

2019 Regular Session

SENATE BILL NO. 186

BY SENATORS MORRELL, BISHOP, BOUDREAUX AND CARTER AND  
REPRESENTATIVES DUPLESSIS, JIMMY HARRIS, JAMES AND  
LEGER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

EMPLOYMENT. Creates the Louisiana Family and Medical Leave Benefits Act. (See Act)

AN ACT

To amend and reenact R.S. 44:4.1(B)(12) and to enact Chapter 6-B of Title 23 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 23:671 through 688, relative to family and medical leave benefits; to define certain terms; to provide for eligibility to receive and payment of benefits; to provide for the calculation and duration of benefits; to provide for leave and protection for eligible employees receiving benefits; to prohibit discrimination; to provide for coordination of benefits; to provide for enforcement; to provide for elective coverage by self-employed individuals; to provide for administration of the program; to create a special fund in the treasury; to provide for civil penalties for violations; to provide for legislative oversight; to provide for public outreach; to provide for the sharing of technology; to provide for confidentiality of records and an exception to the public records law; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 6-B of Title 23 of the Louisiana Revised Statutes of 1950, comprised of R.S. 23:671 through 688, is hereby enacted to read as follows:

**CHAPTER 6-B. FAMILY AND MEDICAL LEAVE BENEFITS**

1           **§671. Title**

2                   **This Chapter shall be cited as the "Louisiana Family and Medical Leave**  
3           **Benefits Act"**.

4           **§672. Definitions**

5                   **As used in this Chapter, the following terms shall have the definitions**  
6           **ascribed in this Section unless the context indicates otherwise:**

7                   **(1) "Application year" means the twelve-month period beginning on the**  
8           **first day of the calendar week in which an individual files an application for**  
9           **family and medical leave benefits.**

10                  **(2) "Commission" means the Louisiana Workforce Commission, or its**  
11           **successor.**

12                  **(3)(a) "Covered individual" means any individual who performs services**  
13           **for compensation or under any written or oral contract for hire, whether the**  
14           **contract is expressed or implied, and who satisfies all of the following criteria:**

15                   **(i) The individual's compensation is subject to withholding payroll taxes**  
16           **for unemployment compensation benefits and the individual has worked the**  
17           **length of time necessary to be entitled to receive unemployment compensation**  
18           **benefits.**

19                   **(ii) The individual is employed on a part-time basis and has been**  
20           **employed and received compensation for a minimum of eight hundred twenty**  
21           **hours in the last five calendar quarters.**

22                   **(iii) The individual has been employed and for whom monies have been**  
23           **paid into the Louisiana Family and Medical Leave Account Fund for the base**  
24           **period.**

25                   **(iv) The individual satisfies the eligibility requirements for benefits as**  
26           **provided in this Chapter.**

27                   **(b) The term "covered individual" shall not include an individual who**  
28           **has been and will continue to be free from any control or direction over the**  
29           **performance of his or her services, whose service rendered is outside the usual**

1 course of the business for which the service is performed or is performed  
2 outside all the places of business of the enterprise for which the service is  
3 performed, and the individual is customarily engaged in an independently  
4 established trade, occupation, profession, or business.

5 (4) "Employer" is as defined in R.S. 23:1472(11) except that the term  
6 "employer" shall not include any of the following:

7 (a) A self-employed individual who does not elect coverage under this  
8 Chapter.

9 (b) Any agency, board, committee, department, division, commission,  
10 office, or other organizational unit of the state.

11 (c) Any local governmental unit or political subdivision of the state.

12 (d) Any individual, company, or other entity that employs nineteen or  
13 fewer employees unless the employees agree to pay their portion of the premium  
14 for benefits.

15 (5) "Family and medical leave benefits" means the benefits provided in  
16 this Chapter.

17 (6) "Family member" means any of the following individuals:

18 (a) The biological, adopted, or foster child, stepchild, legal ward, or child  
19 to whom a covered individual stands *in loco parentis*.

20 (b) The biological, foster, stepparent, or adoptive parent, or legal  
21 guardian of a covered individual or his or her spouse or a person who stood *in*  
22 *loco parentis* when the covered individual or his or her spouse was a minor  
23 child.

24 (c) A person to whom a covered individual is legally married under the  
25 laws of this state.

26 (d) A grandparent or stepgrandparent of a covered individual or his or  
27 her spouse.

28 (e) A grandchild or stepgrandchild of a covered individual or his or her  
29 spouse.

1                    **(f) A biological, foster, or adopted sibling, or the spouse of the sibling of**  
2                    **a covered individual.**

3                    **(7) "Federal Family Medical Leave Act" means that federal law known**  
4                    **as the "Family Medical Leave Act of 1993", 29 U.S.C. 2601 et seq.**

5                    **(8) "Fund" means the Louisiana Family and Medical Leave Account**  
6                    **Fund created under the provisions of this Chapter.**

7                    **(9) "Qualifying military exigency leave" means leave for the family**  
8                    **member of a military service member for any of the following reasons:**

9                    **(a) Leave needed because of a notice of seven days or fewer before**  
10                   **deployment of the service member.**

11                   **(b) Leave to attend military events and related activities of the service**  
12                   **member.**

13                   **(c) Leave to attend child care and school activities if the leave is directly**  
14                   **or indirectly required due to the active duty call or active duty status of a family**  
15                   **member.**

16                   **(d) Leave to make financial and legal arrangements due to the service**  
17                   **member's absence.**

18                   **(e) Leave to attend counseling provided by someone other than a**  
19                   **healthcare provider if the need for counseling arises from the active duty or a**  
20                   **call to active duty status of a service member.**

21                   **(f) Leave to spend time with a service member who is on short-term,**  
22                   **temporary rest and recuperation leave during his or her period of deployment.**  
23                   **The covered individual may take up to five days of leave for each instance of**  
24                   **rest and recuperation.**

25                   **(g) Leave to attend post-deployment activities of the service member.**

26                   **(h) Any leave related to issues that arise out of active duty or a call to**  
27                   **active duty that the employer and covered individual agree will be covered.**

28                   **(10) "Secretary" means the secretary of the Louisiana Workforce**  
29                   **Commission, or its successor.**

1           **(1) "Serious health condition" means an illness, injury, impairment,**  
2           **pregnancy, recuperation from childbirth, including any impairment or injury**  
3           **related to or resulting from domestic abuse, sexual abuse, stalking, or any**  
4           **physical or mental condition that involves inpatient care in a hospital, hospice,**  
5           **or residential medical care facility or continuing treatment by a healthcare**  
6           **provider, and which injury is not eligible for workers' compensation benefits as**  
7           **provided in Chapter 10 of this Title.**

8           **§673. Eligibility for benefits**

9           **A. Beginning one year after the effective date of this Chapter, family and**  
10           **medical leave benefits shall be payable to an individual who is a "covered**  
11           **individual" and who meets any one of the following situations:**

12           **(1) Because of birth, adoption, or placement through foster care, the**  
13           **covered individual is caring for a new child during the first year after the birth,**  
14           **adoption, or placement.**

15           **(2) The covered individual is caring for a family member with a serious**  
16           **health condition that renders the family member unable to care for himself or**  
17           **herself.**

18           **(3) The covered individual has a serious health condition that makes him**  
19           **or her unable to perform the functions of his or her position of employment.**

20           **(4) The covered individual is caring for a military service member who**  
21           **is the covered individual's family member.**

22           **(5) The leave for the covered individual is "qualifying military exigency**  
23           **leave".**

24           **B. Benefits are only payable to a covered individual who has been**  
25           **employed and for whom monies have been paid into the Louisiana Family and**  
26           **Medical Leave Account Fund for a base period of not less than four quarters or**  
27           **the individual has been employed on a part-time basis, been employed, and**  
28           **received compensation for a minimum of eight hundred twenty hours in the last**  
29           **five calendar quarters. For purposes of this Section, the calculation of the base**

1 period and the calculation of quarters shall be the same method provided for  
2 in Chapter 11 of this Title.

3 §674. Duration of benefits

4 A. The maximum number of weeks for which benefits provided in this  
5 Chapter are payable in an application year is twelve weeks.

6 B.(1) Benefits are not payable for the first five consecutive calendar days  
7 in an application year that a covered individual is eligible for benefits.

8 (2) If the covered individual uses ten or more days of paid family and  
9 medical leave benefits in an application year, the covered individual shall be  
10 paid for the five-day waiting period. This five-day waiting period shall only  
11 occur in an application year. Employers shall not require a covered individual  
12 to use accrued vacation or sick leave during the waiting period.

13 C. The first payment of benefits shall be made to a covered individual  
14 within two weeks after the claim is filed and subsequent payments shall be made  
15 twice a month.

16 §675. Amount of benefits

17 The amount of family and medical leave benefits provided in this  
18 Chapter shall be determined as follows:

19 (1) The weekly benefit shall be determined and paid pursuant to rules  
20 and regulations adopted by the commission which rules and regulations shall  
21 include the following items or parameters provided in this Paragraph:

22 (a) Benefits shall be based on the individual's wage in relation to the  
23 average weekly wage established for workers' compensation claims.

24 (b) An eligible individual shall receive ninety percent of his or her  
25 average weekly wage which is less than fifty percent of the average weekly wage  
26 and fifty percent of his or her average wages that equal or exceed fifty percent  
27 of the average weekly wage up to a maximum weekly benefit of the average  
28 weekly wage as calculated by the secretary.

29 (2) Benefits shall not be paid for less than one day or for less than eight

1 consecutive hours of family and medical leave in any one work week.

2 §676. Leave and employment protection

3 A. After a period in which a covered individual receives family and  
4 medical leave benefits or earns waiting period credits under R.S. 23:674, the  
5 covered individual is entitled to be restored to an equivalent position of  
6 employment in the same manner as one entitled to leave under the federal  
7 Family and Medical Leave Act, with the employer from whom leave was taken  
8 under the conditions described in Subsection B of this Section, provided the  
9 covered individual satisfies the standards for reinstatement.

10 B. The covered individual entitled to family and medical leave benefits  
11 shall have his or her employment benefits continued in a manner identical to  
12 that required under the federal Family and Medical Leave Act for the time that  
13 the covered individual is absent from work and receiving family and medical  
14 leave benefits.

15 C. This Section shall be enforced as provided in R.S. 23:679.

16 §677. Discrimination prohibited

17 No employer shall discharge, expel, demote, or otherwise discriminate  
18 or take adverse employment action against a covered individual because the  
19 individual has filed, applied for, or used benefits provided under this Chapter,  
20 or communicated to the employer an intent to file a claim, a complaint, or an  
21 appeal, or has testified or is about to testify, or has assisted in any proceeding,  
22 under this Chapter, at any time, including during the waiting period and the  
23 period in which the covered individual receives family and medical leave  
24 benefits under this Chapter. This Section shall be enforced as provided in R.S.  
25 23:679.

26 §678. Coordination of benefits

27 A. If time taken in which compensation is received pursuant to this  
28 Chapter also qualifies as a reason for leave under the federal Family and  
29 Medical Leave Act, the time that benefits are paid pursuant to this Chapter

1 shall run concurrently with leave taken under the federal Family and Medical  
2 Leave Act.

3 B. An employer may require that payments made pursuant to this  
4 Chapter be made concurrently or otherwise coordinated with payments made  
5 or leave allowed under the terms of disability or family care leave under a  
6 collective bargaining agreement or employer policy. The employer shall give  
7 individuals in its employ written notice of this requirement.

8 C. The provisions of this Chapter shall not be construed to diminish an  
9 employer's obligation to comply with a collective bargaining agreement or  
10 employer policy, as applicable, that provides greater leave time for any of the  
11 items in R.S. 23:673. An individual's right to leave under this Chapter shall not  
12 be diminished by a collective bargaining agreement entered into or renewed, or  
13 an employer policy adopted or retained, after the effective date of this Chapter.

14 D. Any agreement by a covered individual to waive his or her rights  
15 under this Chapter shall be null and void and against public policy.

16 §679. Enforcement

17 A. Any covered individual who is denied restoration to an equivalent  
18 position, or discriminated against in violation of the provisions of this Chapter  
19 shall be entitled to recover a civil penalty payable from the employer of not  
20 more than two hundred dollars per violation as provided in rules promulgated  
21 by the commission. Each day a violation occurs shall constitute a separate  
22 offense. The provisions of this Section shall not create or be construed to create  
23 a new private right of action that is not otherwise available to the covered  
24 individual.

25 B. The penalty authorized in this Section shall not exceed the total  
26 compensation the covered individual would have received had he or she not  
27 been on family or medical leave.

28 §680. Erroneous payments and disqualification for benefits

29 A. A covered individual shall be disqualified from benefits provided in



1 this Chapter for one year if the individual willfully makes a false statement or  
2 misrepresentation regarding a material fact, or willfully fails to report a  
3 material fact, in order to receive benefits under this Chapter.

4 B. If family and medical leave benefits are paid erroneously or as a result  
5 of willful misrepresentation, or if a claim for family and medical leave benefits  
6 is rejected after benefits are paid, the commission may seek repayment of  
7 benefits. The secretary may waive, in whole or in part, the amount of any  
8 payment to be made if the recovery would be contrary to equity and good  
9 conscience.

10 §681. Elective coverage; self-employed

11 A. A self-employed person may elect coverage under this Chapter for an  
12 initial period of not less than three years or a subsequent period of not less than  
13 one year immediately following another period of coverage. The self-employed  
14 person shall file a written notice of election to be covered with the secretary on  
15 a form promulgated by the commission. This election by a self-employed person  
16 shall become effective on the date of filing the written notice with the secretary.

17 B. A self-employed person who has elected coverage may withdraw from  
18 coverage within thirty days after the end of the three-year period of coverage,  
19 or at other times as the commission may prescribe by rule, by filing written  
20 notice with the secretary, and the withdrawal shall take effect not sooner than  
21 thirty days after filing this written notice with the secretary.

22 §682. Administration of the program

23 A. The commission shall establish and administer a family and medical  
24 leave program and pay benefits as specified in this Chapter.

25 B. The commission shall promulgate rules and forms for filing claims for  
26 benefits under this Chapter pursuant to the Administrative Procedure Act.

27 C. The commission shall notify the employer within five business days  
28 of a claim being filed pursuant to this Chapter. The commission shall use  
29 information sharing and integration technology to facilitate the disclosure of

1 relevant information or records so long as the covered individual gives written  
2 consent to the disclosure as required by law.

3 D.(1) Except as provided in Paragraph (2) of this Subsection,  
4 information contained in the files and records pertaining to an individual under  
5 this Chapter shall be confidential and not open to public inspection, as provided  
6 for in R.S. 44:4.1(B)(12).

7 (2) Information contained in the files and records pertaining to a covered  
8 individual under this Chapter shall be available to any of the following:

9 (a) Public employees in the performance of their official duties.

10 (b) The covered individual.

11 (c) The authorized representative of the covered individual may review  
12 records or receive specific information from the records only upon written  
13 authorization from the covered individual to release his or her records.

14 §683. Federal income tax

15 If the Internal Revenue Service determines that family and medical leave  
16 benefits payable under this Chapter are subject to federal income tax, the  
17 commission shall advise a covered individual filing a new claim for family and  
18 medical leave benefits, at the time of filing the claim, of each of the following  
19 items:

20 (1) The Internal Revenue Service has determined that benefits are  
21 subject to federal income tax.

22 (2) Requirements exist pertaining to estimated tax payments.

23 (3) The covered individual may have federal income tax deducted and  
24 withheld from his or her benefits at the amount specified in the Internal  
25 Revenue Code.

26 (4) The covered individual may change a previously elected withholding  
27 status.

28 (5) Amounts deducted and withheld from benefits shall remain in the  
29 family and medical leave account until transferred to the federal taxing

1 authority as payment of income tax.

2 (6) The secretary shall follow all procedures specified by the Internal  
3 Revenue Service pertaining to the deduction and withholding of income tax.

4 §684. Intermittent leave schedule

5 A. A covered individual may take family and medical leave provided in  
6 this Chapter on an intermittent leave schedule, except that the covered  
7 individual is not entitled to an intermittent leave schedule for a period exceeding  
8 twenty-four consecutive weeks unless it is determined to be medically necessary.

9 B. A covered individual shall make a reasonable effort to schedule  
10 intermittent leave so as not to unduly disrupt the operations of the employer.  
11 The covered individual shall provide the employer with prior notice of the care,  
12 medical treatment, or continuing supervision by a healthcare provider  
13 necessary due to a serious health condition of a family member, in a manner  
14 which is reasonable and practicable. Leave taken on an intermittent leave  
15 schedule shall not result in a reduction of the total amount of leave to which a  
16 covered individual is entitled.

17 §685. Legislative oversight; reports

18 A. Beginning one year after the effective date of this Chapter, the  
19 commission shall report quarterly to the Senate Committee on Labor and  
20 Industrial Relations and the House of Representatives Committee on Labor and  
21 Industrial Relations which committees shall have legislative oversight of the  
22 program.

23 B. The report required in this Section shall advise the legislature of  
24 projected and actual program participation, premium rates, fund balances, and  
25 outreach efforts by the department.

26 §686. Public outreach

27 A. The commission shall conduct a public education campaign to inform  
28 workers and employers regarding the availability of paid family and medical  
29 leave benefits.

1                    **B. The commission may use no more than one-half of one percent of the**  
2                    **funds available in the family and medical leave program in a given year to pay**  
3                    **for the public education program. Outreach information shall be available in**  
4                    **English and other languages spoken by more than five percent of the state's**  
5                    **population as that group's primary language.**

6                    **§687. Sharing technology**

7                    **The commission may use state data collection and technology to the**  
8                    **extent possible in order to keep the cost of the program down and to integrate**  
9                    **the program with existing state policies and programs.**

10                  **§688. Louisiana Family and Medical Leave Account Fund; creation;**  
11                  **administration**

12                  **A. There is hereby created in the state treasury a special fund to be**  
13                  **known as the "Louisiana Family and Medical Leave Account Fund" (the Fund).**  
14                  **All monies that are deposited or paid into the Fund shall be appropriated and**  
15                  **made available to the secretary and shall be expended solely for the purpose of**  
16                  **defraying the cost of the administration of this Chapter and the payment of**  
17                  **benefits authorized in this Chapter.**

18                  **B. The Fund may receive any and all grants, premiums, or**  
19                  **appropriations from the state or the United States, any federal agency, or from**  
20                  **any other source, to carry out the provisions of this Chapter.**

21                  **C. After compliance with the requirements of Article VII, Section 9 of**  
22                  **the Constitution of Louisiana relative to the Bond Security and Redemption**  
23                  **fund, all monies in the Fund shall be deposited, administered, and disbursed in**  
24                  **the same manner and under the same conditions and requirements as provided**  
25                  **by law for other special funds in the state treasury, except that monies in the**  
26                  **Fund shall not be commingled with other state funds, but shall be maintained**  
27                  **in a separate account in the state treasury. The state treasurer shall, as provided**  
28                  **by law, require collateral security from a depository bank in the full amount of**  
29                  **monies on deposit from the "Louisiana Family and Medical Leave Account**

1           Fund" and the depository bank may pledge collateral security which collateral  
 2           security shall be kept separate and distinct at all times from any collateral taken  
 3           by the state treasury for other state funds. This collateral security shall be  
 4           pledged at an amount not to exceed face value. Any balances in the Fund shall  
 5           not lapse at any time, but shall be continuously available to the administrator  
 6           for expenditure consistent with this Chapter.

7           Section 2. R.S. 44:4.1(B)(12) is hereby amended and reenacted to read as follows:

8           §4.1. Exceptions

9   \*       \*       \*

10                 B. The legislature further recognizes that there exist exceptions, exemptions,  
 11                 and limitations to the laws pertaining to public records throughout the revised  
 12                 statutes and codes of this state. Therefore, the following exceptions, exemptions, and  
 13                 limitations are hereby continued in effect by incorporation into this Chapter by  
 14                 citation:

15   \*       \*       \*

16                         (12) R.S. 23:~~682~~, 1177, 1197, 1200.7, 1291, 1292, 1293, 1306, 1660, 1671

17   \*       \*       \*

18           Section 3. The Louisiana Legislature finds that Louisiana law has historically  
 19           provided two wage replacement programs to provide income security to employees who find  
 20           themselves unable to work. First, the unemployment insurance benefit program was enacted  
 21           for workers who are laid off from their jobs. Second, the workers' compensation benefits  
 22           system was enacted to cover workers who are injured in the course and scope of  
 23           employment. Historically, Louisiana has not provided for all other hardships which could  
 24           render an employee unable to work through no fault of their own; namely those hardships  
 25           related to an employee's serious sickness or illness, hardships resulting from a family  
 26           member serving in the military, or hardships related to any other family emergency which  
 27           would lead to a job loss. The purpose of this Act is to provide for employment benefits  
 28           related to all other hardships which an employee may encounter other than job layoffs and  
 29           workers' compensation injuries so as to insure that no worker is involuntarily unemployed

1 due to any fault other than their own.

2 Section 4. All rules and forms promulgated pursuant to R.S. 23:682 shall be  
3 completed no later than one year after the effective date of this Act. Beginning one year after  
4 the effective date of this Act, applications may be taken pursuant and benefits made payable  
5 pursuant to R.S. 23:673.

6 Section 5. The provisions of this Chapter shall not take effect until a bill which  
7 originates in the House of Representatives is enacted and becomes effective which provides  
8 that monies from family and medical leave premium payments be deposited into the  
9 Louisiana Family and Medical Leave Account Fund as provided in this Section, and that is  
10 substantially similar to the following:

11 (1) Premium payments shall be paid by employers and employees in an amount equal  
12 to sixty-four hundredths of one percent of the maximum amount of wages subject to the  
13 federal Social Security Old-Age, Survivors, and Disability Insurance Tax.

14 (2) Premium payments shall be divided between the employer and employee with  
15 forty-five percent of the premium being paid by the employer and fifty-five percent of the  
16 premium being paid by the employee.

17 Section 6. This Act shall become effective on August 1, 2019; if vetoed by the  
18 governor and subsequently approved by the legislature, this Act shall become effective on  
19 August 1, 2019, or on the day following such approval by the legislature, whichever is later.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Thomas L. Tyler.

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DIGEST

SB 186 Original

2019 Regular Session

Morrell

Proposed law creates the Louisiana Family and Medical Leave Benefits Act, implemented through the Louisiana Workforce Commission (Commission), to protect employees who need to take leave from their job due to certain family or medical circumstances.

Proposed law defines "covered individual" as any individual who performs services for compensation or under any written or oral contract for hire, whether the contract is express or implied, and who satisfies all of the following criteria:

- (1) The individual's compensation is subject to withholding payroll taxes for unemployment compensation benefits and the individual has worked the length of time necessary to be entitled to receive unemployment compensation benefits.
- (2) The individual has been employed on a part-time basis and has been employed and

received compensation for a minimum of 820 hours in the last five calendar quarters.

- (3) The individual has been employed and for whom monies have been paid into the Louisiana Family and Medical Leave Account Fund.
- (4) The individual satisfies the eligibility requirements for benefits as in proposed law.

Provides that the term "covered individual" shall not include an individual who has been and will continue to be free from any control or direction over the performance of his or her services, whose service rendered is outside the usual course of the business for which service is performed or is performed outside all the places of business of the enterprise for which the service is performed, and the individual is customarily engaged in an independently established trade, occupation, profession, or business.

Proposed law defines "employer" as defined in the Louisiana Employment Security Law for unemployment compensation except the term "employer" does not include for any of the following:

- (1) A self-employed individual who does not elect coverage under proposed law.
- (2) Any agency, board, committee, department, division, commission, office, or other organizational unit of the state.
- (3) Any local governmental unit or political subdivision of the state.
- (4) Any individual, company, or other entity that employs nineteen or less employees unless the employees agree to pay their portion of the premium for benefits..

Defines "family member" as any of the following individuals:

- (1) The biological, adopted, or foster child, step-child, legal ward, or a child to whom a covered individual stands *in loco parentis*.
- (2) The biological, foster, step-parent, or adoptive parent, or legal guardian of a covered individual or his or her spouse or a person who stood *in loco parentis* when the covered individual or his or her spouse was a minor child.
- (3) The person to whom a covered individual is legally married under the laws of this state.
- (4) The grandparent or step-grandparent of a covered individual or his or her spouse.
- (5) The grandchild or step-grandchild of a covered individual or his or her spouse.
- (6) The biological, foster, or adopted sibling, or the spouse of the sibling of a covered individual.

Proposed law defines "qualifying military exigency leave" as leave for the family member of a military service member for any of the following reasons:

- (1) Leave needed because of a notice of seven days or less before deployment of the service member.
- (2) Leave to attend military events and related activities of the service member.
- (3) Leave to attend child care and school activities if the leave is required due, indirectly or directly, to the active duty call or active duty status of a family member.

- (4) Leave to make financial and legal arrangements due to the service member's absence.
- (5) Leave to attend counseling provided by someone other than a healthcare provider, if the need for counseling arises from the active duty or a call to active duty status of a military service member.
- (6) Leave to spend time with a service member who is on short-term, temporary rest and recuperation leave during the period of deployment. The eligible employee may take up to five days of leave for each instance of rest and recuperation.
- (7) Leave to attend post deployment activities of the service member.
- (8) Any leave related to issues that arise out of active duty or a call to active duty that the employer and covered individual agree will be covered.

Defines "serious health condition" as an illness, injury, impairment, pregnancy, recuperation from childbirth, including any impairment or injury related to or resulting from domestic abuse, sexual abuse, stalking, or any physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility or continuing treatment by a healthcare provider, and which injury is not eligible for workers' compensation benefits.

Proposed law provides that a covered individual is eligible to receive family and medical leave benefits under any one of the following circumstances:

- (1) Because of the birth, adoption, or placement through foster care, the individual is caring for a new child during the first year after the birth, adoption, or placement.
- (2) The individual is caring for a family member with a serious health condition.
- (3) The individual has a serious health condition that makes him or her unable to perform the functions of his or her position of employment.
- (4) The individual is caring for a military service member who is the covered individual's family member.
- (5) The leave for the individual is "qualifying military exigency leave".

Provides that benefits are only payable to a covered individual who has been employed and for whom monies have been paid into the Louisiana Family and Medical Leave Account Fund for no less than a base period of not less than four quarters unless the individual has been employed on a part-time basis and been employed and received compensation for a minimum of 820 hours in the last five calendar quarters. Requires that calculation of the base period and the calculation of quarters be the same method used in computing unemployment compensation benefits provided in Chapter 11 of this Title.

Proposed law, relative to the duration of benefits, provides for a twelve-week maximum in an application year. Provides that benefits are not payable for the first five consecutive calendar days in an application year. Provides that if the individual uses 10 or more days of paid leave in an application year, then he or she shall be paid for the five-day waiting period. Prohibits employers from forcing a covered individual to use accrued vacation or sick leave during the five-day waiting period. Requires that first payment of benefits be made within two weeks after a claim for benefits is filed and that subsequent payments be made twice a month.

Proposed law provides that leave benefits be determined by rules and regulations adopted by the commission and that benefits not be paid for less than one day or eight consecutive hours in any one work week. Provides that rules and regulations include the following items or parameters:



- (a) Benefits be based on the individual's wage in relation to the average weekly wage established for workers' compensation claims.
- (b) Requires that the individual receive 90% of his average weekly wage that is less than 50% of the average weekly wage and that 50% of wages that equal or exceed 50% of the average weekly wage up to a maximum weekly benefit of the average weekly wage as calculated by the secretary.

Proposed law provides that a covered individual, upon completion of benefits, is entitled to be restored to an equivalent position of employment in the same manner as an employee entitled to leave under the federal Family and Medical Leave Act.

Proposed law prohibits discrimination against an employee who files or receives family or medical leave benefits.

Provides that any covered individual who is denied benefits, job restoration, or discriminated against in violation of proposed law is entitled to recover a civil penalty payable from the employer of not more than \$200 per violation as provided in rules promulgated by the commission. Each day a violation continues shall constitute a separate offense. Proposed law does not create or be construed to create a new private right of action that is not otherwise available to a covered individual. Provides that this penalty not exceed the total compensation the covered individual would have received had he or she not been on family or medical leave.

Provides for coordination of benefits and that compensation received pursuant to proposed law run concurrently with that taken under the federal Family Medical Leave Act. Provides that the employer may require that state family and medical leave payments be made concurrently or otherwise coordinated with payments made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy.

Provides that proposed law not be construed to diminish an employer's obligation to comply with a collective bargaining agreement or employer policy, as applicable, that provides greater leave for any of the items eligible for benefits.

Provides that any agreement involving a covered individual in which he or she waives his or her rights under proposed law is null and void and against public policy.

Provides for disqualification from benefits if the covered individual willfully makes a false statement or misrepresentation regarding a material fact, or willfully fails to report a material fact, in order to receive benefits under proposed law. Authorizes the commission to seek repayment of benefits paid erroneously or as a result of willful misrepresentation, or if a claim for leave benefits is rejected after benefits are paid and authorizes the secretary to waive, in whole or in part, the amount of any payment to be made if the recovery would be contrary to equity and good conscience.

Proposed law authorizes a self-employed person to elect coverage under proposed law for an initial period of not less than three years or a subsequent period of not less than one year immediately following another period of coverage. Authorizes the self-employed person who has elected coverage to withdraw from coverage within 30 days after the end of the three-year period of coverage, or at other times as the commission may prescribe by rule.

Proposed law authorizes a covered individual to take family and medical leave provided in proposed law on an intermittent leave schedule not exceeding 24 consecutive weeks unless it is determined to be medically necessary. Requires that a covered individual make reasonable efforts to schedule intermittent leave so as not to unduly disrupt the operations of the employer. Requires that the covered individual provide the employer with prior written notice of the care, medical treatment, or continuing supervision by a healthcare

provider necessary due to a serious health condition of a family member. Provides that leave on an intermittent leave schedule not result in a reduction of the total amount of leave to which a covered individual is entitled.

Proposed law requires that the commission conduct a public education campaign to inform workers and employers regarding the availability of paid family and medical leave benefits and requires that outreach information be available in English and other languages spoken by more than five percent of the state's population as that group's primary language.

Proposed law encourages the commission to use state data collection and technology to the extent possible in order to keep the cost of the program down and to integrate the program with existing state policies.

Provides for quarterly reports to the Senate Committee on Labor and Industrial Relations and the House of Representatives Committee on Labor and Industrial Relations that advise the legislature of projected and actual program participation, funding, fund balances, and outreach efforts by the commission.

Proposed law creates the "Louisiana Family and Medical Leave Account Fund" (Fund) as a special fund in the state treasury and provides for deposit of monies into the Fund and provides for the investment and administration of monies in the Fund by the state treasurer.

Proposed law provides for confidentiality of records and information as to the administration of the program by the commission and that they are exempt from the Public Records Law. Provides for exceptions for certain public employees in performance of their official duties, the covered individual, and his or her authorized representative.

Proposed law is not effective until a bill which originates in the House of Representatives is enacted and becomes effective and which provides that monies from family and medical leave premium payments be deposited into the Louisiana Family and Medical Leave Account Fund and provides for premium payment by employers and employees equal to .064% of the maximum amount of wages subject to the federal Social Security Old-Age, Survivors, and Disability Insurance Tax and that premiums be split between the employer (45%) and employee (55%), or for premium payments and a premium distribution that is substantially similar.

Effective August 1, 2019.

(Amends R.S. 44:4.1(B)(12); adds R.S. 23:671-688)