S. 463

To provide paid family and medical leave benefits to certain individuals, and for other purposes.

IN THE SENATE OF THE UNITED STATES

February 12, 2019

Mrs. Gillibrand (for herself, Mr. Cardin, Mr. Blumenthal, Mr. Sanders, Mr. Reed, Mr. Booker, Mr. Brown, Mr. Bennet, Mr. Murphy, Mr. Whitehouse, Mr. Schumer, Mr. Markey, Ms. Klobuchar, Mr. King, Mr. Leahy, Mrs. Feinstein, Mr. Menendez, Mr. Merkley, Ms. Harris, Mr. Van Hollen, Mr. Heinrich, Mr. Schatz, Ms. Hassan, Ms. Baldwin, Ms. Duckworth, Mrs. Sheaheen, Ms. Warren, Mrs. Murray, Mr. Durbin, Mr. Carper, Mr. Casey, Mr. Udall, Ms. Rosen, Ms. Hirono, and Ms. Smith) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide paid family and medical leave benefits to certain individuals, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Family and Medical Insurance Leave Act” or the “FAMILY Act”.

6 SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:


(1) In more than two-thirds of families with children, all adults in the household work. 43,500,000 people provide unpaid care to family members, and six of every ten family caregivers report working at jobs unrelated to their care responsibilities. More than half report working full time. An estimated 36,000,000 working age adults live with a family member who has a disability. Without paid family and medical leave, many workers are unable to take time away from work to care for newborn children, parents and relatives with serious health conditions, or themselves.

(2) Both women and men need to be able to take time off work to participate in the care of their children, in the care of seriously ill family members, and to address their own serious health conditions. Yet, a mere 17 percent of civilian workers in the United States have access to paid family leave through their employers, and fewer than 40 percent have access to short-term disability insurance provided by their employer to use for their own illnesses.

(3) Many workers cannot afford to take unpaid time off work to provide care. According to the Department of Labor, nearly half of workers who qualifi-
fied for leave under the Family and Medical Leave Act of 1993 (FMLA) in 2011 were unable to take the leave because they could not afford to take time off without pay. Six in ten workers who took partially paid or unpaid leave reported difficulty making ends meet; half of these workers were forced to cut their leaves short due to financial constraints.

(4) Only 17 percent of all workers had access to paid family leave in 2017 and it was available to only 5 percent of people working in the lowest paying jobs. Workers who lack paid family and medical leave face lost wages or even job loss when they miss work because of their own illness or to care for an ill child or parent. In this way, access to paid family and medical leave plays a critical role in families’ efforts to maintain employment and economic security.

(5) Caregiving has a high value but also comes at a high cost for family caregivers. Working families in the United States lose an estimated $20,600,000,000 in wages each year due to lack of access to paid family and medical leave.

(6) The estimated value of unpaid family care provided in 2013 was $470,000,000,000. Family caregivers face financial, physical and emotional hardships, and in many cases their careers, incomes,
and retirement security suffer because of their family responsibilities.

(7) The average worker age 50 and older who leaves the workforce to care for an elderly parent loses more than $300,000 in earnings and retirement income. Working caregivers should not have to risk their family’s economic security to fulfill their caregiving obligations.

(8) By 2030, one in five United States residents will have reached retirement age, and individuals 65 and older are projected to outnumber those under the age of 18 for the first time in the history of the United States. The number of potential family caregivers for each person age 80 and older will fall from 7:1 in 2010 to fewer than 3:1 by 2050. Additionally, the number of people with chronic conditions is expected to reach nearly 160,000,000 by 2020. Many of these individuals will at some point require family care, and for older workers still in the workforce, many will need time off at some point to address serious health conditions.

(9) Ensuring working family caregivers have paid family leave to care for seriously ill or injured older adult relatives could drive down Medicare costs by decreasing recurrences of ailments and re-admit-
tance into hospitals. The implementation of California’s paid family leave insurance program, which has been in effect since 2004, accounted for an 11 percent relative decline in elder nursing home usage.

(10) Only half of cancer patients and survivors report having access to paid leave, and only four in ten caregivers of those patients are able to take paid leave to help with completing treatment, managing symptoms and side effects, and caring for their own health.

(11) Many workers are forced to quickly return to work after the birth or arrival of a child because they have no access to paid family and medical leave. Only half of new mothers take paid leave of any duration after the birth of their first child, and among women with less than a high school education the figure is less than 20 percent—a rate that has not changed in more than half a century. Access to paid leave is even rarer for men, as just 9 percent of private sector workers are employed at worksites that offer paid paternity leave to all male employees. Three out of every four fathers in white-collar jobs took one week or less of leave after their most recent child was born, and nearly 60 percent of low-income fathers reported taking zero weeks of paid time.
away from work after the birth or adoption of a child.

(12) When new mothers have no choice but to return to work without taking leave, children can experience a variety of negative outcomes including higher rates of infant mortality, lower rates of breastfeeding, and lower rates of immunization. California’s paid leave program improved child health outcomes, particularly for economically vulnerable children, and improved breastfeeding and vaccination rates.

(13) New mothers without sufficient leave experience a higher incidence of physical and mental health concerns, and new mothers with fewer than 12 weeks of leave experience elevated risks of postpartum depression. California’s paid family leave insurance program increased the number of weeks of leave that women take after childbirth, with larger effects among women in jobs that do not provide paid leave. New Jersey’s paid leave program, which has been in effect since 2009, was strongly associated with improvements in new mothers’ physical health.

(14) A gender-inclusive nationwide paid family and medical leave program would address persistent
sex discrimination in the utilization of leave benefits and reduce the disparity between women and men regarding who takes time off from work to fulfill caregiving duties.

(15) Many men would like to be more involved in caregiving and report greater work-family conflict than ever before. When fathers in two-parent, opposite-sex households take paid leave, their involvement in caregiving and domestic chores increases, supporting equal co-parenting and making it easier for women to return to the workforce. In California, men’s use of the State’s paid family leave insurance program to care for a new child has more than doubled since the program’s implementation. In Rhode Island, which implemented its program in 2014, men took leave at higher rates in the program’s first year than other State programs’ first year.

(16) Paid family and medical leave promotes families’ financial security and independence, increases worker retention, and promotes savings for taxpayers. Women who take paid leave after a child’s birth are more likely to be in the labor force in the 9 to 12 months after a child’s birth and to earn higher wages in the year following their child’s birth. Both men and women who take paid leave
after a child’s birth are less likely to receive SNAP benefits and other public assistance in the year following a child’s birth.

(17) Without paid medical leave, workers who are ill or injured may return to work before being fully recovered, thus making them susceptible to a relapse or recurrence, and potentially placing additional burdens on the health care system. When a job requires physical stamina or ability, individuals who return to work too early may put themselves or others in jeopardy.

(18) A social insurance model of providing paid family leave pioneered and implemented by the States of California, New Jersey, Rhode Island, and New York, and recently passed in the District of Columbia, Washington, and Massachusetts, has worked well for workers, their families, and employers. The overwhelming majority of California employers report that the State’s program had a positive or neutral effect on their business, and businesses surveyed in New Jersey and Rhode Island reported having little trouble adjusting to the State’s law.

(19) When workers can care for themselves and their loved ones, employers experience positive impacts. In California, where a family leave insurance
program has existed for more than a decade, workers in low-wage, high-turnover industries are much more likely to return to their jobs after using the program, and 9 out of 10 businesses report positive or neutral effects on profitability and productivity.

(20) High-profile employers are increasingly recognizing the value of providing paid leave in reduced turnover and improved employee morale and productivity, yet access to paid leave remains low across most industries, particularly for low- and middle-income workers. Some of the fastest-growing occupations, such as home health care and service jobs, typically pay low wages and are particularly unlikely to offer paid leave benefits. As of 2018, more than 75 businesses and business leaders have endorsed the need for a strong, inclusive national paid leave policy.

(21) Californians have filed nearly 2,810,000 paid family leave claims between the implementation of the State’s paid family leave program in 2004 and November 2017. In New Jersey, more than 255,000 claims have been filed over the more than 7 years of the program’s existence, and in Rhode Island, nearly 34,000 claims were filed in the pro-
gram’s first 3 years. These claims represent valuable care for new children and seriously ill loved ones.

(22) Social Security is the Nation’s primary social insurance system, with the most complete record of workers’ earnings history. It provides retirement assistance and disability benefits currently and, since its creation in 1934, the programs the Social Security Administration administers have been updated multiple times to reflect the changing needs of the population, families and the workforce. The system needs to be changed again now—with appropriate investments to meet the agency’s needs—to reflect today’s realities.

(23) Researchers at Brandeis University estimate that, following enactment of this Act, the share of families falling into financial hardship (earnings below 200 percent of the Federal poverty line) as a result of taking 12 weeks of unpaid leave would be reduced by more than 81 percent.

(24) Without a national paid leave policy, the United States is missing out on substantial economic activity, which has been estimated at approximately $500,000,000,000 by the Department of Labor, as women in particular are held back from participating in the workforce in equal shares.
(25) A national paid family and medical leave program has the support of more than eight in ten voters across demographic and party lines.

(b) PURPOSE.—It is the purpose of this Act—

(1) to help working people, including single working parents and workers in dual-earner families, afford to take time away from work to provide care for a family member;

(2) to provide workers with a reasonable level of wage replacement during time away from work for a serious health condition, for the birth or adoption of a child, for the care of a child, spouse, or parent who has a serious health condition, for the care of an injured servicemember, or for qualifying exigencies arising from the deployment of a servicemember;

(3) to address sex discrimination, promote the goal of equal employment opportunity for women and men, and to provide relief when employers violate the law; and

(4) to accomplish the purposes described in paragraphs (1), (2), and (3) in a manner that accommodates the legitimate interests of employers.

SEC. 3. DEFINITIONS.

In this Act, the following definitions apply:
(1) CAREGIVING DAY.—The term “caregiving day” means, with respect to an individual, a calendar day in which the individual engaged in qualified caregiving.

(2) COMMISSIONER.—The term “Commissioner” means the Commissioner of Social Security.

(3) DEPUTY COMMISSIONER.—The term “Deputy Commissioner” means the Deputy Commissioner who heads the Office of Paid Family and Medical Leave established under section 4(a).

(4) ELIGIBLE INDIVIDUAL.—The term “eligible individual” means an individual who is entitled to a benefit under section 5 for a particular month, upon filing an application for such benefit for such month.

(5) INITIAL WAITING PERIOD.—The term “initial waiting period” means a period beginning with the first caregiving day of an individual occurring during the individual’s benefit period and ending after the earlier of—

(A) the fifth caregiving day of the individual occurring during the benefit period; or

(B) the month preceding the first month in the benefit period during which occur not less than 15 caregiving days of the individual.
(6) **QUALIFIED CAREGIVING.**—The term “qualified caregiving” means any activity engaged in by an individual, other than regular employment, for a reason for which an eligible employee would be entitled to leave under subparagraphs (A) through (E) of paragraph (1) of section 102(a) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)).

(7) **SELF-EMPLOYMENT INCOME.**—The term “self-employment income” has the same meaning as such term in section 211(b) of such Act (42 U.S.C. 411(b)).

(8) **STATE.**—The term “State” means any State of the United States or the District of Columbia or any territory or possession of the United States.

(9) **WAGES.**—The term “wages”, except as such term is used in subsection (h)(2) of section 5, has the same meaning as such term in section 209 of the Social Security Act (42 U.S.C. 409).

(10) **60-DAY LIMITATION PERIOD.**—The term “60-day limitation period” means a period—

(A) beginning with the first caregiving day of an individual occurring during the individual’s benefit period and after the expiration of
the individual’s 5-day waiting period, if applicable; and

(B) ending with the 60th caregiving day of
the individual occurring during the benefit pe-
period and after the expiration of the 5-day wait-
ing period,
disregarding any caregiving day of the individual oc-
curring during any month in the benefit period after
the first 20 caregiving days of the individual occur-
ing during such month.

SEC. 4. OFFICE OF PAID FAMILY AND MEDICAL LEAVE.

(a) Establishment of Office.—There is estab-
lished within the Social Security Administration an office
to be known as the Office of Paid Family and Medical
Leave. The Office shall be headed by a Deputy Commiss-
sioner who shall be appointed by the Commissioner.

(b) Responsibilities of Deputy Commissioner.—The Commissioner, acting through the Deputy
Commissioner, shall be responsible for—

(1) hiring personnel and making employment
decisions with regard to such personnel;

(2) issuing such regulations as may be nec-
essary to carry out the purposes of this Act;
(3) entering into cooperative agreements with other agencies and departments to ensure the efficiency of the administration of the program;

(4) determining eligibility for family and medical leave insurance benefits under section 5;

(5) determining benefit amounts for each month of such eligibility and making timely payments of such benefits to entitled individuals in accord with such section;

(6) establishing and maintaining a system of records relating to the administration of such section;

(7) preventing fraud and abuse relating to such benefits;

(8) providing information on request regarding eligibility requirements, the claims process, benefit amounts, maximum benefits payable, notice requirements, nondiscrimination rights, confidentiality, coordination of leave under this Act and other laws, collective bargaining agreements, and employer policies;

(9) annually providing employers a notice informing employees of the availability of such benefits;
(10) annually making available to the public a report that includes the number of individuals who received such benefits, the purposes for which such benefits were received, and an analysis of utilization rates of such benefits by gender, race, ethnicity, and income levels; and

(11) tailoring culturally and linguistically competent education and outreach toward increasing utilization rates of benefits under such section.

(c) Availability of Data.—The Commissioner shall make available to the Deputy Commissioner such data as the Commissioner determines necessary to enable the Deputy Commissioner to effectively carry out the responsibilities described in subsection (b).

SEC. 5. FAMILY AND MEDICAL LEAVE INSURANCE BENEFIT PAYMENTS.

(a) In General.—Every individual who—

(1) is insured for disability insurance benefits (as determined under section 223(c) of the Social Security Act (42 U.S.C. 423(c))) at the time such individual’s application is filed; 

(2) has earned income from employment during the 12 months prior to the month in which the application is filed;
(3) has filed an application for a family and medical leave insurance benefit in accordance with subsection (d); and

(4) was engaged in qualified caregiving, or anticipates being so engaged, during the period that begins 90 days before the date on which such application is filed or within 30 days after such date, shall be entitled to such a benefit for each month in the benefit period specified in subsection (c), not to exceed 60 caregiving days per benefit period.

(b) Benefit Amount.—

(1) In general.—Except as otherwise provided in this subsection, the benefit amount to which an individual is entitled under this section for a month shall be an amount equal to the greater of—

(A) the lesser of \( \frac{1}{18} \) of the wages and self-employment income of the individual for the calendar year in which such wages and self-employment income are the highest among the most recent three calendar years, or the maximum benefit amount determined under paragraph (2); or

(B) the minimum benefit amount determined under paragraph (2),
multiplied by the quotient (not greater than 1) obtained by dividing the number of caregiving days of the individual in such month by 20.

(2) **Annual Increase of Maximum and Minimum Benefit Amounts.**—

(A) For individuals who initially become eligible for family and medical leave insurance benefits in the first full calendar year after the date of enactment of this Act, the maximum monthly benefit amount and the minimum monthly benefit amount shall be $4,000 and $580, respectively.

(B) For individuals who initially become eligible for family and medical leave insurance benefits in any calendar year after such first full calendar year the maximum benefit amount and the minimum benefit amount shall be, respectively, the product of the corresponding amount determined with respect to the first calendar year under subparagraph (A) and the quotient obtained by dividing—

(i) the national average wage index (as defined in section 209(k)(1) of the Social Security Act (42 U.S.C. 409(k)(1)))

for the second calendar year preceding the
calendar year for which the determination is made, by

(ii) the national average wage index (as so defined) for 2018.

(3) LIMITATIONS ON BENEFITS PAID.—

(A) NONPAYABLE WAITING PERIOD.—Any calendar day during an individual’s benefit period which occurs before the expiration of an initial waiting period shall not be taken into account under this subsection as a caregiving day of the individual.

(B) LIMITATION ON TOTAL BENEFITS PAID.—Any calendar day during an individual’s benefit period which occurs after the expiration of a 60-day limitation period shall not be taken into account under this subsection as a caregiving day of the individual.

(4) REDUCTION IN BENEFIT AMOUNT ON ACCOUNT OF RECEIPT OF CERTAIN BENEFITS.—A benefit under this section for a month shall be reduced by the amount, if any, in certain benefits (as determined under regulations issued by the Commissioner) as may be otherwise received by an individual. For purposes of the preceding sentence, certain benefits include—
(A) periodic benefits on account of such individual’s total or partial disability under a workmen’s compensation law or plan of the United States or a State; and

(B) periodic benefits on account of an individual’s employment status under an unemployment law or plan of the United States or a State.

(5) COORDINATION OF BENEFIT AMOUNT WITH CERTAIN STATE BENEFITS.—A benefit received under this section shall be coordinated, in a manner determined by regulations issued by the Commissioner, with the periodic benefits received from temporary disability insurance or family leave insurance programs under any law or plan of a State, a political subdivision (as that term is used in section 218(b)(2) of the Social Security Act (42 U.S.C. 418(b)(2))), or an instrumentality of two or more States (as that term is used in section 218(g) of such Act of the Social Security Act (42 U.S.C. 418(g))).

(c) BENEFIT PERIOD.—

(1) IN GENERAL.—Except as provided in paragraph (2), the benefit period specified in this subsection shall begin on the 1st day of the 1st month
in which the individual meets the criteria specified in paragraphs (1), (2), and (3) of subsection (a), and shall end on the date that is 365 days after the 1st day of the benefit period.

(2) RETROACTIVE BENEFITS.—In the case of an application for benefits under this section for qualified caregiving in which the individual was engaged at any time during the 90-day period preceding the date on which such application is submitted, the benefit period specified in this subsection shall begin on the later of—

(A) the 1st day of the 1st month in which the individual engaged in such qualified caregiving; or

(B) the 1st day of the 1st month that begins during such 90-day period, and shall end on the date that is 365 days after the 1st day of the benefit period.

(d) APPLICATION.—An application for a family and medical leave insurance benefit shall include—

(1) a statement that the individual was engaged in qualified caregiving, or anticipates being so engaged, during the period that begins 90 days before the date on which the application is submitted or within 30 days after such date;
(2) if the qualified caregiving described in the statement in paragraph (1) is engaged in by the individual because of a serious health condition of the individual or a relative of the individual, a certification, issued by the health care provider treating such serious health condition, that affirms the information specified in paragraph (1) and contains such information as the Commissioner shall specify in regulations, which shall be no more than the information that is required to be stated under section 103(b) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613(b));

(3) if such qualified caregiving is engaged in by the individual for any other authorized reason, a certification, issued by a relevant authority determined under regulations issued by the Commissioner, that affirms the circumstances giving rise to such reason; and

(4) an attestation from the applicant that his or her employer has been provided with written notice of the individual’s intention to take family or medical leave, if the individual has an employer, or to the Commissioner in all other cases.

(e) INELIGIBILITY; DISQUALIFICATION.—
(1) **INELIGIBILITY FOR BENEFIT.**—An individual shall be ineligible for a benefit under this section for any month for which the individual is entitled to—

(A) disability insurance benefits under section 223 of the Social Security Act (42 U.S.C. 423) or a similar permanent disability program under any law or plan of a State or political subdivision or instrumentality of a State (as such terms are used in section 218 of the Social Security Act (42 U.S.C. 418));

(B) monthly insurance benefits under section 202 of such Act (42 U.S.C. 402) based on such individual’s disability (as defined in section 223(d) of such Act (42 U.S.C. 423(d))); or

(C) benefits under title XVI of such Act (42 U.S.C. 1381 et seq.) based on such individual’s status as a disabled individual (as determined under section 1614 of such Act (42 U.S.C. 1382c)).

(2) **DISQUALIFICATION.**—An individual who has been convicted of a violation under section 208 of the Social Security Act (42 U.S.C. 408) or who has been found to have used false statements to secure benefits under this section, shall be ineligible for
benefits under this section for a 1-year period fol-
lowing the date of such conviction.

(f) **Review of Eligibility and Benefit Payment**

**Determinations.**—

(1) **Eligibility determinations.**—

(A) **In general.**—The Commissioner shall provide notice to an individual applying for benefits under this section of the initial de-
termination of eligibility for such benefits, and the estimated benefit amount for a month in which one caregiving day of the individual oc-
curs, as soon as practicable after the applica-
tion is received.

(B) **Review.**—An individual may request review of an initial adverse determination with respect to such application at any time before the end of the 20-day period that begins on the date notice of such determination is received, except that such 20-day period may be extended for good cause. As soon as practicable after the individual requests review of the determination, the Commissioner shall provide notice to the in-
dividual of a final determination of eligibility for benefits under this section.

(2) **Benefit payment determinations.**—
(A) IN GENERAL.—The Commissioner shall make any monthly benefit payment to an individual claiming benefits for a month under this section, or provide notice of the reason such payment will not be made if the Commissioner determines that the individual is not entitled to payment for such month, not later than 20 days after the individual’s monthly benefit claim report for such month is received. Such monthly report shall be filed with the Commissioner not later than 15 days after the end of each month.

(B) REVIEW.—If the Commissioner determines that payment will not be made to an individual for a month, or if the Commissioner determines that payment shall be made based on a number of caregiving days in the month inconsistent with the number of caregiving days in the monthly benefit claim report of the individual for such month, the individual may request review of such determination at any time before the end of the 20-day period that begins on the date notice of such determination is received, except that such 20-day period may be extended for good cause. Not later than 20 days
after the individual requests review of the determination, the Commissioner shall provide notice to the individual of a final determination of payment for such month, and shall make payment to the individual of any additional amount not included in the initial payment to the individual for such month to which the Commissioner determines the individual is entitled.

(3) Burden of Proof.—An application for benefits under this section and a monthly benefit claim report of an individual shall each be presumed to be true and accurate, unless the Commissioner demonstrates by a preponderance of the evidence that information contained in the application is false.

(4) Definition of Monthly Benefit Claim Report.—For purposes of this subsection, the term “monthly benefit claim report” means, with respect to an individual for a month, the individual’s report to the Commissioner of the number of caregiving days of the individual in such month, which shall be filed no later than 15 days after the end of each month.

(5) Review.—All final determinations of the Commissioner under this subsection shall be review-
able according to the procedures set out in section

(g) Relationship With State Law; Employer
Benefits.—

(1) In General.—This section does not pre-
empt or superecede any provision of State or local
law that authorizes a State or local municipality to
provide paid family and medical leave benefits simi-
lar to the benefits provided under this section.

(2) Greater Benefits Allowed.—Nothing
in this Act shall be construed to diminish the obliga-
tion of an employer to comply with any contract, col-
lective bargaining agreement, or any employment
benefit program or plan that provides greater paid
leave or other leave rights to employees than the
rights established under this Act.

(h) Prohibited Acts; Enforcement.—

(1) In General.—It shall be unlawful for any
person to discharge or in any other manner discrimi-
nate against an individual because the individual has
applied for, indicated an intent to apply for, or re-
ceived family and medical leave insurance benefits.

(2) Civil Action by an Individual.—

(A) Liability.—Any person who violates
paragraph (1) shall be liable to any individual
employed by such person who is affected by the
violation—

(i) for damages equal to the sum of—

(I) the amount of—

(aa) any wages, salary, em-
ployment benefits, or other com-
pensation denied or lost to such
individual by reason of the viola-
tion; or

(bb) in a case in which
wages, salary, employment ben-
efits, or other compensation have
not been denied or lost to the in-
dividual, any actual monetary
losses sustained by the individual
as a direct result of the violation,
such as the cost of providing
care, up to a sum equal to 60
calendar days of wages or salary
for the individual;

(II) the interest on the amount
described in subclause (I) calculated
at the prevailing rate; and

(III) an additional amount as liq-
uidated damages equal to the sum of
the amount described in subclause (I) and the interest described in subclause (II), except that if a person who has violated paragraph (1) proves to the satisfaction of the court that the act or omission which violated paragraph (1) was in good faith and that the person had reasonable grounds for believing that the act or omission was not a violation of paragraph (1), such court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under subclauses (I) and (II), respectively; and

(ii) for such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(B) RIGHT OF ACTION.—An action to recover the damages or equitable relief prescribed in subparagraph (A) may be maintained against any person in any Federal or State court of competent jurisdiction by any individual for and on behalf of—

(i) the individual; or
(ii) the individual and other individuals similarly situated.

(C) FEES AND COSTS.—The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney’s fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(D) LIMITATIONS.—The right provided by subparagraph (B) to bring an action by or on behalf of any individual shall terminate—

(i) on the filing of a complaint by the Commissioner in an action under paragraph (5) in which restraint is sought of any further delay in the payment of the amount described in subparagraph (A)(I) to such individual by the person responsible under subparagraph (A) for the payment; or

(ii) on the filing of a complaint by the Commissioner in an action under paragraph (3) in which a recovery is sought of the damages described in subparagraph (A)(I) owing to an individual by a person liable under subparagraph (A),
unless the action described in clause (i) or (ii) is dismissed without prejudice on motion of the Commissioner.

(3) Action by the Commissioner.—

(A) Civil action.—The Commissioner may bring an action in any court of competent jurisdiction to recover the damages described in paragraph (2)(A)(I).

(B) Sums recovered.—Any sums recovered by the Commissioner pursuant to subparagraph (A) shall be held in a special deposit account and shall be paid, on order of the Commissioner, directly to each individual affected. Any such sums not paid to an individual because of inability to do so within a period of 3 years shall be deposited into the Federal Family and Medical Leave Insurance Trust Fund.

(4) Limitation.—

(A) In general.—An action may be brought under this subsection not later than 3 years after the date of the last event constituting the alleged violation for which the action is brought.

(B) Commencement.—An action brought by the Commissioner under this subsection shall
be considered to be commenced on the date when the complaint is filed.

(5) ACTION FOR INJUNCTION BY COMMISSIONER.—The district courts of the United States shall have jurisdiction, for cause shown, in an action brought by the Commissioner—

(A) to restrain violations of paragraph (1), including the restraint of any withholding of payment of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due to an individual; or

(B) to award such other equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(i) SPECIAL RULE FOR RAILROAD EMPLOYEES.—For purposes of subsection (a)(1), an individual shall be deemed to be insured for disability insurance benefits if the individual would be so insured if the individual’s service as an employee (as defined in the section 1(b) of the Railroad Retirement Act of 1974) after December 31, 1936, were included within the meaning of the term “employment” for purposes of title II of the Social Security Act (42 U.S.C. 401 et seq.).

(j) DETERMINATION OF WHETHER AN ACTIVITY CONSTITUTES QUALIFIED CAREGIVING.—
(1) IN GENERAL.—For purposes of determining whether an activity engaged in by an individual constitutes qualified caregiving under this section—

(A) the term "spouse" (as used in section 102(a) of the Family and Medical Leave Act (29 U.S.C. 2612(a))) includes the individual’s domestic partner; and

(B) the term "son or daughter" (as used in such section) includes a son or daughter (as defined in section 101 of such Act) of the individual’s domestic partner.

(2) DOMESTIC PARTNER.—

(A) IN GENERAL.—For purposes of paragraph (1), the term "domestic partner", with respect to an individual, means another individual with whom the individual is in a committed relationship.

(B) COMMITTED RELATIONSHIP DEFINED.—The term "committed relationship" means a relationship between two individuals (each at least 18 years of age) in which each individual is the other individual’s sole domestic partner and both individuals share responsibility for a significant measure of each other’s common welfare. The term includes any such
relationship between two individuals, including individuals of the same sex, that is granted legal recognition by a State or political subdivision of a State as a marriage or analogous relationship, including a civil union or domestic partnership.

(k) Applicability of Certain Social Security Act Provisions.—The provisions of sections 204, 205, 206, and 208 of the Social Security Act shall apply to benefit payments authorized by and paid out pursuant to this section in the same way that such provisions apply to benefit payments authorized by and paid out pursuant to title II of such Act.

(l) Effective Date for Applications.—Applications described in this section may be filed beginning 18 months after the date of enactment of this Act.

SEC. 6. ESTABLISHMENT OF FAMILY AND MEDICAL LEAVE INSURANCE TRUST FUND.

(a) In General.—There is hereby created on the books of the Treasury of the United States a trust fund to be known as the “Federal Family and Medical Leave Insurance Trust Fund”. The Federal Family and Medical Leave Insurance Trust Fund shall consist of such gifts and bequests as may be made as provided in section 201(i)(1) of the Social Security Act (42 U.S.C. 401(i)(1))
and such amounts as may be appropriated to, or deposited in, the Federal Family and Medical Leave Insurance Trust Fund as provided in this section.

(b) Authorization of Appropriations.—

(1) IN GENERAL.—There is authorized to be appropriated to the Federal Family and Medical Leave Insurance Trust Fund out of moneys in the Treasury not otherwise appropriated—

(A) for the first three fiscal years beginning after the date of enactment of this Act, such sums as may be necessary for the Commissioner to administer the office established under section 4 and pay the benefits under section 5;

(B) 100 percent of the taxes imposed by sections 3101(c) and 3111(c) of the Internal Revenue Code of 1986 with respect to wages (as defined in section 3121 of such Code) reported to the Secretary of the Treasury pursuant to subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such sections to such wages;

(C) 100 percent of the taxes imposed by section 1401(c) of such Code with respect to
self-employment income (as defined in section 1402 of such Code) reported to the Secretary of the Treasury on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such section to such self-employment income; and

(D) 100 percent of the taxes imposed by sections 3201(c), 3211(c), and 3221(c) of such Code with respect to compensation (as defined in section 3231 of such Code) reported to the Secretary of the Treasury on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such sections to such compensation.

(2) REPAYMENT OF INITIAL APPROPRIATION.—

Amounts appropriated pursuant to subparagraph (A) of paragraph (1) shall be repaid to the Treasury of the United States not later than 10 years after the first appropriation is made pursuant to such subparagraph.

(3) TRANSFER TO TRUST FUND.—The amounts described in paragraph (2) shall be transferred from time to time from the general fund in the Treasury
to the Federal Family and Medical Leave Insurance
Trust Fund, such amounts to be determined on the
basis of estimates by the Secretary of the Treasury
of the taxes, specified in such paragraph, paid to or
deposited into the Treasury. Proper adjustments
shall be made in amounts subsequently transferred
to the extent prior estimates were inconsistent with
the taxes specified in such paragraph.

(e) MANAGEMENT OF TRUST FUND.—The provisions
of subsections (c), (d), (e), (f), (i), and (m) of section 201
of the Social Security Act (42 U.S.C. 401) shall apply with
respect to the Federal Family and Medical Leave Insur-
ance Trust Fund in the same manner as such provisions
apply to the Federal Old-Age and Survivors Insurance
Trust Fund and the Disability Insurance Trust Fund.

(d) BENEFITS PAID FROM TRUST FUND.—Benefit
payments required to be made under section 5 shall be
made only from the Federal Family and Medical Leave
Insurance Trust Fund.

(e) ADMINISTRATION.—There are authorized to be
made available for expenditure, out of the Federal Family
and Medical Leave Insurance Trust Fund, such sums as
may be necessary to pay the costs of the administration
of section 5, including start-up costs, technical assistance,
outreach, education, evaluation, and reporting.
(f) Prohibition.—No funds from the Social Security Trust Fund or appropriated to the Social Security Administration to administer Social Security programs may be used for Federal Family and Medical Leave Insurance benefits or administration set forth under this Act.

SEC. 7. INTERNAL REVENUE CODE PROVISIONS.

(a) In General.—

(1) Employee Contribution.—Section 3101 of the Internal Revenue Code of 1986 is amended—

(A) by redesignating subsection (c) as subsection (d), and

(B) by inserting after subsection (b) the following:

``(c) Family and Medical Leave Insurance.—

``(1) In General.—In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the applicable percentage of the wages (as defined in section 3121(a)) received by the individual with respect to employment (as defined in section 3121(b)).

``(2) Applicable Percentage.—For purposes of paragraph (1), the term ‘applicable percentage’ means 0.2 percent in the case of wages received in any calendar year.”.


(2) Employer contribution.—Section 3111 of such Code is amended—

(A) by redesignating subsection (c) as subsection (d), and

(B) by inserting after subsection (b) the following:

“(c) Family and Medical Leave Insurance.—

“(1) In general.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the applicable percentage of the wages (as defined in section 3121(a)) paid by the employer with respect to employment (as defined in section 3121(b)).

“(2) Applicable percentage.—For purposes of paragraph (1), the term ‘applicable percentage’ means 0.2 percent in the case of wages paid in any calendar year.”.

(3) Self-employment income contribution.—

(A) In general.—Section 1401 of such Code is amended—

(i) by redesignating subsection (e) as subsection (d), and
(ii) by inserting after subsection (b) the following:

“(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

“(1) IN GENERAL.—In addition to other taxes, there is hereby imposed for each taxable year, on the self-employment income of every individual, a tax equal to the applicable percentage of the amount of the self-employment income for such taxable year.

“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term ‘applicable percentage’ means 0.4 percent in the case of self-employment income in any taxable year.”.

(B) EXCLUSION OF CERTAIN NET EARNINGS FROM SELF-EMPLOYMENT.—Section 1402(b)(1) of such Code is amended by striking “tax imposed by section 1401(a)” and inserting “taxes imposed by subsections (a) and (c) of section 1401”.

(b) RAILROAD RETIREMENT TAX ACT.—

(1) EMPLOYEE CONTRIBUTION.—Section 3201 of such Code is amended—

(A) by redesignating subsection (c) as subsection (d), and

(B) by inserting after subsection (b) the following:
“(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

“(1) IN GENERAL.—In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the applicable percentage of the compensation received during any calendar year by such employee for services rendered by such employee.

“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term ‘applicable percentage’ means 0.2 percent in the case of compensation received in any calendar year.”.

(2) EMPLOYEE REPRESENTATIVE CONTRIBUTION.—Section 3211 of such Code is amended—

(A) by redesignating subsection (c) as subsection (d), and

(B) by inserting after subsection (b) the following:

“(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

“(1) IN GENERAL.—In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the applicable percentage of the compensation received during any calendar year by such employee representative for services rendered by such employee representative.
“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term ‘applicable percentage’ means 0.2 percent in the case of compensation received in any calendar year.”.

(3) EMPLOYER CONTRIBUTION.—Section 3221 of such Code is amended—

(A) by redesignating subsection (c) as subsection (d), and

(B) by inserting after subsection (b) the following:

“(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

“(1) IN GENERAL.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the applicable percentage of the compensation paid during any calendar year by such employer for services rendered to such employer.

“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term ‘applicable percentage’ means 0.2 percent in the case of compensation paid in any calendar year.”.

(c) CONFORMING AMENDMENTS.—

(1) Section 6413(c) of the Internal Revenue Code of 1986 is amended—

(A) in paragraph (1)—
(i) by inserting "section 3101(c)," after "by section 3101(a)"; and
(ii) by striking "both" and inserting "each"; and

(B) in paragraph (2), by inserting "or 3101(c)" after "3101(a)" each place it appears.

(2) Section 15(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(a)) is amended by inserting "(other than sections 3201(e), 3211(e), and 3221(c))" before the period at the end.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 120 days after the date of the enactment of this Act.

SEC. 8. REGULATIONS.

The Commissioner, in consultation with the Secretary of Labor, shall prescribe regulations necessary to carry out this Act. In developing such regulations, the Commissioner shall consider the input from a volunteer advisory body comprised of not more than 15 individuals, including experts in the relevant subject matter and officials charged with implementing State paid family and medical leave insurance programs. The Commissioner shall take such programs into account when proposing regulations. Such individuals shall be appointed as follows:
(1) Five individuals to be appointed by the President.

(2) Three individuals to be appointed by the majority leader of the Senate.

(3) Two individuals to be appointed by the minority leader of the Senate.

(4) Three individuals to be appointed by the Speaker of the House of Representatives.

(5) Two individuals to be appointed by the minority leader of the House of Representatives.

SEC. 9. GAO STUDY.

Not later than 3 years after the date of enactment of this Act, the Comptroller General shall submit to Congress a report on family and medical leave insurance benefits paid under section 5 for any month during the 1-year period beginning on January 1, 2021. The report shall include the following:

(1) An identification of the total number of applications for such benefits filed for any month during such 1-year period, and the average number of days occurring in the period beginning on the date on which such an application is received and ending on the date on which the initial determination of eligibility with respect to the application is made.
(2) An identification of the total number of requests for review of an initial adverse determination of eligibility for such benefits made during such 1-year period, and the average number of days occurring in the period beginning on the date on which such review is requested and ending on the date on which the final determination of eligibility with respect to such review is made.

(3) An identification of the total number of monthly benefit claim reports for such benefits filed during such 1-year period, and the average number of days occurring in the period beginning on the date on which such a claim report is received and ending on the date on which the initial determination of eligibility with respect to the claim report is made.

(4) An identification of the total number of requests for review of an initial adverse determination relating to a monthly benefit claim report for such benefits made during such 1-year period, and the average number of days occurring in the period beginning on the date on which such review is requested and ending on the date on which the final determination of eligibility with respect to such review is made.
(5) An identification of any excessive delay in any of the periods described in paragraphs (1) through (4), and a description of the causes for such delay.