PARTICIPATION PERIOD EXPIRES, THE SELF–EMPLOYED INDIVIDUAL SHALL NOTIFY THE SECRETARY IN WRITING OF THE SELF–EMPLOYED INDIVIDUAL'S WITHDRAWAL FROM THE PROGRAM.~~

~~(C) DURING THE PERIOD A SELF–EMPLOYED INDIVIDUAL PARTICIPATES IN THE PROGRAM, THE SELF–EMPLOYED INDIVIDUAL SHALL PAY THE EMPLOYEE CONTRIBUTION REQUIRED UNDER § 8.3–601 OF THIS TITLE.~~

~~8.3–202.~~

~~THIS TITLE MAY NOT BE CONSTRUED TO DIMINISH AN EMPLOYER'S OBLIGATION TO COMPLY WITH A COLLECTIVE BARGAINING AGREEMENT OR AN EMPLOYER POLICY THAT ALLOWS AN EMPLOYEE TO TAKE LEAVE FOR A LONGER PERIOD OF TIME THAN THE EMPLOYEE WOULD BE ABLE TO RECEIVE BENEFITS UNDER THIS TITLE.~~

Appendix 1

~~**8.3–203.**~~

~~**(A) An employee's right to benefits under this title may not be diminished by a collective bargaining agreement entered into or renewed or an employer policy adopted or retained on or after June 1, 2016.**~~

~~**(B) An agreement by an employee to waive the employee's rights under this title is void as against public policy.**~~

~~**Subtitle 3. Establishment of Program.**~~

~~**8.3–301.**~~

~~**There is a Family and Medical Leave Insurance Program.**~~

~~**8.3–302.**~~

~~**The purpose of the Program is to provide temporary benefits to an employee who is taking partially paid or unpaid leave from employment:**~~

~~**(1) to care for a newborn child or a child newly placed for adoption or foster care with the employee during the first year after the birth, adoption, or placement;**~~

~~**(2) to care for a family member with a serious health condition;**~~

~~**(3) because the employee has a serious health condition that results in the employee being unable to perform the functions of the position of the employee;**~~

~~**(4) to care for a service member who is the employee's next of kin; or**~~

~~**(5) because the employee has a qualifying exigency arising out of the deployment of a family member of the employee.**~~

~~**Subtitle 4. Administration.**~~

~~**8.3–401.**~~

Appendix 1

~~THIS TITLE SHALL BE ADMINISTERED UNDER THE SUPERVISION OF THE SECRETARY BY THE DIVISION OF UNEMPLOYMENT INSURANCE ESTABLISHED UNDER § 8–302 OF THIS ARTICLE.~~

~~8.3–402.~~

~~THE SECRETARY MAY DELEGATE TO AN EMPLOYEE OF THE DEPARTMENT ANY POWER OR DUTY THAT IS REASONABLE AND PROPER FOR THE ADMINISTRATION OF THIS TITLE.~~

~~8.3–403.~~

~~(A) THE SECRETARY SHALL:~~

~~(1) SUBJECT TO SUBSECTION (B) OF THIS SECTION, ADOPT REGULATIONS NECESSARY TO CARRY OUT THIS TITLE;~~

~~(2) ESTABLISH PROCEDURES AND FORMS FOR FILING CLAIMS FOR BENEFITS, INCLUDING PROCEDURES FOR NOTIFYING AN EMPLOYER WITHIN 5 BUSINESS DAYS AFTER AN EMPLOYEE OF THE EMPLOYER FILES A CLAIM FOR BENEFITS UNDER THIS TITLE;~~

~~(3) USE INFORMATION–SHARING AND INTEGRATION TECHNOLOGY TO FACILITATE THE DISCLOSURE OF RELEVANT INFORMATION OR RECORDS NEEDED FOR THE ADMINISTRATION OF THIS TITLE; AND~~

~~(4) SUBJECT TO SUBSECTION (C) OF THIS SECTION, CARRY OUT A PUBLIC EDUCATION PROGRAM FOR THE PURPOSE OF EDUCATING THE PUBLIC ABOUT BENEFITS AVAILABLE TO EMPLOYEES UNDER THIS TITLE.~~

~~(B) THE REGULATIONS ADOPTED UNDER SUBSECTION (A)(1) OF THIS SECTION SHALL BE CONSISTENT WITH REGULATIONS ADOPTED TO IMPLEMENT THE FEDERAL FAMILY AND MEDICAL LEAVE ACT AND ANY RELEVANT STATE LAWS TO THE EXTENT THAT THE ADOPTED REGULATIONS DO NOT CONFLICT WITH THIS TITLE.~~

~~(C) (1) THE SECRETARY MAY USE A PORTION OF THE FUNDS PAID UNDER § 8.3–601 OF THIS TITLE OR OTHER AVAILABLE FUNDING TO PAY FOR AND CARRY OUT THE PUBLIC EDUCATION PROGRAM REQUIRED UNDER SUBSECTION (A)(4) OF THIS SECTION.~~

~~(2) MATERIALS USED IN THE PUBLIC EDUCATION PROGRAM REQUIRED UNDER SUBSECTION (A)(4) OF THIS SECTION SHALL BE MADE AVAILABLE IN ENGLISH AND SPANISH.~~

~~8.3–404.~~

~~(A) TO ENFORCE THIS TITLE, THE SECRETARY MAY:~~

~~(1) CONDUCT AN INVESTIGATION UNDER THIS TITLE, ON THE SECRETARY'S OWN INITIATIVE OR BY RECEIPT OF A WRITTEN COMPLAINT;~~

~~(2) ADMINISTER AN OATH;~~

~~(3) CERTIFY TO AN OFFICIAL ACT;~~

~~(4) TAKE A DEPOSITION;~~

~~(5) ISSUE A SUBPOENA FOR THE ATTENDANCE OF A WITNESS TO TESTIFY OR THE PRODUCTION OF BOOKS, CORRESPONDENCE, MEMORANDA, PAPERS, OR OTHER RECORDS; AND~~

~~(6) BRING A CIVIL ACTION IN THE COUNTY WHERE THE VIOLATION ALLEGEDLY OCCURRED.~~

~~(B) (1) A SUBPOENA ISSUED UNDER SUBSECTION (A)(5) OF THIS SECTION SHALL BE SERVED IN ANY MANNER IN WHICH A SUBPOENA OF A COURT MAY BE SERVED.~~

~~(2) IF A PERSON FAILS TO COMPLY WITH A SUBPOENA ISSUED UNDER SUBSECTION (A)(5) OF THIS SECTION ON A COMPLAINT FILED BY THE SECRETARY, THE CIRCUIT COURT FOR THE COUNTY WHERE THE INVESTIGATION IS BEING CONDUCTED OR WHERE THE PERSON RESIDES, IS PRESENT, OR TRANSACTS BUSINESS MAY ISSUE AN ORDER DIRECTING COMPLIANCE WITH THE SUBPOENA OR COMPELLING TESTIMONY.~~

~~(3) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, A PERSON MAY NOT BE EXCUSED FROM COMPLYING WITH A SUBPOENA ISSUED UNDER SUBSECTION (A)(5) OF THIS SECTION ON THE GROUND THAT THE EVIDENCE OR TESTIMONY REQUIRED MAY TEND TO INCRIMINATE THE PERSON OR SUBJECT THE PERSON TO A FORFEITURE OR PENALTY.~~

~~(II) 1. EXCEPT AS PROVIDED IN SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH, AFTER CLAIMING THE PRIVILEGE AGAINST SELF–INCRIMINATION, A PERSON MAY NOT BE PROSECUTED OR SUBJECTED TO ANY~~

~~FORFEITURE OR PENALTY BECAUSE OF ANY MATTER, THING, OR TRANSACTION ABOUT WHICH THE PERSON IS COMPELLED TO PRODUCE EVIDENCE OR TESTIFY.~~

~~2. IF THE PERSON COMMITS PERJURY WHILE GIVING TESTIMONY, THE PERSON IS SUBJECT TO PROSECUTION FOR THAT OFFENSE.~~

~~**8.3–405.**~~

~~IN A CIVIL ACTION TO ENFORCE THIS TITLE, THE SECRETARY AND THE STATE MAY BE REPRESENTED BY:~~

~~(1) THE ATTORNEY GENERAL; OR~~

~~(2) ANY QUALIFIED ATTORNEY WHO:~~

~~(I) IS A SALARIED EMPLOYEE OF THE SECRETARY; AND~~

~~(II) ON RECOMMENDATION OF THE ATTORNEY GENERAL, IS DESIGNATED TO REPRESENT THE SECRETARY OR THE BOARD OF APPEALS AND THE STATE.~~

~~**8.3–406.**~~

~~(A) ON OR BEFORE SEPTEMBER 1 OF EACH YEAR, THE SECRETARY SHALL SUBMIT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2–1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY AN ANNUAL REPORT ON THE ADMINISTRATION AND OPERATION OF THIS TITLE DURING THE PREVIOUS FISCAL YEAR.~~

~~(B) THE ANNUAL REPORT SHALL INCLUDE INFORMATION REGARDING:~~

~~(1) PROJECTED AND ACTUAL PROGRAM PARTICIPATION RATES;~~

~~(2) CONTRIBUTION RATES;~~

~~(3) FUND BALANCES; AND~~

~~(4) PUBLIC OUTREACH EFFORTS.~~

~~SUBTITLE 5. THE FAMILY AND MEDICAL LEAVE INSURANCE FUND.~~

~~**8.3–501.**~~

~~THERE IS A FAMILY AND MEDICAL LEAVE INSURANCE FUND.~~

Appendix 1

~~8.3–502.~~

~~(A) THE SECRETARY SHALL ADMINISTER THE FUND.~~

~~(B) THE FUND SHALL BE A SPECIAL FUND THAT IS SEPARATE FROM STATE MONEY.~~

~~8.3–503.~~

~~(A) THE FUND SHALL CONSIST OF:~~

~~(1) EMPLOYEE CONTRIBUTIONS;~~

~~(2) MONEY PAID TO THE FUND FOR THE PURPOSE OF REIMBURSING THE SECRETARY UNDER § 8.3–802 OF THIS TITLE FOR BENEFITS PAID IN ERROR;~~

~~(3) INTEREST EARNED ON MONEY IN THE FUND; AND~~

~~(4) MONEY RECEIVED FOR THE FUND FROM ANY OTHER SOURCE.~~

~~(B) MONEY IN THE FUND SHALL BE COMMINGLED.~~

~~(C) THE FUND SHALL BE USED ONLY FOR THE PURPOSES OF THIS TITLE.~~

~~8.3–504.~~

~~(A) (1) THE STATE TREASURER IS CUSTODIAN OF THE FUND.~~

~~(2) THE STATE TREASURER SHALL MANAGE THE FUND IN ACCORDANCE WITH REGULATIONS THAT THE SECRETARY ADOPTS.~~

~~(B) UNDER THE DIRECTION OF THE SECRETARY, THE STATE TREASURER SHALL ESTABLISH THE FUND ACCOUNT IN ANY FINANCIAL INSTITUTION IN WHICH THE GENERAL FUND OF THE STATE MAY BE DEPOSITED.~~

~~(C) ON RECEIPT OF ANY MONEY PAYABLE TO THE FUND, THE SECRETARY SHALL ENSURE IMMEDIATE DEPOSIT OF THE MONEY INTO THE FUND ACCOUNT AS REQUIRED BY THE STATE TREASURER.~~

~~(D) IN ACCORDANCE WITH REGULATIONS THAT THE SECRETARY ADOPTS, MONEY IN THE FUND ACCOUNT:~~

~~(1) SHALL BE USED TO PAY BENEFITS UNDER THIS TITLE; AND~~

~~(2) MAY BE USED TO PAY FOR:~~

~~(I) THE PUBLIC EDUCATION PROGRAM REQUIRED UNDER § 8.3–403(A)(4) OF THIS TITLE; AND~~

~~(II) ANY COSTS ASSOCIATED WITH THE INITIAL IMPLEMENTATION OF THIS TITLE.~~

~~**8.3–505.**~~

~~A CHECK THAT THE STATE TREASURER ISSUES TO PAY BENEFITS OR REFUNDS SHALL:~~

~~(1) BE ISSUED ONLY ON A WARRANT SIGNED BY THE SECRETARY;~~

~~(2) BEAR THE SIGNATURE OF THE STATE TREASURER; AND~~

~~(3) BE COUNTERSIGNED BY AN AUTHORIZED AGENT.~~

~~**8.3–506.**~~

~~THIS TITLE DOES NOT GRANT AN EMPLOYEE ANY PRIOR CLAIM OR RIGHT TO MONEY THE EMPLOYEE PAYS INTO THE FUND.~~

~~SUBTITLE 6. CONTRIBUTIONS.~~

~~**8.3–601.**~~

~~(A) BEGINNING ON JANUARY 1, 2017, EACH EMPLOYEE SHALL PAY TO THE SECRETARY CONTRIBUTIONS FOR THE FUND ON WAGES FOR EMPLOYMENT THAT IS PERFORMED FOR AN EMPLOYER.~~

~~(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE SECRETARY SHALL ESTABLISH IN REGULATION THE RATE OF CONTRIBUTION AN EMPLOYEE IS REQUIRED TO PAY UNDER SUBSECTION (A) OF THIS SECTION.~~

~~(2) THE RATE OF CONTRIBUTION ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE SUFFICIENT TO FUND THE BENEFITS PAYABLE UNDER THIS TITLE.~~

~~SUBTITLE 7. BENEFITS.~~

~~**8.3–701.**~~

Appendix 1

~~(A) BEGINNING ON JULY 1, 2018, TO BE ELIGIBLE FOR BENEFITS, A COVERED EMPLOYEE MUST BE TAKING PARTIALLY PAID OR UNPAID LEAVE FROM EMPLOYMENT BECAUSE THE COVERED EMPLOYEE:~~

~~(1) IS CARING FOR A NEWBORN CHILD OR A CHILD NEWLY PLACED FOR ADOPTION OR FOSTER CARE WITH THE COVERED EMPLOYEE DURING THE FIRST YEAR AFTER THE BIRTH, ADOPTION, OR PLACEMENT;~~

~~(2) IS CARING FOR A FAMILY MEMBER WITH A SERIOUS HEALTH CONDITION;~~

~~(3) HAS A SERIOUS HEALTH CONDITION THAT RESULTS IN THE COVERED EMPLOYEE BEING UNABLE TO PERFORM THE FUNCTIONS OF THE POSITION OF THE COVERED EMPLOYEE;~~

~~(4) IS CARING FOR A SERVICE MEMBER WHO IS THE COVERED EMPLOYEE'S NEXT OF KIN; OR~~

~~(5) HAS A QUALIFYING EXIGENCY ARISING OUT OF THE DEPLOYMENT OF A FAMILY MEMBER OF THE COVERED EMPLOYEE.~~

~~(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A COVERED EMPLOYEE MAY TAKE THE LEAVE FOR WHICH THE EMPLOYEE IS ELIGIBLE FOR BENEFITS UNDER SUBSECTION (A) OF THIS SECTION ON AN INTERMITTENT LEAVE SCHEDULE.~~

~~(2) IF LEAVE IS TAKEN ON AN INTERMITTENT LEAVE SCHEDULE, THE COVERED EMPLOYEE SHALL:~~

~~(I) MAKE A REASONABLE EFFORT TO SCHEDULE THE INTERMITTENT LEAVE IN A MANNER THAT DOES NOT UNDULY DISRUPT THE OPERATIONS OF THE EMPLOYER; AND~~

~~(II) PROVIDE THE EMPLOYER WITH REASONABLE AND PRACTICABLE PRIOR NOTICE OF THE REASON FOR WHICH THE INTERMITTENT LEAVE IS NECESSARY.~~

~~(3) IF LEAVE IS TAKEN ON AN INTERMITTENT LEAVE SCHEDULE, AN EMPLOYER MAY NOT:~~

~~(I) UNLESS THE INTERMITTENT LEAVE SCHEDULE IS MEDICALLY NECESSARY, BE REQUIRED TO ALLOW AN INTERMITTENT LEAVE SCHEDULE FOR MORE THAN 24 CONSECUTIVE WEEKS; OR~~

Appendix 1

~~(II) REDUCE THE TOTAL AMOUNT OF LEAVE TO WHICH THE COVERED EMPLOYEE IS ENTITLED.~~

~~8.3–702.~~

~~(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A COVERED EMPLOYEE MAY NOT RECEIVE MORE THAN 12 WEEKS OF BENEFITS IN AN APPLICATION YEAR.~~

~~(2) A COVERED EMPLOYEE MAY RECEIVE AN ADDITIONAL 12 WEEKS OF BENEFITS IF THE COVERED EMPLOYEE DURING THE SAME APPLICATION YEAR:~~

~~(I) RECEIVED BENEFITS BECAUSE THE COVERED EMPLOYEE WAS ELIGIBLE FOR BENEFITS UNDER § 8.3–701(A)(3) OF THIS SUBTITLE; AND~~

~~(II) BECOMES ELIGIBLE FOR BENEFITS UNDER § 8.3–701(A)(2), (4), OR (5) OF THIS SUBTITLE.~~

~~(B) (1) A COVERED EMPLOYEE MAY NOT BE PAID BENEFITS FOR THE FIRST 5 CONSECUTIVE CALENDAR DAYS AFTER THE COVERED EMPLOYEE BECOMES ELIGIBLE FOR BENEFITS UNDER § 8.3–701 OF THIS SUBTITLE UNLESS THE COVERED EMPLOYEE:~~

~~(I) HAS USED 10 OR MORE DAYS OF PARTIALLY PAID OR UNPAID LEAVE DURING THE APPLICATION YEAR; OR~~

~~(II) HAS ALREADY UNDERGONE THE WAITING PERIOD IN THE SAME APPLICATION YEAR.~~

~~(2) AN EMPLOYER MAY NOT REQUIRE A COVERED EMPLOYEE TO USE LEAVE PROVIDED BY THE EMPLOYER DURING THE WAITING PERIOD REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION.~~

~~(C) A COVERED EMPLOYEE MAY NOT BE PAID BENEFITS FOR LESS THAN 1 DAY OR 8 CONSECUTIVE HOURS OF LEAVE TAKEN IN 1 WORKWEEK.~~

~~8.3–703.~~

~~IF AN EMPLOYER PROVIDES A COVERED EMPLOYEE WITH WRITTEN NOTICE, THE EMPLOYER MAY REQUIRE THAT BENEFITS PAID UNDER THIS TITLE TO THE COVERED EMPLOYEE BE COORDINATED WITH PAYMENT MADE OR LEAVE ALLOWED~~

~~UNDER THE TERMS OF DISABILITY OR FAMILY CARE LEAVE UNDER A COLLECTIVE BARGAINING AGREEMENT OR EMPLOYER POLICY.~~

~~8.3–704.~~

~~(A) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE WEEKLY BENEFIT AMOUNT PAYABLE TO A COVERED EMPLOYEE UNDER THIS TITLE SHALL BE:~~

~~(I) 66% OF THE HIGHEST TOTAL AMOUNT OF WAGES EARNED BY THE COVERED EMPLOYEE IN 1 WEEK DURING THE BASE PERIOD; OR~~

~~(II) IF THE EMPLOYEE IS TAKING PARTIALLY PAID LEAVE, THE LESSER OF:~~

~~1. THE AMOUNT REQUIRED TO MAKE UP THE DIFFERENCE BETWEEN THE WAGES PAID TO THE EMPLOYEE WHILE THE EMPLOYEE IS TAKING PARTIALLY PAID LEAVE AND THE FULL WAGES NORMALLY PAID TO THE EMPLOYEE; AND~~

~~2. 66% OF THE HIGHEST TOTAL AMOUNT OF WAGES EARNED BY THE COVERED EMPLOYEE IN 1 WEEK DURING THE BASE PERIOD.~~

~~(2) THE WEEKLY BENEFIT AMOUNT PAYABLE UNDER PARAGRAPH (1) OF THIS SUBSECTION:~~

~~(I) SHALL BE AT LEAST $50; AND~~

~~(II) MAY NOT EXCEED:~~

~~1. FOR THE 12–MONTH PERIOD BEGINNING JULY 1, 2018, $1,000; AND~~

~~2. FOR THE 12–MONTH PERIOD BEGINNING JULY 1, 2019, AND EACH SUBSEQUENT 12–MONTH PERIOD, THE AMOUNT DETERMINED AND ANNOUNCED BY THE SECRETARY UNDER PARAGRAPH (3) OF THIS SUBSECTION.~~

~~(3) (I) IN THIS PARAGRAPH, "CONSUMER PRICE INDEX" MEANS THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE WASHINGTON–BALTIMORE METROPOLITAN AREA OR A SUCCESSOR INDEX PUBLISHED BY THE FEDERAL BUREAU OF LABOR STATISTICS.~~

~~(II) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH, FOR THE 12–MONTH PERIOD BEGINNING JULY 1, 2019, AND EACH SUBSEQUENT 12–MONTH PERIOD, THE MAXIMUM WEEKLY BENEFIT AMOUNT SHALL~~

~~BE INCREASED BY THE AMOUNT, ROUNDED TO THE NEAREST CENT, THAT EQUALS THE PRODUCT OF:~~

~~1. THE MAXIMUM WEEKLY BENEFIT AMOUNT IN EFFECT FOR THE PRECEDING 12–MONTH PERIOD; AND~~

~~2. THE ANNUAL PERCENT GROWTH IN THE CONSUMER PRICE INDEX FOR THE IMMEDIATELY PRECEDING 12–MONTH PERIOD, AS DETERMINED BY THE SECRETARY UNDER ITEM 1 OF THIS SUBPARAGRAPH.~~

~~(III) BEGINNING MARCH 1, 2019, AND EACH SUBSEQUENT SEPTEMBER 1, THE SECRETARY SHALL DETERMINE AND ANNOUNCE:~~

~~1. THE ANNUAL PERCENT GROWTH, IF ANY, IN THE CONSUMER PRICE INDEX BASED ON THE MOST RECENT 12–MONTH PERIOD FOR WHICH DATA IS AVAILABLE ON SEPTEMBER 1; AND~~

~~2. THE MAXIMUM WEEKLY BENEFIT AMOUNT EFFECTIVE FOR THE 12–MONTH PERIOD BEGINNING THE FOLLOWING JULY 1.~~

~~(IV) IF THERE IS A DECLINE OR NO GROWTH IN THE CONSUMER PRICE INDEX, THE MAXIMUM WEEKLY BENEFIT AMOUNT SHALL REMAIN THE SAME AS THE AMOUNT THAT WAS IN EFFECT FOR THE PRECEDING 12–MONTH PERIOD.~~

~~(B) AN INCREASE IN THE WEEKLY BENEFIT AMOUNT UNDER SUBSECTION (A)(3) OF THIS SECTION APPLIES ONLY TO A CLAIM FOR BENEFITS FILED AFTER THE DATE THE INCREASE BECOMES EFFECTIVE.~~

~~(C) THE DIVISION SHALL:~~

~~(1) MAKE THE FIRST PAYMENT OF BENEFITS TO A COVERED EMPLOYEE WITHIN 2 WEEKS AFTER THE CLAIM IS FILED; AND~~

~~(2) MAKE SUBSEQUENT PAYMENTS EVERY 2 WEEKS UNTIL THE BENEFIT PERIOD ENDS.~~

~~8.3–705.~~

~~(A) IF THE INTERNAL REVENUE SERVICE DETERMINES THAT BENEFITS PAID UNDER THIS SUBTITLE ARE SUBJECT TO FEDERAL INCOME TAX, AT THE TIME AN INDIVIDUAL FILES A NEW CLAIM FOR BENEFITS, THE DIVISION SHALL NOTIFY THE INDIVIDUAL THAT:~~

~~(1) THE INTERNAL REVENUE SERVICE HAS DETERMINED THAT THE BENEFITS ARE SUBJECT TO FEDERAL INCOME TAX;~~

~~(2) THERE ARE REQUIREMENTS REGARDING ESTIMATED TAX PAYMENTS;~~

~~(3) THE INDIVIDUAL MAY ELECT TO HAVE FEDERAL INCOME TAX DEDUCTED AND WITHHELD FROM THE BENEFITS THAT THE INDIVIDUAL RECEIVES UNDER THIS TITLE AT THE AMOUNT SPECIFIED IN THE INTERNAL REVENUE CODE; AND~~

~~(4) THE INDIVIDUAL IS PERMITTED TO CHANGE A PREVIOUSLY ELECTED WITHHOLDING STATUS.~~

~~(B) (1) IF AN INDIVIDUAL ELECTS TO HAVE FEDERAL INCOME TAX DEDUCTED AND WITHHELD UNDER SUBSECTION (A)(3) OF THIS SECTION, THE DIVISION SHALL DEDUCT AND WITHHOLD THE AMOUNT SPECIFIED IN THE INTERNAL REVENUE CODE IN A MANNER REQUIRED BY THE INTERNAL REVENUE SERVICE.~~

~~(2) IF THE DIVISION DEDUCTS AND WITHHOLDS FEDERAL INCOME TAX UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE AMOUNT DEDUCTED AND WITHHELD SHALL REMAIN IN THE FUND UNTIL IT IS TRANSFERRED TO THE FEDERAL TAXING AUTHORITY AS A PAYMENT OF INCOME TAX.~~

~~8.3–706.~~

~~IF A COVERED EMPLOYEE RECEIVES BENEFITS UNDER THIS SUBTITLE OR TAKES LEAVE FROM WORK THAT FULFILLS THE WAITING PERIOD REQUIRED UNDER § 8.3–702(B) OF THIS SUBTITLE, THE EMPLOYER OF THE COVERED EMPLOYEE SHALL, ON THE EXPIRATION OF THE LEAVE, RESTORE THE EMPLOYEE TO AN EQUIVALENT POSITION OF EMPLOYMENT IN THE SAME MANNER AS AN EMPLOYEE ENTITLED TO LEAVE UNDER THE FEDERAL FAMILY MEDICAL LEAVE ACT IS REQUIRED TO BE RESTORED.~~

~~8.3–707.~~

~~IF A COVERED EMPLOYEE IS RECEIVING BENEFITS UNDER THIS TITLE OR IS TAKING LEAVE THAT FULFILLS THE WAITING PERIOD REQUIRED UNDER § 8.3–702(B) OF THIS SUBTITLE, THE EMPLOYER OF THE COVERED EMPLOYEE SHALL CONTINUE ANY EMPLOYMENT BENEFITS IN THE SAME MANNER AS REQUIRED UNDER THE FEDERAL FAMILY MEDICAL LEAVE ACT FOR THE TIME PERIOD THAT THE COVERED EMPLOYEE IS ABSENT FROM WORK AND RECEIVING BENEFITS UNDER THIS TITLE.~~

Appendix 1

~~SUBTITLE 8. PROHIBITED ACTS; PENALTIES.~~

~~8.3–801.~~

~~IF AN INDIVIDUAL WILLFULLY MAKES A FALSE STATEMENT OR MISREPRESENTATION REGARDING A MATERIAL FACT OR WILLFULLY FAILS TO REPORT A MATERIAL FACT TO OBTAIN BENEFITS UNDER THIS TITLE, THE INDIVIDUAL IS DISQUALIFIED FROM RECEIVING BENEFITS FOR 1 YEAR.~~

~~8.3–802.~~

~~(A) THE DIVISION MAY SEEK REPAYMENT OF BENEFITS FROM AN INDIVIDUAL WHO RECEIVED BENEFITS UNDER THIS TITLE IF:~~

~~(1) THE BENEFITS WERE PAID ERRONEOUSLY OR AS A RESULT OF WILLFUL MISREPRESENTATION; OR~~

~~(2) IF A CLAIM FOR BENEFITS UNDER THIS TITLE IS REJECTED AFTER THE BENEFITS WERE PAID.~~

~~(B) THE SECRETARY MAY WAIVE THE REPAYMENT OF BENEFITS UNDER SUBSECTION (A) OF THIS SECTION IF THE REPAYMENT WOULD BE AGAINST EQUITY AND GOOD CONSCIENCE.~~

~~8.3–803.~~

~~A PERSON MAY NOT DISCHARGE, DEMOTE, OR OTHERWISE DISCRIMINATE OR TAKE ADVERSE ACTION AGAINST A COVERED EMPLOYEE BECAUSE THE COVERED EMPLOYEE:~~

~~(1) HAS FILED, APPLIED FOR, OR RECEIVED BENEFITS UNDER THIS TITLE;~~

~~(2) HAS COMMUNICATED TO THE PERSON AN INTENT TO FILE A CLAIM, A COMPLAINT, OR AN APPEAL UNDER THIS TITLE; OR~~

~~(3) HAS TESTIFIED OR INTENDS TO TESTIFY OR OTHERWISE HAS ASSISTED IN A PROCEEDING UNDER THIS TITLE.~~

~~SUBTITLE 9. SHORT TITLE.~~

~~8.3–901.~~

Appendix 1

~~THIS TITLE MAY BE CITED AS THE MARYLAND FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.~~

~~**Article – State Finance and Procurement**~~

~~6–226.~~

~~(a) (1) Except as otherwise specifically provided by law or by regulation of the Treasurer, the Treasurer shall credit to the General Fund any interest on or other income from State money that the Treasurer invests.~~

~~(2) (i) Notwithstanding any other provision of law, and unless inconsistent with a federal law, grant agreement, or other federal requirement or with the terms of a gift or settlement agreement, net interest on all State money allocated by the State Treasurer under this section to special funds or accounts, and otherwise entitled to receive interest earnings, as accounted for by the Comptroller, shall accrue to the General Fund of the State.~~

~~(ii) The provisions of subparagraph (i) of this paragraph do not apply to the following funds:~~

~~84. the Economic Development Marketing Fund; **[**and**]**~~

~~85. the Military Personnel and Veteran–Owned Small Business No–Interest Loan Fund**; AND**~~

~~**86. THE FAMILY AND MEDICAL LEAVE INSURANCE FUND.**~~

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any collective bargaining agreement entered into before the effective date of this Act.~~

~~SECTION 3. AND BE IT FURTHER ENACTED, That, on or before October 1, 2016, the Secretary of Labor, Licensing, and Regulation shall adopt regulations as required under § 8.3–403 of the Labor and Employment Article, as enacted by Section 1 of this Act.~~

~~SECTION 4. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that, to the extent permissible under federal law, existing employees and resources of the Division of Unemployment Insurance be used to carry out the provisions of this Act.~~

SECTION ~~5.~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2016. It shall remain effective for a period of 2 years and 1 month and, at the end of June 30, 2018, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 28, 2016.