

110TH CONGRESS  
2D SESSION

# H. R. 5873

To provide for a paid family and medical leave insurance program, and  
for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 2008

Mr. STARK (for himself, Mr. GEORGE MILLER of California, Ms. WOOLSEY, and Mrs. MALONEY of New York) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committees on Oversight and Government Reform and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide for a paid family and medical leave insurance  
program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Family Leave Insur-  
5 ance Act of 2008”.

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 Congress finds the following:

1           (1) Since its passage, the Family and Medical  
2 Leave Act of 1993 (referred to in this section as the  
3 “FMLA”) has assisted millions of employees in bal-  
4 ancing the demands of their jobs with their family  
5 responsibilities. However, many eligible employees  
6 are not able to utilize the benefits of the FMLA be-  
7 cause FMLA leave is unpaid. According to a 2000  
8 survey on the FMLA by the Department of Labor,  
9 among those employees who need FMLA leave and  
10 don’t take it, 78 percent don’t take it because they  
11 can’t afford it.

12           (2) An analysis of national data from the 2000  
13 FMLA survey by the Center for Women and Work  
14 at Rutgers University suggests that employees suffer  
15 severe financial hardship in order to be responsible  
16 family members and provide minor children and  
17 aging parents with the care they need. For example,  
18 among employees who needed to care for a seriously  
19 ill child—

20                   (A) 42 percent took time off even though  
21 they received no pay while doing so;

22                   (B) 46 percent received full or partial pay  
23 during at least part of the time off (including  
24 receiving pay for reasons such as use of vaca-  
25 tion time); and

1           (C) 12 percent could not take time off to  
2           care for the child due to lack of pay.

3           (3) Americans who provide direct care for their  
4           family members prevent the worsening of illnesses  
5           and promote strong recovery. For example, the  
6           length of a child's stay in the hospital decreases by  
7           31 percent when parents are able to be present.

8           (4) Forty-three percent of private sector em-  
9           ployees do not have access to paid sick leave, as re-  
10          ported in the Bureau of Labor Statistics National  
11          Compensation Survey in March 2006. Of those em-  
12          ployees who do have paid sick leave, many are not  
13          able to use their own sick leave to receive payment  
14          while caring for family members who are ill.

15          (5) Family and medical leave benefits strength-  
16          en and support the business sector through health  
17          care savings and increased employee retention and  
18          productivity.

19          (6) Demographic changes over the past few dec-  
20          ades have altered the face and needs of the work-  
21          force. It is now common for both parents to be in  
22          the workforce and for men and women to also serve  
23          as the primary caregivers for elderly spouses or par-  
24          ents.

1           (7) According to the Bureau of the Census and  
2           the Bureau of Labor Statistics, 56 percent of women  
3           with children under age 1 are in the labor force,  
4           while 71 percent of all women with dependent chil-  
5           dren under age 18 are in the labor force.

6           (8) Nearly  $\frac{2}{3}$  of Americans under the age of 60  
7           expect to be responsible for the care of an elderly  
8           relative in the next 10 years.

9   **SEC. 3. GENERAL DEFINITIONS.**

10          (a) IN GENERAL.—The definitions provided by sec-  
11          tion 101 of the Family and Medical Leave Act of 1993  
12          (29 U.S.C. 2611), other than the definitions of the terms  
13          “eligible employee” and “employer”, shall apply for pur-  
14          poses of this Act.

15          (b) ADDITIONAL DEFINITIONS.—In this Act, the fol-  
16          lowing additional definitions shall apply:

17                  (1) BOARD OF TRUSTEES.—The term “Board  
18                  of Trustees” means the Board of Trustees of the In-  
19                  surance Fund.

20                  (2) COVERED AGENCY.—The term “covered  
21                  agency”, when used with respect to a State, means  
22                  the State agency referred to in paragraph (1) of sec-  
23                  tion 102(b), or the Commissioner of the Social Secu-  
24                  rity Administration if the Commissioner is carrying  
25                  out the State Family and Medical Insurance Pro-

1       gram in the State under paragraph (2) of such sec-  
2       tion.

3               (3) DOMESTIC PARTNER.—The term “domestic  
4       partner” means—

5               (A) the person recognized as the domestic  
6       partner of the employee under any domestic  
7       partner registry or civil union laws of the State  
8       or political subdivision of a State where the em-  
9       ployee resides; or

10              (B) a same-sex spouse as determined  
11       under the applicable law of the State or polit-  
12       ical subdivision of a State where the employee  
13       resides; or

14              (C) in the case of an unmarried employee  
15       who lives in a State where a person cannot  
16       marry a person of the same sex under the laws  
17       of the State, a single, unmarried adult person  
18       of the same sex as the employee who is in a  
19       committed, intimate relationship with the em-  
20       ployee, is not a domestic partner to any other  
21       person, and who is designated to the employer  
22       by such employee as that employee’s domestic  
23       partner.

1           (4) INSURANCE FUND.—The term “Insurance  
2 Fund” means the Family and Medical Leave Insur-  
3 ance Fund established under section 301.

4           (5) MANAGING TRUSTEE.—The term “Man-  
5 aging Trustee” means the Managing Trustee of the  
6 Board of Trustees of the Insurance Fund.

7       **TITLE I—FAMILY AND MEDICAL**  
8       **LEAVE INSURANCE PROGRAM**

9       **SEC. 101. PROGRAM DEFINITIONS.**

10       In this title:

11           (1) ELIGIBLE EMPLOYEE.—The term “eligible  
12 employee” means any of the following:

13                   (A) An employee who—

14                           (i) earned wages with a covered em-  
15 ployer for a minimum of 6 months prior to  
16 filing an application for leave benefits  
17 under this title; and

18                           (ii) has been employed by the em-  
19 ployer with respect to whom paid leave is  
20 requested for at least 625 hours of service  
21 during the previous 6 months.

22                   (B) An employee—

23                           (i) of a small employer that has elect-  
24 ed to participate in the Program under

1 this title in accordance with such regula-  
2 tions as the Secretary shall prescribe; and

3 (ii) who meets the requirements of  
4 subparagraph (A), but is not an employee  
5 of the Federal Government.

6 (C) A self-employed individual who has—

7 (i) elected to participate in the Pro-  
8 gram under this title in accordance with  
9 such regulations as the Secretary shall pre-  
10 scribe;

11 (ii) self-employment income while a  
12 covered employer for 6 of the last 12  
13 months prior to filing an application for  
14 leave benefits under this title; and

15 (iii) paid premiums under section  
16 1401(c) of the Internal Revenue Code of  
17 1986 with respect to such self-employment  
18 income.

19 (2) EMPLOYER-RELATED DEFINITIONS.—

20 (A) COVERED EMPLOYER.—The term  
21 “covered employer” means a person—

22 (i) that is—

23 (I) an employer;

24 (II) a small employer that has  
25 elected to participate in the Program

1 under this title in accordance with  
2 such regulations as the Secretary shall  
3 prescribe; or

4 (III) a self-employed individual  
5 who has elected to so participate; and

6 (ii) that is not a voluntary plan em-  
7 ployer.

8 (B) EMPLOYER.—The term “employer”  
9 shall have the meaning given that term in sec-  
10 tion 101(4) of the Family and Medical Leave  
11 Act of 1993 (29 U.S.C. 2611(4)), except that  
12 such term shall include any person who employs  
13 2 or more employees for each working day dur-  
14 ing each of 20 or more calendar workweeks in  
15 the current or preceding calendar year;

16 (C) SMALL EMPLOYER.—The term “small  
17 employer”—

18 (i) means any person engaged in com-  
19 merce or in any industry or activity affect-  
20 ing commerce who employs not less than 2  
21 and not more than 19 employees for each  
22 working day during each of 20 or more  
23 calendar workweeks in the current or pre-  
24 ceding calendar year; and

25 (ii) includes—



1 (I) any person who acts, directly  
2 or indirectly, in the interest of an em-  
3 ployer described in clause (i) to any of  
4 the employees of such employer;

5 (II) any successor in interest of  
6 an employer described in clause (i);  
7 and

8 (III) any public agency, as de-  
9 fined in section 3(x) of the Fair Labor  
10 Standards Act of 1938 (29 U.S.C.  
11 203(x)) that is an employer described  
12 in clause (i) but is not an entity of the  
13 Federal Government.

14 (D) VOLUNTARY PLAN EMPLOYER.—The  
15 term “voluntary plan employer” means an em-  
16 ployer for which the Secretary has approved a  
17 voluntary plan under section 104 for the period  
18 involved.

19 (3) LEAVE BENEFIT.—The term “leave benefit”  
20 means a family and medical leave insurance benefit  
21 described in section 103.

22 (4) PROGRAM.—The term “Program” means  
23 the Family and Medical Leave Insurance Program  
24 established under section 102.

1           (5) VOLUNTARY PAID BENEFIT.—The term  
2           “voluntary paid benefit” means a family and medical  
3           leave insurance benefit provided under a voluntary  
4           plan approved under section 104 for the period in-  
5           volved.

6 **SEC. 102. ESTABLISHMENT OF PROGRAM.**

7           (a) FEDERAL PROGRAM.—The Secretary of Labor  
8           shall establish a Family and Medical Insurance Program.

9           (b) STATE PROGRAMS.—In carrying out the Federal  
10          Program, the Secretary may—

11           (1) enter into a contract with a State under  
12          which—

13                   (A) the State agrees to establish, and pro-  
14                   vide the benefits described under this title in  
15                   that State through a Family and Medical Insur-  
16                   ance Program, including expansion of a pre-ex-  
17                   isting State program; and

18                   (B) the Secretary agrees to instruct the  
19                   Managing Trustee of the Family and Medical  
20                   Leave Insurance Fund, established under sec-  
21                   tion 301, to provide funds for such benefits  
22                   from the Fund; or

23           (2) at the request of the Governor of a State,  
24          enter into an interagency agreement with the Com-  
25          missioner of the Social Security Administration to

1 establish, and provide the benefits described under  
2 this title, through a State Family and Medical In-  
3 surance Program directly in a State from funds pro-  
4 vided to the Commissioner by the managing trustee  
5 of the Fund;

6 (c) STATE APPLICATION.—To be eligible to receive  
7 a contract under subsection (b)(1), a State shall submit  
8 an application to the Secretary at such time, in such man-  
9 ner, and containing such information as the Secretary may  
10 require. At a minimum, the application shall include infor-  
11 mation identifying the State agency to carry out the State  
12 Family and Medical Insurance Program.

13 **SEC. 103. PROGRAM BENEFITS.**

14 (a) ENTITLEMENT.—Subject to subsections (b), (d),  
15 and (e), an eligible employee of a covered employer shall  
16 be entitled to a family and medical leave insurance benefit  
17 for a total of 12 workweeks of leave during any 12-month  
18 period for 1 or more of the following reasons:

19 (1) Because of the birth of a son or daughter  
20 of the employee and in order to care for such son  
21 or daughter.

22 (2) Because of the placement of a son or  
23 daughter with the employee for adoption or foster  
24 care.

1           (3) In order to care for a child, parent, spouse,  
2           domestic partner, grandchild, grandparent, or sibling  
3           of the employee and who has a serious health condi-  
4           tion.

5           (4) Because of a serious health condition that  
6           makes the employee unable to perform the functions  
7           of the position of such employee.

8           (5) Because of any qualifying exigency (as the  
9           Secretary of Labor shall, by regulation, determine)  
10          arising out of the fact that the spouse, or a son,  
11          daughter, or parent of the employee is on active  
12          duty (or has been notified of an impending call or  
13          order to active duty) in the Armed Forces of the  
14          United States in support of a contingency operation.

15          (6) In order to care for a child, parent, spouse,  
16          domestic partner, grandchild, grandparent, sibling,  
17          or next of kin of the employee who is a covered  
18          servicemember as such term is defined in section  
19          101(16) of the Family and Medical Leave Act of  
20          1993 (29 U.S.C. 2611(16)).

21          (b) WAITING PERIOD.—During each 12-month pe-  
22          riod described in subsection (a), each eligible employee  
23          shall be subject to a waiting period of 5 workdays of leave  
24          described in subsection (a) (but not more than 7 calendar  
25          days), during which a leave benefit shall not be paid to

1 the employee. The waiting period shall not reduce the 12  
2 workweeks of leave benefits available under subsection (a).

3 (c) BENEFIT AMOUNT.—

4 (1) IN GENERAL.—Subject to paragraph (2), an  
5 eligible employee’s leave benefit for any workday on  
6 which the employee takes leave as described in sub-  
7 section (a) shall be calculated as—

8 (A) in the case of an employee with an an-  
9 nual income of not more than \$20,000, an  
10 amount equal to 100 percent of that employee’s  
11 daily earnings;

12 (B) in the case of an employee with an an-  
13 nual income of more than \$20,000 and not  
14 more than \$30,000, an amount equal to the  
15 greater of—

16 (i) 75 percent of that employee’s daily  
17 earnings; or

18 (ii) 100 percent of the daily earnings  
19 of an employee with an annual income of  
20 \$20,000;

21 (C) in the case of an employee with an an-  
22 nual income of more than \$30,000 and not  
23 more than \$60,000, an amount equal to the  
24 greater of—

1 (i) 55 percent of that employee's daily  
2 earnings; or

3 (ii) 75 percent of the daily earnings of  
4 an employee with an annual income of  
5 \$30,000;

6 (D) in the case of an employee with an an-  
7 nual income of more than \$60,000 and not  
8 more than \$97,000, an amount equal to the  
9 greater of—

10 (i) 40 percent of that employee's daily  
11 earnings; or

12 (ii) 55 percent of the daily earnings of  
13 an employee with an annual income of  
14 \$60,000; and

15 (E) in the case of an employee with an an-  
16 nual income of more than \$97,000, an amount  
17 equal to 40 percent of the daily earnings of an  
18 employee with an annual income of \$97,000.

19 (2) INDEXING OF ANNUAL INCOME CAT-  
20 EGORIES.—

21 (A) IN GENERAL.—The Secretary shall  
22 index the annual income amounts specified in  
23 paragraph (1) for each calendar year, using the  
24 national average wage index, as determined

1 under section 209(k) of the Social Security Act  
2 (42 U.S.C. 409(k)).

3 (B) PUBLICATION.—Not later than the  
4 November 1 preceding each calendar year, the  
5 Secretary shall publish in the Federal Register  
6 the indexed amount determined under subpara-  
7 graph (A) for that calendar year.

8 (d) APPLICATION.—

9 (1) IN GENERAL.—To be eligible to receive a  
10 family and medical insurance benefit under this title  
11 in a State, an eligible employee shall submit an ap-  
12 plication to the covered agency for the State at such  
13 time, in such manner, and containing the informa-  
14 tion specified in paragraph (3) and such additional  
15 information as the agency may require.

16 (2) IRREVOCABILITY FOR SELF-EMPLOYED IN-  
17 DIVIDUALS.—An election by a self-employed indi-  
18 vidual to participate in the Program shall be irrev-  
19 ocable.

20 (3) CERTIFICATION REQUIREMENTS.—The cov-  
21 ered agency shall require each of the following, as  
22 part of the application for benefits under this section  
23 in connection with any leave:

24 (A) A certification, submitted in a timely  
25 manner, issued by the health care provider of

1 the eligible employee or of the child, spouse,  
2 parent, domestic partner, grandchild, grand-  
3 parent or sibling of the employee, as appro-  
4 priate, and similar to the certification described  
5 section 103(b) of the Family and Medical Leave  
6 Act of 1993 (29 U.S.C. 2613(b)) in connection  
7 with such leave.

8 (B) In any case in which the covered agen-  
9 cy has reason to doubt the validity of the cer-  
10 tification provided under subparagraph (A), the  
11 Secretary may require, at the expense of the  
12 covered agency, that the eligible employee ob-  
13 tain the opinion of a second health care pro-  
14 vider designated or approved by the agency con-  
15 cerning any information certified under sub-  
16 paragraph (A).

17 (C) In any case in which the second opin-  
18 ion described in subparagraph (B) differs from  
19 the opinion in the original certification provided  
20 under subparagraph (A), the covered agency  
21 may require, at the expense of the agency, that  
22 the employee obtain the opinion of a third  
23 health care provider designated or approved  
24 jointly by the agency and the employee con-  
25 cerning the information certified under sub-



1 paragraph (A). The opinion of the third health  
2 care provider concerning such information shall  
3 be considered to be final and shall be binding  
4 on the agency and the employee.

5 (e) PAYMENT OF BENEFITS.—

6 (1) PAYMENT FROM INSURANCE FUND.—Pay-  
7 ments of benefits required to be made under this  
8 section shall be made only from the Insurance Fund  
9 established under section 301.

10 (2) CERTIFICATION AND PAYMENT.—On the  
11 final decision of a covered agency or on the final  
12 judgment of any court of competent jurisdiction pur-  
13 suant to paragraph (3) that any person is entitled  
14 to any payment under this section—

15 (A) the covered agency shall certify to the  
16 Managing Trustee of the Board of Trustees of  
17 the Insurance Fund the name and address of  
18 the person entitled to receive such payment, the  
19 amount of such payment, and the time at which  
20 such payment shall be made;

21 (B) the Managing Trustee shall pay the  
22 certified amount from the Insurance Fund to  
23 the covered agency; and

24 (C) the covered agency shall make the pay-  
25 ment to the person.

1           (3) REVIEW.—Any eligible employee dissatisfied  
2 with any initial determination under this section  
3 shall be entitled to reconsideration of the determina-  
4 tion, and a hearing on the determination, by the  
5 Secretary to the same extent as is provided in sec-  
6 tion 205(b) of the Social Security Act (42 U.S.C.22  
7 405(b)) and to judicial review of the final decision  
8 after such hearing as is provided in section 205(g)  
9 of the Social Security Act (42 U.S.C. 405(g)).

10           (4) WITHHOLDING OF CERTIFICATION.—In any  
11 case in which a review of the covered agency’s deci-  
12 sion is or may be sought under paragraph (3), the  
13 covered agency may withhold certification of pay-  
14 ment pending such review.

15           (5) OTHER COMPENSATION.—Except as pro-  
16 vided in section 105, no employee shall be eligible to  
17 receive paid leave benefits under this title for any  
18 period during which—

19                   (A) the employee is receiving worker’s  
20 compensation or compensation through unem-  
21 ployment insurance in connection with the event  
22 for which the employee is taking the leave; or

23                   (B) the employee is receiving paid leave  
24 benefits from an employer under a voluntary  
25 employer plan approved under section 104.

1 (f) REGULATIONS.—The Secretary shall issue regula-  
2 tions to carry out this subsection, including the determina-  
3 tion of benefits for leave taken intermittently or on a re-  
4 duced leave schedule, or for leave taken by a part-time,  
5 seasonal, or intermittent employee.

6 **SEC. 104. VOLUNTARY EMPLOYER PLAN.**

7 (a) IN GENERAL.—Any employer may submit an ap-  
8 plication to the Secretary for approval of a voluntary plan.  
9 The Secretary may require the employer to resubmit the  
10 plan for approval on an annual basis. During a period for  
11 which the Secretary has approved a plan, the applicant  
12 shall provide a voluntary paid benefit under the plan rath-  
13 er than participating in the Program.

14 (b) APPROVAL.—The Secretary shall approve the vol-  
15 untary plan of the applicant if the Secretary finds each  
16 of the following with respect to the applicant:

17 (1) The rights afforded to the employees cov-  
18 ered under the plan are equal to or greater than the  
19 rights afforded through the Program.

20 (2) The plan has been made available to all of  
21 the employees of the applicant employed in the  
22 United States or to all employees at any 1 distinct,  
23 separate establishment maintained by the applicant  
24 in the United States.

1           (3) A majority of the employees of the employer  
2 employed in the United States or a majority of the  
3 employees employed at any one distinct, separate es-  
4 tablishment maintained by the employer in the  
5 United States have consented to the plan.

6           (4) The plan provides for insurance to be issued  
7 by an admitted disability insurer approved by the  
8 Secretary or equivalent insurance (which may be  
9 self-insurance).

10           (5) The applicant has consented to the plan and  
11 has agreed to make the premium contributions re-  
12 quired, if any, and transmit the proceeds to the dis-  
13 ability insurer, if any.

14           (6) The plan provides for the inclusion of future  
15 employees.

16           (7)(A) The plan will be in effect for a period of  
17 not less than 1 year and, thereafter, continuously  
18 unless the Secretary finds that the applicant has  
19 given notice of intent to terminate the plan, as de-  
20 scribed in subparagraph (B), and that the fee de-  
21 scribed in subparagraph (C) has been paid.

22           (B) The notice shall be filed in writing with the  
23 Secretary and shall be effective—

1 (i) on the anniversary of the effective date  
2 of the plan next following the date of the filing  
3 of the notice; or

4 (ii) if such anniversary would occur less  
5 than 30 days after the date of the filing of the  
6 notice, on the next anniversary of that effective  
7 date.

8 (C) The applicant shall pay a fee to the Sec-  
9 retary in such amount as the Secretary determines  
10 to be adequate to provide leave benefits under this  
11 title to all eligible employees of the applicant for a  
12 period of at least 4 months, plus an amount to pay  
13 administrative costs related to processing and paying  
14 such benefits.

15 (D) Amounts received by the Secretary under  
16 this paragraph shall be deposited in the Insurance  
17 Fund.

18 (8) The amount of deductions from the wages  
19 of an employee that is in effect for the plan shall not  
20 be increased on any date other than on the date of  
21 an anniversary of the effective date of the plan.

22 (c) ORDERS AND WITHDRAWAL OF APPROVAL.—If  
23 the Secretary finds that a voluntary plan employer is not  
24 paying voluntary paid benefits required under the vol-  
25 untary plan to the employees under the plan, the Secretary

1 may order the employer to make the payments. If the Sec-  
2 retary finds that a voluntary plan employer is not com-  
3 plying with the provisions of the plan, including by not  
4 paying voluntary paid benefits required under the plan,  
5 the Secretary may revoke the Secretary's approval for the  
6 plan, and require the employer to participate in the Pro-  
7 gram.

8 **SEC. 105. ADDITIONAL BENEFITS.**

9 (a) **ADDITIONAL EMPLOYER BENEFITS.—**

10 (1) **COVERED EMPLOYERS.—**Nothing in this  
11 title shall be construed to discourage a covered em-  
12 ployer from providing an additional benefit in con-  
13 junction with leave described in section 103(a) to an  
14 eligible employee, in addition to the leave benefit  
15 provided to that employee. The additional employer  
16 benefit shall not reduce the amount of the leave ben-  
17 efit that an eligible employee receives under this  
18 title.

19 (2) **VOLUNTARY PLAN EMPLOYERS.—**Nothing  
20 in this title shall be construed to discourage a vol-  
21 untary plan employer from providing an additional  
22 benefit in conjunction with leave described in section  
23 103(a) to an employee, in addition to the voluntary  
24 paid benefit provided to that employee. The addi-  
25 tional employer benefit shall not reduce the amount

1 of the voluntary paid benefit that an employee re-  
2 ceives under a voluntary plan described in section  
3 104.

4 (b) COLLECTIVE BARGAINING.—

5 (1) MORE PROTECTIVE.—Nothing in this title  
6 shall be construed to diminish the obligation of a  
7 covered employer or voluntary plan employer to com-  
8 ply with any collective bargaining agreement or any  
9 employment benefit program or plan that provides  
10 greater paid leave rights to employees than the  
11 rights established under this title (including rights  
12 established under a plan described in section 104).

13 (2) LESS PROTECTIVE.—The rights established  
14 for employees under this title (including rights es-  
15 tablished under a plan described in section 104)  
16 shall not be diminished by any collective bargaining  
17 agreement or any employment benefit program or  
18 plan.

19 **SEC. 106. PROHIBITED ACTS BY EMPLOYER.**

20 (a) INTERFERENCE WITH RIGHTS.—It shall be un-  
21 lawful for any covered employer to interfere with, restrain,  
22 or deny the exercise of or the attempt to exercise, any  
23 right provided under this title.

24 (b) DISCRIMINATION.—It shall be unlawful for any  
25 covered employer to discharge or in any other manner dis-

1 criminate against any individual for opposing any practice  
2 made unlawful by this title.

3 (c) INTERFERENCE WITH PROCEEDINGS OR INQUIR-  
4 IES.—It shall be unlawful for any person to discharge or  
5 in any other manner discriminate against any individual  
6 because such individual—

7 (1) has filed any charge, or has instituted or  
8 caused to be instituted any proceeding, under or re-  
9 lated to this title;

10 (2) has given, or is about to give, any informa-  
11 tion in connection with any inquiry or proceeding re-  
12 lating to any right provided under this title; or

13 (3) has testified, or is about to testify, in any  
14 inquiry or proceeding relating to any right provided  
15 under this title.

16 **SEC. 107. ENFORCEMENT.**

17 (a) CIVIL ACTION BY EMPLOYEES.—

18 (1) LIABILITY.—Any covered employer who vio-  
19 lates section 106 shall be liable to any eligible em-  
20 ployee affected—

21 (A) for damages equal to—

22 (i) the amount of—

23 (I) any wages, salary, employ-  
24 ment benefits, or other compensation



1 denied or lost to such employee by  
2 reason of the violation; or

3 (II) in a case in which wages,  
4 salary, employment benefits, or other  
5 compensation have not been denied or  
6 lost to the employee, any actual mone-  
7 tary losses sustained by the employee  
8 as a direct result of the violation, such  
9 as the cost of providing care, up to a  
10 sum equal to 8 weeks of wages or sal-  
11 ary for the employee;

12 (ii) the interest on the amount de-  
13 scribed in clause (i) calculated at the pre-  
14 vailing rate; and

15 (iii) an additional amount as liq-  
16 uidated damages equal to the sum of the  
17 amount described in clause (i) and the in-  
18 terest described in clause (ii), except that  
19 if a covered employer who has violated sec-  
20 tion 106 proves to the satisfaction of the  
21 court that the act or omission which vio-  
22 lated section 106 was in good faith and  
23 that the employer had reasonable grounds  
24 for believing that the act or omission was  
25 not a violation of section 106, such court

1           may, in the discretion of the court, reduce  
2           the amount of the liability to the amount  
3           and interest determined under clauses (i)  
4           and (ii), respectively; and

5           (B) for such equitable relief as may be ap-  
6           propriate, including employment, reinstatement,  
7           and promotion.

8           (2) RIGHT OF ACTION.—

9           (A) IN GENERAL.—Except as provided in  
10          subparagraph (B), an action to recover the  
11          damages or equitable relief prescribed in para-  
12          graph (1) may be maintained against any cov-  
13          ered employer (including a public agency) in  
14          any Federal or State court of competent juris-  
15          diction by any 1 or more employees for and on  
16          behalf of—

17                 (i) the employees; or

18                 (ii) the employees and other employ-  
19                 ees similarly situated.

20          (B) LIMITATION.—The right provided by  
21          subparagraph (A) to bring an action by or on  
22          behalf of any employee shall terminate—

23                 (i) on the filing of a complaint by the  
24                 Secretary in an action under subsection  
25                 (b)(3) in which restraint is sought of any

1 further delay in the payment of the  
2 amount described in paragraph (1)(A) to  
3 such employee by an employer responsible  
4 under paragraph (1) for the payment; or

5 (ii) on the filing of a complaint by the  
6 Secretary in an action under paragraph (1)  
7 or (2) of subsection (b) in which a recovery  
8 is sought of the damages described in  
9 paragraph (1)(A) owing to an eligible em-  
10 ployee by an employer liable under para-  
11 graph (1),

12 unless the action described in clause (i) or (ii)  
13 is dismissed without prejudice on motion of the  
14 Secretary.

15 (3) FEES AND COSTS.—The court in an action  
16 brought under this subsection shall, in addition to  
17 any judgment awarded to the plaintiff, allow a rea-  
18 sonable attorneys' fee, reasonable expert witness  
19 fees, and other costs of the action to be paid by the  
20 defendant.

21 (b) ACTIONS BY THE SECRETARY.—

22 (1) ADMINISTRATIVE ACTION.—The Secretary  
23 shall receive, investigate, and attempt to resolve  
24 complaints of violations of section 106 in the same  
25 manner that the Secretary receives, investigates, and

1 attempts to resolve complaints of violations of sec-  
2 tions 6 and 7 of the Fair Labor Standards Act of  
3 1938 (29 U.S.C. 206 and 207).

4 (2) CIVIL ACTION.—

5 (A) RIGHT OF ACTION.—The Secretary  
6 may bring an action in any court of competent  
7 jurisdiction to recover the damages described in  
8 subsection (a)(1)(A).

9 (B) SUMS RECOVERED.—Any sums recov-  
10 ered by the Secretary pursuant to this para-  
11 graph shall be held in a special deposit account  
12 and shall be paid, on order of the Secretary, di-  
13 rectly to each employee affected. Any such sums  
14 not paid to an employee because of inability to  
15 do so within a period of 3 years shall be depos-  
16 ited into the Treasury of the United States as  
17 miscellaneous receipts.

18 (3) ACTION FOR INJUNCTION BY THE SEC-  
19 RETARY.—The district courts of the United States  
20 shall have jurisdiction, for cause shown, in an action  
21 brought by the Secretary—

22 (A) to restrain violations of section 106,  
23 including the restraint of any withholding of  
24 payment of wages, salary, employment benefits,

1 or other compensation, plus interest, found by  
2 the court to be due to eligible employees; or

3 (B) to award such other equitable relief as  
4 may be appropriate, including employment, re-  
5 instatement, and promotion.

6 (4) SOLICITOR OF LABOR.—The Solicitor of  
7 Labor may appear for and represent the Secretary  
8 on any litigation brought under this subsection.

9 (c) LIMITATION.—

10 (1) Except as provided in paragraph (2), an ac-  
11 tion may be brought under subsections (a) or (b) not  
12 later than 2 years after the date of the last event  
13 constituting the alleged violation for which the ac-  
14 tion is brought.

15 (2) WILLFUL VIOLATION.—In the case of such  
16 action brought for a willful violation of section 106,  
17 such action may be brought within 3 years of the  
18 date of the last event constituting the alleged viola-  
19 tion for which such action is brought.

20 (3) COMMENCEMENT.—In determining when an  
21 action is commenced by the Secretary for the pur-  
22 poses of this subsection, it shall be considered to be  
23 commenced on the date when the complaint is filed.

24 (d) INVESTIGATIVE AUTHORITY.—

1           (1) IN GENERAL.—To ensure compliance with  
2           the provisions of this title, or any regulation or order  
3           issued under this title, the Secretary shall have, sub-  
4           ject to paragraph (3), the investigative authority  
5           provided under section 11(a) of the Fair Labor  
6           Standards Act of 1938 (29 U.S.C. 211(a)).

7           (2) OBLIGATION TO KEEP AND PRESERVE  
8           RECORDS.—Any covered employer shall make, keep,  
9           and preserve records pertaining to compliance with  
10          this title in accordance with section 11(c) of the Fair  
11          Labor Standards Act of 1938 (29 U.S.C. 211(e))  
12          and in accordance with regulations issued by the  
13          Secretary. The Secretary shall have access to the  
14          records for purposes of conducting audits.

15          (3) REQUIRED SUBMISSIONS GENERALLY LIM-  
16          ITED TO AN ANNUAL BASIS.—The Secretary shall  
17          not under the authority of this subsection require  
18          any covered employer or any plan, fund, or program  
19          to submit to the Secretary any books or records  
20          more than once during any 12-month period, unless  
21          the Secretary has reasonable cause to believe there  
22          may exist a violation of this title or any regulation  
23          or order issued pursuant to this title, or is inves-  
24          tigating a charge pursuant to subsection (b).

1           (4) SUBPOENA POWER.—For the purposes of  
2           any investigation provided for in this section, the  
3           Secretary shall have the subpoena authority provided  
4           for under section 9 of the Fair Labor Standards Act  
5           of 1938 (29 U.S.C. 209).

6 **SEC. 108. PENALTIES.**

7           (a) PENALTIES FOR SUBMISSION OF FALSE CERTIFI-  
8           CATIONS.—If the Secretary finds that any individual sub-  
9           mits a false certification of the health condition of any  
10          person in order to obtain leave benefits under this title  
11          with the intent to defraud, the Secretary shall assess a  
12          penalty against the individual in an amount up to 100 per-  
13          cent of the benefits paid as a result of the false certifi-  
14          cation. Penalties collected under this subsection shall be  
15          deposited in the Insurance Fund, notwithstanding the pro-  
16          visions of title 31, United States Code and used to reim-  
17          burse the covered employers involved for the amount of  
18          the leave benefits.

19          (b) CRIMINAL PENALTIES FOR FALSE STATEMENTS  
20          AND SOLICITATIONS.—Whoever—

21                 (1) makes or causes to be made any false state-  
22                 ment in support of an application for leave benefits  
23                 under this title;

24                 (2) knowingly presents or causes to be pre-  
25                 sented any false written or oral material statement

1 in support of any claim for leave benefits under this  
2 title;

3 (3) knowingly solicits, receives, offers, pays, or  
4 accepts any rebate, refund, commission, preference,  
5 patronage, dividend, discount, or other consider-  
6 ation, whether in the form of money or otherwise, as  
7 compensation or inducement for soliciting a claimant  
8 to apply for leave benefits under this title, except to  
9 the extent authorized by a law of the United States;  
10 or

11 (4) knowingly assists, abets, solicits, or con-  
12 spires with any person to engage in an act that is  
13 prohibited under paragraph (1), (2), or (3),  
14 shall be guilty of a felony and upon conviction shall be  
15 fined under title 18, United States Code, or imprisoned  
16 for not more than 5 years, or both.

17 **SEC. 109. EDUCATION PROGRAMS.**

18 (a) **AUTHORITY.**—The Secretary shall develop and  
19 maintain a program of education concerning the rights  
20 and leave benefits under this title.

21 (b) **NOTICE TO EMPLOYERS.**—The Secretary shall  
22 provide to each covered employer a notice informing em-  
23 ployees of the rights and leave benefits available under this  
24 title. The notice shall be given by every covered employer



1 to each employee hired, and to each employee taking leave  
2 as described in section 103(a).

3 **SEC. 110. REGULATIONS.**

4 The Secretary shall issue regulations to carry out this  
5 title.

6 **SEC. 111. EFFECTIVE DATE.**

7 This title shall take effect on January 1, 2009, and  
8 shall apply to periods of leave that commence on or after  
9 January 1, 2010.

10 **TITLE II—CIVIL SERVICE FAM-**  
11 **ILY AND MEDICAL LEAVE IN-**  
12 **SURANCE PROGRAM**

13 **SEC. 201. PROGRAM DEFINITIONS.**

14 In this title:

15 (1) AGENCY.—The term “agency” means an  
16 agency covered under subchapter V of chapter 63 of  
17 title 5, United States Code.

18 (2) AGENCY EMPLOYEE.—The term “agency  
19 employee” means an employee who—

20 (A) meets the requirements of paragraph  
21 (1) of section 6381 of title 5, United States  
22 Code; and

23 (B) has earned wages with an agency for  
24 12 of the last 18 months, prior to filing an ap-  
25 plication for leave benefits under this title.

1 **SEC. 202. ESTABLISHMENT OF PROGRAM.**

2 (a) IN GENERAL.—The Director of the Office of Per-  
3 sonnel Management shall establish a Civil Service Family  
4 and Medical Leave Insurance Program, and shall issue  
5 regulations providing for the implementation of the pro-  
6 gram. In issuing the regulations, the Director shall require  
7 that the Director shall provide, or that the agencies shall  
8 provide, family and medical leave insurance benefits de-  
9 scribed in section 103 to agency employees. The regula-  
10 tions issued under this subsection shall include provisions  
11 that are the same as regulations issued by the Secretary  
12 to implement the statutory provisions of sections 103,  
13 105, 109, and 110, except insofar as the Director may  
14 determine, for good cause shown and stated together with  
15 the regulations, that a modification of the regulations  
16 would be more effective for the implementation of the  
17 rights and protections under those sections. The regula-  
18 tions shall provide for appropriate remedies and proce-  
19 dures for violations of this title.

20 (b) PAYMENT.—At the direction of the Director or  
21 the head of an agency, as specified in the regulations, the  
22 Managing Trustee shall pay funds from the Insurance  
23 Fund for the leave benefits.

1 **TITLE III—FAMILY AND MED-**  
2 **ICAL LEAVE INSURANCE**  
3 **FUND**

4 **SEC. 301. ESTABLISHMENT.**

5 (a) IN GENERAL.—There is created in the Treasury  
6 of the United States a trust fund to be known as the Fam-  
7 ily and Medical Leave Insurance Fund. The Insurance  
8 Fund shall consist of such amounts as may be deposited  
9 in, or appropriated to, such fund as provided in this sec-  
10 tion.

11 (b) APPROPRIATIONS TO INSURANCE FUND.—

12 (1) AMOUNTS APPROPRIATED.—There is appro-  
13 priated to the Insurance Fund for fiscal year 2009  
14 and each fiscal year thereafter, out of any moneys  
15 in the Treasury not otherwise appropriated, amounts  
16 equivalent to 100 percent of—

17 (A) the family and medical leave premiums  
18 imposed by sections 3101(c) and 3111(c) of the  
19 Internal Revenue Code of 1986 with respect to  
20 wages (as defined in section 3121 of such Code)  
21 reported to the Secretary of the Treasury or the  
22 Secretary's delegate under subtitle F of such  
23 Code after December 31, 2008, as determined  
24 by the Secretary of the Treasury by applying  
25 the applicable rates of premium payment under

1 such sections to such wages, which wages shall  
2 be certified by the Commissioner of Social Se-  
3 curity on the basis of the records of wages es-  
4 tablished and maintained by the Commissioner  
5 of Social Security in accordance with such re-  
6 ports; and

7 (B) the family and medical leave premiums  
8 imposed by section 1401(c) of such Code with  
9 respect to self-employment income (as defined  
10 in section 1402 of such Code) reported to the  
11 Secretary of the Treasury or the Secretary's  
12 delegate on tax returns under subtitle F of such  
13 Code after December 31, 2008, as determined  
14 by the Secretary of the Treasury by applying  
15 the applicable rate of premium payment under  
16 such section 1401(c) to such self-employment  
17 income, which self-employment income shall be  
18 certified by the Commissioner of Social Security  
19 on the basis of the records of self-employment  
20 income established and maintained by the Com-  
21 missioner of Social Security in accordance with  
22 such returns.

23 (2) TRANSFERS.—Such appropriated amounts  
24 shall be transferred from time to time from the gen-  
25 eral fund of the Treasury to the Insurance Fund.

1       Such amounts shall be determined on the basis of  
2       estimates by the Secretary of the Treasury of the  
3       premiums, specified in paragraph (1), paid to or de-  
4       posited into the Treasury, and proper adjustments  
5       shall be made in amounts subsequently transferred  
6       to the extent prior estimates were in excess of or  
7       were less than such premiums.

8               (3) INVESTMENTS.—All amounts transferred to  
9       the Insurance Fund under paragraph (2) shall be in-  
10      vested by the Managing Trustee referred to in sec-  
11      tion 302(c) in the same manner and to the same ex-  
12      tent as the other assets of the Insurance Fund.

13 **SEC. 302. BOARD OF TRUSTEES.**

14       (a) ESTABLISHMENT AND MEMBERSHIP.—With re-  
15      spect to the Insurance Fund, there is established a body  
16      to be known as the Board of Trustees of the Insurance  
17      Fund which shall be composed of the Secretary of the  
18      Treasury, the Secretary of Labor, the Commissioner of  
19      Social Security, and the Secretary of Health and Human  
20      Services, all ex officio, and of two members of the public  
21      (both of whom may not be from the same political party),  
22      who shall be nominated by the President, by and with the  
23      advice and consent of the Senate.

24       (b) TERMS AND VACANCIES.—Members of the Board  
25      of Trustees shall serve for a period of 4 years. A member

1 of the Board of Trustees nominated and confirmed as a  
2 member of the public to fill a vacancy occurring during  
3 a term shall be nominated and confirmed only for the re-  
4 mainder of such term. An individual nominated and con-  
5 firmed as a member of the public may serve in such posi-  
6 tion after the expiration of such member's term until the  
7 earlier of the date on which the member's successor takes  
8 office or the date on which a report of the Board is first  
9 issued under paragraph (2) after the expiration of the  
10 member's term.

11 (c) MANAGING TRUSTEE AND SECRETARY.—The  
12 Secretary of the Treasury shall be the Managing Trustee  
13 of the Board of Trustees. The Secretary of Labor shall  
14 serve as the Secretary of the Board of Trustees.

15 (d) BASIC DUTIES OF THE BOARD OF TRUSTEES.—  
16 The Board of Trustees shall meet not less frequently than  
17 once each calendar year. It shall be the duty of the Board  
18 of Trustees to—

19 (1) hold the Insurance Fund;

20 (2) report to Congress not later than April 1 of  
21 each year—

22 (A) on the operation and status of the In-  
23 surance Fund during the fiscal year preceding  
24 the fiscal year in which the report is made; and

1 (B) on the expected operation and status  
2 of the Insurance Fund during the fiscal year in  
3 which the report is made and the next 2 fiscal  
4 years;

5 (3) report immediately to Congress whenever  
6 the Board is of the opinion that the amount in the  
7 Insurance Fund is unduly small; and

8 (4) review the general policies followed in man-  
9 aging the Insurance Fund, and recommend changes  
10 in such policies, including necessary changes in the  
11 provisions of law that govern the way in which the  
12 Insurance Fund is to be managed.

13 (e) REQUIREMENTS RELATING TO ANNUAL RE-  
14 PORT.—The report provided for in subsection (d)(2) shall  
15 include a statement of the assets of, and the disburse-  
16 ments made from, the Insurance Fund during the fiscal  
17 year preceding the fiscal year in which the report is made,  
18 an estimate of the expected income to, and disbursements  
19 to be made from, the Insurance Fund during the fiscal  
20 year in which the report is made and each of the next  
21 two fiscal years, and a statement of the actuarial status  
22 of the Insurance Fund. Such report shall also include an  
23 actuarial opinion by an appropriate employee of the De-  
24 partment of Labor certifying that the techniques and  
25 methodologies used for the report are generally accepted

1 within the actuarial profession and that the assumptions  
2 and cost estimates used for the report are reasonable.

3 (f) LIABILITY.—A person serving as a member of the  
4 Board of Trustees shall not be considered to be a fiduciary  
5 and shall not be personally liable for actions taken in such  
6 capacity with respect to the Insurance Fund.

7 **SEC. 303. INVESTMENT OF THE FAMILY AND MEDICAL**  
8 **LEAVE INSURANCE FUND.**

9 (a) OBLIGATIONS.—It shall be the duty of the Man-  
10 aging Trustee to invest such portion of the Insurance  
11 Fund as is not, in the trustee's judgment, required to meet  
12 current withdrawals. Such investments may be made only  
13 in interest-bearing obligations of the United States or in  
14 obligations guaranteed as to both principal and interest  
15 by the United States.

16 (b) ACQUISITION.—The obligations referred to in  
17 subsection (a) may be acquired—

18 (1) on original issue at the issue price; or

19 (2) by purchase of outstanding obligations at  
20 the market price.

21 (c) OBLIGATIONS ISSUED FOR PURCHASE BY  
22 FUND.—The purposes for which obligations of the United  
23 States may be issued under chapter 31 of title 31, United  
24 States Code, are extended to authorize the issuance at par  
25 of public debt obligations for purchase by the Insurance



1 Fund. Such obligations issued for purchase by the Insur-  
2 ance Fund shall have dates of maturity fixed with due re-  
3 gard for the needs of the Insurance Fund. Such obliga-  
4 tions shall bear interest at a rate equal to—

5           (1) except as provided in paragraph (2), the av-  
6 erage market yield (computed by the Managing  
7 Trustee on the basis of market quotations as of the  
8 end of the calendar month preceding the date of  
9 such issue) on all marketable interest-bearing obliga-  
10 tions of the United States forming a part of the  
11 public debt that are not due or callable until after  
12 the expiration of four years from the end of such  
13 calendar month; or

14           (2) in a case in which such average market  
15 yield is not a multiple of 0.1 percent, the multiple  
16 of 0.1 percent nearest such market yield.

17       (d) OTHER OBLIGATIONS.—The Managing Trustee  
18 may purchase interest-bearing obligations of the United  
19 States that are not described in subsection (c) or obliga-  
20 tions guaranteed as to both principal and interest by the  
21 United States, on original issue or at the market price,  
22 only in cases in which the trustee determines that the pur-  
23 chase of obligations described in this paragraph is in the  
24 public interest.

1 (e) DISPOSITION AND REDEMPTION OF OBLIGA-  
2 TIONS.—Any obligations acquired by the Insurance Fund  
3 (except public debt obligations issued exclusively to the In-  
4 surance Fund) may be sold by the Managing Trustee at  
5 the market price, and such public debt obligations may  
6 be redeemed at par plus accrued interest.

7 (f) CREDITING OF INTEREST AND PROCEEDS.—The  
8 interest on, and the proceeds from the sale or redemption  
9 of, any obligations held in the Insurance Fund shall be  
10 credited to and form a part of the Insurance Fund.

11 **SEC. 304. PAYMENTS FROM FAMILY AND MEDICAL LEAVE**  
12 **INSURANCE FUND.**

13 The Managing Trustee shall pay from time to time  
14 from the Insurance Fund such amounts as the Secretary  
15 of Labor certifies are necessary to make the payments pro-  
16 vided for by section 103, and payments with respect to  
17 administrative expenses under section 305.

18 **SEC. 305. ADMINISTRATIVE EXPENSES.**

19 (a) AVAILABILITY OF INSURANCE FUND.—Under  
20 regulations that shall be prescribed by the Secretary of  
21 Labor, funds shall be made available from the Insurance  
22 Fund in connection with the administration of this Act  
23 and the administration of related provisions of the Inter-  
24 nal Revenue Code of 1986 in the same manner and extent  
25 as funds are made available from the trust funds referred

1 to in section 201(g) of the Social Security Act (42 U.S.C.  
2 401(g)) in connection with the administration of the rel-  
3 evant provisions referred to in such section.

4 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
5 are authorized to be made available for expenditure such  
6 amounts as Congress may determine to be appropriate to  
7 pay the costs of the part of the administration of this Act  
8 (including start-up costs, technical assistance, and costs  
9 for small employers electing to participate in the Family  
10 and Medical Leave Insurance Program) for which the Sec-  
11 retary of Labor is responsible.

12 (c) GIFTS AND BEQUESTS.—The Managing Trustee  
13 may accept on behalf of the United States money gifts  
14 and bequests made unconditionally to the Insurance Fund  
15 for the benefit of the Insurance Fund or any activity fi-  
16 nanced through the Insurance Fund and such gifts and  
17 bequests shall be deposited into the Insurance Fund.

18 (d) PROCESSING OF TAX DATA.—Section 232 of the  
19 Social Security Act (42 U.S.C. 432) shall apply with re-  
20 spect to this Act, in the same manner and to the same  
21 extent as such section applies with respect to title II of  
22 the Social Security Act (42 U.S.C. 401 et seq.).

1 **SEC. 306. AMENDMENTS TO THE INTERNAL REVENUE CODE**  
2 **OF 1986.**

3 (a) EMPLOYEE PREMIUMS.—Section 3101 of the In-  
4 ternal Revenue Code of 1986 (relating to tax on employ-  
5 ees) is amended—

6 (1) by redesignating subsection (c) as sub-  
7 section (d); and

8 (2) by inserting after subsection (c) the fol-  
9 lowing new subsection:

10 “(c) FAMILY AND MEDICAL LEAVE PREMIUMS.—

11 “(1) IN GENERAL.—In addition to the taxes im-  
12 posed by subsections (a) and (b), there is imposed  
13 on the income of every individual a family and med-  
14 ical leave premium equal to the applicable percent-  
15 age of the wages (as defined in section 3121(a)) re-  
16 ceived by the individual with respect to employment  
17 (as defined in section 3121(b)).

18 “(2) APPLICABLE PERCENTAGE.—For purposes  
19 of paragraph (1), the applicable percentage is—

20 “(A) 0.1 percent with respect to periods of  
21 employment by a small employer (as defined in  
22 section 3(b) of the Family Leave Insurance Act  
23 of 2008) electing to participate in the Family  
24 and Medical Leave Insurance Program (estab-  
25 lished under section 102 of such Act); and

1           “(B) 0.2 percent with respect to all other  
2           periods of employment.

3           “(3) EXCEPTION FOR CERTAIN EMPLOY-  
4           MENT.—Paragraph (1) shall not apply with respect  
5           to a period of employment—

6           “(A) by an employer during which the Sec-  
7           retary of Labor determines the employer has in  
8           effect a plan which is equivalent to or better  
9           than the Family and Medical Leave Insurance  
10          Program (established under section 102 of the  
11          Family Leave Insurance Act of 2008); or

12          “(B) by a small employer (as so defined)  
13          who has not elected to participate in such Pro-  
14          gram.

15          For purposes of the preceding sentence, the Sec-  
16          retary of Labor shall prescribe such regulations as  
17          may be appropriate or necessary, including regula-  
18          tions requiring documentation of employer pro-  
19          grams.”.

20          (b) EMPLOYER PREMIUMS.—Section 3111 of the In-  
21          ternal Revenue Code of 1986 (relating to tax on employ-  
22          ers) is amended—

23                 (1) by redesignating subsection (c) as sub-  
24                 section (d); and

1           (2) by inserting after subsection (c) the fol-  
2           lowing new subsection:

3           “(c) FAMILY AND MEDICAL LEAVE PREMIUMS.—

4           “(1) IN GENERAL.—In addition to the excise  
5           taxes imposed by subsections (a) and (b), there is  
6           imposed on every employer a family and medical  
7           leave premium, with respect to having individuals in  
8           such employer’s employ, equal to the applicable per-  
9           centage of the wages (as defined in section 3121(a))  
10          paid by such employer with respect to employment  
11          (as defined in section 3121(b)).

12          “(2) APPLICABLE PERCENTAGE.—For purposes  
13          of paragraph (1), the applicable percentage is—

14                 “(A) 0.1 percent with respect to small em-  
15                 ployers (as defined in section 3(b) of the Fam-  
16                 ily Leave Insurance Act of 2008) electing to  
17                 participate in the Family and Medical Leave In-  
18                 surance Program (established under section  
19                 102 of such Act); and

20                 “(B) 0.2 percent with respect to all other  
21                 employers.

22          “(3) EXCEPTION FOR CERTAIN EMPLOYERS.—  
23          Paragraph (1) shall not apply for any period with  
24          respect to an employer to whom paragraph (1) of

1 section 3101(c) does not apply by reason of para-  
2 graph (3) thereof.”.

3 (c) SELF-EMPLOYED PREMIUMS.—Section 1401 of  
4 the Internal Revenue Code of 1986 is amended—

5 (1) by redesignating subsection (c) as sub-  
6 section (d); and

7 (2) by inserting after subsection (b) the fol-  
8 lowing new subsection:

9 “(c) FAMILY AND MEDICAL LEAVE PREMIUMS.—

10 “(1) IN GENERAL.—In addition to the taxes im-  
11 posed by subsections (a) and (b), there is imposed  
12 for each taxable year, on the self-employment income  
13 of every individual, a family and medical leave pre-  
14 mium equal to 0.4 percent of the amount of the self-  
15 employment income for such taxable year.

16 “(2) EXCEPTION FOR CERTAIN EMPLOYERS.—  
17 Paragraph (1) shall not apply for any period with  
18 respect to an employer who has not elected to par-  
19 ticipate in the Family and Medical Leave Insurance  
20 Program (established under section 102 of the Fam-  
21 ily Leave Insurance Act of 2008).”.

22 (d) CONFORMING AMENDMENTS TO SOCIAL SECUR-  
23 RITY ACT.—Section 201 of the Social Security Act (42  
24 U.S.C. 401) is amended—

1           (1) by striking “sections 3101(b) and 3111(b)”  
2           both places it appears in subsection (a)(3) and in-  
3           serting “sections 3101(b), 3101(c), 3111(b), and  
4           3111(e)”, and

5           (2) by striking “section 1401(b)” both places it  
6           appears in subsection (a)(4) and inserting “sections  
7           1401(b) and 1401(c)”.

8           (e) EFFECTIVE DATE.—

9           (1) EMPLOYMENT PREMIUMS.—The amend-  
10          ments made by subsections (a), (b), and (d)(1) shall  
11          apply to wages paid after December 31, 2008.

12          (2) SELF-EMPLOYMENT PREMIUMS.—The  
13          amendments made by subsections (c) and (d)(2)  
14          shall apply to taxable years beginning after Decem-  
15          ber 31, 2008.

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