

111TH CONGRESS
1ST SESSION

H. R. 1723

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 2009

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Family Leave Insur-
5 ance Act of 2009”.

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

7 Congress finds the following:

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

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

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

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

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

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

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

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

19 (6) A 2008 Harvard Law study on foreclosure
20 trends found that 49 percent of all respondents'
21 foreclosures were caused, at least in part, by a med-
22 ical crisis—including loss of work due to illness or
23 injury, unmanageable medical bills, or caring for an
24 ill family member. The State of California, where
25 workers have access to paid family medical leave

1 benefits, had a lower rate of foreclosure caused by
2 caring for a sick household member.

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

9 (8) According to the Bureau of the Census and
10 the Bureau of Labor Statistics, 56 percent of women
11 with children under age 1 are in the labor force,
12 while 71 percent of all women with dependent chil-
13 dren under age 18 are in the labor force.

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

17 **SEC. 3. GENERAL DEFINITIONS.**

18 (a) IN GENERAL.—The definitions provided by sec-
19 tion 101 of the Family and Medical Leave Act of 1993
20 (29 U.S.C. 2611), other than the definitions of the terms
21 “son or daughter”, shall apply for purposes of this Act.

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

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

4 (2) COVERED AGENCY.—The term “covered
5 agency”, when used with respect to a State, means
6 the State agency referred to in paragraph (1) of sec-
7 tion 102(b), or the Commissioner of Social Security
8 if the Commissioner is carrying out the State Family
9 and Medical Insurance Program in the State under
10 paragraph (2) of such section.

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

13 (A) the person recognized as the domestic
14 partner of the employee under any domestic
15 partner registry or civil union laws of the State
16 or political subdivision of a State where the em-
17 ployee resides;

18 (B) a same-sex spouse as determined
19 under the applicable law of the State or polit-
20 ical subdivision of a State where the employee
21 resides; or

22 (C) in the case of an unmarried employee
23 who lives in a State where a person cannot
24 marry a person of the same sex under the laws
25 of the State, a single, unmarried adult person

1 of the same sex as the employee who is in a
2 committed, intimate relationship with the em-
3 ployee, is not a domestic partner to any other
4 person, and who is designated to the employer
5 by such employee as that employee’s domestic
6 partner.

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

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

13 (6) SON OR DAUGHTER.—The term “son or
14 daughter” means a biological, adopted, or foster
15 child, a stepchild, a legal ward, a child of a person’s
16 domestic partner, or a child of a person standing in
17 loco parentis, who is—

18 (A) under 18 years of age; or

19 (B) 18 years of age or older and incapable
20 of self-care because of a mental or physical dis-
21 ability.

22 **TITLE I—FAMILY AND MEDICAL** 23 **LEAVE INSURANCE PROGRAM**

24 **SEC. 101. PROGRAM DEFINITIONS.**

25 In this title:

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

3 (A) An employee who—

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

8 (ii) has been employed by the em-
9 ployer with respect to whom paid leave is
10 requested for at least 625 hours of service
11 during the previous 6 months.

12 (B) An employee—

13 (i) of a small employer that has elect-
14 ed to participate in the Program under
15 this title in accordance with such regula-
16 tions as the Secretary shall prescribe; and

17 (ii) who meets the requirements of
18 subparagraph (A), but is not an employee
19 of the Federal Government.

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

21 (i) elected to participate in the Pro-
22 gram under this title in accordance with
23 such regulations as the Secretary shall pre-
24 scribe;

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

5 (iii) paid premiums under section
6 1401(c) of the Internal Revenue Code of
7 1986 with respect to such self-employment
8 income.

9 (2) EMPLOYER-RELATED DEFINITIONS.—

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

12 (i) that is—

13 (I) an employer;

14 (II) a small employer that has
15 elected to participate in the Program
16 under this title in accordance with
17 such regulations as the Secretary shall
18 prescribe; or

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

21 (ii) that is not a voluntary plan em-
22 ployer.

23 (B) EMPLOYER.—The term “employer”
24 shall have the meaning given that term in sec-
25 tion 101(4) of the Family and Medical Leave

1 Act of 1993 (29 U.S.C. 2611(4)), except that
2 such term shall include any person who employs
3 2 or more employees for each working day dur-
4 ing each of 20 or more calendar workweeks in
5 the current or preceding calendar year.

6 (C) SMALL EMPLOYER.—The term “small
7 employer”—

8 (i) means any person engaged in com-
9 merce or in any industry or activity affect-
10 ing commerce who employs not less than 2
11 and not more than 19 employees for each
12 working day during each of 20 or more
13 calendar workweeks in the current or pre-
14 ceding calendar year; and

15 (ii) includes—

16 (I) any person who acts, directly
17 or indirectly, in the interest of an em-
18 ployer described in clause (i) to any of
19 the employees of such employer;

20 (II) any successor in interest of
21 an employer described in clause (i);
22 and

23 (III) any public agency, as de-
24 fined in section 3(x) of the Fair Labor
25 Standards Act of 1938 (29 U.S.C.

1 203(x)) that is an employer described
2 in clause (i) but is not an entity of the
3 Federal Government.

4 (D) VOLUNTARY PLAN EMPLOYER.—The
5 term “voluntary plan employer” means an em-
6 ployer for which the Secretary has approved a
7 voluntary plan under section 104 for the period
8 involved.

9 (3) LEAVE BENEFIT.—The term “leave benefit”
10 means a family and medical leave insurance benefit
11 described in section 103.

12 (4) VOLUNTARY PAID BENEFIT.—The term
13 “voluntary paid benefit” means a family and medical
14 leave insurance benefit provided under a voluntary
15 plan approved under section 104 for the period in-
16 volved.

17 **SEC. 102. ESTABLISHMENT OF PROGRAM.**

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

20 (b) STATE PROGRAMS.—In carrying out the Federal
21 Program established under subsection (a), the Secretary
22 may—

23 (1) enter into a contract with a State under
24 which—

1 (A) the State agrees to establish, or ex-
2 pand a State program in effect at the date of
3 the enactment of this Act to include, a State
4 Family and Medical Insurance Program that
5 provides the benefits described in this title; and

6 (B) the Secretary agrees to instruct the
7 Managing Trustee of the Family and Medical
8 Leave Insurance Fund, established under sec-
9 tion 301, to provide the State funds for such
10 benefits from the Insurance Fund; or

11 (2) at the request of the Governor of a State,
12 enter into an interagency agreement with the Com-
13 missioner of Social Security under which—

14 (A) the Commissioner of Social Security
15 agrees to establish a State Family and Medical
16 Insurance Program in such State to provide the
17 benefits described in this title in such State;
18 and

19 (B) the Secretary agrees to instruct the
20 Managing Trustee of the Insurance Fund to
21 provide the Commissioner of Social Security
22 funds for such benefits from the Insurance
23 Fund.

24 (c) STATE APPLICATION.—To be eligible to receive
25 a contract under subsection (b)(1), a State shall submit

1 an application to the Secretary at such time, in such man-
2 ner, and containing such information as the Secretary may
3 require. At a minimum, the application shall include infor-
4 mation identifying the State agency to carry out the State
5 Family and Medical Insurance Program under subsection
6 (b)(1).

7 **SEC. 103. PROGRAM BENEFITS.**

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

13 (1) Because of the birth of a son or daughter
14 of the employee and in order to care for such son
15 or daughter.

16 (2) Because of the placement of a son or
17 daughter with the employee for adoption or foster
18 care.

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

23 (4) Because of a serious health condition that
24 makes the employee unable to perform the functions
25 of the position of such employee.

1 (5) Because of any qualifying exigency (as the
2 Secretary of Labor shall, by regulation, determine)
3 arising out of the fact that the spouse, or a son,
4 daughter, or parent of the employee is on active
5 duty (or has been notified of an impending call or
6 order to active duty) in the Armed Forces of the
7 United States in support of a contingency operation.

8 (6) In order to care for a child, parent, spouse,
9 domestic partner, grandchild, grandparent, sibling,
10 or next of kin of the employee who is a covered serv-
11 icemember as such term is defined in section
12 101(16) of the Family and Medical Leave Act of
13 1993 (29 U.S.C. 2611(16)).

14 (b) WAITING PERIOD.—During each 12-month pe-
15 riod described in subsection (a), each eligible employee
16 shall be subject to a waiting period of 5 workdays of leave
17 described in subsection (a) (but not more than 7 calendar
18 days), during which a leave benefit shall not be paid to
19 the employee. The waiting period shall not reduce the 12
20 workweeks of leave benefits available under subsection (a).

21 (c) BENEFIT AMOUNT.—

22 (1) IN GENERAL.—Subject to paragraph (2), an
23 eligible employee's leave benefit for any workday on
24 which the employee takes leave as described in sub-
25 section (a) shall be calculated as—

1 (A) in the case of an employee with an an-
2 nual income of not more than \$20,000, an
3 amount equal to 100 percent of that employee's
4 daily earnings;

5 (B) in the case of an employee with an an-
6 nual income of more than \$20,000 and not
7 more than \$30,000, an amount equal to the
8 greater of—

9 (i) 75 percent of that employee's daily
10 earnings; or

11 (ii) 100 percent of the daily earnings
12 of an employee with an annual income of
13 \$20,000;

14 (C) in the case of an employee with an an-
15 nual income of more than \$30,000 and not
16 more than \$60,000, an amount equal to the
17 greater of—

18 (i) 55 percent of that employee's daily
19 earnings; or

20 (ii) 75 percent of the daily earnings of
21 an employee with an annual income of
22 \$30,000;

23 (D) in the case of an employee with an an-
24 nual income of more than \$60,000 and not

1 more than \$97,000, an amount equal to the
2 greater of—

3 (i) 40 percent of that employee's daily
4 earnings; or

5 (ii) 55 percent of the daily earnings of
6 an employee with an annual income of
7 \$60,000; and

8 (E) in the case of an employee with an an-
9 nual income of more than \$97,000, an amount
10 equal to 40 percent of the daily earnings of an
11 employee with an annual income of \$97,000.

12 (2) INDEXING OF ANNUAL INCOME CAT-
13 EGORIES.—

14 (A) IN GENERAL.—The Secretary shall
15 index the annual income amounts specified in
16 paragraph (1) for each calendar year, using the
17 national average wage index, as determined
18 under section 209(k) of the Social Security Act
19 (42 U.S.C. 409(k)).

20 (B) PUBLICATION.—Not later than the
21 November 1 preceding each calendar year, the
22 Secretary shall publish in the Federal Register
23 the indexed amount determined under subpara-
24 graph (A) for that calendar year.

25 (d) APPLICATION.—

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

8 (2) IRREVOCABILITY FOR SELF-EMPLOYED IN-
9 DIVIDUALS.—An election by a self-employed indi-
10 vidual to participate in the Program shall be irrev-
11 ovable.

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

16 (A) A certification, submitted in a timely
17 manner, issued by the health care provider of
18 the eligible employee or of the child, spouse,
19 parent, domestic partner, grandchild, grand-
20 parent or sibling of the employee, as appro-
21 priate, and similar to the certification described
22 section 103(b) of the Family and Medical Leave
23 Act of 1993 (29 U.S.C. 2613(b)) in connection
24 with such leave.

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

10 (C) In any case in which the second opin-
11 ion described in subparagraph (B) differs from
12 the opinion in the original certification provided
13 under subparagraph (A), the covered agency
14 may require, at the expense of the agency, that
15 the employee obtain the opinion of a third
16 health care provider designated or approved
17 jointly by the agency and the employee con-
18 cerning the information certified under sub-
19 paragraph (A). The opinion of the third health
20 care provider concerning such information shall
21 be considered to be final and shall be binding
22 on the agency and the employee.

23 (e) PAYMENT OF BENEFITS.—

24 (1) PAYMENT FROM INSURANCE FUND.—Pay-
25 ments of benefits required to be made under this

1 section shall be made only from the Insurance Fund
2 established under section 301.

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

8 (A) the covered agency shall certify to the
9 Managing Trustee of the Board of Trustees of
10 the Insurance Fund the name and address of
11 the person entitled to receive such payment, the
12 amount of such payment, and the time at which
13 such payment shall be made;

14 (B) the Managing Trustee shall pay the
15 certified amount from the Insurance Fund to
16 the covered agency; and

17 (C) the covered agency shall make the pay-
18 ment to the person.

19 (3) REVIEW.—Any eligible employee dissatisfied
20 with any initial determination under this section
21 shall be entitled to reconsideration of the determina-
22 tion, and a hearing on the determination, by the
23 Secretary to the same extent as is provided in sec-
24 tion 205(b) of the Social Security Act (42 U.S.C.22
25 405(b)) and to judicial review of the final decision

1 after such hearing as is provided in section 205(g)
2 of the Social Security Act (42 U.S.C. 405(g)).

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

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

12 (A) the employee is receiving worker’s
13 compensation or compensation through unem-
14 ployment insurance in connection with the event
15 for which the employee is taking the leave; or

16 (B) the employee is receiving paid leave
17 benefits from an employer under a voluntary
18 employer plan approved under section 104.

19 (f) REGULATIONS.—The Secretary shall issue regula-
20 tions to carry out this section, including the determination
21 of benefits for leave taken intermittently or on a reduced
22 leave schedule, or for leave taken by a part-time, seasonal,
23 or intermittent employee.

1 **SEC. 104. VOLUNTARY EMPLOYER PLAN.**

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

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

12 (1) The rights afforded to the employees cov-
13 ered under the plan are equal to or greater than the
14 rights afforded through the Program.

15 (2) The plan has been made available to all of
16 the employees of the applicant employed in the
17 United States or to all employees at any 1 distinct,
18 separate establishment maintained by the applicant
19 in the United States.

20 (3) A majority of the employees of the employer
21 employed in the United States or a majority of the
22 employees employed at any one distinct, separate es-
23 tablishment maintained by the employer in the
24 United States have consented to the plan.

25 (4) The plan provides for insurance to be issued
26 by an admitted disability insurer approved by the

1 Secretary or equivalent insurance (which may be
2 self-insurance).

3 (5) The applicant has consented to the plan and
4 has agreed to make the premium contributions re-
5 quired, if any, and transmit the proceeds to the dis-
6 ability insurer, if any.

7 (6) The plan provides for the inclusion of future
8 employees.

9 (7)(A) The plan will be in effect for a period of
10 not less than 1 year and, thereafter, continuously
11 unless the Secretary finds that the applicant has
12 given notice of intent to terminate the plan, as de-
13 scribed in subparagraph (B), and that the fee de-
14 scribed in subparagraph (C) has been paid.

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

17 (i) on the anniversary of the effective date
18 of the plan next following the date of the filing
19 of the notice; or

20 (ii) if such anniversary would occur less
21 than 30 days after the date of the filing of the
22 notice, on the next anniversary of that effective
23 date.

24 (C) The applicant shall pay a fee to the Sec-
25 retary in such amount as the Secretary determines

1 to be adequate to provide leave benefits under this
2 title to all eligible employees of the applicant for a
3 period of at least 4 months, plus an amount to pay
4 administrative costs related to processing and paying
5 such benefits.

6 (D) Amounts received by the Secretary under
7 this paragraph shall be deposited in the Insurance
8 Fund.

9 (8) The amount of deductions from the wages
10 of an employee that is in effect for the plan shall not
11 be increased on any date other than on the date of
12 an anniversary of the effective date of the plan.

13 (c) ORDERS AND WITHDRAWAL OF APPROVAL.—If
14 the Secretary finds that a voluntary plan employer is not
15 paying voluntary paid benefits required under the vol-
16 untary plan to the employees under the plan, the Secretary
17 may order the employer to make the payments. If the Sec-
18 retary finds that a voluntary plan employer is not com-
19 plying with the provisions of the plan, including by not
20 paying voluntary paid benefits required under the plan,
21 the Secretary may revoke the Secretary's approval for the
22 plan, and require the employer to participate in the Pro-
23 gram.

24 **SEC. 105. ADDITIONAL BENEFITS.**

25 (a) ADDITIONAL EMPLOYER BENEFITS.—

1 (1) COVERED EMPLOYERS.—Nothing in this
2 title shall be construed to discourage a covered em-
3 ployer from providing an additional benefit in con-
4 junction with leave described in section 103(a) to an
5 eligible employee, in addition to the leave benefit
6 provided to that employee. The additional employer
7 benefit shall not reduce the amount of the leave ben-
8 efit that an eligible employee receives under this
9 title.

10 (2) VOLUNTARY PLAN EMPLOYERS.—Nothing
11 in this title shall be construed to discourage a vol-
12 untary plan employer from providing an additional
13 benefit in conjunction with leave described in section
14 103(a) to an employee, in addition to the voluntary
15 paid benefit provided to that employee. The addi-
16 tional employer benefit shall not reduce the amount
17 of the voluntary paid benefit that an employee re-
18 ceives under a voluntary plan described in section
19 104.

20 (b) COLLECTIVE BARGAINING.—

21 (1) MORE PROTECTIVE.—Nothing in this title
22 shall be construed to diminish the obligation of a
23 covered employer or voluntary plan employer to com-
24 ply with any collective bargaining agreement or any
25 employment benefit program or plan that provides

1 greater paid leave rights to employees than the
2 rights established under this title (including rights
3 established under a plan described in section 104).

4 (2) LESS PROTECTIVE.—The rights established
5 for employees under this title (including rights es-
6 tablished under a plan described in section 104)
7 shall not be diminished by any collective bargaining
8 agreement or any employment benefit program or
9 plan.

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

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

15 (b) DISCRIMINATION.—It shall be unlawful for any
16 covered employer to discharge or in any other manner dis-
17 criminate against any individual for opposing any practice
18 made unlawful by this title.

19 (c) INTERFERENCE WITH PROCEEDINGS OR INQUIR-
20 IES.—It shall be unlawful for any person to discharge or
21 in any other manner discriminate against any individual
22 because such individual—

23 (1) has filed any charge, or has instituted or
24 caused to be instituted any proceeding, under or re-
25 lated to this title;

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

4 (3) has testified, or is about to testify, in any
5 inquiry or proceeding relating to any right provided
6 under this title.

7 **SEC. 107. ENFORCEMENT.**

8 (a) CIVIL ACTION BY EMPLOYEES.—

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

12 (A) for damages equal to—

13 (i) the amount of—

14 (I) any wages, salary, employ-
15 ment benefits, or other compensation
16 denied or lost to such employee by
17 reason of the violation; or

18 (II) in a case in which wages,
19 salary, employment benefits, or other
20 compensation have not been denied or
21 lost to the employee, any actual mone-
22 etary losses sustained by the employee
23 as a direct result of the violation, such
24 as the cost of providing care, up to a

1 sum equal to 8 weeks of wages or sal-
2 ary for the employee;

3 (ii) the interest on the amount de-
4 scribed in clause (i) calculated at the pre-
5 vailing rate; and

6 (iii) an additional amount as liq-
7 uidated damages equal to the sum of the
8 amount described in clause (i) and the in-
9 terest described in clause (ii), except that
10 if a covered employer who has violated sec-
11 tion 106 proves to the satisfaction of the
12 court that the act or omission which vio-
13 lated section 106 was in good faith and
14 that the employer had reasonable grounds
15 for believing that the act or omission was
16 not a violation of section 106, such court
17 may, in the discretion of the court, reduce
18 the amount of the liability to the amount
19 and interest determined under clauses (i)
20 and (ii), respectively; and

21 (B) for such equitable relief as may be ap-
22 propriate, including employment, reinstatement,
23 and promotion.

24 (2) RIGHT OF ACTION.—

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), an action to recover the
3 damages or equitable relief prescribed in para-
4 graph (1) may be maintained against any cov-
5 ered employer (including a public agency) in
6 any Federal or State court of competent juris-
7 diction by any 1 or more employees for and on
8 behalf of—

9 (i) the employees; or

10 (ii) the employees and other employ-
11 ees similarly situated.

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

15 (i) on the filing of a complaint by the
16 Secretary in an action under subsection
17 (b)(3) in which restraint is sought of any
18 further delay in the payment of the
19 amount described in paragraph (1)(A) to
20 such employee by an employer responsible
21 under paragraph (1) for the payment; or

22 (ii) on the filing of a complaint by the
23 Secretary in an action under paragraph (1)
24 or (2) of subsection (b) in which a recovery
25 is sought of the damages described in

1 paragraph (1)(A) owing to an eligible em-
2 ployee by an employer liable under para-
3 graph (1),

4 unless the action described in clause (i) or (ii)
5 is dismissed without prejudice on motion of the
6 Secretary.

7 (3) FEES AND COSTS.—The court in an action
8 brought under this subsection shall, in addition to
9 any judgment awarded to the plaintiff, allow a rea-
10 sonable attorneys' fee, reasonable expert witness
11 fees, and other costs of the action to be paid by the
12 defendant.

13 (b) ACTIONS BY THE SECRETARY.—

14 (1) ADMINISTRATIVE ACTION.—The Secretary
15 shall receive, investigate, and attempt to resolve
16 complaints of violations of section 106 in the same
17 manner that the Secretary receives, investigates, and
18 attempts to resolve complaints of violations of sec-
19 tions 6 and 7 of the Fair Labor Standards Act of
20 1938 (29 U.S.C. 206 and 207).

21 (2) CIVIL ACTION.—

22 (A) RIGHT OF ACTION.—The Secretary
23 may bring an action in any court of competent
24 jurisdiction to recover the damages described in
25 subsection (a)(1)(A).

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

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

14 (A) to restrain violations of section 106,
15 including the restraint of any withholding of
16 payment of wages, salary, employment benefits,
17 or other compensation, plus interest, found by
18 the court to be due to eligible employees; or

19 (B) to award such other equitable relief as
20 may be appropriate, including employment, re-
21 instatement, and promotion.

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

25 (c) LIMITATION.—

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

6 (2) WILLFUL VIOLATION.—In the case of such
7 action brought for a willful violation of section 106,
8 such action may be brought within 3 years of the
9 date of the last event constituting the alleged viola-
10 tion for which such action is brought.

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

15 (d) INVESTIGATIVE AUTHORITY.—

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

22 (2) OBLIGATION TO KEEP AND PRESERVE
23 RECORDS.—Any covered employer shall make, keep,
24 and preserve records pertaining to compliance with
25 this title in accordance with section 11(c) of the Fair

1 Labor Standards Act of 1938 (29 U.S.C. 211(e))
2 and in accordance with regulations issued by the
3 Secretary. The Secretary shall have access to the
4 records for purposes of conducting audits.

5 (3) REQUIRED SUBMISSIONS GENERALLY LIM-
6 ITED TO AN ANNUAL BASIS.—The Secretary shall
7 not under the authority of this subsection require
8 any covered employer or any plan, fund, or program
9 to submit to the Secretary any books or records
10 more than once during any 12-month period, unless
11 the Secretary has reasonable cause to believe there
12 may exist a violation of this title or any regulation
13 or order issued pursuant to this title, or is inves-
14 tigating a charge pursuant to subsection (b).

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

20 **SEC. 108. PENALTIES.**

21 (a) PENALTIES FOR SUBMISSION OF FALSE CERTIFI-
22 CATIONS.—If the Secretary finds that any individual sub-
23 mits a false certification of the health condition of any
24 person in order to obtain leave benefits under this title
25 with the intent to defraud, the Secretary shall assess a

1 penalty against the individual in an amount up to 100 per-
2 cent of the benefits paid as a result of the false certifi-
3 cation. Penalties collected under this subsection shall be
4 deposited in the Insurance Fund, notwithstanding the pro-
5 visions of title 31, United States Code and used to reim-
6 burse the covered employers involved for the amount of
7 the leave benefits.

8 (b) CRIMINAL PENALTIES FOR FALSE STATEMENTS
9 AND SOLICITATIONS.—Whoever—

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

13 (2) knowingly presents or causes to be pre-
14 sented any false written or oral material statement
15 in support of any claim for leave benefits under this
16 title;

17 (3) knowingly solicits, receives, offers, pays, or
18 accepts any rebate, refund, commission, preference,
19 patronage, dividend, discount, or other consider-
20 ation, whether in the form of money or otherwise, as
21 compensation or inducement for soliciting a claimant
22 to apply for leave benefits under this title, except to
23 the extent authorized by a law of the United States;
24 or

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

7 **SEC. 109. EDUCATION PROGRAMS.**

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

11 (b) **NOTICE TO EMPLOYERS.**—The Secretary shall
12 provide to each covered employer a notice informing em-
13 ployees of the rights and leave benefits available under this
14 title. The notice shall be given by every covered employer
15 to each employee hired, and to each employee taking leave
16 as described in section 103(a).

17 **SEC. 110. REGULATIONS.**

18 The Secretary shall issue regulations to carry out this
19 title.

20 **SEC. 111. EFFECTIVE DATE.**

21 This title shall take effect on January 1, 2011, and
22 apply to periods of leave that commence on or after Janu-
23 ary 1, 2012.

1 **TITLE II—CIVIL SERVICE FAM-**
2 **ILY AND MEDICAL LEAVE IN-**
3 **SURANCE PROGRAM**

4 **SEC. 201. PROGRAM DEFINITIONS.**

5 In this title:

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

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

11 (A) meets the requirements of paragraph
12 (1) of section 6381 of title 5, United States
13 Code; and

14 (B) has earned wages with an agency for
15 12 of the last 18 months, prior to filing an ap-
16 plication for leave benefits under this title.

17 **SEC. 202. ESTABLISHMENT OF PROGRAM.**

18 (a) IN GENERAL.—The Director of the Office of Per-
19 sonnel Management shall establish a Civil Service Family
20 and Medical Leave Insurance Program, and shall issue
21 regulations providing for the implementation of the pro-
22 gram. In issuing the regulations, the Director shall require
23 that the Director shall provide, or that the agencies shall
24 provide, family and medical leave insurance benefits de-
25 scribed in section 103 to agency employees. The regula-

1 tions issued under this subsection shall include provisions
2 that are the same as regulations issued by the Secretary
3 to implement the statutory provisions of sections 103,
4 105, 109, and 110, except insofar as the Director may
5 determine, for good cause shown and stated together with
6 the regulations, that a modification of the regulations
7 would be more effective for the implementation of the
8 rights and protections under those sections. The regula-
9 tions shall provide for appropriate remedies and proce-
10 dures for violations of this title.

11 (b) PAYMENT.—At the direction of the Director or
12 the head of an agency, as specified in the regulations, the
13 Managing Trustee shall pay funds from the Insurance
14 Fund for the leave benefits.

15 **TITLE III—FAMILY AND MED-**
16 **ICAL LEAVE INSURANCE**
17 **FUND**

18 **SEC. 301. ESTABLISHMENT.**

19 (a) IN GENERAL.—There is created in the Treasury
20 of the United States a trust fund to be known as the Fam-
21 ily and Medical Leave Insurance Fund. The Insurance
22 Fund shall consist of such amounts as may be deposited
23 in, or appropriated to, such fund as provided in this sec-
24 tion.

25 (b) APPROPRIATIONS TO INSURANCE FUND.—

1 (1) AMOUNTS APPROPRIATED.—There is appro-
2 priated to the Insurance Fund for fiscal year 2011
3 and each fiscal year thereafter, out of any moneys
4 in the Treasury not otherwise appropriated, amounts
5 equivalent to 100 percent of—

6 (A) the family and medical leave premiums
7 imposed by sections 3101(c) and 3111(c) of the
8 Internal Revenue Code of 1986 with respect to
9 wages (as defined in section 3121 of such Code)
10 reported to the Secretary of the Treasury or the
11 Secretary's delegate under subtitle F of such
12 Code after December 31, 2009, as determined
13 by the Secretary of the Treasury by applying
14 the applicable rates of premium payment under
15 such sections to such wages, which wages shall
16 be certified by the Commissioner of Social Se-
17 curity;

18 (B) on the basis of the records of wages
19 established and maintained by the Commis-
20 sioner of the Social Security Administration in
21 accordance with such reports;

22 (C) the family and medical leave premiums
23 imposed by section 1401(c) of such Code with
24 respect to self-employment income (as defined
25 in section 1402 of such Code) reported to the

1 Secretary of the Treasury or the Secretary's
2 delegate on tax returns under subtitle F of such
3 Code after December 31, 2009, as determined
4 by the Secretary of the Treasury by applying
5 the applicable rate of premium payment under
6 such section 1401(c) to such self-employment
7 income, which self-employment income shall be
8 certified by the Commissioner of Social Secu-
9 rity; and

10 (D) on the basis of the records of self-em-
11 ployment income established and maintained by
12 the Commissioner of Social Security in accord-
13 ance with such returns.

14 (2) TRANSFERS.—Such appropriated amounts
15 shall be transferred from time to time from the gen-
16 eral fund of the Treasury to the Insurance Fund.
17 Such amounts shall be determined on the basis of
18 estimates by the Secretary of the Treasury of the
19 premiums, specified in paragraph (1), paid to or de-
20 posited into the Treasury, and proper adjustments
21 shall be made in amounts subsequently transferred
22 to the extent prior estimates were in excess of or
23 were less than such premiums.

24 (3) INVESTMENTS.—All amounts transferred to
25 the Insurance Fund under paragraph (2) shall be in-

1 vested by the Managing Trustee referred to in sec-
2 tion 302(c) in the same manner and to the same ex-
3 tent as the other assets of the Insurance Fund.

4 **SEC. 302. BOARD OF TRUSTEES.**

5 (a) ESTABLISHMENT AND MEMBERSHIP.—With re-
6 spect to the Insurance Fund, there is established a body
7 to be known as the Board of Trustees of the Insurance
8 Fund which shall be composed of the Secretary of the
9 Treasury, the Secretary of Labor, the Commissioner of
10 Social Security, and the Secretary of Health and Human
11 Services, all ex officio, and of two members of the public
12 (both of whom may not be from the same political party),
13 who shall be nominated by the President, by and with the
14 advice and consent of the Senate.

15 (b) TERMS AND VACANCIES.—Members of the Board
16 of Trustees shall serve for a period of 4 years. A member
17 of the Board of Trustees nominated and confirmed as a
18 member of the public to fill a vacancy occurring during
19 a term shall be nominated and confirmed only for the re-
20 mainder of such term. An individual nominated and con-
21 firmed as a member of the public may serve in such posi-
22 tion after the expiration of such member's term until the
23 earlier of the date on which the member's successor takes
24 office or the date on which a report of the Board is first

1 issued under paragraph (2) after the expiration of the
2 member's term.

3 (c) MANAGING TRUSTEE AND SECRETARY.—The
4 Secretary of the Treasury shall be the Managing Trustee
5 of the Board of Trustees. The Secretary of Labor shall
6 serve as the Secretary of the Board of Trustees.

7 (d) BASIC DUTIES OF THE BOARD OF TRUSTEES.—
8 The Board of Trustees shall meet not less frequently than
9 once each calendar year. It shall be the duty of the Board
10 of Trustees to—

11 (1) hold the Insurance Fund;

12 (2) report to Congress not later than April 1 of
13 each year—

14 (A) on the operation and status of the In-
15 surance Fund during the fiscal year preceding
16 the fiscal year in which the report is made; and

17 (B) on the expected operation and status
18 of the Insurance Fund during the fiscal year in
19 which the report is made and the next 2 fiscal
20 years;

21 (3) report immediately to Congress whenever
22 the Board is of the opinion that the amount in the
23 Insurance Fund is unduly small; and

24 (4) review the general policies followed in man-
25 aging the Insurance Fund, and recommend changes

1 in such policies, including necessary changes in the
2 provisions of law that govern the way in which the
3 Insurance Fund is to be managed.

4 (e) REQUIREMENTS RELATING TO ANNUAL RE-
5 PORT.—The report provided for in subsection (d)(2) shall
6 include a statement of the assets of, and the disburse-
7 ments made from, the Insurance Fund during the fiscal
8 year preceding the fiscal year in which the report is made,
9 an estimate of the expected income to, and disbursements
10 to be made from, the Insurance Fund during the fiscal
11 year in which the report is made and each of the next
12 two fiscal years, and a statement of the actuarial status
13 of the Insurance Fund. Such report shall also include an
14 actuarial opinion by an appropriate employee of the De-
15 partment of Labor certifying that the techniques and
16 methodologies used for the report are generally accepted
17 within the actuarial profession and that the assumptions
18 and cost estimates used for the report are reasonable.

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

1 **SEC. 303. INVESTMENT OF THE FAMILY AND MEDICAL**
2 **LEAVE INSURANCE FUND.**

3 (a) OBLIGATIONS.—It shall be the duty of the Man-
4 aging Trustee to invest such portion of the Insurance
5 Fund as is not, in the trustee’s judgment, required to meet
6 current withdrawals. Such investments may be made only
7 in interest-bearing obligations of the United States or in
8 obligations guaranteed as to both principal and interest
9 by the United States.

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

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

13 (2) by purchase of outstanding obligations at
14 the market price.

15 (c) OBLIGATIONS ISSUED FOR PURCHASE BY
16 FUND.—The purposes for which obligations of the United
17 States may be issued under chapter 31 of title 31, United
18 States Code, are extended to authorize the issuance at par
19 of public debt obligations for purchase by the Insurance
20 Fund. Such obligations issued for purchase by the Insur-
21 ance Fund shall have dates of maturity fixed with due re-
22 gard for the needs of the Insurance Fund. Such obliga-
23 tions shall bear interest at a rate equal to—

24 (1) except as provided in paragraph (2), the av-
25 erage market yield (computed by the Managing
26 Trustee on the basis of market quotations as of the

1 end of the calendar month preceding the date of
2 such issue) on all marketable interest-bearing obliga-
3 tions of the United States forming a part of the
4 public debt that are not due or callable until after
5 the expiration of four years from the end of such
6 calendar month; or

7 (2) in a case in which such average market
8 yield is not a multiple of 0.1 percent, the multiple
9 of 0.1 percent nearest such market yield.

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

18 (e) DISPOSITION AND REDEMPTION OF OBLIGA-
19 TIONS.—Any obligations acquired by the Insurance Fund
20 (except public debt obligations issued exclusively to the In-
21 surance Fund) may be sold by the Managing Trustee at
22 the market price, and such public debt obligations may
23 be redeemed at par plus accrued interest.

24 (f) CREDITING OF INTEREST AND PROCEEDS.—The
25 interest on, and the proceeds from the sale or redemption

1 of, any obligations held in the Insurance Fund shall be
2 credited to and form a part of the Insurance Fund.

3 **SEC. 304. PAYMENTS FROM FAMILY AND MEDICAL LEAVE**
4 **INSURANCE FUND.**

5 The Managing Trustee shall pay from time to time
6 from the Insurance Fund such amounts as the Secretary
7 of Labor certifies are necessary to make the payments pro-
8 vided for by section 103, and payments with respect to
9 administrative expenses under section 305.

10 **SEC. 305. ADMINISTRATIVE EXPENSES.**

11 (a) AVAILABILITY OF INSURANCE FUND.—Under
12 regulations that shall be prescribed by the Secretary of
13 Labor, funds shall be made available from the Insurance
14 Fund in connection with the administration of this Act
15 and the administration of related provisions of the Inter-
16 nal Revenue Code of 1986 in the same manner and extent
17 as funds are made available from the trust funds referred
18 to in section 201(g) of the Social Security Act (42 U.S.C.
19 401(g)) in connection with the administration of the rel-
20 evant provisions referred to in such section.

21 (b) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be made available for expenditure such
23 amounts as Congress may determine to be appropriate to
24 pay the costs of the part of the administration of this Act
25 (including start-up costs, technical assistance, and costs

1 for small employers electing to participate in the Family
2 and Medical Leave Insurance Program) for which the Sec-
3 retary of Labor is responsible.

4 (c) GIFTS AND BEQUESTS.—The Managing Trustee
5 may accept on behalf of the United States money gifts
6 and bequests made unconditionally to the Insurance Fund
7 for the benefit of the Insurance Fund or any activity fi-
8 nanced through the Insurance Fund and such gifts and
9 bequests shall be deposited into the Insurance Fund.

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

15 **SEC. 306. AMENDMENTS TO THE INTERNAL REVENUE CODE**
16 **OF 1986.**

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

20 (1) by redesignating subsection (c) as sub-
21 section (d); and

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

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

1 “(1) IN GENERAL.—In addition to the taxes im-
2 posed by subsections (a) and (b), there is imposed
3 on the income of every individual a family and med-
4 ical leave premium equal to the applicable percent-
5 age of the wages (as defined in section 3121(a)) re-
6 ceived by the individual with respect to employment
7 (as defined in section 3121(b)).

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

10 “(A) 0.1 percent with respect to periods of
11 employment by a small employer (as defined in
12 section 3(b) of the Family Leave Insurance Act
13 of 2009) electing to participate in the Family
14 and Medical Leave Insurance Program (estab-
15 lished under section 102 of such Act); and

16 “(B) 0.2 percent with respect to all other
17 periods of employment.

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

21 “(A) by an employer during which the Sec-
22 retary of Labor determines the employer has in
23 effect a plan which is equivalent to or better
24 than the Family and Medical Leave Insurance

1 Program (established under section 102 of the
2 Family Leave Insurance Act of 2009); or

3 “(B) by a small employer (as so defined)
4 who has not elected to participate in such Pro-
5 gram.

6 For purposes of the preceding sentence, the Sec-
7 retary of Labor shall prescribe such regulations as
8 may be appropriate or necessary, including regula-
9 tions requiring documentation of employer pro-
10 grams.”.

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

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

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

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

19 “(1) IN GENERAL.—In addition to the excise
20 taxes imposed by subsections (a) and (b), there is
21 imposed on every employer a family and medical
22 leave premium, with respect to having individuals in
23 such employer’s employ, equal to the applicable per-
24 centage of the wages (as defined in section 3121(a))

1 paid by such employer with respect to employment
2 (as defined in section 3121(b)).

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

5 “(A) 0.1 percent with respect to small em-
6 ployers (as defined in section 3(b) of the Fam-
7 ily Leave Insurance Act of 2009) electing to
8 participate in the Family and Medical Leave In-
9 surance Program (established under section
10 102 of such Act); and

11 “(B) 0.2 percent with respect to all other
12 employers.

13 “(3) EXCEPTION FOR CERTAIN EMPLOYERS.—
14 Paragraph (1) shall not apply for any period with
15 respect to an employer to whom paragraph (1) of
16 section 3101(c) does not apply by reason of para-
17 graph (3) thereof.”.

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

20 (1) by redesignating subsection (c) as sub-
21 section (d); and

22 (2) by inserting after subsection (b) the fol-
23 lowing new subsection:

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

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

7 “(2) EXCEPTION FOR CERTAIN EMPLOYERS.—
8 Paragraph (1) shall not apply for any period with
9 respect to an employer who has not elected to par-
10 ticipate in the Family and Medical Leave Insurance
11 Program (established under section 102 of the Fam-
12 ily Leave Insurance Act of 2009).”.

13 (d) CONFORMING AMENDMENTS TO SOCIAL SECU-
14 RITY ACT.—Section 201 of the Social Security Act (42
15 U.S.C. 401) is amended—

16 (1) by striking “sections 3101(b) and 3111(b)”
17 both places it appears in subsection (a)(3) and in-
18 serting “sections 3101(b), 3101(c), 3111(b), and
19 3111(c)”, and

20 (2) by striking “section 1401(b)” both places it
21 appears in subsection (a)(4) and inserting “sections
22 1401(b) and 1401(c)”.

23 (e) EFFECTIVE DATE.—

1 (1) EMPLOYMENT PREMIUMS.—The amend-
2 ments made by subsections (a), (b), and (d)(1) shall
3 apply to wages paid after December 31, 2010.

4 (2) SELF-EMPLOYMENT PREMIUMS.—The
5 amendments made by subsections (c) and (d)(2)
6 shall apply to taxable years beginning after Decem-
7 ber 31, 2010.

○