

117TH CONGRESS
1ST SESSION

S. 248

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2021

Mrs. GILLIBRAND (for herself, Mr. SCHUMER, Mr. PADILLA, Mr. SCHATZ, Mr. BLUMENTHAL, Mr. LEAHY, Mr. BOOKER, Mr. REED, Ms. DUCKWORTH, Mr. KING, Ms. HASSAN, Mr. MARKEY, Mr. VAN HOLLEN, Ms. WARREN, Mr. MENENDEZ, Mr. BROWN, Mr. LUJÁN, Mr. BENNET, Ms. BALDWIN, Mr. CARDIN, Ms. KLOBUCHAR, Mrs. FEINSTEIN, Mr. MURPHY, Ms. SMITH, Mr. SANDERS, Mr. WYDEN, Ms. HIRONO, Ms. ROSEN, Mr. CARPER, Mrs. SHAHEEN, Mrs. MURRAY, Mr. CASEY, Mr. DURBIN, Mr. WHITEHOUSE, Mr. MERKLEY, and Mr. HEINRICH) 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 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 and Medical
5 Insurance Leave Act” or the “FAMILY Act”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act, the following definitions apply:

3 (1) CAREGIVING DAY.—The term “caregiving
4 day” means, with respect to an individual, a cal-
5 endar day in which the individual engaged in quali-
6 fied caregiving.

7 (2) COMMISSIONER.—The term “Commis-
8 sioner” means the Commissioner of Social Security.

9 (3) DEPUTY COMMISSIONER.—The term “Dep-
10 uty Commissioner” means the Deputy Commissioner
11 who heads the Office of Paid Family and Medical
12 Leave established under section 3(a).

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

17 (5) INITIAL WAITING PERIOD.—The term “ini-
18 tial waiting period” means a period beginning with
19 the first caregiving day of an individual occurring
20 during the individual’s benefit period and ending
21 after the earlier of—

22 (A) the fifth caregiving day of the indi-
23 vidual occurring during the benefit period; or

24 (B) the month preceding the first month in
25 the benefit period during which occur not less
26 than 15 caregiving days of the individual.

1 (6) QUALIFIED CAREGIVING.—The term “quali-
2 fied caregiving” means any activity engaged in by an
3 individual, other than regular employment, for a rea-
4 son for which an eligible employee would be entitled
5 to leave under subparagraphs (A) through (E) of
6 paragraph (1) of section 102(a) of the Family and
7 Medical Leave Act of 1993 (29 U.S.C. 2612(a)).

8 (7) SELF-EMPLOYMENT INCOME.—The term
9 “self-employment income” has the same meaning as
10 such term in section 211(b) of such Act (42 U.S.C.
11 411(b)).

12 (8) STATE.—The term “State” means any
13 State of the United States or the District of Colum-
14 bia or any territory or possession of the United
15 States.

16 (9) WAGES.—The term “wages”, except as such
17 term is used in subsection (h)(2) of section 4, has
18 the same meaning as such term in section 209 of the
19 Social Security Act (42 U.S.C. 409).

20 (10) 60-DAY LIMITATION PERIOD.—The term
21 “60-day limitation period” means a period—

22 (A) beginning with the first caregiving day
23 of an individual occurring during the individ-
24 ual’s benefit period and after the expiration of

1 the individual's 5-day waiting period, if applica-
 2 ble; and

3 (B) ending with the 60th caregiving day of
 4 the individual occurring during the benefit pe-
 5 riod and after the expiration of the 5-day wait-
 6 ing period,
 7 disregarding any caregiving day of the individual oc-
 8 ccurring during any month in the benefit period after
 9 the first 20 caregiving days of the individual occur-
 10 ring during such month.

11 **SEC. 3. OFFICE OF PAID FAMILY AND MEDICAL LEAVE.**

12 (a) ESTABLISHMENT OF OFFICE.—There is estab-
 13 lished within the Social Security Administration an office
 14 to be known as the Office of Paid Family and Medical
 15 Leave. The Office shall be headed by a Deputy Commis-
 16 sioner who shall be appointed by the Commissioner.

17 (b) RESPONSIBILITIES OF DEPUTY COMMIS-
 18 SIONER.—The Commissioner, acting through the Deputy
 19 Commissioner, shall be responsible for—

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

22 (2) issuing such regulations as may be nec-
 23 essary to carry out the purposes of this Act;

1 (3) entering into cooperative agreements with
2 other agencies and departments to ensure the effi-
3 ciency of the administration of the program;

4 (4) determining eligibility for family and med-
5 ical leave insurance benefits under section 4;

6 (5) determining benefit amounts for each
7 month of such eligibility and making timely pay-
8 ments of such benefits to entitled individuals in ac-
9 cordance with such section;

10 (6) establishing and maintaining a system of
11 records relating to the administration of such sec-
12 tion;

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

15 (8) providing information on request regarding
16 eligibility requirements, the claims process, benefit
17 amounts, maximum benefits payable, notice require-
18 ments, nondiscrimination rights, confidentiality, co-
19 ordination of leave under this Act and other laws,
20 collective bargaining agreements, and employer poli-
21 cies;

22 (9) annually providing employers a notice in-
23 forming employees of the availability of such bene-
24 fits;

1 (10) annually making available to the public a
 2 report that includes the number of individuals who
 3 received such benefits, the purposes for which such
 4 benefits were received, and an analysis of utilization
 5 rates of such benefits by gender, race, ethnicity, and
 6 income levels; and

7 (11) tailoring culturally and linguistically com-
 8 petent education and outreach toward increasing uti-
 9 lization rates of benefits under such section.

10 (c) AVAILABILITY OF DATA.—The Commissioner
 11 shall make available to the Deputy Commissioner such
 12 data as the Commissioner determines necessary to enable
 13 the Deputy Commissioner to effectively carry out the re-
 14 sponsibilities described in subsection (b).

15 **SEC. 4. FAMILY AND MEDICAL LEAVE INSURANCE BENEFIT**
 16 **PAYMENTS.**

17 (a) IN GENERAL.—Every individual who—

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

22 (2) has earned income from employment during
 23 the 12 months prior to the month in which the ap-
 24 plication is filed;

1 (3) has filed an application for a family and
2 medical leave insurance benefit in accordance with
3 subsection (d); and

4 (4) was engaged in qualified caregiving, or an-
5 ticipates being so engaged, during the period that
6 begins 90 days before the date on which such appli-
7 cation is filed or within 30 days after such date,
8 shall be entitled to such a benefit for each month in the
9 benefit period specified in subsection (c), not to exceed 60
10 caregiving days per benefit period.

11 (b) BENEFIT AMOUNT.—

12 (1) IN GENERAL.—Except as otherwise pro-
13 vided in this subsection, the benefit amount to which
14 an individual is entitled under this section for a
15 month shall be an amount equal to the greater of—

16 (A) the lesser of $\frac{1}{18}$ of the wages and self-
17 employment income of the individual for the
18 calendar year in which such wages and self-em-
19 ployment income are the highest among the
20 most recent three calendar years, or the max-
21 imum benefit amount determined under para-
22 graph (2); or

23 (B) the minimum benefit amount deter-
24 mined under paragraph (2),

1 multiplied by the quotient (not greater than 1) ob-
2 tained by dividing the number of caregiving days of
3 the individual in such month by 20.

4 (2) ANNUAL INCREASE OF MAXIMUM AND MIN-
5 IMUM BENEFIT AMOUNTS.—

6 (A) For individuals who initially become el-
7 igible for family and medical leave insurance
8 benefits in the first full calendar year after the
9 date of enactment of this Act, the maximum
10 monthly benefit amount and the minimum
11 monthly benefit amount shall be \$4,000 and
12 \$580, respectively.

13 (B) For individuals who initially become el-
14 igible for family and medical leave insurance
15 benefits in any calendar year after such first
16 full calendar year the maximum benefit amount
17 and the minimum benefit amount shall be, re-
18 spectively, the product of the corresponding
19 amount determined with respect to the first cal-
20 endar year under subparagraph (A) and the
21 quotient obtained by dividing—

22 (i) the national average wage index
23 (as defined in section 209(k)(1) of the So-
24 cial Security Act (42 U.S.C. 409(k)(1)))
25 for the second calendar year preceding the

1 calendar year for which the determination
2 is made, by

3 (ii) the national average wage index
4 (as so defined) for 2020.

5 (3) LIMITATIONS ON BENEFITS PAID.—

6 (A) NONPAYABLE WAITING PERIOD.—Any
7 calendar day during an individual’s benefit pe-
8 riod which occurs before the expiration of an
9 initial waiting period shall not be taken into ac-
10 count under this subsection as a caregiving day
11 of the individual.

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

18 (4) REDUCTION IN BENEFIT AMOUNT ON AC-
19 COUNT OF RECEIPT OF CERTAIN BENEFITS.—A ben-
20 efit under this section for a month shall be reduced
21 by the amount, if any, in certain benefits (as deter-
22 mined under regulations issued by the Commis-
23 sioner) as may be otherwise received by an indi-
24 vidual. For purposes of the preceding sentence, cer-
25 tain benefits include—

1 (A) periodic benefits on account of such in-
 2 dividual's total or partial disability under a
 3 workmen's compensation law or plan of the
 4 United States or a State; and

5 (B) periodic benefits on account of an indi-
 6 vidual's employment status under an unemploy-
 7 ment law or plan of the United States or a
 8 State.

9 (5) COORDINATION OF BENEFIT AMOUNT WITH
 10 CERTAIN STATE BENEFITS.—A benefit received
 11 under this section shall be coordinated, in a manner
 12 determined by regulations issued by the Commis-
 13 sioner, with the periodic benefits received from tem-
 14 porary disability insurance or family leave insurance
 15 programs under any law or plan of a State, a polit-
 16 ical subdivision (as that term is used in section
 17 218(b)(2) of the Social Security Act (42 U.S.C.
 18 418(b)(2))), or an instrumentality of two or more
 19 States (as that term is used in section 218(g) of
 20 such Act of the Social Security Act (42 U.S.C.
 21 418(g))).

22 (c) BENEFIT PERIOD.—

23 (1) IN GENERAL.—Except as provided in para-
 24 graph (2), the benefit period specified in this sub-
 25 section shall begin on the 1st day of the 1st month

1 in which the individual meets the criteria specified in
2 paragraphs (1), (2), and (3) of subsection (a), and
3 shall end on the date that is 365 days after the 1st
4 day of the benefit period.

5 (2) RETROACTIVE BENEFITS.—In the case of
6 an application for benefits under this section for
7 qualified caregiving in which the individual was en-
8 gaged at any time during the 90-day period pre-
9 ceding the date on which such application is sub-
10 mitted, the benefit period specified in this subsection
11 shall begin on the later of—

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

15 (B) the 1st day of the 1st month that be-
16 gins during such 90-day period,

17 and shall end on the date that is 365 days after the
18 1st day of the benefit period.

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

21 (1) a statement that the individual was engaged
22 in qualified caregiving, or anticipates being so en-
23 gaged, during the period that begins 90 days before
24 the date on which the application is submitted or
25 within 30 days after such date;

1 (2) if the qualified caregiving described in the
2 statement in paragraph (1) is engaged in by the in-
3 dividual because of a serious health condition of the
4 individual or a relative of the individual, a certifi-
5 cation, issued by the health care provider treating
6 such serious health condition, that affirms the infor-
7 mation specified in paragraph (1) and contains such
8 information as the Commissioner shall specify in
9 regulations, which shall be no more than the infor-
10 mation that is required to be stated under section
11 103(b) of the Family and Medical Leave Act of
12 1993 (29 U.S.C. 2613(b));

13 (3) if such qualified caregiving is engaged in by
14 the individual for any other authorized reason, a cer-
15 tification, issued by a relevant authority determined
16 under regulations issued by the Commissioner, that
17 affirms the circumstances giving rise to such reason;
18 and

19 (4) an attestation from the applicant that his or
20 her employer has been provided with written notice
21 of the individual's intention to take family or med-
22 ical leave, if the individual has an employer, or to
23 the Commissioner in all other cases.

24 (e) INELIGIBILITY; DISQUALIFICATION.—

1 (1) INELIGIBILITY FOR BENEFIT.—An indi-
2 vidual shall be ineligible for a benefit under this sec-
3 tion for any month for which the individual is enti-
4 tled to—

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

12 (B) monthly insurance benefits under sec-
13 tion 202 of such Act (42 U.S.C. 402) based on
14 such individual's disability (as defined in sec-
15 tion 223(d) of such Act (42 U.S.C. 423(d))); or

16 (C) benefits under title XVI of such Act
17 (42 U.S.C. 1381 et seq.) based on such individ-
18 ual's status as a disabled individual (as deter-
19 mined under section 1614 of such Act (42
20 U.S.C. 1382e)).

21 (2) DISQUALIFICATION.—An individual who has
22 been convicted of a violation under section 208 of
23 the Social Security Act (42 U.S.C. 408) or who has
24 been found to have used false statements to secure
25 benefits under this section, shall be ineligible for

1 benefits under this section for a 1-year period fol-
2 lowing the date of such conviction.

3 (f) REVIEW OF ELIGIBILITY AND BENEFIT PAYMENT
4 DETERMINATIONS.—

5 (1) ELIGIBILITY DETERMINATIONS.—

6 (A) IN GENERAL.—The Commissioner
7 shall provide notice to an individual applying
8 for benefits under this section of the initial de-
9 termination of eligibility for such benefits, and
10 the estimated benefit amount for a month in
11 which one caregiving day of the individual oc-
12 curs, as soon as practicable after the applica-
13 tion is received.

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

25 (2) BENEFIT PAYMENT DETERMINATIONS.—

1 (A) IN GENERAL.—The Commissioner
2 shall make any monthly benefit payment to an
3 individual claiming benefits for a month under
4 this section, or provide notice of the reason
5 such payment will not be made if the Commis-
6 sioner determines that the individual is not en-
7 titled to payment for such month, not later
8 than 20 days after the individual’s monthly
9 benefit claim report for such month is received.
10 Such monthly report shall be filed with the
11 Commissioner not later than 15 days after the
12 end of each month.

13 (B) REVIEW.—If the Commissioner deter-
14 mines that payment will not be made to an in-
15 dividual for a month, or if the Commissioner
16 determines that payment shall be made based
17 on a number of caregiving days in the month
18 inconsistent with the number of caregiving days
19 in the monthly benefit claim report of the indi-
20 vidual for such month, the individual may re-
21 quest review of such determination at any time
22 before the end of the 20-day period that begins
23 on the date notice of such determination is re-
24 ceived, except that such 20-day period may be
25 extended for good cause. Not later than 20 days

1 after the individual requests review of the deter-
2 mination, the Commissioner shall provide notice
3 to the individual of a final determination of
4 payment for such month, and shall make pay-
5 ment to the individual of any additional amount
6 not included in the initial payment to the indi-
7 vidual for such month to which the Commis-
8 sioner determines the individual is entitled.

9 (3) BURDEN OF PROOF.—An application for
10 benefits under this section and a monthly benefit
11 claim report of an individual shall each be presumed
12 to be true and accurate, unless the Commissioner
13 demonstrates by a preponderance of the evidence
14 that information contained in the application is
15 false.

16 (4) DEFINITION OF MONTHLY BENEFIT CLAIM
17 REPORT.—For purposes of this subsection, the term
18 “monthly benefit claim report” means, with respect
19 to an individual for a month, the individual’s report
20 to the Commissioner of the number of caregiving
21 days of the individual in such month, which shall be
22 filed no later than 15 days after the end of each
23 month.

24 (5) REVIEW.—All final determinations of the
25 Commissioner under this subsection shall be review-

1 able according to the procedures set out in section
2 205 of the Social Security Act (42 U.S.C. 405).

3 (g) RELATIONSHIP WITH STATE LAW; EMPLOYER
4 BENEFITS.—

5 (1) IN GENERAL.—This section does not pre-
6 empt or supercede any provision of State or local
7 law that authorizes a State or local municipality to
8 provide paid family and medical leave benefits simi-
9 lar to the benefits provided under this section.

10 (2) GREATER BENEFITS ALLOWED.—Nothing
11 in this Act shall be construed to diminish the obliga-
12 tion of an employer to comply with any contract, col-
13 lective bargaining agreement, or any employment
14 benefit program or plan that provides greater paid
15 leave or other leave rights to employees than the
16 rights established under this Act.

17 (h) PROHIBITED ACTS; ENFORCEMENT.—

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

23 (2) CIVIL ACTION BY AN INDIVIDUAL.—

24 (A) LIABILITY.—Any person who violates
25 paragraph (1) shall be liable to any individual

1 employed by such person who is affected by the
2 violation—

3 (i) for damages equal to the sum of—

4 (I) the amount of—

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

10 (bb) in a case in which
11 wages, salary, employment bene-
12 fits, or other compensation have
13 not been denied or lost to the in-
14 dividual, any actual monetary
15 losses sustained by the individual
16 as a direct result of the violation,
17 such as the cost of providing
18 care, up to a sum equal to 60
19 calendar days of wages or salary
20 for the individual;

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

24 (III) an additional amount as liq-
25 uidated damages equal to the sum of

1 the amount described in subclause (I)
2 and the interest described in sub-
3 clause (II), except that if a person
4 who has violated paragraph (1) proves
5 to the satisfaction of the court that
6 the act or omission which violated
7 paragraph (1) was in good faith and
8 that the person had reasonable
9 grounds for believing that the act or
10 omission was not a violation of para-
11 graph (1), such court may, in the dis-
12 cretion of the court, reduce the
13 amount of the liability to the amount
14 and interest determined under sub-
15 clauses (I) and (II), respectively; and
16 (ii) for such equitable relief as may be
17 appropriate, including employment, rein-
18 statement, and promotion.

19 (B) RIGHT OF ACTION.—An action to re-
20 cover the damages or equitable relief prescribed
21 in subparagraph (A) may be maintained against
22 any person in any Federal or State court of
23 competent jurisdiction by any individual for and
24 on behalf of—

25 (i) the individual; or

1 (ii) the individual and other individ-
2 uals similarly situated.

3 (C) FEES AND COSTS.—The court in such
4 an action shall, in addition to any judgment
5 awarded to the plaintiff, allow a reasonable at-
6 torney’s fee, reasonable expert witness fees, and
7 other costs of the action to be paid by the de-
8 fendant.

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

12 (i) on the filing of a complaint by the
13 Commissioner in an action under para-
14 graph (5) in which restraint is sought of
15 any further delay in the payment of the
16 amount described in subparagraph (A)(I)
17 to such individual by the person respon-
18 sible under subparagraph (A) for the pay-
19 ment; or

20 (ii) on the filing of a complaint by the
21 Commissioner in an action under para-
22 graph (3) in which a recovery is sought of
23 the damages described in subparagraph
24 (A)(I) owing to an individual by a person
25 liable under subparagraph (A),

1 unless the action described in clause (i) or (ii)
2 is dismissed without prejudice on motion of the
3 Commissioner.

4 (3) ACTION BY THE COMMISSIONER.—

5 (A) CIVIL ACTION.—The Commissioner
6 may bring an action in any court of competent
7 jurisdiction to recover the damages described in
8 paragraph (2)(A)(I).

9 (B) SUMS RECOVERED.—Any sums recov-
10 ered by the Commissioner pursuant to subpara-
11 graph (A) shall be held in a special deposit ac-
12 count and shall be paid, on order of the Com-
13 missioner, directly to each individual affected.
14 Any such sums not paid to an individual be-
15 cause of inability to do so within a period of 3
16 years shall be deposited into the Federal Family
17 and Medical Leave Insurance Trust Fund.

18 (4) LIMITATION.—

19 (A) IN GENERAL.—An action may be
20 brought under this subsection not later than 3
21 years after the date of the last event consti-
22 tuting the alleged violation for which the action
23 is brought.

24 (B) COMMENCEMENT.—An action brought
25 by the Commissioner under this subsection shall

1 be considered to be commenced on the date
2 when the complaint is filed.

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

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

12 (B) to award such other equitable relief as
13 may be appropriate, including employment, re-
14 instatement, and promotion.

15 (i) SPECIAL RULE FOR RAILROAD EMPLOYEES.—For
16 purposes of subsection (a)(1), an individual shall be
17 deemed to be insured for disability insurance benefits if
18 the individual would be so insured if the individual’s serv-
19 ice as an employee (as defined in the section 1(b) of the
20 Railroad Retirement Act of 1974) after December 31,
21 1936, were included within the meaning of the term “em-
22 ployment” for purposes of title II of the Social Security
23 Act (42 U.S.C. 401 et seq.).

24 (j) DETERMINATION OF WHETHER AN ACTIVITY
25 CONSTITUTES QUALIFIED CAREGIVING.—

1 (1) IN GENERAL.—For purposes of determining
2 whether an activity engaged in by an individual con-
3 stitutes qualified caregiving under this section—

4 (A) the term “spouse” (as used in section
5 102(a) of the Family and Medical Leave Act
6 (29 U.S.C. 2612(a))) includes the individual’s
7 domestic partner; and

8 (B) the term “son or daughter” (as used
9 in such section) includes a son or daughter (as
10 defined in section 101 of such Act) of the indi-
11 vidual’s domestic partner.

12 (2) DOMESTIC PARTNER.—

13 (A) IN GENERAL.—For purposes of para-
14 graph (1), the term “domestic partner”, with
15 respect to an individual, means another indi-
16 vidual with whom the individual is in a com-
17 mitted relationship.

18 (B) COMMITTED RELATIONSHIP DE-
19 FINED.—The term “committed relationship”
20 means a relationship between two individuals
21 (each at least 18 years of age) in which each
22 individual is the other individual’s sole domestic
23 partner and both individuals share responsi-
24 bility for a significant measure of each other’s
25 common welfare. The term includes any such

1 relationship between two individuals, including
2 individuals of the same sex, that is granted
3 legal recognition by a State or political subdivi-
4 sion of a State as a marriage or analogous rela-
5 tionship, including a civil union or domestic
6 partnership.

7 (k) **APPLICABILITY OF CERTAIN SOCIAL SECURITY**
8 **ACT PROVISIONS.**—The provisions of sections 204, 205,
9 206, and 208 of the Social Security Act shall apply to
10 benefit payments authorized by and paid out pursuant to
11 this section in the same way that such provisions apply
12 to benefit payments authorized by and paid out pursuant
13 to title II of such Act.

14 (l) **EFFECTIVE DATE FOR APPLICATIONS.**—Applica-
15 tions described in this section may be filed beginning 18
16 months after the date of enactment of this Act.

17 **SEC. 5. ESTABLISHMENT OF FAMILY AND MEDICAL LEAVE**
18 **INSURANCE TRUST FUND.**

19 (a) **IN GENERAL.**—There is hereby created on the
20 books of the Treasury of the United States a trust fund
21 to be known as the “Federal Family and Medical Leave
22 Insurance Trust Fund”. The Federal Family and Medical
23 Leave Insurance Trust Fund shall consist of such gifts
24 and bequests as may be made as provided in section
25 201(i)(1) of the Social Security Act (42 U.S.C. 401(i)(1))

1 and such amounts as may be appropriated to, or deposited
2 in, the Federal Family and Medical Leave Insurance
3 Trust Fund as provided in this section.

4 (b) AUTHORIZATION OF APPROPRIATIONS.—

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

9 (A) for the first three fiscal years begin-
10 ning after the date of enactment of this Act,
11 such sums as may be necessary for the Com-
12 missioner to administer the office established
13 under section 3 and pay the benefits under sec-
14 tion 4;

15 (B) 100 percent of the taxes imposed by
16 sections 3101(c) and 3111(c) of the Internal
17 Revenue Code of 1986 with respect to wages
18 (as defined in section 3121 of such Code) re-
19 ported to the Secretary of the Treasury pursu-
20 ant to subtitle F of such Code, as determined
21 by the Secretary of the Treasury by applying
22 the applicable rate of tax under such sections to
23 such wages;

24 (C) 100 percent of the taxes imposed by
25 section 1401(c) of such Code with respect to

1 self-employment income (as defined in section
2 1402 of such Code) reported to the Secretary of
3 the Treasury on tax returns under subtitle F of
4 such Code, as determined by the Secretary of
5 the Treasury by applying the applicable rate of
6 tax under such section to such self-employment
7 income; and

8 (D) 100 percent of the taxes imposed by
9 sections 3201(c), 3211(c), and 3221(c) of such
10 Code with respect to compensation (as defined
11 in section 3231 of such Code) reported to the
12 Secretary of the Treasury on tax returns under
13 subtitle F of such Code, as determined by the
14 Secretary of the Treasury by applying the ap-
15 plicable rate of tax under such sections to such
16 compensation.

17 (2) REPAYMENT OF INITIAL APPROPRIATION.—

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

23 (3) TRANSFER TO TRUST FUND.—

24 The amounts described in paragraph (2) shall be transferred from
25 time to time from the general fund in the Treasury

1 to the Federal Family and Medical Leave Insurance
2 Trust Fund, such amounts to be determined on the
3 basis of estimates by the Secretary of the Treasury
4 of the taxes, specified in such paragraph, paid to or
5 deposited into the Treasury. Proper adjustments
6 shall be made in amounts subsequently transferred
7 to the extent prior estimates were inconsistent with
8 the taxes specified in such paragraph.

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

16 (d) BENEFITS PAID FROM TRUST FUND.—Benefit
17 payments required to be made under section 4 shall be
18 made only from the Federal Family and Medical Leave
19 Insurance Trust Fund.

20 (e) ADMINISTRATION.—There are authorized to be
21 made available for expenditure, out of the Federal Family
22 and Medical Leave Insurance Trust Fund, such sums as
23 may be necessary to pay the costs of the administration
24 of section 4, including start-up costs, technical assistance,
25 outreach, education, evaluation, and reporting.

1 (f) PROHIBITION.—No funds from the Social Secu-
 2 rity Trust Fund or appropriated to the Social Security Ad-
 3 ministration to administer Social Security programs may
 4 be used for Federal Family and Medical Leave Insurance
 5 benefits or administration set forth under this Act.

6 **SEC. 6. INTERNAL REVENUE CODE PROVISIONS.**

7 (a) IN GENERAL.—

8 (1) EMPLOYEE CONTRIBUTION.—Section 3101
 9 of the Internal Revenue Code of 1986 is amended—

10 (A) by redesignating subsection (c) as sub-
 11 section (d); and

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

14 “(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

15 “(1) IN GENERAL.—In addition to other taxes,
 16 there is hereby imposed on the income of every indi-
 17 vidual a tax equal to the applicable percentage of the
 18 wages (as defined in section 3121(a)) received by the
 19 individual with respect to employment (as defined in
 20 section 3121(b)).

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

1 (2) EMPLOYER CONTRIBUTION.—Section 3111
2 of such Code is amended—

3 (A) by redesignating subsection (c) as sub-
4 section (d); and

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

7 “(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

8 “(1) IN GENERAL.—In addition to other taxes,
9 there is hereby imposed on every employer an excise
10 tax, with respect to having individuals in his employ,
11 equal to the applicable percentage of the wages (as
12 defined in section 3121(a)) paid by the employer
13 with respect to employment (as defined in section
14 3121(b)).

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

19 (3) SELF-EMPLOYMENT INCOME CONTRIBU-
20 TION.—

21 (A) IN GENERAL.—Section 1401 of such
22 Code is amended—

23 (i) by redesignating subsection (c) as
24 subsection (d); and

1 (ii) by inserting after subsection (b)
2 the following:

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

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

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

13 (B) EXCLUSION OF CERTAIN NET EARN-
14 INGS FROM SELF-EMPLOYMENT.—Section
15 1402(b)(1) of such Code is amended by striking
16 “tax imposed by section 1401(a)” and inserting
17 “taxes imposed by subsections (a) and (c) of
18 section 1401”.

19 (b) RAILROAD RETIREMENT TAX ACT.—

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

22 (A) by redesignating subsection (c) as sub-
23 section (d); and

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

1 “(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

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

8 “(2) APPLICABLE PERCENTAGE.—For purposes
9 of paragraph (1), the term ‘applicable percentage’
10 means 0.2 percent in the case of compensation re-
11 ceived in any calendar year.”.

12 (2) EMPLOYEE REPRESENTATIVE CONTRIBU-
13 TION.—Section 3211 of such Code is amended—

14 (A) by redesignating subsection (c) as sub-
15 section (d); and

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

18 “(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

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

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

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

7 (A) by redesignating subsection (c) as sub-
8 section (d); and

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

11 “(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

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

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

22 (c) CONFORMING AMENDMENTS.—

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

25 (A) in paragraph (1)—

1 (i) by inserting “, section 3101(c),”
2 after “by section 3101(a)”; and

3 (ii) by striking “both” and inserting
4 “each”; and

5 (B) in paragraph (2), by inserting “or
6 3101(c)” after “3101(a)” each place it appears.

7 (2) Section 15(a) of the Railroad Retirement
8 Act of 1974 (45 U.S.C. 231n(a)) is amended by in-
9 serting “(other than sections 3201(c), 3211(c), and
10 3221(c))” before the period at the end.

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

14 **SEC. 7. REGULATIONS.**

15 The Commissioner, in consultation with the Secretary
16 of Labor, shall prescribe regulations necessary to carry out
17 this Act. In developing such regulations, the Commissioner
18 shall consider the input from a volunteer advisory body
19 comprised of not more than 15 individuals, including ex-
20 perts in the relevant subject matter and officials charged
21 with implementing State paid family and medical leave in-
22 surance programs. The Commissioner shall take such pro-
23 grams into account when proposing regulations. Such indi-
24 viduals shall be appointed as follows:

1 (1) Five individuals to be appointed by the
2 President.

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

5 (3) Two individuals to be appointed by the mi-
6 nority leader of the Senate.

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

9 (5) Two individuals to be appointed by the mi-
10 nority leader of the House of Representatives.

11 **SEC. 8. GAO STUDY.**

12 As soon as practicable after calendar year 2024, the
13 Comptroller General shall submit to Congress a report on
14 family and medical leave insurance benefits paid under
15 section 4 for any month during the 1-year period begin-
16 ning on January 1, 2024. The report shall include the fol-
17 lowing:

18 (1) An identification of the total number of ap-
19 plications for such benefits filed for any month dur-
20 ing such 1-year period, and the average number of
21 days occurring in the period beginning on the date
22 on which such an application is received and ending
23 on the date on which the initial determination of eli-
24 gibility with respect to the application is made.

1 (2) An identification of the total number of re-
2 quests for review of an initial adverse determination
3 of eligibility for such benefits made during such 1-
4 year period, and the average number of days occur-
5 ring in the period beginning on the date on which
6 such review is requested and ending on the date on
7 which the final determination of eligibility with re-
8 spect to such review is made.

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

17 (4) An identification of the total number of re-
18 quests for review of an initial adverse determination
19 relating to a monthly benefit claim report for such
20 benefits made during such 1-year period, and the av-
21 erage number of days occurring in the period begin-
22 ning on the date on which such review is requested
23 and ending on the date on which the final deter-
24 mination of eligibility with respect to such review is
25 made.

1 (5) An identification of any excessive delay in
2 any of the periods described in paragraphs (1)
3 through (4), and a description of the causes for such
4 delay.

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