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SENATE BILL DRS15235-LR-112

Short Title: NC Paid Family Leave Insurance Act. (Public)

Sponsors: Senators Batch, Salvador, and Crawford (Primary Sponsors)./Representative Meyer.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NORTH CAROLINA PAID FAMILY LEAVE INSURANCE ACT.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. Effective January 1, 2022, the General Statutes are amended by adding
5 a new Chapter to read:

6 **Chapter 96A.**

7 **"Paid Family Leave Insurance Act.**

8 **"§ 96A-1. Short title; definitions.**

9 (a) This Chapter shall be known and may be cited as the "North Carolina Paid Family
10 Leave Insurance Act."

11 (b) The following definitions apply in this Chapter:

12 (1) Application year. – The 12-month period beginning on the first day of the
13 calendar week in which an individual files an application for family and
14 medical leave insurance benefits.

15 (2) Assistant Secretary. – The Assistant Secretary of the Division of Employment
16 Security.

17 (3) Covered individual. – Any person who does all of the following:

18 a. Meets the monetary eligibility criteria set forth in G.S. 96-14.1(b) or
19 is self-employed, elects coverage, and meets the requirements of
20 G.S. 96A-13.

21 b. Meets the administrative requirements outlined in this Chapter and in
22 the rules adopted under this Chapter.

23 c. Submits an application.

24 (4) Covered service member. – Either:

25 a. A member of the Armed Forces, including a member of the National
26 Guard or Reserves, who is (i) undergoing medical treatment,
27 recuperation, or therapy, (ii) otherwise in outpatient status, or (iii) is
28 otherwise on the temporary disability retired list for a serious injury or
29 illness that was incurred by the member in the line of duty on active
30 duty in the Armed Forces or a serious injury or illness that existed
31 before the beginning of the member's active duty and was aggravated
32 by service in the line of duty on active duty in the Armed Forces; or

33 b. A former member of the Armed Forces, including a former member of
34 the National Guard or Reserves, who is undergoing medical treatment,
35 recuperation, or therapy for a serious injury or illness that was incurred



- 1 by the member in the line of duty on active duty in the Armed Forces
2 or a serious injury or illness that existed before the beginning of the
3 member's active duty and was aggravated by service in the line of duty
4 on active duty in the Armed Forces and manifested before or after the
5 member was discharged or released from service.
- 6 (5) Division. – The Division of Employment Security of the Department of
7 Commerce.
- 8 (6) Employee. – Any individual employed by an employer.
- 9 (7) Employer. – Any person acting directly or indirectly in the interest of an
10 employer in relation to an employee. As used in this subdivision, "person"
11 means an individual, partnership, association, corporation, business trust,
12 legal representative, or any organized group of persons. For the purposes of
13 this Chapter, it also means the State of North Carolina, any city, town, county,
14 municipality, or any State or local agency or instrumentality of government.
15 The term does not include the government of the United States and any agency
16 of the United States (including the United States Postal Service and Postal
17 Rate Commission).
- 18 (8) Family and medical leave insurance benefits. – The benefits provided under
19 the terms of this Chapter.
- 20 (9) Family member. – Any of the following:
- 21 a. Regardless of age, a biological, adopted, or foster child, stepchild, or
22 legal ward, a child of a domestic partner, a child to whom the employee
23 stands in loco parentis, or a person to whom the employee stood in
24 loco parentis when the person was a minor.
- 25 b. A biological, adoptive, or foster parent, stepparent, or legal guardian
26 of an employee or an employee's spouse or domestic partner or a
27 person who stood in loco parentis when the employee or the
28 employee's spouse or domestic partner was a minor.
- 29 c. A person to whom the employee is legally married under the laws of
30 any state or a domestic partner of an employee as registered under the
31 laws of any state or political subdivision.
- 32 d. A grandparent, grandchild, or sibling (whether a biological, foster,
33 adoptive, or step relationship) of the employee or the employee's
34 spouse or domestic partner.
- 35 e. Any other individual related by blood or whose close association with
36 the employee is the equivalent of a family relationship.
- 37 (10) Health care provider. – Any person licensed under federal or North Carolina
38 law to provide medical or emergency services, including, but not limited to,
39 doctors, nurses and emergency room personnel, or certified midwives.
- 40 (11) Next of kin. – As defined in section 101(17) of the Family and Medical Leave
41 Act, 29 U.S.C. § 2611(17).
- 42 (12) Qualifying exigency leave. – Leave based on a need arising out of a covered
43 individual's family member's active duty service or notice of an impending
44 call or order to active duty in the Armed Forces, including, but not limited to,
45 providing for the care or other needs of the military member's child or other
46 family member, making financial or legal arrangements for the military
47 member, attending counseling, attending military events or ceremonies,
48 spending time with the military member during a rest and recuperation leave
49 or following return from deployment, or making arrangements following the
50 death of the military member.

- 1 (13) Retaliatory personnel action. – Denial of any right guaranteed under this
2 Chapter, including, but not limited to, any threat, discharge, suspension,
3 demotion, reduction of hours, any other adverse action against an employee
4 for the exercise of any right guaranteed herein, or reporting or threatening to
5 report an employee's suspected citizenship or immigration status or the
6 suspected citizenship or immigration status of a family member of the
7 employee to a federal, State, or local agency. Retaliatory personnel actions
8 shall also include interference with or punishment for in any manner
9 participating in or assisting an investigation, proceeding, or hearing under this
10 Chapter.
- 11 (14) Serious health condition. – An illness, injury, impairment, pregnancy,
12 recovery from childbirth, or physical or mental condition that involves
13 inpatient care in a hospital, hospice, or residential medical care facility, or
14 continuing treatment by a health care provider.
- 15 (15) State average weekly wage. – The average weekly insured wage as defined in
16 G.S. 96-1(b)(2).

17 **"§ 96A-2. Eligibility for benefits.**

18 Beginning January 1, 2023, family and medical leave insurance benefits are payable to an
19 individual who:

- 20 (1) Meets the definition of "covered individual" as defined by G.S. 96A-1(b)(2);
21 and
- 22 (2) Meets one of the following requirements:
- 23 a. Because of birth, adoption, or placement through foster care, is caring
24 for a new child during the first year after the birth, adoption, or
25 placement of that child;
- 26 b. Is caring for a family member with a serious health condition;
- 27 c. Has a serious health condition;
- 28 d. Is caring for a covered service member who is the covered individual's
29 next of kin or other family member; or
- 30 e. Because of any "qualifying exigency leave" arising out of the fact that
31 the family member of the covered individual is on active duty (or has
32 been notified of an impending call or order to active duty) in the
33 Armed Forces.

34 **"§ 96A-3. Duration of benefits.**

35 (a) The maximum number of weeks during which family and medical leave insurance
36 benefits are payable under G.S. 96A-2(a)(2)c. in an application year is 18 weeks.

37 (b) The maximum number of weeks during which family and medical leave insurance
38 benefits are payable under G.S. 96A-2(a)(2)a., (2)b., or (2)e. in an application year is 12 weeks.

39 (c) The maximum number of weeks during which family and medical leave insurance
40 benefits are payable under G.S. 96A-2(a)(2)d. in an application year is 26 weeks.

41 (d) The first payment of benefits must be made to an individual within two weeks after
42 the claim is filed, and subsequent payments must be made every two weeks thereafter.

43 **"§ 96A-4. Amount of benefits.**

44 (a) The amount of family and medical leave insurance benefits shall be determined as
45 follows:

- 46 (1) The weekly benefit shall be determined as follows: (i) the portion of the
47 covered individual's average weekly wage that is equal to or less than one
48 hundred percent (100%) of the State average weekly wage shall be replaced
49 at a rate of ninety percent (90%) and (ii) the portion of an employee's or
50 self-employed individual's average weekly wage that is more than one

1 hundred percent (100%) of the State average weekly wage shall be replaced
2 at a rate of fifty percent (50%).

3 (2) The maximum benefit shall be one hundred percent (100%) of the statewide
4 average weekly wage.

5 (3) The minimum weekly benefit shall not be less than one hundred dollars
6 (\$100.00) per week except that if the covered individual's average weekly
7 wage is less than one hundred dollars (\$100.00) per week, the weekly benefit
8 shall be the employee's full wage.

9 (4) For purposes of this section, a covered individual's average weekly wage shall
10 be the average weekly wage during the 12 months preceding submission of
11 the application (or the average weekly wage during the time the covered
12 individual worked, if it was less than 12 months).

13 (b) Family and medical leave insurance benefits are not payable for less than eight hours
14 of family and medical leave taken in one workweek.

15 **"§ 96A-5. Contributions.**

16 (a) Payroll contributions shall be authorized in order to finance the payment of benefits
17 under the family and medical leave insurance program.

18 (b) Beginning on January 1, 2022, for each employee, an employer shall remit to the Paid
19 Family and Medical Leave Fund (Fund), established under G.S. 96A-16, contributions in the
20 form and manner determined by the Division. Annually, not later than October 1, the Assistant
21 Secretary shall fix the contribution rate for the coming calendar year in the manner described in
22 this subsection. For calendar years 2022 and 2023, the Assistant Secretary shall do so based on
23 sound actuarial principles. For calendar year 2024 and thereafter, the Assistant Secretary shall
24 first certify and publish the following information:

25 (1) The total amount of family and medical leave insurance benefits paid by the
26 Division during the previous fiscal year;

27 (2) The total amount remaining in the Fund at the close of the fiscal year;

28 (3) The total amount equal to one hundred forty percent (140%) of the previous
29 fiscal year's expenditure for family and medical leave insurance benefits paid
30 and for the administration of the family and medical leave insurance program;

31 (4) The amount by which the total amount remaining in the Fund at the close of
32 the previous fiscal year is less than or greater than one hundred forty percent
33 (140%) of the previous fiscal year's expenditure for family and medical leave
34 insurance benefits paid and for the administration of the family and medical
35 leave insurance program; and

36 (5) The amount by which the contribution rate shall be adjusted to ensure that the
37 Fund shall maintain or achieve an annualized amount of not less than one
38 hundred forty percent (140%) of the previous fiscal year's expenditure for
39 family and medical leave insurance benefits paid and for the administration of
40 the family and medical leave insurance program. The contribution rate
41 adjustment, if any, made as the result of the Assistant Secretary's certification
42 and report under this subsection shall supersede the rate previously set forth
43 and shall become effective on January 1 of the following calendar year.

44 (c) A self-employed individual who is electing coverage under G.S. 96A-13 shall be
45 responsible for the employee's share of contributions set forth in subsection (b) of this section on
46 that individual's income from self-employment.

47 (d) An employer shall not deduct more than fifty percent (50%) of the contribution
48 required for an employee by subsection (b) of this section from that employee's wages and shall
49 remit the full contribution required under said subsection to the fund.

50 **"§ 96A-6. Reduced leave schedule.**

1 (a) A covered individual shall be entitled, at the option of the covered individual, to take
2 paid family and medical leave on an intermittent or reduced leave schedule in which all of the
3 leave authorized under this Chapter is not taken sequentially. Family and medical leave insurance
4 benefits for intermittent or reduced leave schedules shall be prorated.

5 (b) The covered individual shall make a reasonable effort to schedule paid family and
6 medical leave under this section so as not to unduly disrupt the operations of the employer. The
7 covered individual shall provide the employer with prior notice of the schedule on which the
8 covered individual will take the leave, to the extent practicable. Paid family and medical leave
9 taken under this section shall not result in a reduction of the total amount of leave to which an
10 employee is entitled beyond the amount of leave actually taken.

11 (c) Nothing in this section shall be construed to entitle a covered individual to more leave
12 than required under G.S. 96A-3.

13 **§ 96A-7. Leave and employment protection.**

14 (a) Any covered individual who exercises his or her right to family and medical leave
15 insurance benefits shall, upon the expiration of that leave, be entitled to be restored by the
16 employer to the position held by the covered individual when the leave commenced, or to a
17 position with equivalent seniority, status, employment benefits, pay, and other terms and
18 conditions of employment, including fringe benefits and service credits that the covered
19 individual had been entitled to at the commencement of leave.

20 (b) During any leave taken pursuant to G.S. 96A-2, the employer shall maintain any
21 health care benefits the covered individual had prior to taking such leave for the duration of the
22 leave as if the covered individual had continued in employment continuously from the date he or
23 she commenced the leave until the date the family and medical leave insurance benefits
24 terminate; provided, however, that the covered individual shall continue to pay the covered
25 individual's share of the cost of health benefits as required prior to the commencement of the
26 leave.

27 (c) Any employer who violates G.S. 96A-7 or G.S. 96A-8 shall be liable to any eligible
28 employee affected as follows:

29 (1) For damages equal to the amount of (i) any wages, salary, employment
30 benefits, or other compensation denied or lost to such employee by reason of
31 the violation, or (ii) in a case in which wages, salary, employment benefits, or
32 other compensation have not been denied or lost to the employee, any actual
33 monetary losses sustained by the employee as a direct result of the violation,
34 such as the cost of providing care, up to a sum equal to 12 weeks of wages or
35 salary for the employee, (iii) the interest on the amount described in clause (i)
36 calculated at the prevailing rate, and (iv) an additional amount as liquidated
37 damages equal to the sum of the amount described in clause (i) and the interest
38 described in clause (ii), except that if an employer who has violated
39 G.S. 96A-7 or G.S. 96A-8 proves to the satisfaction of the court that the act
40 or omission which violated the section was in good faith and that the employer
41 had reasonable grounds for believing that the act or omission was not a
42 violation, the court may, in the discretion of the court, reduce the amount of
43 the liability to the amount and interest determined under clauses (i) and (ii),
44 respectively.

45 (2) For such equitable relief as may be appropriate, including employment,
46 reinstatement, and promotion.

47 (d) An action to recover the damages or equitable relief prescribed in subsection (c) of
48 this section may be maintained against any employer (including a public agency) in any federal
49 or State court of competent jurisdiction by any one or more employees for and on behalf of the
50 employees or the employees and other employees similarly situated.

1 (e) The court in such an action shall, in addition to any judgment awarded to the plaintiff,
2 allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to
3 be paid by the defendant.

4 (f) Except as provided by subsection (g) of this section, an action may be brought under
5 this section not later than two years after the date of the last event constituting the alleged
6 violation for which the action is brought.

7 (g) In the case of an action brought for a willful violation of G.S. 96A-7 or G.S. 96A-8,
8 the action may be brought within three years of the date of the last event constituting the alleged
9 violation for which such action is brought.

10 **"§ 96A-8. Retaliatory personnel actions prohibited.**

11 (a) It shall be unlawful for an employer or any other person to interfere with, restrain,
12 deny the exercise of, or the attempt to exercise, any right protected under this Chapter.

13 (b) An employer, temporary help company, employment agency, employee organization,
14 or other person shall not take retaliatory personnel action or otherwise discriminate against a
15 person because he or she exercised rights protected under this Chapter. Such rights include, but
16 are not limited to, the right to request, file for, apply for, or use benefits provided for under this
17 Chapter; to take leave from work under this Chapter; communicate to the employer or any other
18 person or entity an intent to file a claim, a complaint with the Division or courts, or an appeal; or
19 has testified or is about to testify or has assisted in any investigation, hearing, or proceeding under
20 this Chapter, at any time, including during the period in which the person receives family and
21 medical leave insurance benefits under this Chapter; inform any person about any employer's
22 alleged violation of this Chapter; and the right to inform any person of his or her rights under this
23 Chapter.

24 (c) It shall be unlawful for an employer's absence control policy to count paid family and
25 medical leave taken under this Chapter as an absence that may lead to or result in discipline,
26 discharge, demotion, suspension, or any other adverse action.

27 (d) Protections of this section shall apply to any person who mistakenly, but in good faith,
28 alleges violations of this Chapter.

29 (e) This section shall be enforced as provided in subsections (c) through (g) of
30 G.S. 96A-7.

31 **"§ 96A-9. Coordination of benefits.**

32 (a) Leave taken with wage replacement under this Chapter that also qualifies as leave
33 under the Family and Medical Leave Act shall run concurrently with leave taken under the
34 Family and Medical Leave Act.

35 (b) An employer may require that payment made pursuant to this Chapter be made
36 concurrently or otherwise coordinated with payment made or leave allowed under the terms of
37 disability or family care leave under a collective bargaining agreement or employer policy. The
38 employer must give employees written notice of this requirement.

39 (c) This Chapter does not diminish an employer's obligation to comply with any of the
40 following that provide more generous leave:

41 (1) A collective bargaining agreement;

42 (2) An employer policy; or

43 (3) Any law.

44 (d) An individual's right to leave under this Chapter may not be diminished by a collective
45 bargaining agreement entered into or renewed, or an employer policy adopted or retained, after
46 the effective date of this Chapter. Any agreement by an individual to waive his or her rights under
47 this Chapter is void as against public policy.

48 **"§ 96A-10. Notice.**

49 (a) Each employer shall provide written notice to each employee upon hiring and
50 annually thereafter. An employer shall also provide written notice to an employee when the
51 employee requests leave under this Chapter or when the employer acquires knowledge that an

1 employee's leave may be for a qualifying reason under G.S. 96A-2. Such notice shall include (i)
2 the employee's right to family and medical leave insurance benefits under this Chapter and the
3 terms under which it may be used, (ii) the amount of family and medical leave insurance benefits,
4 (iii) the procedure for filing a claim for benefits, (iv) the right to job protection and benefits
5 continuation under G.S. 96A-7, (v) that discrimination and retaliatory personnel actions against
6 a person for requesting, applying for, or using family and medical leave insurance benefits is
7 prohibited under G.S. 96A-8, and (vi) that the employee has a right to file a complaint for
8 violations of this Chapter. An employer shall also display and maintain a poster in a conspicuous
9 place accessible to employees at the employer's place of business that contains the information
10 required by this section in English, Spanish, and any language that is the first language spoken
11 by at least five percent (5%) of the employer's workforce, provided that such notice has been
12 provided by the Division. The Assistant Secretary may adopt regulations to establish additional
13 requirements concerning the means by which employers shall provide such notice.

14 (b) Employees shall provide notice to their employers as soon as practicable of their
15 intention to take leave under this Chapter.

16 **"§ 96A-11. Enforcement.**

17 (a) The Assistant Secretary shall establish a system for appeals in the case of a denial of
18 family and medical leave insurance benefits. In establishing such system, the Assistant Secretary
19 may utilize any and all procedures and appeals mechanisms established under G.S. 96-15.

20 (b) Judicial review of any decision with respect to family and medical leave insurance
21 benefits shall be permitted in a court of competent jurisdiction after a party aggrieved thereby
22 has exhausted all administrative remedies established by the Assistant Secretary.

23 (c) The Assistant Secretary shall implement procedures to ensure confidentiality of all
24 information related to any claims filed or appeals taken to the maximum extent permitted by
25 applicable laws.

26 **"§ 96A-12. Erroneous payments and disqualification for benefits.**

27 (a) A covered individual is disqualified from family and medical leave insurance benefits
28 for one year if the individual is determined by the Assistant Secretary to have willfully made a
29 false statement or misrepresentation regarding a material fact or willfully failed to report a
30 material fact, to obtain benefits under this Chapter.

31 (b) If family and medical leave insurance benefits are paid erroneously or as a result of
32 willful misrepresentation, or if a claim for family and medical leave insurance benefits is rejected
33 after benefits are paid, the Division may seek repayment of benefits from the recipient. The
34 Assistant Secretary shall exercise his or her discretion to waive, in whole or in part, the amount
35 of any such payments where the recovery would be against equity and good conscience.

36 **"§ 96A-13. Elective coverage.**

37 (a) A self-employed person, including a sole proprietor, partner, or joint venturer, may
38 elect coverage under this Chapter for an initial period of not less than three years. The
39 self-employed person must file a notice of election in writing with the Assistant Secretary, as
40 required by the Division. The election becomes effective on the date of filing the notice. As a
41 condition of election, the self-employed person must agree to supply any information concerning
42 income that the Division deems necessary.

43 (b) A self-employed person who has elected coverage may withdraw from coverage
44 within 30 days after the end of the three-year period of coverage, or at such other times as the
45 Assistant Secretary may prescribe by rule, by filing written notice with the Assistant Secretary,
46 such withdrawal to take effect not sooner than 30 days after filing the notice.

47 **"§ 96A-14. Family and medical leave insurance program.**

48 (a) The Division shall establish and administer a family and medical leave insurance
49 program and begin collecting contributions as specified in this Chapter. By January 1, 2023, the
50 Division shall start receiving claims from and paying family and medical leave insurance benefits
51 to covered individuals.

1 **(b)** The Division shall establish reasonable procedures and forms for filing claims for
2 benefits under this Chapter and shall specify what supporting documentation is necessary to
3 support a claim for benefits, including any documentation required from a health care provider
4 for proof of a serious health condition.

5 **(c)** The Division shall notify the employer within five business days of a claim being
6 filed pursuant to this Chapter.

7 **(d)** The Division shall use information sharing and integration technology to facilitate the
8 disclosure of relevant information or records, so long as an individual consents to the disclosure
9 as required under State law.

10 **(e)** Information contained in the files and records pertaining to an individual under this
11 Chapter are confidential and not open to public inspection other than to public employees in the
12 performance of their official duties. However, the individual or an authorized representative of
13 an individual may review the records or receive specific information from the records upon the
14 presentation of the individual's signed authorization.

15 **(f)** The Department of Commerce shall adopt rules as necessary to implement this
16 Chapter.

17 **"§ 96A-15. Federal income tax.**

18 If the Internal Revenue Service determines that family and medical leave insurance benefits
19 under this Chapter are subject to federal income tax, the Division must advise an individual filing
20 a new claim for family and medical leave insurance benefits, at the time of filing such claim, that
21 the Internal Revenue Service has determined that benefits are subject to federal income tax and
22 that requirements exist pertaining to estimated tax payments.

23 **"§ 96A-16. Family and medical leave insurance account fund; establishment and**
24 **investment.**

25 **(a)** The Paid Family and Medical Leave Fund (Fund) is created in the custody of the
26 Division. Expenditures from the Fund may be used only for the purposes of the family and
27 medical leave insurance benefits program. Only the Assistant Secretary of the Division or the
28 Assistant Secretary's designee may authorize expenditures from the Fund.

29 **(b)** Whenever, in the judgment of the Division, there shall be in the Fund an amount of
30 funds in excess of that amount deemed by the Division to be sufficient to meet the current
31 expenditures properly payable therefrom, the Division shall have full power to invest, reinvest,
32 manage, contract, sell, or exchange investments acquired with such excess funds in the manner
33 prescribed by North Carolina law.

34 **"§ 96A-17. Reports.**

35 Beginning January 1, 2024, the Division shall report to the General Assembly by April 1 of
36 each year on projected and actual program participation by purpose listed in G.S. 96A-2, gender
37 of beneficiary, premium rates, fund balances, outreach efforts, and, for leaves taken under
38 G.S. 96A-2, family members for whom leave was taken to provide care.

39 **"§ 96A-18. Public education.**

40 The Division shall conduct a public education campaign to inform workers and employers
41 regarding the availability of family and medical leave insurance benefits. Outreach information
42 shall be available in English, Spanish, French, German, Vietnamese, Chinese, Arabic, Korean,
43 Tagalog, Hindi, Gujarati, Russian, Hmong, and other languages spoken by more than five percent
44 (5%) of the State's population.

45 **"§ 96A-19. Sharing technology.**

46 The Division is encouraged to use State data collection and technology to the extent possible
47 and to integrate the program with existing State policies.

48 **"§ 96A-20. Severability.**

49 If any provision of this Chapter or its application to any person or circumstance is held
50 invalid, the remainder of the Chapter or the application of the provision to other persons or
51 circumstances is not affected."

1 **SECTION 2.** All rules necessary for implementation of this act shall be adopted by
2 October 1, 2021.

3 **SECTION 3.** Except as otherwise provided, this act is effective when it becomes
4 law.