

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 3078**

BY DELEGATES ESTEP-BURTON, C. THOMPSON,

LAVENDER-BOWE, DOYLE AND PYLES

[Introduced February 12, 2019; Referred  
to the Committee on Banking and Insurance then  
Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended by adding thereto a new article,  
2 designated §21-5F-1, §21-5F-2, §21-5F-3, §21-5F-4, §21-5F-5, §21-5F-6, §21-5F-7, §21-  
3 5F-8, §21-5F-9, §21-5F-10, §21-5F-11, §21-5F-12, §21-5F-13, §21-5F-14, §21-5F-15,  
4 §21-5F-16, §21-5F-17, §21-5F-18, §21-5F-19, §21-5F-20, §21-5F-21, §21-5F-22, §21-5F-  
5 23, §21-5F-24, §21-5F-25, §21-5F-26, §21-5F-27, §21-5F-28, §21-5F-29, §21-5F-30,  
6 §21-5F-31, §21-5F-32, §21-5F-33, §21-5F-34, §21-5F-35, §21-5F-36, §21-5F-37, §21-5F-  
7 38, §21-5F-39, §21-5F-40, §21-5F-41, §21-5F-42, §21-5F-43, §21-5F-44, §21-5F-45,  
8 §21-5F-46, §21-5F-47, §21-5F-48, §21-5F-49, §21-5F-50, §21-5F-51. §21-5F-52, §21-5F-  
9 53, §21-5F-54, §21-5F-55, §21-5F-56, §21-5F-57, §21-5F-58, §21-5F-59, §21-5F-60,  
10 §21-5F-61, §21-5F-62, §21-5F-63, §21-5F-64, §21-5F-65, §21-5F-66, §21-5F-67, §21-5F-  
11 68, §21-5F-69, §21-5F-70, §21-5F-71, §21-5F-72, §21-5F-73, §21-5F-74, §21-5F-75,  
12 §21-5F-76, §21-5F-77, §21-5F-78, §21-5F-79, §21-5F-80, §21-5F-81, §21-5F-82, §21-5F-  
13 83, §21-5F-84, §21-5F-85, §21-5F-86, and §21-5F-87, all relating generally to paid family  
14 and medical leave; intent; definitions; benefit eligibility leave entitlement and expiration;  
15 limitations, disqualifications and employee penalties; benefit amounts and duration; time  
16 of payment; contesting application; premiums; elective coverage; tribes; notice to  
17 employers; application, certification and verification; voluntary plan; advisory committee;  
18 child support; employment protection; recovery of benefit payments; employer  
19 requirements; appeals; interest on delinquent premiums; lien for premiums; order and  
20 notice of assessment; jeopardy assessment; distraint, seizure and sale; notice and order  
21 to withhold and deliver; warrant; collection by civil action; injunction proceedings; charge  
22 off of uncollectible accounts; premiums due and payable upon termination or disposal of  
23 business; employer penalties; other benefits; health benefits; employee notice of rights;  
24 employer prohibitions; investigations and appeals; remedies; posting of notice; family and  
25 medical leave enforcement account; other laws-discrimination; miscellaneous rights;  
26 coordination of leave under other laws; federal income taxes; no continuing right; family

27 and medical leave insurance account; small business assistance; rules; reports; collective  
28 bargaining; and ombudsperson.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 5F. PAID FAMILY AND MEDICAL LEAVE.**

**§21-5F-1. Intent.**

1 The Legislature finds that the demands of the workplace and of families need to be  
2 balanced to promote family stability and economic security. The Legislature also finds that families  
3 across the state own and operate businesses. Workplace leave policies are desirable to  
4 accommodate changes in the workforce such as rising numbers of dual-career couples, working  
5 single parents, and an aging population. In addition the impact of significant new requirements  
6 should be reasonably balanced to help small businesses thrive.

7 The Legislature also finds that access to paid leave is associated with many important  
8 health benefits. Research confirms that paid leave results in decreased infant mortality and more  
9 well-baby visits and reductions in maternal postpartum depression and stress. The Legislature  
10 further finds that paid leave increases the duration of breastfeeding, which supports bonding,  
11 stimulates positive neurological and psychological development, strengthens a child's immune  
12 system, and reduces the risks of serious or costly health problems such as asthma, acute ear  
13 infections, obesity, Type 2 diabetes, leukemia, and sudden infant death syndrome. The  
14 Legislature also finds that when fathers have access to paid leave they are more directly engaged  
15 during the child's first few months, thereby increasing father infant bonding and reducing overall  
16 stress on the family.

17 The Legislature declares it to be in the public interest to create a family and medical leave  
18 insurance program to provide reasonable paid family leave for the birth or placement of a child  
19 with the employee, for the care of a family member who has a serious health condition, and for a  
20 qualifying exigency under the federal family and medical leave article, and reasonable paid  
21 medical leave for an employee's own serious health condition and to reasonably assist

22 businesses in implementing and maintaining a program to support their employees and family.

**§21-5F-2. Definitions.**

1 Unless the context clearly requires otherwise, the definitions in this section apply  
2 throughout this article.

1 (1) "Child" includes a biological, adopted, or foster child, a stepchild, or a child to whom  
2 the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of  
3 age or dependency status.

4 (2) "Commissioner" means the commissioner of the bureau or the commissioner's  
5 designee.

6 (3) "Bureau" means the Bureau of Employment Programs.

7 (4)(a) "Employee" means an individual who is in the employment of an employer.

8 (b) "Employee" does not include employees of the United States of America.

9 (5) "Employee's average weekly wage" means the quotient derived by dividing the  
10 employee's total wages during the two quarters of the employee's qualifying period in which total  
11 wages were highest by 26. If the result is not a multiple of one dollar, the bureau must round the  
12 result to the next lower multiple of one dollar.

13 (6)(a) "Employer" means: (i) Any individual or type of organization, including any  
14 partnership, association, trust, estate, joint stock company, insurance company, limited liability  
15 company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy,  
16 trustee, or the legal representative of a deceased person, having any person in employment or,  
17 having become an employer, has not ceased to be an employer as provided in this article; (ii) the  
18 state, state institutions, and state agencies; and (iii) any unit of local government including, but  
19 not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political  
20 subdivision.

21 (b) "Employer" does not include the United States of America.

22 (7)(a) "Employment" means personal service, of whatever nature, unlimited by the

23 relationship of master and servant as known to the common law or any other legal relationship  
24 performed for wages or under any contract calling for the performance of personal services,  
25 written or oral, express or implied. The term "employment" includes an individual's entire service  
26 performed within or without or both within and without this state, if:

27 (i) The service is localized in this state; or

28 (ii) The service is not localized in any state, but some of the service is performed in this  
29 state; and

30 (A) The base of operations of the employee is in the state, or if there is no base of  
31 operations, then the place from which such service is directed or controlled is in this state; or

32 (B) The base of operations or place from which such service is directed or controlled is  
33 not in any state in which some part of the service is performed, but the individual's residence is in  
34 this state.

35 (b) "Employment" does not include:

36 (i) Self-employed individuals;

37 (ii) Services for remuneration when it is shown to the satisfaction of the commissioner that:

38 (A)(I) Such individual has been and will continue to be free from control or direction over  
39 the performance of such service, both under his or her contract of service and in fact; and

40 (II) Such service is either outside the usual course of business for which such service is  
41 performed, or that such service is performed outside of all the places of business of the  
42 enterprises for which such service is performed; and

43 (III) Such individual is customarily engaged in an independently established trade,  
44 occupation, profession, or business, of the same nature as that involved in the contract of service;

45 or

46 (B) As a separate alternative:

47 (I) Such individual has been and will continue to be free from control or direction over the  
48 performance of such service, both under his or her contract of service and in fact; and

49 (II) Such service is either outside the usual course of business for which such service is  
50 performed, or that such service is performed outside of all the places of business of the  
51 enterprises for which such service is performed, or the individual is responsible, both under the  
52 contract and in fact, for the costs of the principal place of business from which the service is  
53 performed; and

54 (III) Such individual is customarily engaged in an independently established trade,  
55 occupation, profession, or business, of the same nature as that involved in the contract of service,  
56 or such individual has a principal place of business for the work the individual is conducting that  
57 is eligible for a business deduction for federal income tax purposes; and

58 (IV) On the effective date of the contract of service, such individual is responsible for filing  
59 at the next applicable filing period, both under the contract of service and in fact, a schedule of  
60 expenses with the Internal Revenue Service for the type of business the individual is conducting;  
61 and

62 (V) On the effective date of the contract of service, or within a reasonable period after the  
63 effective date of the contract, such individual has established an account with the bureau of  
64 revenue, and other state agencies as required by the particular case, for the business the  
65 individual is conducting for the payment of all state taxes normally paid by employers and  
66 businesses and has registered for and received a unified business identifier number from the  
67 State of West Virginia; and

68 (VI) On the effective date of the contract of service, such individual is maintaining a  
69 separate set of books or records that reflect all items of income and expenses of the business  
70 which the individual is conducting; or

71 (iii) Services that require registration under article 18.27 RCW or licensing under article  
72 19.28 RCW rendered by an individual when:

73 (A) The individual has been and will continue to be free from control or direction over the  
74 performance of the service, both under the contract of service and in fact;

75 (B) The service is either outside the usual course of business for which the service is  
76 performed, or the service is performed outside of all the places of business of the enterprise for  
77 which the service is performed, or the individual is responsible, both under the contract and in  
78 fact, for the costs of the principal place of business from which the service is performed;

79 (C) The individual is customarily engaged in an independently established trade,  
80 occupation, profession, or business, of the same nature as that involved in the contract of service,  
81 or the individual has a principal place of business for the business the individual is conducting  
82 that is eligible for a business deduction for federal income tax purposes, other than that furnished  
83 by the employer for which the business has contracted to furnish services;

84 (D) On the effective date of the contract of service, the individual is responsible for filing  
85 at the next applicable filing period, both under the contract of service and in fact, a schedule of  
86 expenses with the internal revenue service for the type of business the individual is conducting;

87 (E) On the effective date of the contract of service, or within a reasonable period after the  
88 effective date of the contract, the individual has an active and valid certificate of registration with  
89 the bureau of revenue, and an active and valid account with any other state agencies as required  
90 by the particular case, for the business the individual is conducting for the payment of all state  
91 taxes normally paid by employers and businesses and has registered for and received a unified  
92 business identifier number from the State of West Virginia;

93 (F) On the effective date of the contract of service, the individual is maintaining a separate  
94 set of books or records that reflect all items of income and expenses of the business that the  
95 individual is conducting; and

96 (G) On the effective date of the contract of service, the individual has a valid contractor  
97 registration pursuant to article 18.27 RCW or an electrical contractor license pursuant to article  
98 19.28 RCW.

99 (8) "Employment benefits" means all benefits provided or made available to employees by  
100 an employer, including group life insurance, health insurance, disability insurance, sick leave,

101 annual leave, educational benefits, and pensions except benefits that are provided by a practice  
102 or written policy of an employer or through an employee benefit plan as defined in 29 U.S.C. Sec.  
103 1002(3).

104 (9) "Family leave" means any leave taken by an employee from work:

105 (a) To participate in providing care, including physical or psychological care, for a family  
106 member of the employee made necessary by a serious health condition of the family member;

107 (b) To bond with the employee's child during the first 12 months after the child's birth, or  
108 the first 12 months after the placement of a child under the age of 18 with the employee; or

109 (c) Because of any qualifying exigency as permitted under the federal family and medical  
110 leave article, 29 U.S.C. Sec. 2612(a)(1)(e) and 29 C.F.R. Sec. 825.126(a)(1) through (8), as they  
111 existed on the effective date of this section for family members as defined in subsection (10) of  
112 this section.

113 (10) "Family member" means a child, grandchild, grandparent, parent, sibling, or spouse  
114 of an employee.

115 (11) "Grandchild" means a child of the employee's child.

116 (12) "Grandparent" means a parent of the employee's parent.

117 (13) "Health care provider" means: (a) A person licensed as a physician under §30-3-1 *et*  
118 *seq.* or an osteopathic physician and surgeon under §30-14-1 *et seq.*; (b) a person licensed as  
119 an advanced registered nurse practitioner under §30-7-1 *et seq.*; or (c) any other person  
120 determined by the commissioner to be capable of providing health care services.

121 (14) "Medical leave" means any leave taken by an employee from work made necessary  
122 by the employee's own serious health condition.

123 (15) "Parent" means the biological, adoptive, de facto, or foster parent, stepparent, or legal  
124 guardian of an employee or the employee's spouse, or an individual who stood in loco parents to  
125 an employee when the employee was a child.

126 (16) "Period of incapacity" means an inability to work, attend school, or perform other

127 regular daily activities because of a serious health condition, treatment of that condition or  
128 recovery from it, or subsequent treatment in connection with such inpatient care.

129 (17) "Premium" or "premiums" means the payments required by section 8 of this article  
130 and paid to the bureau for deposit in the family and medical leave insurance account under section  
131 82 of this article.

132 (18) "Qualifying period" means the first four of the last five completed calendar quarters  
133 or, if eligibility is not established, the last four completed calendar quarters immediately preceding  
134 the application for leave.

135 (19)(a) "Serious health condition" means an illness, injury, impairment, or physical or  
136 mental condition that involves:

137 (i) Inpatient care in a hospital, hospice, or residential medical care facility, including any  
138 period of incapacity; or

139 (ii) Continuing treatment by a health care provider. A serious health condition involving  
140 continuing treatment by a health care provider includes any one or more of the following:

141 (A) A period of incapacity of more than three consecutive, full calendar days, and any  
142 subsequent treatment or period of incapacity relating to the same condition, that also involves:

143 (I) Treatment two or more times, within 30 days of the first day of incapacity, unless  
144 extenuating circumstances exist, by a health care provider, by a nurse or physician's assistant  
145 under direct supervision of a health care provider, or by a provider of health care services, such  
146 as a physical therapist, under orders of, or on referral by, a health care provider; or

147 (II) Treatment by a health care provider on at least one occasion which results in a regimen  
148 of continuing treatment under the supervision of the health care provider;

149 (B) Any period of incapacity due to pregnancy, or for prenatal care;

150 (C) Any period of incapacity or treatment for such incapacity due to a chronic serious  
151 health condition. A chronic serious health condition is one which:

152 (I) Requires periodic visits, defined as at least twice a year, for treatment by a health care

153 provider, or by a nurse under direct supervision of a health care provider;

154 (II) Continues over an extended period of time, including recurring episodes of a single  
155 underlying condition; and

156 (III) May cause episodic rather than a continuing period of incapacity, including asthma,  
157 diabetes, and epilepsy;

158 (D) A period of incapacity which is permanent or long term due to a condition for which  
159 treatment may not be effective. The employee or family member must be under the continuing  
160 supervision of, but need not be receiving active treatment by, a health care provider, including  
161 Alzheimer's, a severe stroke, or the terminal stages of a disease; or

162 (E) Any period of absence to receive multiple treatments, including any period of recovery  
163 from the treatments, by a health care provider or by a provider of health care services under  
164 orders of, or on referral by, a health care provider, either for: (I) Restorative surgery after an  
165 accident or other injury; or (II) a condition that would likely result in a period of incapacity of more  
166 than three consecutive, full calendar days in the absence of medical intervention or treatment,  
167 such as cancer, severe arthritis, or kidney disease.

168 (b) The requirement in (a)(i) and (ii) of this subsection for treatment by a health care  
169 provider means an in-person visit to a health care provider. The first, or only, in-person treatment  
170 visit must take place within seven days of the first day of incapacity.

171 (c) Whether additional treatment visits or a regimen of continuing treatment is necessary  
172 within the 30-day period shall be determined by the health care provider.

173 (d) The term extenuating circumstances in (a)(ii)(A)(I) of this subsection means  
174 circumstances beyond the employee's control that prevent the follow-up visit from occurring as  
175 planned by the health care provider. Whether a given set of circumstances are extenuating  
176 depends on the facts. For example, extenuating circumstances exist if a health care provider  
177 determines that a second in-person visit is needed within the 30-day period, but the health care  
178 provider does not have any available appointments during that time period.

179 (e) Treatment for purposes of (a) of this subsection includes, but is not limited to,  
180 examinations to determine if a serious health condition exists and evaluations of the condition.  
181 Treatment does not include routine physical examinations, eye examinations, or dental  
182 examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of continuing treatment includes,  
183 but is not limited to, a course of prescription medication, such as an antibiotic, or therapy requiring  
184 special equipment to resolve or alleviate the health condition, such as oxygen. A regimen of  
185 continuing treatment that includes taking over-the-counter medications, such as aspirin,  
186 antihistamines, or salves, or bed rest, drinking fluids, exercise, and other similar activities that can  
187 be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a  
188 regimen of continuing treatment for purposes of this article.

189 (f) Conditions for which cosmetic treatments are administered, such as most treatments  
190 for acne or plastic surgery, are not serious health conditions unless inpatient hospital care is  
191 required or unless complications develop. Ordinarily, unless complications arise, the common  
192 cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraines, routine  
193 dental or orthodontia problems, and periodontal disease are examples of conditions that are not  
194 serious health conditions and do not qualify for leave under this article. Restorative dental or  
195 plastic surgery after an injury or removal of cancerous growths are serious health conditions  
196 provided all the other conditions of this section are met. Mental illness resulting from stress or  
197 allergies may be serious health conditions, but only if all the conditions of this section are met.

198 (g)(i) Substance abuse may be a serious health condition if the conditions of this section  
199 are met. However, leave may only be taken for treatment for substance abuse by a health care  
200 provider or by a licensed substance abuse treatment provider. Absence because of the  
201 employee's use of the substance, rather than for treatment, does not qualify for leave under this  
202 article.

203 (ii) Treatment for substance abuse does not prevent an employer from taking employment  
204 action against an employee. The employer may not take action against the employee because

205 the employee has exercised his or her right to take medical leave for treatment. However, if the  
206 employer has an established policy, applied in a nondiscriminatory manner that has been  
207 communicated to all employees, that provides under certain circumstances an employee may be  
208 terminated for substance abuse, pursuant to that policy the employee may be terminated whether  
209 or not the employee is presently taking medical leave. An employee may also take family leave  
210 to care for a covered family member who is receiving treatment for substance abuse. The  
211 employer may not take action against an employee who is providing care for a covered family  
212 member receiving treatment for substance abuse.

213 (h) Absences attributable to incapacity under (a)(ii)(B) or (C) of this subsection qualify for  
214 leave under this article even though the employee or the family member does not receive  
215 treatment from a health care provider during the absence, and even if the absence does not last  
216 more than three consecutive, full calendar days. For example, an employee with asthma may be  
217 unable to report for work due to the onset of an asthma attack or because the employee's health  
218 care provider has advised the employee to stay home when the pollen count exceeds a certain  
219 level. An employee who is pregnant may be unable to report to work because of severe morning  
220 sickness.

221 (20) "Service is localized in this state" means service performed in this state.

222 (21) "Spouse" means a husband or wife, as the case may be, or state registered domestic  
223 partner.

224 (22) "State average weekly wage" means the most recent average weekly wage calculated  
225 under §21A-6-10 and available on January 1st of each year.

226 (23) "Typical workweek hours" means:

227 (a) For an hourly employee, the average number of hours worked per week by an  
228 employee since the beginning of the qualifying period; and

229 (b) Forty hours for a salaried employee, regardless of the number of hours the salaried  
230 employee typically works.

231 (24) "Wage" means the same as "wages" under §21A-1A-28, except that: (a) The term  
232 employment is defined in this article; and (b) the maximum wages subject to a premium  
233 assessment are those wages as set by the commissioner under §21-5F-8(4), of this code.  
234 "Wages" for purposes of elective coverage under section 9 of this article has the meaning as  
235 defined by rule.

**§21-5F-3. Benefit eligibility.**

1 Employees are eligible for family and medical leave benefits as provided in this article  
2 after working for at least 820 hours in employment during the qualifying period.

**§21-5F-4. Leave entitlement expiration.**

1 (1) The entitlement to family leave benefits for the birth or placement of a child expires at  
2 the end of the 12-month period beginning on the date of such birth or placement.

3 (2) The entitlement to family leave benefits for a family member's serious health condition,  
4 or leave for qualifying exigency, expires at the end of the 12-month period beginning on the date  
5 of which the employee filed an application for the benefits.

6 (3) The entitlement to medical leave benefits for the employee's own serious health  
7 condition expires at the end of the 12-month period beginning on the date on which the employee  
8 filed an application for medical leave benefits.

**§21-5F-5. Limitations, disqualifications, and employee penalties.**

1 (1) An employee is not entitled to paid family or medical leave benefits under this article:

2 (a) For any absence occasioned by the willful intention of the employee to bring about  
3 injury to or the sickness of the employee or another, or resulting from any injury or sickness  
4 sustained in the perpetration by the employee of an illegal article;

5 (b) For any family or medical leave commencing before the employee becomes qualified  
6 for benefits under this article;

7 (c) For an employee who is on suspension from his or her employment; or

8 (d) For any day in which a family or medical leave care recipient works at least part of that

9 day for remuneration or profit during the same or substantially similar working hours as those of  
10 the employer from which family or medical leave benefits are claimed, except that occasional  
11 scheduling adjustments with respect to secondary employments shall not prevent receipt of family  
12 or medical leave benefits.

13 (2) An employer may allow an employee who has accrued vacation, sick, or other paid  
14 time off to choose whether: (a) To take such leave; or (b) not to take such leave and receive paid  
15 family or medical leave benefits, as provided in section 6 of this article.

16 (3) An individual is disqualified for benefits for any week he or she has knowingly and  
17 willfully made a false statement or representation involving a material fact or knowingly and  
18 willfully failed to report a material fact and, as a result, has obtained or attempted to obtain any  
19 benefits under the provisions of this article. An individual disqualified for benefits under this  
20 subsection (3) for the:

21 (a) First time is disqualified for an additional 26 weeks beginning with the Sunday of the  
22 week in which the determination is mailed or delivered, and is subject to an additional penalty of  
23 fifteen percent of the amount of benefits overpaid or deemed overpaid;

24 (b) Second time is also disqualified for an additional 52 weeks beginning with the Sunday  
25 of the week in which the determination is mailed or delivered, and is subject to an additional  
26 penalty of 25 percent of the amount of benefits overpaid or deemed overpaid;

27 (c) Third time and any time thereafter is also disqualified for an additional 104 weeks  
28 beginning with the Sunday of the week in which the determination is mailed or delivered, and is  
29 subject to an additional penalty of 50 percent of the amount of benefits overpaid or deemed  
30 overpaid.

31 (4) All penalties collected under this section must be deposited in the family and medical  
32 leave enforcement account created under §21-5F-76 of this code.

**§21-5F-6. Benefit amounts and duration.**

1 (1) Beginning January 1, 2020, family and medical leave are available and benefits are

2 payable to a qualified employee under this section. Following a waiting period consisting of the  
3 first seven calendar days of leave, benefits are payable when family or medical leave is required.  
4 However, no waiting period is required for leave for the birth or placement of a child. Benefits may  
5 continue during the continuance of the need for family and medical leave, subject to the maximum  
6 and minimum weekly benefits, duration, and other conditions and limitations established in this  
7 article. Successive periods of family and medical leave caused by the same or related injury or  
8 sickness are deemed a single period of family and medical leave only if separated by less than  
9 four months.

10 (2) The weekly benefit shall be prorated by the percentage of hours on leave compared to  
11 the number of hours provided as the typical workweek hours as defined in section 2 of this article.

12 (a) The benefits in this section, if not a multiple of one dollar, shall be reduced to the next  
13 lower multiple of one dollar.

14 (b) Hours on leave claimed for benefits under this article, if not a multiple of one hour, shall  
15 be reduced to the next lower multiple of one hour.

16 (c) The minimum claim duration payment is for eight consecutive hours of leave.

17 (3)(a) The maximum duration of paid family leave may not exceed 12 times the typical  
18 workweek hours during a period of 52 consecutive calendar weeks.

19 (b) The maximum duration of paid medical leave may not exceed 12 times the typical  
20 workweek hours during a period of 52 consecutive calendar weeks. This leave may be extended  
21 an additional two times the typical workweek hours if the employee experiences a serious health  
22 condition with a pregnancy that results in incapacity.

23 (c) An employee is not entitled to paid family and medical leave benefits under this article  
24 that exceeds a combined total of 16 times the typical workweek hours. The combined total of  
25 family and medical leave may be extended to 18 times the typical workweek hours if the employee  
26 experiences a serious health condition with a pregnancy that results in incapacity.

27 (4) The weekly benefit for family and medical leave shall be determined as follows: If the

28 employee's average weekly wage is: (a) Fifty percent or less of the state average weekly wage,  
29 the employee's weekly benefit is 90 percent of the employee's average weekly wage; or (b)  
30 greater than 50 percent of the state average weekly wage, the employee's weekly benefit is the  
31 sum of: (i) Ninety percent of the employee's average weekly wage up to 50 percent of the state  
32 average weekly wage; and (ii) fifty percent of the employee's average weekly wage that is greater  
33 than 50 percent of the state average weekly wage.

34 (5)(a) The maximum weekly benefit for family and medical leave that occurs on or after  
35 January 1, 2020, shall be \$1000. By September 30, 2020, and by each subsequent September  
36 30th, the commissioner shall adjust the maximum weekly benefit amount to 90 percent of the  
37 state average weekly wage. The adjusted maximum weekly benefit amount takes effect on the  
38 following January 1st.

39 (b) The minimum weekly benefit shall not be less than \$100 per week except that if the  
40 employee's average weekly wage at the time of family and medical leave is less than \$100 per  
41 week, the weekly benefit shall be the employee's full wage.

**§21-5F-7. Time of payment; contesting application.**

1 (1) Benefits provided under this article shall be paid periodically and promptly, except  
2 when an employer contests a period of family or medical leave. The bureau must send the first  
3 benefit payment to the employee within 14 calendar days after the first properly completed weekly  
4 application is received by the bureau. Subsequent payments must be sent at least biweekly  
5 thereafter. If the employer contests an initial application for family or medical leave benefits, the  
6 employer must notify the employee and the bureau in a manner prescribed by the commissioner  
7 within 18 days of receipt of notice from the bureau of the employee's filing of an application for  
8 benefits, as provided under §21-5F-29 of this code. Failure to timely contest an initial application  
9 shall constitute a waiver of objection to the family or medical leave application. Any inquiry which  
10 requires the employee's response in order to continue benefits uninterrupted or unmodified shall  
11 provide a reasonable time period in which to respond and include a clear and prominent statement

12 of the deadline for responding and consequences of failing to respond.

13 (2) If an employee has received one or more benefit payments under this article, is in  
14 continued claim status, and his or her eligibility for benefits is questioned by the bureau or  
15 contested by the employer, the employee will be conditionally paid benefits without delay for any  
16 periods for which the employee files a claim for benefits, until and unless the employee has been  
17 provided adequate notice and an opportunity to be heard. The employee's right to retain such  
18 payments is conditioned upon the bureau's finding the employee to be eligible for such payments.

19 (a) At the employee's request, the bureau may hold conditional payments until the  
20 question of eligibility has been resolved.

21 (b) Payments will be issued for any benefits withheld under (a) of this subsection if the  
22 bureau determines the employee is eligible for benefits.

23 (c) If it is determined that the employee is ineligible for the weeks paid conditionally, the  
24 overpayment cannot be waived and must be repaid.

25 (3) The bureau must develop, in rule, a process by which an employer may contest an  
26 initial application for family or medical leave benefits.

**§21-5F-8. Premiums.**

1 (1)(a) Beginning July 1, 2019, the bureau shall assess for each individual in employment  
2 with an employer and for each individual electing coverage a premium based on the amount of  
3 the individual's wages subject to subsection (4) of this section.

4 (b) The premium rate for family leave benefits shall be equal to one-third of the total  
5 premium rate.

6 (c) The premium rate for medical leave benefits shall be equal to two-thirds of the total  
7 premium rate.

8 (2) For calendar year 2022 and thereafter, the commissioner shall determine the  
9 percentage of paid claims related to family leave benefits and the percentage of paid claims  
10 related to medical leave benefits and adjust the premium rates set in subsection (1)(b) and (c) of

11 this section by the proportional share of paid claims.

12 (3)(a) Beginning July 1, 2019, and ending December 31, 2020, the total premium rate shall  
13 be four-tenths of one percent of the individual's wages subject to subsection (4) of this section.

14 (b) For family leave premiums, an employer may deduct from the wages of each employee  
15 up to the full amount of the premium required.

16 (c) For medical leave premiums, an employer may deduct from the wages of each  
17 employee up to 45 percent of the full amount of the premium required.

18 (d) An employer may elect to pay all or any portion of the employee's share of the premium  
19 for family leave or medical leave benefits, or both.

20 (4) The commissioner must annually set a maximum limit on the amount of wages that is  
21 subject to a premium assessment under this section that is equal to the maximum wages subject  
22 to taxation for social security as determined by the social security administration.

23 (5)(a) Employers with fewer than 50 employees employed in the state are not required to  
24 pay the employer portion of premiums for family and medical leave.

25 (b) If an employer with fewer than 50 employees elects to pay the premiums, the employer  
26 is then eligible for assistance under section 84 of this article.

27 (6) For calendar year 2021 and thereafter, the total premium rate shall be based on the  
28 family and medical leave insurance account balance ratio as of September 30 of the previous  
29 year. The commissioner shall calculate the account balance ratio by dividing the balance of the  
30 family and medical leave insurance account by total covered wages paid by employers and those  
31 electing coverage. The division shall be carried to the fourth decimal place with the remaining  
32 fraction disregarded unless it amounts to five hundred-thousandths or more, in which case the  
33 fourth decimal place shall be rounded to the next higher digit. If the account balance ratio is:

34 (a) Zero to nine hundredths of one percent, the premium is six tenths of one percent of  
35 the individual's wages;

36 (b) One tenth of one percent to nineteen hundredths of one percent, the premium is five

37 tenths of one percent of the individual's wages;

38 (c) Two tenths of one percent to twenty-nine hundredths of one percent, the premium is  
39 four tenths of one percent of the individual's wages;

40 (d) Three tenths of one percent to thirty-nine hundredths of one percent, the premium is  
41 three tenths of one percent of the individual's wages;

42 (e) Four tenths of one percent to forty-nine hundredths of one percent, the premium is two  
43 tenths of one percent of the individual's wages; or

44 (f) Five tenths of one percent or greater, the premium is one tenth of one percent of the  
45 individual's wages.

46 (7) Beginning January 1, 2021, if the account balance ratio calculated in subsection (6) of  
47 this section is below five hundredths of one percent, the commissioner must assess a solvency  
48 surcharge at the lowest rate necessary to provide revenue to pay for the administrative and benefit  
49 costs of family and medical leave, for the calendar year, as determined by the commissioner. The  
50 solvency surcharge shall be at least one-tenth of one percent and no more than six-tenths of one  
51 percent and be added to the total premium rate for family and medical leave benefits.

52 (8)(a) The employer must collect from the employees the premiums and any surcharges  
53 provided under this section through payroll deductions and remit the amounts collected to the  
54 bureau.

55 (b) In collecting employee premiums through payroll deductions, the employer shall article  
56 as the agent of the employees and shall remit the amounts to the bureau as required by this  
57 article.

58 (c) On September 30 of each year, the bureau shall average the number of employees  
59 reported by an employer over the last four completed calendar quarters to determine the size of  
60 the employer for the next calendar year for the purposes of this section and §21-5F-84 of this  
61 code.

62 (9) Premiums shall be collected in the manner and at such intervals as provided in this

63 article and directed by the bureau.

64 (10) Premiums collected under this section are placed in trust for the employees and  
65 employers that the program is intended to assist.

66 (11) A city, code city, town, county, or political subdivision may not enact a charter,  
67 ordinance, regulation, rule, or resolution:

68 (a) Creating a paid family or medical leave insurance program that alters or amends the  
69 requirements of this article for any private employer;

70 (b) Providing for local enforcement of the provisions of this article; or

71 (c) Requiring private employers to supplement duration of leave or amount of wage  
72 replacement benefits provided under this article.

**§21-5F-9. Premiums—out-of-state waiver.**

1 (1) An employer may file an application with the bureau for a conditional waiver for the  
2 payment of family and medical leave premiums, assessed under §21-5F-8 of this code, for any  
3 employee who is:

4 (a) Physically based outside of the state;

5 (b) Employed in the state on a limited or temporary work schedule; and

6 (c) Not expected to be employed in the state for 820 hours or more in a qualifying period.

7 (2) The bureau must approve an application that has been signed by both the employee  
8 and employer verifying their belief that the conditions in this subsection will be met during the  
9 qualifying period.

10 (3) If the employee exceeds the 820 hours or more in a qualifying period, the conditional  
11 waiver expires and the employer and employee will be responsible for their shares of all premiums  
12 that would have been paid during the qualifying period in which the employee exceeded the 820  
13 hours had the waiver not been granted. Upon payment of the missed premiums, the employee  
14 will be credited for the hours worked and will be eligible for benefits under this article as if the  
15 premiums were originally paid.

**§21-5F-10. Elective coverage.**

1           (1) For benefits payable beginning January 1, 2020, any self-employed person, including  
2 a sole proprietor, independent contractor, partner, or joint venturer, may elect coverage under this  
3 article for an initial period of not less than three years and subsequent periods of not less than  
4 one year immediately following a period of coverage. Those electing coverage under this section  
5 must elect coverage for both family leave and medical leave and are responsible for payment of  
6 100 percent of all premiums assessed to an employee under §21-5F-8 of this code. The self-  
7 employed person must file a notice of election in writing with the bureau, in a manner as required  
8 by the bureau in rule. The self-employed person is eligible for family and medical leave benefits  
9 after working 820 hours in the state during the qualifying period following the date of filing the  
10 notice.

11           (2) A self-employed person who has elected coverage may withdraw from coverage within  
12 30 days after the end of each period of coverage, or at such other times as the commissioner  
13 may adopt by rule, by filing a notice of withdrawal in writing with the commissioner, such  
14 withdrawal to take effect not sooner than 30 days after filing the notice with the commissioner.

15           (3) The bureau may cancel elective coverage if the self-employed person fails to make  
16 required payments or file reports. The bureau may collect due and unpaid premiums and may  
17 levy an additional premium for the remainder of the period of coverage. The cancellation shall be  
18 effective no later than 30 days from the date of the notice in writing advising the self-employed  
19 person of the cancellation.

20           (4) Those electing coverage are considered employers or employees where the context  
21 so dictates.

22           (5) For the purposes of this section, "independent contractor" means an individual  
23 excluded from employment under §21-4F-2(7)(b) (ii) and (iii) of this code.

24           (6) In developing and implementing the requirements of this section, the bureau shall  
25 adopt government efficiencies to improve administration and reduce costs. These efficiencies

26 may include, but are not limited to, requiring that payments be made in a manner and at intervals  
27 unique to the elective coverage program.

28 (7) The bureau shall adopt rules for determining the hours worked and the wages of  
29 individuals who elect coverage under this section and rules for enforcement of this section.

**§21-5F-11. Tribes.**

1 A federally recognized tribe may elect coverage under §21-5F-9 of this code. The bureau  
2 shall adopt rules to implement this section.

**§21-5F-12. Notice to employers.**

1 (1) If the necessity for leave for the birth or placement of a child with the employee is  
2 foreseeable based on an expected birth or placement, the employee shall provide the employer  
3 with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention  
4 to take leave for the birth or placement of a child, except that if the date of the birth or placement  
5 requires leave to begin in less than 30 days, the employee shall provide such notice as is  
6 practicable.

7 (2) If the necessity for leave for a family member's serious health condition or the  
8 employee's serious health condition is foreseeable based on planned medical treatment, the  
9 employee:

10 (a) Must make a reasonable effort to schedule the treatment so as not to disrupt unduly  
11 the operations of the employer, subject to the approval of the health care provider of the employee  
12 or the health care provider of the family member, as appropriate; and

13 (b) Must provide the employer with not less than 30 days' notice, before the date the leave  
14 is to begin, of the employee's intention to take leave for a family member's serious health condition  
15 or the employee's serious health condition, except that if the date of the treatment requires leave  
16 to begin in less than 30 days, the employee must provide such notice as is practicable.

**§21-5F-13. Application, certification and verification.**

1 (1) Family and medical leave insurance benefits are payable to an employee during a

2 period in which the employee is unable to perform his or her regular or customary work because  
3 he or she is on family and medical leave if the employee:

4 (a) Files an application for benefits as required by rules adopted by the commissioner;

5 (b) Has met the eligibility requirements of section 3 of this article or the elective coverage  
6 requirements under §21-5F-10 of this code;

7 (c) Consents to the disclosure of information or records deemed private and confidential  
8 under state law. Initial disclosure of this information and these records by another state agency  
9 to the bureau is solely for purposes related to the administration of this article.

10 (d) Discloses whether or not he or she owes child support obligations as defined in §48-  
11 1-1 et seq.;

12 (e) Provides his or her social security number;

13 (f) Provides a document authorizing the family member's or employee's health care  
14 provider, as applicable, to disclose the family member's or employee's health care information in  
15 the form of the certification of a serious health condition;

16 (g) Provides the employer from whom family and medical leave is to be taken with written  
17 notice of the employee's intention to take family leave in the same manner as an employee is  
18 required to provide notice in §21-5F-12 of this code and, in the employee's initial application for  
19 benefits, attests that written notice has been provided; and

20 (h) If requested by the employer, provides documentation of a military exigency.

21 (2) An employee who is not in employment for an employer at the time of filing an  
22 application for benefits is exempt from subsection (1)(g) and (h) of this section.

**§21-5F-14. Voluntary plan—general.**

1 (1) An employer may apply to the commissioner for approval of a voluntary plan for the  
2 payment of either family leave benefits or medical leave benefits, or both. The application must  
3 be submitted on a form and in the manner as prescribed by the commissioner in rule. The fee for  
4 the bureau's review of each application for approval of a voluntary plan is \$250.

5           (2) The benefits payable as indemnification for loss of wages under any voluntary plan  
6 must be separately stated and designated separately and distinctly in the plan from other benefits,  
7 if any.

8           (3) Neither an employee nor his or her employer are liable for any premiums for benefits  
9 covered by an approved voluntary plan.

10           (4) Except as provided in this section, an employee covered by an approved voluntary  
11 plan at the commencement of a period of family leave or a medical leave benefit period is not  
12 entitled to benefits from the state program. Benefits payable to that employee is the liability of the  
13 approved voluntary plan under which the employee was covered at the commencement of the  
14 family leave or medical leave benefit period, regardless of any subsequent serious health  
15 condition or family leave which may occur during the benefit period. The commissioner must adopt  
16 rules to allow benefits or prevent duplication of benefits to employees simultaneously covered by  
17 one or more approved voluntary plans and the state program.

18           (5) The commissioner must approve any voluntary plan as to which the commissioner  
19 finds that there is at least one employee in employment and all of the following exist:

20           (a) The benefits afforded to the employees must be at least equivalent to the benefits the  
21 employees are entitled to as part of the state's family and medical leave program, including but  
22 not limited to the duration of leave. The employer must offer at least one-half of the length of leave  
23 as provided in section 6(2) of this article with pay and provide a monetary payment in an amount  
24 equal to or higher than the total amount of monetary benefits the employee would be entitled to  
25 receive as part of the state-run program. The employer may offer the same duration of leave and  
26 monetary benefits as offered under the state program.

27           (b) The sick leave an employee is entitled to is in addition to the employer's provided  
28 benefits and is in addition to any family and medical leave benefits.

29           (c) The plan is available to all of the eligible employees of the employer employed in this  
30 state, including future employees.

31 (d) The employer has agreed to make the payroll deductions required, if any, and transmit  
32 the proceeds to the bureau for any portions not collected for the voluntary plan.

33 (e) The plan will be in effect for a period of not less than one year and, thereafter,  
34 continuously unless the commissioner finds that the employer has given notice of withdrawal from  
35 the plan in a manner specified by the commissioner in rule. The plan may be withdrawn by the  
36 employer on the date of any law increasing the benefit amounts or the date of any change in the  
37 rate of employee premiums, if notice of the withdrawal from the plan is transmitted to the  
38 commissioner not less than 30 days prior to the date of that law or change. If the plan is not  
39 withdrawn, it must be amended to conform to provide the increased benefit amount or change in  
40 the rate of the employee's premium on the date of the increase or change.

41 (f) The amount of payroll deductions from the wages of an employee in effect for any  
42 voluntary plan may not exceed the maximum payroll deduction for that employee as authorized  
43 under §21-5F-8 of this code. The deductions may not be increased on other than an anniversary  
44 of the effective date of the plan, except to the extent that any increase in the deductions from the  
45 wages of an employee do not exceed the maximum rate authorized under the state program.

46 (g) The voluntary plan provides that an employee of an employer with a voluntary plan for  
47 either family leave or medical leave, or both, is eligible for the plan benefits if the employee meets  
48 the requirements of section 3 of this article and has worked at least 340 hours for the employer  
49 during the 12 months immediately preceding the date leave will commence.

50 (h) The voluntary plan provides that an employee of an employer with a voluntary plan for  
51 either family leave or medical leave, or both, who takes leave under the voluntary plan is entitled  
52 to the employment protection provisions contained in §21-5F-31 of this code if the employee has  
53 worked for the employer for at least nine months and 965 hours during the 12 months immediately  
54 preceding the date leave will commence.

55 (i) The voluntary plan provides that the employer maintains the employee's existing health  
56 benefits as provided under §21-5F-70 of this article.

57 (6)(a) The bureau must conduct a review of the expenses incurred in association with the  
58 administration of the voluntary plans during the first three years after implementation and report  
59 its findings to the Legislature.

60 (b) The review must include an analysis of the adequacy of the fee in subsection (1) of  
61 this section to cover the bureau's administrative expenses related to reviewing and approving or  
62 denying the applications and administering appeals related to voluntary plans. The review must  
63 include an estimate of the next year's projected administrative costs related to the voluntary plans.  
64 The Legislature shall adjust the fee in subsection (1) of this section as needed to ensure the  
65 bureau's administrative expenses related to the voluntary plans are covered by the fee.

66 (c) If the current receipts from the fee in subsection (1) of this section are inadequate to  
67 cover the bureau's administrative expenses related to the voluntary plans, the bureau may use  
68 funds from the family and medical leave insurance account under §21-5F-82 of this code to pay  
69 for these expenses.

**§21-5F-15. Voluntary plan—successor employer.**

1 A voluntary plan in force and effect at the time a successor acquires the organization,  
2 trade, or business, or substantially all the assets thereof, or a distinct and severable portion of the  
3 organization, trade, or business, and continues its operation without substantial reduction of  
4 personnel resulting from the acquisition, must continue the voluntary plan and may not withdraw  
5 the plan without a specific request for withdrawal in a manner and at a time specified by the  
6 commissioner. A successor may terminate a voluntary plan with notice to the commissioner and  
7 without a request to withdraw the plan within 90 days from the date of the acquisition.

**§21-5F-16. Voluntary plan—Reapproval.**

1 The employer must have the voluntary plan approved by the commissioner annually for  
2 the first three years. After the first three years, the employer is only required to have the approval  
3 if the employer makes changes to the plan that were not mandated by changes to state law.

**§21-5F-17. Voluntary plan—employee costs.**

1 An employer may assume all or a greater part of the cost of the voluntary plan than  
 2 required under the state program. An employer may deduct from the wages of an employee  
 3 covered by the voluntary plan, for the purpose of providing the benefits specified in this article, an  
 4 amount not in excess of that which would be required if the employee was not covered by the  
 5 plan.

**§21-5F-18. Voluntary plan—wage deductions upon withdrawal.**

1 All deductions from the wages of an employee remaining in the possession of the  
 2 employer upon the employer's withdrawal of the voluntary plan as a result of plan contributions  
 3 being in excess of plan costs, that are not disposed of in conformity with the bureau's rules, must  
 4 be remitted to the bureau and deposited in the family and medical leave insurance account.

**§21-5F-19. Voluntary plan—trust funds.**

1 Any employee contributions to and income arising from an approved voluntary plan  
 2 received or retained by an employer under an approved voluntary plan are trust funds that are  
 3 not considered to be part of an employer's assets. An employer must maintain a separate,  
 4 specifically identifiable account for voluntary plan trust funds in a financial institution.

**§21-5F-20. Voluntary plans—penalties.**

1 (1) An employer of a voluntary plan found to have violated this article shall be assessed  
 2 the following monetary penalties:

3 (a) One thousand dollars for the first violation; and

4 (b) Two thousand dollars for the second and subsequent violations.

5 (2) The commissioner shall waive collection of the penalty if the employer corrects the  
 6 violation within 30 days of receiving a notice of the violation and the notice is for a first violation.

7 (3) The commissioner may waive collection of any penalties if the commissioner  
 8 determines the violation to be an inadvertent error by the employer.

9 (4) Monetary penalties collected under this section shall be deposited in the family and  
 10 medical leave enforcement account.

11 (5) The bureau shall enforce the collection of penalties through conference and  
12 conciliation.

13 (6) These penalties may be appealed as provided in sections 34 through 53 of this article.

**§21-5F-21. Voluntary plan—termination.**

1 (1) The commissioner may terminate any voluntary plan if the commissioner finds that  
2 there is risk that the benefits accrued or that will accrue will not be paid or for other good cause  
3 shown.

4 (2) The commissioner must give notice of the commissioner's intention to terminate a plan  
5 to the employer at least 10 days before taking any final action. The notice must state the effective  
6 date and the reason for the termination.

7 (3) On the effective date of the termination of a plan by the commissioner, all moneys in  
8 the plan, including moneys paid by the employer, moneys paid by the employees, moneys owed  
9 to the voluntary plan by the employer but not yet paid to the plan, and any interest accrued on all  
10 these moneys, must be remitted to the bureau and deposited into the family and medical leave  
11 insurance account.

12 (4) The employer may, within 10 days from mailing or personal service of the notice, file  
13 an appeal in the time, manner, method, and procedure provided in §21-5F-34 of this code.

14 (5) The payment of benefits and the transfer of moneys in the voluntary plan may not be  
15 delayed during an employer's appeal of the termination of a voluntary plan.

16 (6) If an employer's voluntary plan has been terminated by the commissioner the employer  
17 is not eligible to apply for approval of another voluntary plan for a period of three years.

**§21-5F-22. Voluntary plan—employees covered.**

1 (1) To be eligible for any family and medical leave, an employee must be in employment  
2 for 820 hours during the qualifying period, by an employer with a voluntary plan or an employer  
3 utilizing the state family and medical leave plan. An employee qualifies for benefits under an  
4 employer's voluntary plan only after the employee works at least 340 hours for the current

5 employer.

6 (2) An employee who had coverage under the state plan retains coverage under the state  
7 plan until such time as the employee is qualified for coverage under the new employer's voluntary  
8 plan.

9 (3) An employee who was eligible for benefits under a voluntary plan is immediately  
10 eligible for benefits under a new employer's voluntary plan.

**§21-5F-23. Voluntary plan—employees no longer covered.**

1 (1) An employee is no longer covered by an approved voluntary plan if family leave or the  
2 employee's medical leave occurred after the employment relationship with the voluntary plan  
3 employer ends, or if the commissioner terminates a voluntary plan.

4 (2) An employee who has ceased to be covered by an approved voluntary plan is, if  
5 otherwise eligible, immediately entitled to benefits from the state program to the same extent as  
6 though there had been no exemption as provided in this article.

**§21-5F-24. Voluntary plan—appeal.**

1 An employer may appeal any adverse decision by the bureau regarding the voluntary plan  
2 and an employee may appeal an employer's denial of liability upon the claim of an employee for  
3 family or medical leave benefits under an approved plan, in the manner specified under §21-5F-  
4 34 of this code.

**§21-5F-25. Voluntary plan—information.**

1 An employer with a voluntary plan must provide a notice prepared by or approved by the  
2 commissioner regarding the voluntary plan consistent with the provisions of §21-5F-75 of this  
3 code.

**§21-5F-26. Voluntary plan—reports and records.**

1 Employers whose employees are participating in an approved voluntary plan must  
2 maintain all reports, information, and records as relating to the voluntary plan and claims for six  
3 years and furnish for the commissioner upon request.

**§21-5F-27. Voluntary plan—amendments.**

1           (1) The commissioner must approve any amendment to a voluntary plan adjusting the  
2 provisions thereof, as to periods after the effective date of the amendment, when the  
3 commissioner finds: (a) That the plan, as amended, will conform to the standards set forth in this  
4 article; and (b) that notice of the amendment has been delivered to the employees at least 10  
5 days prior to the approval.

6           (2) Nothing contained in this section is intended to deny or limit the right of the  
7 commissioner to adopt supplementary rules regarding voluntary plans.

**§21-5F-28. Advisory committee.**

1           (1) The commissioner shall appoint an advisory committee to review issues and topics of  
2 interest related to this article.

3           (2) The committee is composed of 10 members: (a) Four members representing  
4 employees' interests in paid family and medical leave, each of whom shall be appointed from a  
5 list of at least four names submitted by a recognized statewide organization of employees; (b)  
6 four members representing employers, each of whom shall be appointed from a list of at least  
7 four names submitted by a recognized statewide organization of employers; and (c) two ex officio  
8 members, without a vote, one of whom shall represent the bureau, and the other shall be the  
9 ombudsperson for the family and medical leave program. The member representing the bureau  
10 shall be the chair.

11           (3) The committee shall provide comment on bureau rule making, policies, implementation  
12 of this article, utilization of benefits, and other initiatives, and study issues the committee  
13 determines to require its consideration.

14           (4) The members shall serve without compensation, but are entitled to reimbursement for  
15 travel expenses as provided for other state employees. The committee may utilize such personnel  
16 and facilities of the bureau as it needs, without charge. All expenses of the committee must be  
17 paid by the family and medical leave insurance account.

**§21-5F-29. Bureau to administer—information and outreach.**

1           (1) The bureau shall establish and administer the family and medical leave program and  
2 pay family and medical leave benefits as specified in this article. The bureau shall adopt  
3 government efficiencies to improve administration and reduce costs. These efficiencies shall  
4 include, to the extent feasible, combined reporting and payment, with a single return, of premiums  
5 under this article and any other contributions.

6           (2) The bureau shall establish procedures and forms for filing applications for benefits  
7 under this article. The bureau shall notify the employer within five business days of an application  
8 being filed.

9           (3) The bureau shall use information sharing and integration technology to facilitate the  
10 disclosure of relevant information or records by the bureau, so long as an employee consents to  
11 the disclosure as required under §21-5F-13 of this code.

12           (4) Information contained in the files and records pertaining to an employee under this  
13 article are confidential and not open to public inspection, other than to public employees in the  
14 performance of their official duties. However, the employee or an authorized representative of an  
15 employee may review the records or receive specific information from the records on the  
16 presentation of the signed authorization of the employee. An employer or the employer's duly  
17 authorized representative may review the records of an employee employed by the employer in  
18 connection with a pending application. At the bureau's discretion, other persons may review  
19 records when such persons are rendering assistance to the bureau at any stage of the  
20 proceedings on any matter pertaining to the administration of this article.

21           (5) The bureau shall develop and implement an outreach program to ensure that  
22 employees who may be qualified to receive family and medical leave benefits under this article  
23 are made aware of these benefits. Outreach information shall explain, in an easy to understand  
24 format, eligibility requirements, the application process, weekly benefit amounts, maximum  
25 benefits payable, notice and certification requirements, reinstatement and nondiscrimination

26 rights, confidentiality, voluntary plans, and the relationship between employment protection, leave  
27 from employment, and wage replacement benefits under this article and other laws, collective  
28 bargaining agreements, and employer policies. Outreach information shall be available in English  
29 and other primary languages the commissioner considers necessary.

30 (6) The bureau is authorized to inspect and audit employer files and records relating to  
31 the family and medical leave program, including employer voluntary plans.

**§21-5F-30. Child support.**

1 If an employee discloses that he or she owes child support obligations under §21-5F-13  
2 of this code and the bureau determines that the employee is qualified for benefits, the bureau  
3 shall notify the applicable state or local child support enforcement agency and deduct and  
4 withhold an amount from benefits in a manner consistent with chapter 48 of this code. Consistent  
5 with §21-5F-13(1)(c) of this code, the bureau may verify delinquent child support obligations with  
6 the bureau of child support enforcement.

**§21-5F-31. Employment protection.**

1 (1) Except as provided in §21-5F-14(5) of this code and subsection (6) of this section, any  
2 employee who takes family or medical leave under this article is entitled, on return from the leave:

3 (a) To be restored by the employer to the position of employment held by the employee  
4 when the leave commenced; or

5 (b) To be restored by the employer to an equivalent position with equivalent employment  
6 benefits, pay, and other terms and conditions of employment.

7 (2) The taking of leave under this article may not result in the loss of any employment  
8 benefits accrued before the date on which the leave commenced.

9 (3) Nothing in this section shall be construed to entitle any restored employee to:

10 (a) The accrual of any seniority or employment benefits during any period of leave; or

11 (b) Any right, benefit, or position of employment other than any right, benefit, or position  
12 to which the employee would have been entitled had the employee not taken the leave.

13 (4) As a condition of restoration under subsection (1) of this section for an employee who  
14 has taken medical leave, the employer may have a uniformly applied practice or policy that  
15 requires each such employee to receive certification from the employee's health care provider  
16 that the employee is able to resume work.

17 (5) Nothing in this section shall be construed to prohibit an employer from requiring an  
18 employee on leave to report periodically to the employer on the status and intention of the  
19 employee to return to work.

20 (6)(a) This section does not apply unless the employee: (i) Works for an employer with 50  
21 or more employees; (ii) has been employed by the current employer for 12 months or more; and  
22 (iii) has worked for the current employer for at least 1250 hours during the 12 months immediately  
23 preceding the date on which leave will commence. For the purposes of this subsection, an  
24 employer shall be considered to employ 50 or more employees if the employer employs 50 or  
25 more employees for each working day during each of 20 or more calendar workweeks in the  
26 current or preceding calendar year.

27 (b) An employer may deny restoration under this section to any salaried employee who is  
28 among the highest paid 10 percent of the employees employed by the employer within 75 miles  
29 of the facility at which the employee is employed if:

30 (i) Denial is necessary to prevent substantial and grievous economic injury to the  
31 operations of the employer;

32 (ii) The employer notifies the employee of the intent of the employer to deny restoration  
33 on such basis at the time the employer determines that the injury would occur; and

34 (iii) The leave has commenced and the employee elects not to return to employment after  
35 receiving the notice.

**§21-5F-32. Recovery of benefit payments.**

1 (1) An individual who is paid any amount as benefits under this article to which he or she  
2 is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of

3 the amount overpaid. The bureau shall issue an overpayment assessment setting forth the  
4 reasons for and the amount of the overpayment. The amount assessed, to the extent not  
5 collected, may be deducted from any future benefits payable to the individual: *Provided:* That in  
6 the absence of a back pay award, a settlement affecting the allowance of benefits, fraud,  
7 misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or  
8 personally served not later than two years after the close of or final payment made on the  
9 individual's applicable eligibility period for which the purported overpayment was made, whichever  
10 is later, unless the merits of the claim are subjected to administrative or judicial review in which  
11 event the period for serving the determination of liability shall be extended to allow service of the  
12 determination of liability during the six-month period following the final decision affecting the claim.

13 (2) The commissioner may waive an overpayment if the commissioner finds that the  
14 overpayment was not the result of fraud, misrepresentation, willful nondisclosure, conditional  
15 payment, or fault attributable to the individual and that the recovery thereof would be against  
16 equity and good conscience. An overpayment waived under this subsection shall be charged  
17 against the individual's applicable entitlement for the eligibility period containing the weeks to  
18 which the overpayment was attributed as though such benefits had been properly paid.

19 (3) Any assessment herein provided shall constitute a determination of liability from which  
20 an appeal may be had in the same manner and to the same extent as provided for appeals relating  
21 to determinations in respect to claims for benefits: *Provided,* That an appeal from any  
22 determination covering overpayment only shall be deemed to be an appeal from the determination  
23 which was the basis for establishing the overpayment unless the merits involved in the issue set  
24 forth in such determination have already been heard and passed upon by the appeal tribunal. If  
25 no such appeal is taken to the appeal tribunal by the individual within 30 days of the delivery of  
26 the notice of determination of liability, or within 30 days of the mailing of the notice of  
27 determination, whichever is the earlier, the determination of liability shall be deemed conclusive  
28 and final. Whenever any such notice of determination of liability becomes conclusive and final,

29 the commissioner, upon giving at least 20 days' notice, using a method by which the mailing can  
30 be tracked or the delivery can be confirmed, may file with the circuit court clerk of any county  
31 within the state a warrant in the amount of the notice of determination of liability plus a filing fee.  
32 The clerk of the circuit court where the warrant is filed shall immediately designate a circuit court  
33 cause number for the warrant, and the clerk shall cause to be entered in the judgment docket  
34 under the circuit court cause number assigned to the warrant, the name of the person(s)  
35 mentioned in the warrant, the amount of the notice of determination of liability, and the date when  
36 the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title  
37 to, and any interest in, all real and personal property of the person(s) against whom the warrant  
38 is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A  
39 warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of  
40 garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the  
41 warrant shall be mailed within five days of its filing with the clerk to the person(s) mentioned in  
42 the warrant using a method by which the mailing can be tracked or the delivery can be confirmed.

43 (4) Any employer who is a party to a back pay award or settlement due to loss of wages  
44 shall, within 30 days of the award or settlement, report to the bureau the amount of the award or  
45 settlement, the name and social security number of the recipient of the award or settlement, and  
46 the period for which it is awarded. When an individual has been awarded or receives back pay,  
47 for benefit purposes the amount of the back pay shall constitute wages paid in the period for which  
48 it was awarded. For premium purposes, the back pay award or settlement shall constitute wages  
49 paid in the period in which it was actually paid. The following requirements also apply:

50 (a) The employer shall reduce the amount of the back pay award or settlement by an  
51 amount determined by the bureau based upon the amount of paid family or medical leave benefits  
52 received by the recipient of the award or settlement during the period for which the back pay  
53 award or settlement was awarded;

54 (b) The employer shall pay to the paid family and medical leave fund, in a manner specified

55 by the commissioner, an amount equal to the amount of such reduction;

56 (c) The employer shall also pay to the bureau any premiums due for paid family and  
57 medical leave insurance purposes on the entire amount of the back pay award or settlement  
58 notwithstanding any reduction made pursuant to (a) of this subsection;

59 (d) If the employer fails to reduce the amount of the back pay award or settlement as  
60 required in (a) of this subsection, the bureau shall issue an overpayment assessment against the  
61 recipient of the award or settlement in the amount that the back pay award or settlement should  
62 have been reduced; and

63 (e) If the employer fails to pay to the bureau an amount equal to the reduction as required  
64 in (b) of this subsection, the bureau shall issue an assessment of liability against the employer  
65 that shall be collected pursuant to the procedures for collection of assessments provided herein  
66 and in §21-5F-62 of this code.

67 (5) When an individual fails to repay an overpayment assessment that is due and fails to  
68 arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of  
69 one percent per month of the outstanding balance. Interest shall accrue immediately on  
70 overpayments assessed pursuant to §21-5F-5 of this code and shall be imposed when the  
71 assessment becomes final. For any other overpayment, interest shall accrue when the individual  
72 has missed two or more of the individual's monthly payments either partially or in full.

73 (6) Any penalties and interest collected pursuant to this section must be deposited into the  
74 family and medical leave enforcement account.

75 (7) The bureau shall: (a) Conduct social security number cross-match audits or engage in  
76 other more effective activities that ensure that individuals are entitled to all amounts of benefits  
77 that they are paid; and (b) engage in other detection and recovery of overpayment and collection  
78 activities.

**§21-5F-33. Employer requirements—companies.**

1 (1) In the form and at the times specified in this article and by the commissioner, an

2 employer shall make reports, furnish information, and collect and remit premiums as required by  
3 this article to the bureau. If the employer is a temporary help company that provides employees  
4 on a temporary basis to its customers, the temporary help company is considered the employer  
5 for purposes of this section.

6 (2)(a) An employer must keep at the employer's place of business a record of employment,  
7 for a period of six years, from which the information needed by the bureau for purposes of this  
8 article may be obtained. This record shall at all times be open to the inspection of the  
9 commissioner.

10 (b) Information obtained under this article from employer records is confidential and not  
11 open to public inspection, other than to public employees in the performance of their official duties.  
12 However, an interested party shall be supplied with information from employer records to the  
13 extent necessary for the proper presentation of the case in question. An employer may authorize  
14 inspection of the employer's records by written consent.

15 (3) The requirements relating to the collection of family and medical leave premiums are  
16 as provided in this article. Before issuing a warning letter, the bureau shall enforce the collection  
17 of premiums through conference and conciliation. These requirements apply to:

18 (a) An employer that fails under this article to make the required reports, or fails to remit  
19 the full amount of the premiums when due;

20 (b) An employer that willfully makes a false statement or misrepresentation regarding a  
21 material fact, or willfully fails to report a material fact, to avoid making the required reports or  
22 remitting the full amount of the premiums when due under this article;

23 (c) A successor in the manner specified in §21-5F-67 of this code; and

24 (d) An officer, member, or owner having control or supervision of payment and/or reporting  
25 of family and medical leave premiums, or who is charged with the responsibility for the filing of  
26 returns, in the manner specified in §21-5F-68 of this code.

27 (4) Notwithstanding subsection (3) of this section, appeals are governed by §21-5F-34 of

28 this code.

**§21-5F-34. Appeals—general.**

1 (1) Any aggrieved person may file an appeal from any determination or redetermination  
2 with the commissioner within 30 days after the date of notification or mailing, whichever is earlier,  
3 of such determination or redetermination to the person's last known address. If an appeal with  
4 respect to any determination is pending as of the date when a redetermination is issued, such  
5 appeal, unless withdrawn, shall be treated as an appeal from such redetermination.

6 (2) Any appeal from a determination of denial of benefits shall be deemed to be an appeal  
7 as to all weeks subsequent to the effective date of the denial for which benefits have already been  
8 denied. If no appeal is taken from any determination, or redetermination, within the time allowed  
9 by the provisions of this section for appeal, the determination or redetermination, as the case may  
10 be, shall be conclusively deemed to be correct except as provided in respect to reconsideration  
11 by the commissioner of any determination.

12 (3) Upon receipt of a notice of appeal, the commissioner shall request the assignment of  
13 an administrative law judge in accordance with the law to conduct a hearing and issue a proposed  
14 order.

**§21-5F-35. Appeals—filing process.**

1 The appeal or petition from a determination, redetermination, order and notice of  
2 assessment, appeals decision, or commissioner's decision is deemed filed and received if  
3 properly addressed and with sufficient postage:

4 (1) If transmitted through the United States mail, on the date shown by the United States  
5 postal service cancellation mark;

6 (2) If mailed but not received by the addressee, or where received and the United States  
7 postal service cancellation mark is illegible, erroneous, or omitted, on the date it was mailed, if  
8 the sender establishes by competent evidence that the appeal or petition was deposited in the  
9 United States mail on or before the date due for filing; or

10           (3) In the case of a metered cancellation mark by the sender and a United States postal  
11 service cancellation mark on the same envelope or other wrapper, the latter shall control.

**§21-5F-36. Appeals—assessment.**

1           (1) When an order and notice of assessment has been served upon or mailed to a  
2 delinquent employer, the employer may within 30 days file an appeal with the bureau, stating that  
3 the assessment is unjust or incorrect and requesting a hearing. The appeal must set forth the  
4 reasons why the assessment is objected to and the amount of premiums, if any, which the  
5 employer admits to be due. If no appeal is filed, the assessment shall be conclusively deemed to  
6 be just and correct except that in such case, and in cases where payment of premiums, interest,  
7 or penalties has been made pursuant to a jeopardy assessment, the commissioner may properly  
8 entertain a subsequent application for refund. The filing of an appeal on a disputed assessment  
9 with the administrative law judge stays the distraint and sale proceeding provided for in this article  
10 until a final decision has been made, but the filing of an appeal does not affect the right of the  
11 commissioner to perfect a lien, as provided by this article, upon the property of the employer. The  
12 filing of a petition on a disputed assessment stays the accrual of interest and penalties on the  
13 disputed premiums until a final decision is made.

14           (2) Within 30 days after notice of denial of refund or adjustment has been mailed or  
15 delivered, whichever is the earlier, to an employer, the employer may file an appeal with the  
16 bureau for a hearing unless assessments have been appealed from and have become final. The  
17 employer shall set forth the reasons why such hearing should be granted and the amount which  
18 the employer believes should be adjusted or refunded. If no appeal is filed within said 30 days,  
19 the determination of the commissioner as stated in the notice is final.

**§21-5F-37. Appeals—benefit appeals procedure.**

1           (1) In any proceeding before an administrative law judge involving a dispute of an  
2 employee's initial determination, claim for waiting period credit or claim for benefits, all matters  
3 and provisions of this article relating to the employee's initial determination, or right to receive

4 such credit or benefits for the period in question, shall be deemed to be in issue irrespective of  
5 the particular ground or grounds set forth in the notice of appeal in single employee cases.

6 (2) In any proceeding before an administrative law judge involving an employee's right to  
7 benefits, all parties shall be afforded an opportunity for hearing after not less than seven days'  
8 notice.

9 (3) In any proceeding involving an appeal relating to benefit determinations or benefit  
10 claims, the administrative law judge, after affording the parties reasonable opportunity for fair  
11 hearing, shall render its decision affirming, modifying, or setting aside the determination or  
12 decisions of the bureau. The parties shall be duly notified of such decision together with the  
13 reasons, which shall be deemed to be the final decision unless, within 30 days after the date of  
14 notification or mailing, whichever is the earlier, of such decision, further appeal is perfected  
15 pursuant to section 39 of this article.

**§21-5F-38. Appeals—assessment appeal procedure.**

1 In any proceeding before an administrative law judge involving an appeal from a disputed  
2 order and notice of assessment or a disputed denial of refund or adjustment, the administrative  
3 law judge, after affording the parties a reasonable opportunity for hearing, shall affirm, modify, or  
4 set aside the notice of assessment or denial of refund. The parties shall be duly notified of such  
5 decision together with the reasons, which shall be deemed to be the final decision unless within  
6 30 days after the date of notification or mailing, whichever is the earlier, of such decision, further  
7 appeal is perfected pursuant to the provisions of this article relating to review by the  
8 commissioner.

**§21-5F-39. Appeals—hearings.**

1 The manner in which any dispute is presented to the administrative law judge, and the  
2 conduct of hearings and appeals, shall be in accordance with rules adopted by the commissioner.  
3 A full and complete record shall be kept of all administrative law judge proceedings. All testimony  
4 at any appeal hearing shall be recorded, but need not be transcribed unless further appeal is

5 taken.

**§21-5F-40. Appeals—petition for review by the commissioner.**

1 Within 30 days from the date of notification or mailing, whichever is the earlier, of any  
2 decision of an administrative law judge, the commissioner on the commissioner's own order may,  
3 or upon petition of any interested party shall, take jurisdiction of the proceedings for the purpose  
4 of review. Appeal from any decision of an administrative law judge may be perfected so as to  
5 prevent finality of such decision if, within 30 days from the date of notification or mailing of the  
6 decision, whichever is the earlier, a petition in writing for review by the commissioner is received  
7 by the commissioner or by such representative of the commissioner as the commissioner by rule  
8 shall prescribe. The commissioner may also prevent finality of any decision of an administrative  
9 law judge and take jurisdiction of the proceedings for his or her review by entering an order so  
10 providing on his or her own motion and mailing a copy thereof to the interested parties within the  
11 same period allowed for receipt of a petition for review. The time limit provided for the  
12 commissioner's assumption of jurisdiction on his or her own motion for review shall be deemed to  
13 be jurisdictional.

**§21-5F-41. Appeals—waiver of time.**

1 For good cause shown the administrative law judge or the commissioner may waive the  
2 time limitations for administrative appeals or petitions set forth in this article.

**§21-5F-42. Appeals—commissioner review procedure.**

1 After having acquired jurisdiction for review, the commissioner shall review the  
2 proceedings in question. Prior to rendering a decision, the commissioner may order the taking of  
3 additional evidence by an administrative law judge to be made a part of the record in the case.  
4 Upon the basis of evidence submitted to the administrative law judge and such additional  
5 evidence as the commissioner may order to be taken, the commissioner shall render a decision  
6 in writing affirming, modifying, or setting aside the decision of the administrative law judge.  
7 Alternatively, the commissioner may order further proceedings to be held before the

8 administrative law judge, upon completion of which the administrative law judge shall issue a  
 9 decision in writing affirming, modifying, or setting aside its previous decision. The new decision  
 10 may be appealed as provided under §21-5F-39 of this code. The commissioner shall mail the  
 11 decision to the interested parties at their last known addresses.

**§21-5F-43. Appeals—commissioner decisions.**

12 Any decision of the commissioner involving a review of an administrative law judge  
 13 decision, in the absence of a petition as provided elsewhere, becomes final 30 days after  
 14 notification or mailing, whichever is earlier. The commissioner shall be deemed to be a party to  
 15 any judicial action involving any such decision and shall be represented in any such judicial action  
 16 by the Attorney General.

**§21-5F-44. Appeals—judicial review procedure.**

1 Judicial review of a decision of the commissioner involving the review of a decision of an  
 2 administrative law judge under this article may be had only in accordance with the procedural  
 3 requirements as provided under this code.

**§ 21-5F-45. Appeals—seeking judicial review.**

1 (1) A bond of any kind may not be required of any employee seeking judicial review from  
 2 a commissioner's decision affecting such employee's application for initial determination or claim  
 3 for waiting period credit or for benefits.

4 (2) A commissioner's decision is not stayed by a petition for judicial review unless the  
 5 petitioning employer shall first deposit an undertaking in an amount deemed by the commissioner  
 6 to be due, if any, from the petitioning employer, together with interest thereon, if any, with the  
 7 commissioner or in the registry of the court.

8 (3) This section does not authorize a stay in the payment of benefits to an employee when  
 9 such employee has been held entitled thereto by a decision of the commissioner which decision  
 10 either affirms, reverses, or modifies a decision of an appeals tribunal.

**§21-5F-46. Appeals—interstate petitions to Kanawha County.**

1       Petitions to the circuit court from decisions of the commissioner dealing with the  
2 applications or claims relating to benefit payments that were filed outside of this state with an  
3 authorized representative of the commissioner shall be filed with the Circuit Court of Kanawha  
4 County that shall have the original venue of such appeals.

**§21-5F-47. Appeals—judicial review.**

1       (1) In all court proceedings under or pursuant to this article the decision of the  
2 commissioner shall be prima facie correct, and the burden of proof shall be upon the party  
3 attacking the decision.

4       (2) If the court determines that the commissioner has acted within the commissioner's  
5 power and has correctly construed the law, the decision of the commissioner shall be confirmed;  
6 otherwise, the decision shall be reversed or modified. In case of a modification or reversal the  
7 circuit court shall refer the decision to the commissioner with an order directing the commissioner  
8 to proceed in accordance with the findings of the court.

9       (3) Whenever any order and notice of assessment shall have become final in accordance  
10 with the provisions of this article, the court shall upon application of the commissioner enter a  
11 judgment in the amount provided for in the order and notice of assessment, and the judgment  
12 shall have and be given the same effect as if entered pursuant to a civil action instituted in the  
13 court.

**§21-5F-48. Appeals—applicability of finding, determination, etc., to other action.**

1       Any finding, determination, conclusion, declaration, or final order made by the  
2 commissioner, or his or her representative or delegate, or by an appeal tribunal, administrative  
3 law judge, reviewing officer, or other agent of the bureau for the purposes of this article, is not  
4 conclusive, nor binding, nor admissible as evidence in any separate action outside the scope of  
5 this article between an employee and the employee's present or prior employer before an  
6 arbitrator, court, or judge of this state or the United States, regardless of whether the prior action  
7 was between the same or related parties or involved the same facts or was reviewed pursuant to

8 §21-5F-44 of this code.

**§21-5F-49. Appeals—fees for administrative hearings.**

1 An individual may not be charged fees of any kind in any proceeding involving the  
2 employee's application for initial determination, or claim for waiting period credit, or claim for  
3 benefits, under this article by the commissioner or his or her representatives, or by an appeal  
4 tribunal, or any court, or any officer thereof. Any employee in any such proceeding before the  
5 commissioner or any appeal tribunal may be represented by counsel or other duly authorized  
6 agent who shall neither charge nor receive a fee for such services in excess of an amount found  
7 reasonable by the officer conducting such proceeding.

**§21-5F-50. Appeals—attorney fees.**

1 It is unlawful for any attorney engaged in any appeal to the courts on behalf of an employee  
2 involving the employee's application for initial determination or claim for benefits to charge or  
3 receive any fee in excess of a reasonable fee to be fixed by the circuit court in respect to the  
4 services performed in connection with the appeal taken and to be fixed by the supreme court or  
5 the court of appeals in the event of appellate review, and if the decision of the is reversed or  
6 modified, such fee and the costs are payable out of the family and medical leave enforcement  
7 account.

**§21-5F-51. Appeals—remedies exclusive.**

1 The remedies provided in this article for determining the justness or correctness of  
2 assessments, refunds, adjustments, or claims shall be exclusive and no court shall entertain any  
3 action to enjoin an assessment or require a refund or adjustment except in accordance with the  
4 provisions of this article. Matters which may be determined by the procedures set out in this article  
5 may not be the subject of any declaratory judgment.

**§21-5F-52. Appeals—expenses.**

1 (1) Whenever any appeal is taken from any decision of the commissioner to any court, all  
2 expenses and costs incurred by the commissioner, including court reporter costs and attorneys'

3 fees and all costs taxed against such commissioner, shall be paid out of the family and medical  
4 leave enforcement account.

5 (2) Neither the commissioner nor the state shall be charged any fee for any service  
6 rendered in connection with litigation under this article by the clerk of any court.

**§21-5F-53. Appeal —redeterminations.**

1 (1) A determination of amount of benefits potentially payable under this article is not a  
2 basis for appeal. However, the determination is subject to request by the employee on family and  
3 medical leave for redetermination by the commissioner at any time within one year from the date  
4 of delivery or mailing of such determination, or any redetermination thereof. A redetermination  
5 shall be furnished to the employee in writing and provide the basis for appeal.

6 (2) A determination of denial of benefits becomes final, in the absence of timely appeal  
7 therefrom. The commissioner may redetermine such determinations at any time within one year  
8 from delivery or mailing to correct an error in identity, omission of fact, or misapplication of law  
9 with respect to the facts.

10 (3) A determination of allowance of benefits becomes final, in the absence of a timely  
11 appeal therefrom. The commissioner may redetermine such allowance at any time within two  
12 years following the eligibility period in which such allowance was made in order to recover any  
13 benefits for which recovery is provided under this article.

14 (4) A redetermination may be made at any time: (a) To conform to a final court decision  
15 applicable to either an initial determination or a determination of denial or allowance of benefits;  
16 (b) in the event of a back pay award or settlement affecting the allowance of benefits; or (c) in the  
17 case of misrepresentation or willful failure to report a material fact. Written notice of any such  
18 redetermination shall be promptly given by mail or delivered to such interested parties as were  
19 notified of the initial determination or determination of denial or allowance of benefits and any new  
20 interested party or parties who, pursuant to such rule as the commissioner may adopt, would be  
21 an interested party.

**§21-5F-54. Authority to compromise.**

1           The commissioner may compromise any claim for premiums, interest, or penalties due  
2 and owing from an employer, and any amount owed by an individual because of benefit  
3 overpayments existing or arising under this article in any case where collection of the full amount  
4 due and owing, whether reduced to judgment or otherwise, would be against equity and good  
5 conscience. Whenever a compromise is made by the commissioner in the case of a claim for  
6 premiums, interest, or penalties, whether reduced to judgment or otherwise, there shall be placed  
7 on file in the bureau a statement of the amount of premiums, interest, and penalties imposed by  
8 law and claimed due, attorneys' fees and costs, if any, a complete record of the compromise  
9 agreement, and the amount actually paid in accordance with the terms of the compromise  
10 agreement. Whenever a compromise is made by the commissioner in the case of a claim of a  
11 benefit overpayment, whether reduced to judgment or otherwise, there shall be placed on file in  
12 the bureau a statement of the amount of the benefit overpayment, attorneys' fees and costs, if  
13 any, a complete record of the compromise agreement, and the amount actually paid in  
14 accordance with the terms of the compromise agreement. If any such compromise is accepted  
15 by the commissioner, within such time as may be stated in the compromise or agreed to, such  
16 compromise shall be final and conclusive and except upon showing of fraud or malfeasance or  
17 misrepresentation of a material fact the case may not be reopened as to the matters agreed upon.  
18 In any suit, action, or proceeding, such agreement or any determination, collection, payment,  
19 adjustment, refund, or credit made in accordance therewith may not be annulled, modified, set  
20 aside, or disregarded.

**§21-5F-55. Interest on delinquent premiums.**

1           If premiums are not paid on the date on which they are due and payable as prescribed by  
2 the commissioner, the, whole or part, thereof remaining unpaid shall bear interest at the rate of  
3 one percent per month or fraction thereof from and after such date until payment plus accrued  
4 interest is received by him or her. The date as of which payment of premiums, if mailed, is deemed

5 to have been received may be determined by such rules as the commissioner may prescribe.  
6 Interest collected pursuant to this section shall be paid into the family and medical leave  
7 enforcement account. Interest does not accrue on premiums from any estate in the hands of a  
8 receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other  
9 liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in  
10 bankruptcy, common law assignee, or other liquidating officer qualifies as such, but premiums  
11 accruing with respect to employment of persons by any receiver, executor, administrator, trustee  
12 in bankruptcy, common law assignee, or other liquidating officer shall become due and shall draw  
13 interest in the same manner as premiums due from other employers. Where adequate information  
14 has been furnished to the bureau and the bureau has failed to article or has advised the employer  
15 of no liability or inability to decide the issue, interest may be waived.

**§21-5F-56. Lien for premiums generally.**

1 The claim of the department of employment security for any premiums, interest, or  
2 penalties not paid when due, shall be a lien prior to all other liens or claims and on a parity with  
3 prior tax liens against all property and rights to property, whether real or personal, belonging to  
4 the employer. In order to avail itself of the lien hereby created, the bureau shall file with any county  
5 clerk where property of the employer is located a statement and claim of lien specifying the  
6 amount of delinquent premiums, interest, and penalties claimed by the bureau. From the time of  
7 filing for record, the amount required to be paid shall constitute a lien upon all property and rights  
8 to property, whether real or personal, in the county, owned by the employer or acquired by him or  
9 her. The lien is not valid against any purchaser, holder of a security interest, mechanic's lien, or  
10 judgment lien creditor until notice thereof has been filed with the county clerk. This lien shall be  
11 separate and apart from, and in addition to, any other lien or claim created by, or provided for in,  
12 this article. When any such notice of lien has been so filed, the commissioner may release the  
13 same by filing a certificate of release when it appears that the amount of delinquent premiums,  
14 interest, and penalties have been paid, or when such assurance of payment is made as the

15 commissioner may deem to be adequate. Fees for filing and releasing the lien provided herein  
16 may be charged to the employer and may be collected from the employer utilizing the remedies  
17 provided in this article for the collection of premiums.

**§21-5F-57. Lien in event of insolvency or dissolution.**

1 In the event of any distribution of an employer's assets pursuant to an order of any court,  
2 including any receivership, probate, legal dissolution, or similar proceeding, or in case of any  
3 assignment for the benefit of creditors, composition, or similar proceeding, premiums, interest, or  
4 penalties then or thereafter due shall be a lien upon all the assets of such employer. Said lien is  
5 prior to all other liens or claims except prior tax liens, other liens provided by this article, and  
6 claims for remuneration for services of not more than \$250 to each claimant earned within six  
7 months of the commencement of the proceeding. The mere existence of a condition of insolvency  
8 or the institution of any judicial proceeding for legal dissolution or of any proceeding for distribution  
9 of assets shall cause such a lien to attach without action on behalf of the commissioner or the  
10 state. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension  
11 proposal, or composition, under the federal bankruptcy article of 1898, as amended, premiums,  
12 interest, or penalties then or thereafter due shall be entitled to such priority as provided in that  
13 article, as amended.

**§21-5F-58. Order and notice of assessment.**

1 At any time after the commissioner shall find that any premiums, interest, or penalties have  
2 become delinquent, the commissioner may issue an order and notice of assessment specifying  
3 the amount due, which order and notice of assessment shall be served upon the delinquent  
4 employer in the manner prescribed for the service of a summons in a civil action, or using a  
5 method by which the mailing can be tracked or the delivery can be confirmed. Failure of the  
6 employer to receive such notice or order whether served or mailed does not release the employer  
7 from any tax, or any interest or penalties thereon.

**§21-5F-59. Jeopardy assessment.**

1 If the commissioner has reason to believe that an employer is insolvent or if any reason  
2 exists why the collection of any premiums accrued will be jeopardized by delaying collection, he  
3 or she may make an immediate assessment thereof and may proceed to enforce collection  
4 immediately, but interest and penalties shall not begin to accrue upon any premiums until the date  
5 when such premiums would normally have become delinquent.

**§21-5F-60. Distraint, seizure and sale.**

1 If the amount of premiums, interest, or penalties assessed by the commissioner by order  
2 and notice of assessment provided in this article is not paid within 10 days after the service or  
3 mailing of the order and notice of assessment, the commissioner or his or her duly authorized  
4 representative may collect the amount stated in said assessment by the distraint, seizure, and  
5 sale of the property, goods, chattels, and effects of said delinquent employer. There shall be  
6 exempt from distraint and sale under this section such goods and property as are exempt from  
7 execution under the laws of this state.

**§21-5F-61. Distraint procedure.**

1 The commissioner, upon making a distraint, shall seize the property and shall make an  
2 inventory of the property distrained, a copy of which shall be mailed to the owner of such property  
3 or personally delivered to him or her, and shall specify the time and place when the property is to  
4 be sold. A notice specifying the property to be sold and the time and place of sale shall be posted  
5 in at least two public places in the county wherein the seizure has been made. The time of sale  
6 may not be less than 10 nor more than 20 days from the date of posting of such notices. Said sale  
7 may be adjourned from time to time at the discretion of the commissioner, but not for a time to  
8 exceed in all 60 days. The sale shall be conducted by the commissioner or his or her authorized  
9 representative who shall proceed to sell such property by parcel or by lot at a public auction, and  
10 who may set a minimum price to include the expenses of making a levy and of advertising the  
11 sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed,  
12 the commissioner or his or her representative may declare such property to be purchased by the

13 bureau for such minimum price. In such event the delinquent account shall be credited with the  
14 amount for which the property has been sold. Property acquired by the bureau as herein  
15 prescribed may be sold by the commissioner or his or her representative at public or private sale,  
16 and the amount realized shall be placed in the family and medical leave account. In all cases of  
17 sale, as aforesaid, the commissioner shall issue a bill of sale or a deed to the purchaser and said  
18 bill of sale or deed shall be prima facie evidence of the right of the commissioner to make such  
19 sale and conclusive evidence of the regularity of his or her proceeding in making the sale, and  
20 shall transfer to the purchaser all right, title, and interest of the delinquent employer in said  
21 property. The proceeds of any such sale, except in those cases wherein the property has been  
22 acquired by the employment security bureau, shall be first applied by the commissioner in  
23 satisfaction of the delinquent account, and out of any sum received in excess of the amount of  
24 delinquent premiums, interest, and penalties the administration fund shall be reimbursed for the  
25 costs of distraint and sale. Any excess which shall thereafter remain in the hands of the  
26 commissioner shall be refunded to the delinquent employer. Sums so refundable to a delinquent  
27 employer may be subject to seizure or distraint in the hands of the commissioner by any other  
28 taxing authority of the state or its political subdivisions.

**§21-5F-62. Notice and order to withhold and deliver.**

1 The commissioner is hereby authorized to issue to any person, firm, corporation, political  
2 subdivision, or bureau of the state, a notice and order to withhold and deliver property of any kind  
3 whatsoever when the commissioner has reason to believe that there is in the possession of such  
4 person, firm, corporation, political subdivision, or bureau, property which is due, owing, or  
5 belonging to any person, firm, or corporation upon whom the bureau has served a benefit  
6 overpayment assessment or a notice and order of assessment for premiums, interest, or  
7 penalties. The effect of a notice to withhold and deliver shall be continuous from the date such  
8 notice and order to withhold and deliver is first made until the liability is satisfied or becomes  
9 unenforceable because of a lapse of time. The notice and order to withhold and deliver shall be

10 served by the sheriff or the sheriff's deputy of the county wherein the service is made, using a  
11 method by which the mailing can be tracked or the delivery can be confirmed, or by any duly  
12 authorized representative of the commissioner. Any person, firm, corporation, political  
13 subdivision, or bureau upon whom service has been made is hereby required to answer the notice  
14 within 20 days exclusive of the day of service, under oath and in writing, and shall make true  
15 answers to the matters inquired of in the notice. In the event there is in the possession of any  
16 such person, firm, corporation, political subdivision, or bureau, any property which may be subject  
17 to the claim of the bureau of the state, such property shall be delivered forthwith to the  
18 commissioner or the commissioner's duly authorized representative upon demand to be held in  
19 trust by the commissioner for application on the indebtedness involved or for return, without  
20 interest, in accordance with final determination of liability or nonliability, or in the alternative, there  
21 shall be furnished a good and sufficient bond satisfactory to the commissioner conditioned upon  
22 final determination of liability. Should any person, firm, or corporation fail to make answer to an  
23 order to withhold and deliver within the time prescribed herein, it shall be lawful for the court, after  
24 the time to answer such order has expired, to render judgment by default against such person,  
25 firm, or corporation for the full amount claimed by the commissioner in the notice to withhold and  
26 deliver, together with costs.

**§21-5F-63. Warrant—authorized—filing—lien—enforcement.**

1 Whenever any order and notice of assessment or jeopardy assessment has become final  
2 in accordance with the provisions of this article the commissioner may file with the clerk of any  
3 county within the state a warrant in the amount of the notice of assessment plus interest, penalties,  
4 and a filing fee as required. The clerk of the county wherein the warrant is filed shall immediately  
5 designate a circuit court case number for such warrant, and the clerk shall cause to be entered in  
6 the judgment docket under the circuit court cause number assigned to the warrant, the name of  
7 the employer mentioned in the warrant, the amount of the tax, interest, penalties, and filing fee  
8 and the date when such warrant was filed. The aggregate amount of such warrant as docketed

9 shall become a lien upon the title to, and interest in all real and personal property of the employer  
10 against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the  
11 office of such clerk. Such warrant so docketed shall be sufficient to support the issuance of writs  
12 of execution and writs of garnishment in favor of the state in the manner provided by law in the  
13 case of civil judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a  
14 filing fee as required, which shall be added to the amount of the warrant, and charged by the  
15 commissioner to the employer or employing unit. A copy of the warrant shall be mailed to the  
16 employer or employing unit using a method by which the mailing can be tracked or the delivery  
17 can be confirmed within five days of filing with the clerk.

**§21-5F-64. Collection by civil action.**

1 (1) If after due notice, any employer defaults in any payment of premiums, interest, or  
2 penalties, the amount due may be collected by civil action in the name of the state, and the  
3 employer adjudged in default shall pay the cost of such action. Any lien created by this article  
4 may be foreclosed by decree of the court in any such action. Civil actions brought under this  
5 article to collect premiums, interest, or penalties from an employer shall be heard by the court at  
6 the earliest possible date and shall be entitled to preference upon the calendar of the court over  
7 all other civil actions except petitions for judicial review under this article, and cases arising under  
8 the unemployment compensation laws of this state.

9 (2) Any employing unit that is not a resident of this state and that exercises the privilege  
10 of having one or more individuals perform service for it within this state, and any resident  
11 employing unit that exercises that privilege and thereafter removes from this state, shall be  
12 deemed thereby to appoint the secretary of state as its agent and attorney for the acceptance of  
13 process in any action under this article. In instituting such an action against any such employing  
14 unit the commissioner shall cause such process or notice to be filed with the Secretary of State  
15 and such service shall be sufficient service upon such employing unit, and shall be of the same  
16 force and validity as if served upon it personally within this state: *Provided*, That the commissioner

17 shall forthwith send notice of the service of such process or notice, together with a copy thereof,  
18 by registered mail, return receipt requested, to such employing unit at its last known address and  
19 such return receipt, the commissioner's affidavit of compliance with the provisions of this section,  
20 and a copy of the notice of service shall be appended to the original of the process filed in the  
21 court in which such action is pending.

**§21-5F-65. Injunction proceedings.**

1 Any employer who is delinquent in the payment of premiums, interest, or penalties may  
2 be enjoined upon the suit of the State of West Virginia from continuing in business in this state or  
3 employing persons herein until the delinquent premiums, interest, and penalties have been paid,  
4 or until the employer has furnished a good and sufficient bond in a sum equal to double the  
5 amount of premiums, interest, and penalties already delinquent, plus such further sum as the  
6 court deems adequate to protect the bureau in the collection of premiums, interest, and penalties  
7 which will become due from such employer during the next ensuing calendar year, said bond to  
8 be conditioned upon payment of all premiums, interest, and penalties due and owing within 30  
9 days after the expiration of the next ensuing calendar year or at such earlier date as the court  
10 may fix. Action under this section may be instituted in the circuit court of any county of the state  
11 wherein the employer resides, has its principal place of business, or where it has anyone  
12 performing services for it, whether or not such services constitute employment.

**§21-5F-66. Charge off of uncollectible accounts.**

1 The commissioner may charge off as uncollectible and no longer an asset of the family  
2 and medical leave account, any delinquent premiums, interest, penalties, credits, or benefit  
3 overpayments if the commissioner is satisfied that there are no cost-effective means of collecting  
4 the premiums, interest, penalties, credits, or benefit overpayments.

**§21-5F-67. Premiums due and payable upon termination or disposal of business—  
successor liability.**

1 Whenever any employer quits business, or sells out, exchanges, or otherwise disposes of

2 the employer's business or stock of goods, any premiums payable under this article become  
3 immediately due and payable, and the employer shall, within 10 days, make a return and pay the  
4 premiums due; and any person who becomes a successor to such business becomes liable for  
5 the full amount of the premiums and withhold from the purchase price a sum sufficient to pay any  
6 premiums due from the employer until such time as the employer produces a receipt from the  
7 bureau showing payment in full of any premiums due or a certificate that no premium is due and,  
8 if such premium is not paid by the employer within 10 days from the date of such sale, exchange,  
9 or disposal, the successor shall become liable for the payment of the full amount of premiums,  
10 and the payment thereof by such successor shall, to the extent thereof, be deemed a payment  
11 upon the purchase price, and if such payment is greater in amount than the purchase price the  
12 amount of the difference shall become a debt due such successor from the employer. A successor  
13 may not be liable for any premiums due from the person from whom that person has acquired a  
14 business or stock of goods if that person gives written notice to the bureau of such acquisition  
15 and no assessment is issued by the bureau within 180 days of receipt of such notice against the  
16 former operator of the business and a copy thereof mailed to such successor.

**§32-5F-68. Employer penalties.**

1 (1) An employer who willfully fails to make the required reports is subject to penalties as  
2 follows: (a) For the second occurrence, the penalty is \$75; (b) for the third occurrence, the penalty  
3 is \$150; and (c) for the fourth occurrence and for each occurrence thereafter, the penalty is \$250.

4 (2) An employer who willfully fails to remit the full amount of the premiums when due is  
5 liable, in addition to the full amount of premiums due and amounts assessed as interest under  
6 section 55 of this article, to a penalty equal to the premiums and interest.

7 (3) Any penalties under this section shall be deposited into the family and medical leave  
8 enforcement account.

9 (4) For the purposes of this section, "willful" means a knowing and intentional action that  
10 is neither accidental nor the result of a bona fide dispute.

11 (5) The bureau shall enforce the collection of penalties through conference and  
12 conciliation.

13 (6) These penalties may be appealed as provided in sections 34 through 53 of this article.

**§21-5F-69. Other benefits.**

1 (1) Leave from employment under this article is in addition to leave from employment  
2 during which benefits are paid or are payable under other applicable federal or state insurance  
3 laws.

4 (2) In any week in which an employee is eligible to receive benefits under other applicable  
5 federal or state unemployment compensation, industrial insurance, or disability insurance laws,  
6 the employee is disqualified from receiving family or medical leave benefits under this article.

**§21-5F-70. Health benefits.**

1 If required by the federal family and medical leave article, as it existed on the effective  
2 date of this section during any period of family or medical leave taken under this article, the  
3 employer shall maintain any existing health benefits of the employee in force for the duration of  
4 such leave as if the employee had continued to work from the date the employee commenced  
5 family or medical leave until the date the employee returns to employment. If the employer and  
6 employee share the cost of the existing health benefits, the employee remains responsible for the  
7 employee's share of the cost. This section does not apply to an employee who is not in  
8 employment for an employer at the time of filing an application for benefits.

**§21-5F-71. Employee notice of rights.**

1 Whenever an employee of an employer who is qualified for benefits under this article is  
2 absent from work to provide family leave, or to take medical leave for more than seven  
3 consecutive days, the employer shall provide the employee with a written statement of the  
4 employee's rights under this article in a form prescribed by the commissioner. The statement must  
5 be provided to the employee within five business days after the employee's seventh consecutive  
6 day of absence due to family or medical leave, or within five business days after the employer

7 has received notice that the employee's absence is due to family or medical leave, whichever is  
8 later.

**§21-5F-72. Employer prohibitions.**

1 (1) It is unlawful for any employer to:

2 (a) Interfere with, restrain, or deny the exercise of, or the attempt to exercise, any valid  
3 right provided under this article; or

4 (b) Discharge or in any other manner discriminate against any employee for opposing any  
5 practice made unlawful by this article.

6 (2) It is unlawful for any person to discharge or in any other manner discriminate against  
7 any employee because the employee has:

8 (a) Filed any complaint, or has instituted or caused to be instituted any proceeding, under  
9 or related to this article;

10 (b) Given, or is about to give, any information in connection with any inquiry or proceeding  
11 relating to any right provided under this article; or

12 (c) Testified, or is about to testify, in any inquiry or proceeding relating to any right provided  
13 under this article.

**§21-5F-73. Investigations and appeals.**

1 Upon complaint by an employee, the commissioner shall investigate to determine if there  
2 has been compliance with this article and the rules adopted under this article. If the investigation  
3 indicates that a violation may have occurred, a hearing must be held in accordance with article  
4 34.05 RCW. The commissioner must issue a written determination including the commissioner's  
5 findings after the hearing. A judicial appeal from the commissioner's determination may be taken  
6 in accordance with §29A-5-1 et seq. of this code.

**§21-5F-74. Remedies.**

1 Any employer who violates section 72 of this article is liable for damages equal to:

2 (1) The amount of:

3 (a) Any wages, salary, employment benefits, or other compensation denied or lost to such  
4 employee by reason of the violation; or

5 (b) In a case in which wages, salary, employment benefits, or other compensation have  
6 not been denied or lost to the employee, any actual monetary losses sustained by the employee  
7 as a direct result of the violation, such as the cost of providing care, up to a sum equal to wages  
8 or salary for the employee for up to 16 weeks, or 18 weeks if the employee experiences a serious  
9 health condition with a pregnancy that results in incapacity.

10 (2)(a) The interest on the amount described in subsection (1) of this section calculated at  
11 the prevailing rate; and

12 (b) For a willful violation, an additional amount as liquidated damages equal to the sum of  
13 the amount described in subsection (1) of this section and the interest described in this subsection  
14 (2). For purposes of this section, "willful" means a knowing and intentional action that is neither  
15 accidental nor the result of a bona fide dispute.

**§21-5F-75. Posting of notice.**

1 Each employer shall post and keep posted, in conspicuous places on the premises of the  
2 employer where notices to employees and applicants for employment are customarily posted, a  
3 notice, to be prepared or approved by the commissioner, setting forth excerpts from, or  
4 summaries of, the pertinent provisions of this article and information pertaining to the filing of a  
5 complaint. Any employer that willfully violates this section may be subject to a civil penalty of not  
6 more than \$100 for each separate offense. Any penalties collected by the bureau under this  
7 section shall be deposited into the family and medical leave enforcement account.

**§21-5F-76. Family and medical leave enforcement account.**

1 The family and medical leave enforcement account is created in the custody of the State  
2 Treasurer. Any penalties and interest collected under sections 5, 20, 32, 33, 55, 68, and 75 of this  
3 article shall be deposited into the account and shall be used only for the purposes of administering  
4 and enforcing this article. Only the commissioner may authorize expenditures from the account.

5 An appropriation is not required for expenditures.

**§21-5F-77. Other laws—discrimination.**

1 Nothing in this article may be construed to modify or affect any state or local law prohibiting  
2 discrimination on the basis of race, creed, religion, color, national origin, families with children,  
3 sex, marital status, age, honorably discharged veteran or military status, or the presence of any  
4 sensory, mental, or physical disability or the use of a trained dog guide or service animal by a  
5 person with a disability.

**§21-5F-78. Miscellaneous rights.**

- 1 (1) Nothing in this article shall be construed to discourage employers from:
- 2 (a) Adopting or retaining leave policies more generous than any policies that comply with
- 3 the requirements under this article; or
- 4 (b) Making payments to supplement the benefit payments provided under section 6 of this
- 5 article to an employee on family or medical leave.
- 6 (2) Any agreement by an individual to waive his or her rights under this article is void as
- 7 against public policy.
- 8 (3) After January 1, 2020, subject to section 87 of this article, an employee's rights under
- 9 this article may not be diminished by a collective bargaining agreement or employer policy.

**§21-5F-79. Coordination of leave under other laws.**

- 1 (1) Leave under this article and leave under the federal family and medical leave article of
- 2 1993 (Article Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on the effective date of this
- 3 section) is in addition to any leave for sickness or temporary disability because of pregnancy or
- 4 childbirth.
- 5 (2) Unless otherwise expressly permitted by the employer, leave taken under this article
- 6 must be taken concurrently with any leave taken under the federal family and medical leave article
- 7 of 1993 (Article Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on the effective date of this
- 8 section).

**§21-5F-80. Federal income taxes.**

1           (1) If the Internal Revenue Service determines that family or medical leave benefits under  
2 this article are subject to federal income tax, the bureau must advise an employee filing a new  
3 application for benefits, at the time of filing such application, that:

4           (a) The Internal Revenue Service has determined that benefits are subject to federal  
5 income tax;

6           (b) Requirements exist pertaining to estimated tax payments;

7           (c) The employee may elect to have federal income tax deducted and withheld from the  
8 employee's payment of benefits at the amount specified in the federal Internal Revenue code;  
9 and

10          (d) The employee is permitted to change a previously elected withholding status.

11          (2) Amounts deducted and withheld from benefits must remain in the family and medical  
12 leave insurance account until transferred to the federal taxing authority as a payment of income  
13 tax.

14          (3) The commissioner shall follow all procedures specified by the federal Internal Revenue  
15 Service pertaining to the deducting and withholding of income tax.

**§21-5F-81. No continuing right.**

1           This article does not create a continuing entitlement or contractual right. The reserves the  
2 right to amend or repeal all or part of this article at any time, and a benefit or other right granted  
3 under this article exists subject to the Legislature's power to amend or repeal this article. There is  
4 no vested private right of any kind against such amendment or repeal.

**§21-5F-82. Family and medical leave insurance account.**

1           (1) The family and medical leave insurance account is created in the custody of the State  
2 Treasurer. All receipts from premiums imposed under this article must be deposited in the  
3 account. Expenditures from the account may be used only for the purposes of the family and  
4 medical leave program. Only the commissioner or the commissioner's designee may authorize

5 expenditures from the account. An appropriation is required for administrative expenses, but not  
6 for benefit payments.

7 (2) Money deposited in the account shall remain a part of the account until expended  
8 pursuant to the requirements of this article or transferred in accordance with subsection (3) of this  
9 section. The commissioner shall maintain a separate record of the deposit, obligation,  
10 expenditure, and return of funds so deposited. Any money so deposited which either will not be  
11 obligated within the period specified by the appropriations article or remains unobligated at the  
12 end of the period, and any money which has been obligated within the period but will not be  
13 expended, shall be returned promptly to the family and medical leave insurance account.

14 (3) Money shall be transferred from the family and medical leave insurance account and  
15 deposited in the unemployment trust fund solely for the repayment of benefits not charged to  
16 employers. The commissioner shall direct the transfer.

17 (4) Money transferred as provided in subsection (3) of this section for the repayment of  
18 benefits not charged to employers shall be deposited in the unemployment compensation fund  
19 and shall remain a part of the unemployment compensation fund until expended. The  
20 commissioner shall maintain a separate record of the deposit, obligation, expenditure, and return  
21 of funds so deposited. Any money so deposited which either will not be obligated within the period  
22 specified by the appropriation law or remains unobligated at the end of the period, and any money  
23 which has been obligated within the period but will not be expended, shall be returned promptly  
24 to the account of this state in the unemployment trust fund.

**§21-5F-83. Small business assistance.**

1 (1) The Legislature recognizes that while family leave and medical leave benefit both  
2 employees and employers, there may be costs that disproportionately impact small businesses.  
3 To equitably balance the risks among employers, the Legislature intends to assist small  
4 businesses with the costs of an employee's use of family or medical leave.

5 (2) Employers with 150 or fewer employees and employers with 50 or fewer employees

6 who are assessed all premiums under section 8(5)(b) of this article may apply to the bureau for a  
7 grant under this section.

8 (3)(a) An employer may receive a grant of \$3000 if the employer hires a temporary worker  
9 to replace an employee on family or medical leave for a period of seven days or more.

10 (b) For an employee's family or medical leave, an employer may receive a grant of up to  
11 \$1000 as reimbursement for significant additional wage-related costs due to the employee's  
12 leave.

13 (c) An employer may receive a grant under (a) or (b) of this subsection, but not both,  
14 except that an employer who received a grant under (b) of this subsection may receive a grant of  
15 the difference between the grant awarded under (b) of this subsection and \$3000 if the employee  
16 on leave extended the leave beyond the leave initially planned and the employer hired a  
17 temporary worker for the employee on leave.

18 (4) An employer may apply for a grant no more than 10 times per calendar year and no  
19 more than once for each employee on leave.

20 (5) To be eligible for a grant, the employer must provide the bureau written documentation  
21 showing the temporary worker hired or significant wage-related costs incurred are due to an  
22 employee's use of family or medical leave.

23 (6) The bureau must assess an employer with fewer than 50 employees who receives a  
24 grant under this section for all premiums for three years from the date of receipt of a grant.

25 (7) The grants under this section shall be funded from the family and medical leave  
26 insurance account.

27 (8) The commissioner shall adopt rules as necessary to implement this section.

28 (9) For the purposes of this section, the number of employees must be calculated as  
29 provided in section 8 of this article.

30 (10) An employer who has an approved voluntary plan is not eligible to receive a grant  
31 under this section.

**§21-5F-84. Rules.**

1           The commissioner shall adopt in accordance with the provisions of §29A-3-1 et seq. of  
2 this code rules as necessary to implement this article.

**§21-5F-85. Reports.**

1           Beginning December 1, 2020, and annually thereafter, the bureau shall report to the  
2 Legislature on the entire program, including:

3           (1) Projected and actual program participation;

4           (2) Premium rates;

5           (3) Fund balances;

6           (4) Benefits paid;

7           (5) Demographic information on program participants, including income, gender, race,  
8 ethnicity, geographic distribution by county and legislative district, and employment sector;

9           (6) Costs of providing benefits;

10          (7) Elective coverage participation;

11          (8) Voluntary plan participation;

12          (9) Outreach efforts; and

13          (10) Small business assistance.

**§21-5F-86. Collective bargaining.**

1           Nothing in this article requires any party to a collective bargaining agreement in existence  
2 on the effective date of this section to reopen negotiations of the agreement or to apply any of the  
3 rights and responsibilities under this article unless and until the existing agreement is reopened  
4 or renegotiated by the parties or expires.

**§21-5F-87. Ombudsperson.**

1           (1) The commissioner shall establish an ombudsperson office for family and medical leave  
2 within the bureau. The ombudsperson shall be appointed by the Governor and report directly to  
3 the commissioner of the bureau. The ombudsperson is available to all employers and employees

4 in the state.

5 (2) The person appointed ombudsperson shall hold office for a term of six years and shall  
6 continue to hold office until reappointed or until his or her successor is appointed. The Governor  
7 may remove the ombudsperson only for neglect of duty, misconduct, or inability to perform duties.  
8 Any vacancy shall be filled by similar appointment for the remainder of the unexpired term.

9 (3) The ombudsperson shall:

10 (a) Offer and provide information on family and medical leave to employers and  
11 employees;

12 (b) Article as an advocate for employers and employees in their dealings with the bureau;

13 (c) Identify, investigate, and facilitate resolution of disputes and complaints under this  
14 article; and

15 (d) Refer complaints to the bureau when appropriate.

16 (4) The ombudsperson may conduct surveys of employees. Survey questions and results  
17 are confidential and not subject to public disclosure.

18 (5) The ombudsperson is not liable for the good faith performance of responsibilities under  
19 this article.

NOTE: The purpose of this bill is to provide for paid family and medical leave.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.