

115TH CONGRESS  
1ST SESSION

# S. 337

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

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 7 (legislative day, FEBRUARY 6), 2017

Mrs. GILLIBRAND (for herself, Mr. BROWN, Mr. BOOKER, Ms. HIRONO, Mr. MARKEY, Mr. MERKLEY, Mr. SCHATZ, Mr. WHITEHOUSE, Ms. BALDWIN, Mr. REED, Mr. BLUMENTHAL, Ms. WARREN, Mr. DURBIN, Mr. SANDERS, Mr. MURPHY, Mr. UDALL, Mr. SCHUMER, Ms. KLOBUCHAR, Mr. FRANKEN, Mrs. FEINSTEIN, Ms. HEITKAMP, Mrs. MURRAY, Mr. VAN HOLLEN, Mr. LEAHY, Ms. DUCKWORTH, Mr. MENENDEZ, and Ms. HARRIS) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

1           (1) In more than two-thirds of families with  
2 children, all adults in the household work. Six in ten  
3 family caregivers report working at jobs unrelated to  
4 their care responsibilities and more than half report  
5 working full time. Without paid family and medical  
6 leave, many workers are unable to take time away  
7 from work to care for newborn children, ill or aging  
8 parents and relatives, or themselves.

9           (2) Both women and men need to be able to  
10 take time off work to participate in the care of their  
11 children, in the care of seriously ill family members,  
12 and to address their own serious health conditions.  
13 Yet, a mere 14 percent of workers in the United  
14 States have access to paid family leave through their  
15 employers, and fewer than 40 percent have access to  
16 short-term disability insurance provided by their em-  
17 ployer to use for their own illnesses.

18           (3) Many workers cannot afford to take unpaid  
19 time off work to provide care. According to the De-  
20 partment of Labor, nearly half of workers who quali-  
21 fied for leave under the Family and Medical Leave  
22 Act of 1993 (FMLA) in 2011 were unable to take  
23 the leave because they could not afford to take time  
24 off without pay. Six in ten workers who took par-  
25 tially paid or unpaid leave reported difficulty making

1 ends meet; half of these workers were forced to cut  
2 their leaves short due to financial constraints.

3 (4) Only 14 percent of all workers had access  
4 to paid family leave in 2016 and it was available to  
5 only 4 percent of people working in the lowest pay-  
6 ing jobs. Workers who lack paid family and medical  
7 leave face lost wages or even job loss when they miss  
8 work because of their own illness or to care for an  
9 ill child or parent. In this way, access to paid family  
10 and medical leave plays a critical role in families' ef-  
11 forts to maintain employment and economic security.

12 (5) Caregiving has a high value but also comes  
13 at a high cost for family caregivers. Working fami-  
14 lies in the United States lose an estimated  
15 \$20,600,000,000 in wages each year due to lack of  
16 access to paid family and medical leave.

17 (6) The estimated value of unpaid family care  
18 provided in 2013 was \$470,000,000,000. Family  
19 caregivers face financial, physical and emotional  
20 hardships, and in many cases their careers, incomes,  
21 and retirement security suffer because of their fam-  
22 ily responsibilities.

23 (7) The average worker age 50 and older who  
24 leaves the workforce to care for an elderly parent  
25 loses more than \$300,000 in earnings and retire-

1       ment income. Working caregivers should not have to  
2       risk their family’s economic security to fulfill their  
3       caregiving obligations.

4           (8) The population aged 65 and over is ex-  
5       pected to double over the next few decades. The  
6       number of people with chronic conditions is expected  
7       to reach nearly 160,000,000 by 2020. Many of these  
8       individuals will at some point require family care,  
9       and for older workers still in the workforce, many  
10      will need time off at some point to address serious  
11      health conditions.

12          (9) Ensuring working family caregivers have  
13      paid family leave to care for ailing elders could drive  
14      down Medicare costs by decreasing recurrences of  
15      ailments and re-admittance into hospitals.

16          (10) Many workers are forced to quickly return  
17      to work after the birth or arrival of a child because  
18      they have no access to paid family and medical  
19      leave. Only half of new mothers take paid leave of  
20      any duration after the birth of their first child, and  
21      among women with less than a high school education  
22      the figure is less than 20 percent—a rate that has  
23      not changed in half a century.

24          (11) When new mothers have no choice but to  
25      return to work without taking leave, children can ex-

1 perience a variety of negative outcomes including  
2 higher rates of infant mortality, lower rates of  
3 breastfeeding, lower rates of immunization, and a  
4 higher incidence of maternal physical and mental  
5 health concerns. California's paid family leave insur-  
6 ance program, which has been in effect since 2004,  
7 has increased the number of weeks of leave that  
8 women take after childbirth, with larger effects  
9 among women in jobs that do not provide paid leave.

10 (12) A nationwide paid family and medical  
11 leave program would address the persistent sex dis-  
12 crimination in the utilization of leave benefits and  
13 reduce the disparity between women and men re-  
14 garding who takes time off from work to fulfill  
15 caregiving duties. This disparity is driven in part by  
16 the fact that men continue to be paid more than  
17 women, and, as a result, it often makes more eco-  
18 nomic sense for women in two-parent families to  
19 take unpaid leave and forgo their lower salary.

20 (13) Many men would like to be more involved  
21 in caregiving and report greater work-family conflict  
22 than ever before. In California, men's use of the  
23 State's paid family leave insurance program to care  
24 for a new child has more than doubled since the pro-  
25 gram's implementation. In Rhode Island, the most

1 recent State to implement a State paid leave pro-  
2 gram, men took leave at higher rates in the pro-  
3 gram's first year than other State programs' first  
4 year.

5 (14) High-profile companies are increasingly  
6 recognizing the importance of providing paid leave to  
7 their workers, regardless of gender, and updating  
8 their leave policies to reflect the reality that both  
9 men and women need paid leave.

10 (15) Paid family and medical leave promotes  
11 families' financial security and independence, in-  
12 creases worker retention, and promotes savings for  
13 taxpayers. Women who take paid leave after a  
14 child's birth are more likely to be in the labor force  
15 in the 9 to 12 months after a child's birth and to  
16 earn higher wages in the year following their child's  
17 birth. Both men and women who take paid leave  
18 after a child's birth are less likely to receive food  
19 stamps and public assistance in the year following a  
20 child's birth.

21 (16) Without paid medical leave, workers who  
22 are ill or injured may return to work before being  
23 fully recovered, thus making them susceptible to a  
24 relapse or recurrence, and potentially placing addi-  
25 tional burdens on the health care system. When a

1 job requires physical stamina or ability, individuals  
2 who return to work too early may put themselves or  
3 others in jeopardy.

4 (17) A social insurance model of providing paid  
5 family leave pioneered by the States of California,  
6 New Jersey, and Rhode Island has worked well for  
7 workers, their families, and employers. The over-  
8 whelming majority of California employers report  
9 that the State's program had a positive or neutral  
10 effect on their business. When workers can care for  
11 themselves and their loved ones, employers experi-  
12 ence positive impacts.

13 (18) According to the Department of Labor's  
14 2012 survey on the FMLA, more than four times as  
15 many worksites covered by the FMLA reported posi-  
16 tive effects on employee productivity, absenteeism,  
17 turnover, career advancement and morale, as well as  
18 the business' profitability, as reported negative ef-  
19 fects.

20 (19) Californians have filed more than  
21 2,100,000 claims to leave to care for a family mem-  
22 ber or bond with a new child over more than a dec-  
23 ade. In New Jersey, more than 217,000 claims have  
24 been filed over the more than 6 years of the pro-  
25 gram's existence, and in Rhode Island, nearly

1 13,000 claims were filed in the programs first two  
2 years. These claims represent valuable care for new  
3 children and seriously ill loved ones.

4 (20) Social Security is the Nation's primary so-  
5 cial insurance system, with the most complete record  
6 of workers' earnings history. It provides retirement  
7 assistance and disability benefits currently and,  
8 since its creation in 1934, the programs the Social  
9 Security Administration administers have been up-  
10 dated multiple times to reflect the changing needs of  
11 the population, families and the workforce. The sys-  
12 tem needs to be changed again now—with appro-  
13 priate investments to meet the agency's needs—to  
14 reflect today's realities.

15 (21) Researchers at Brandeis University esti-  
16 mate that, following enactment of this Act, the share  
17 of families falling into financial hardship (earnings  
18 below 200 percent of the Federal poverty line) as a  
19 result of taking 12 weeks of unpaid leave would be  
20 reduced by more than three-fourths.

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

22 (1) to help working families, including single  
23 working parents and dual-earner families, afford to  
24 take time away from work to provide care for a fam-  
25 ily member and be good workers;

1           (2) to provide workers with a reasonable level  
2 of wage replacement during time away from work  
3 for a serious health condition, for the birth or adop-  
4 tion of a child, for the care of a child, spouse, or  
5 parent who has a serious health condition, for the  
6 care of an injured servicemember, or for qualifying  
7 exigencies arising from the deployment of a service-  
8 member;

9           (3) to address sex discrimination, promote the  
10 goal of equal employment opportunity for women  
11 and men, and to provide relief when employers vio-  
12 late the law; and

13           (4) to accomplish the purposes described in  
14 paragraphs (1), (2), and (3) in a manner that ac-  
15 commodates the legitimate interests of employers.

16 **SEC. 3. DEFINITIONS.**

17 In this Act, the following definitions apply:

18           (1) CAREGIVING DAY.—The term “caregiving  
19 day” means, with respect to an individual, a cal-  
20 endar day in which the individual engaged in quali-  
21 fied caregiving.

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

24           (3) DEPUTY COMMISSIONER.—The term “Dep-  
25 uty Commissioner” means the Deputy Commissioner

1 who heads the Office of Paid Family and Medical  
2 Leave established under section 4(a).

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

7 (5) INITIAL WAITING PERIOD.—The term “ini-  
8 tial waiting period” means a period beginning with  
9 the first caregiving day of an individual occurring  
10 during the individual’s benefit period and ending  
11 after the earlier of—

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

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

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

24 (7) SELF-EMPLOYMENT INCOME.—The term  
25 “self-employment income” has the same meaning as

1 such term in section 211(b) of such Act (42 U.S.C.  
2 411(b)).

3 (8) STATE.—The term “State” means any  
4 State of the United States or the District of Colum-  
5 bia or any territory or possession of the United  
6 States.

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

11 (10) 60-DAY LIMITATION PERIOD.—The term  
12 “60-day limitation period” means a period—

13 (A) beginning with the first caregiving day  
14 of an individual occurring during the individ-  
15 ual’s benefit period and after the expiration of  
16 the individual’s 5-day waiting period, if applica-  
17 ble; and

18 (B) ending with the 60th caregiving day of  
19 the individual occurring during the benefit pe-  
20 riod and after the expiration of the 5-day wait-  
21 ing period,

22 disregarding any caregiving day of the individual oc-  
23 ccurring during any month in the benefit period after  
24 the first 20 caregiving days of the individual occur-  
25 ring during such month.

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

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

7 (b) RESPONSIBILITIES OF DEPUTY COMMIS-  
8 SIONER.—The Commissioner, acting through the Deputy  
9 Commissioner, shall be responsible for—

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

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

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

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

19 (5) determining benefit amounts for each  
20 month of such eligibility and making timely pay-  
21 ments of such benefits to entitled individuals in ac-  
22 cordance with such section;

23 (6) establishing and maintaining a system of  
24 records relating to the administration of such sec-  
25 tion;

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

3           (8) providing information on request regarding  
4 eligibility requirements, the claims process, benefit  
5 amounts, maximum benefits payable, notice require-  
6 ments, nondiscrimination rights, confidentiality, co-  
7 ordination of leave under this Act and other laws,  
8 collective bargaining agreements, and employer poli-  
9 cies;

10          (9) annually providing employers a notice in-  
11 forming employees of the availability of such bene-  
12 fits;

13          (10) annually making available to the public a  
14 report that includes the number of individuals who  
15 received such benefits, the purposes for which such  
16 benefits were received, and an analysis of utilization  
17 rates of such benefits by gender, race, ethnicity, and  
18 income levels; and

19          (11) tailoring culturally and linguistically com-  
20 petent education and outreach toward increasing uti-  
21 lization rates of benefits under such section.

22          (c) AVAILABILITY OF DATA.—The Commissioner  
23 shall make available to the Deputy Commissioner such  
24 data as the Commissioner determines necessary to enable

1 the Deputy Commissioner to effectively carry out the re-  
2 sponsibilities described in subsection (b).

3 **SEC. 5. FAMILY AND MEDICAL LEAVE INSURANCE BENEFIT**  
4 **PAYMENTS.**

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

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

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

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

16 (4) was engaged in qualified caregiving, or an-  
17 ticipates being so engaged, during the period that  
18 begins 90 days before the date on which such appli-  
19 cation is filed or within 30 days after such date,

20 shall be entitled to such a benefit for each month in the  
21 benefit period specified in subsection (c), not to exceed 60  
22 caregiving days per benefit period.

23 (b) BENEFIT AMOUNT.—

24 (1) IN GENERAL.—Except as otherwise pro-  
25 vided in this subsection, the benefit amount to which

1 an individual is entitled under this section for a  
2 month shall be an amount equal to the greater of—

3 (A) the lesser of  $\frac{1}{18}$  of the wages and self-  
4 employment income of the individual for the  
5 calendar year in which such wages and self-em-  
6 ployment income are the highest among the  
7 most recent three calendar years, or the max-  
8 imum benefit amount determined under para-  
9 graph (2); or

10 (B) the minimum benefit amount deter-  
11 mined under paragraph (2),  
12 multiplied by the quotient (not greater than 1) ob-  
13 tained by dividing the number of caregiving days of  
14 the individual in such month by 20.

15 (2) ANNUAL INCREASE OF MAXIMUM AND MIN-  
16 IMUM BENEFIT AMOUNTS.—

17 (A) For individuals who initially become el-  
18 igible for family and medical leave insurance  
19 benefits in the first full calendar year after the  
20 date of enactment of this Act, the maximum  
21 monthly benefit amount and the minimum  
22 monthly benefit amount shall be \$4,000 and  
23 \$580, respectively.

24 (B) For individuals who initially become el-  
25 igible for family and medical leave insurance

1 benefits in any calendar year after such first  
2 full calendar year the maximum benefit amount  
3 and the minimum benefit amount shall be, re-  
4 spectively, the product of the corresponding  
5 amount determined with respect to the first cal-  
6 endar year under subparagraph (A) and the  
7 quotient obtained by dividing—

8 (i) the national average wage index  
9 (as defined in section 209(k)(1) of the So-  
10 cial Security Act (42 U.S.C. 409(k)(1)))  
11 for the second calendar year preceding the  
12 first calendar year for which the deter-  
13 mination is made, by

14 (ii) the national average wage index  
15 (as so defined) for 2017.

16 (3) LIMITATIONS ON BENEFITS PAID.—

17 (A) NONPAYABLE WAITING PERIOD.—Any  
18 calendar day during an individual's benefit pe-  
19 riod which occurs before the expiration of an  
20 initial waiting period shall not be taken into ac-  
21 count under this subsection as a caregiving day  
22 of the individual.

23 (B) LIMITATION ON TOTAL BENEFITS  
24 PAID.—Any calendar day during an individual's  
25 benefit period which occurs after the expiration

1 of a 60-day limitation period shall not be taken  
2 into account under this subsection as a  
3 caregiving day of the individual.

4 (4) REDUCTION IN BENEFIT AMOUNT ON AC-  
5 COUNT OF RECEIPT OF CERTAIN BENEFITS.—A ben-  
6 efit under this section for a month shall be reduced  
7 by the amount, if any, in certain benefits (as deter-  
8 mined under regulations issued by the Commis-  
9 sioner) as may be otherwise received by an indi-  
10 vidual. For purposes of the preceding sentence, cer-  
11 tain benefits include—

12 (A) periodic benefits on account of such in-  
13 dividual's total or partial disability under a  
14 workmen's compensation law or plan of the  
15 United States or a State; and

16 (B) periodic benefits on account of an indi-  
17 vidual's employment status under an unemploy-  
18 ment law or plan of the United States or a  
19 State.

20 (5) COORDINATION OF BENEFIT AMOUNT WITH  
21 CERTAIN STATE BENEFITS.—A benefit received  
22 under this section shall be coordinated, in a manner  
23 determined by regulations issued by the Commis-  
24 sioner, with the periodic benefits received from tem-  
25 porary disability insurance or family leave insurance

1 programs under any law or plan of a State, a polit-  
2 ical subdivision (as that term is used in section  
3 218(b)(2) of the Social Security Act (42 U.S.C.  
4 418(b)(2))), or an instrumentality of two or more  
5 States (as that term is used in section 218(g) of  
6 such Act of the Social Security Act (42 U.S.C.  
7 418(g))).

8 (c) BENEFIT PERIOD.—

9 (1) IN GENERAL.—Except as provided in para-  
10 graph (2), the benefit period specified in this sub-  
11 section shall begin on the 1st day of the 1st month  
12 in which the individual meets the criteria specified in  
13 paragraphs (1), (2), and (3) of subsection (a), and  
14 shall end on the date that is 365 days after the 1st  
15 day of the benefit period.

16 (2) RETROACTIVE BENEFITS.—In the case of  
17 an application for benefits under this section for  
18 qualified caregiving in which the individual was en-  
19 gaged at any time during the 90-day period pre-  
20 ceding the date on which such application is sub-  
21 mitted, the benefit period specified in this subsection  
22 shall begin on the later of—

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

1 (B) the 1st day of the 1st month that be-  
2 gins during such 90-day period,  
3 and shall end on the date that is 365 days after the  
4 1st day of the benefit period.

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

7 (1) a statement that the individual was engaged  
8 in qualified caregiving, or anticipates being so en-  
9 gaged, during the period that begins 90 days before  
10 the date on which the application is submitted or  
11 within 30 days after such date;

12 (2) if the qualified caregiving described in the  
13 statement in paragraph (1) is engaged in by the in-  
14 dividual because of a serious health condition of the  
15 individual or a relative of the individual, a certifi-  
16 cation, issued by the health care provider treating  
17 such serious health condition, that affirms the infor-  
18 mation specified in paragraph (1) and contains such  
19 information as the Commissioner shall specify in  
20 regulations, which shall be no more than the infor-  
21 mation that is required to be stated under section  
22 103(b) of the Family and Medical Leave Act of  
23 1993 (29 U.S.C. 2613(b));

24 (3) if such qualified caregiving is engaged in by  
25 the individual for any other authorized reason, a cer-

1 tification, issued by a relevant authority determined  
2 under regulations issued by the Commissioner, that  
3 affirms the circumstances giving rise to such reason;  
4 and

5 (4) an attestation from the applicant that his or  
6 her employer has been provided with written notice  
7 of the individual's intention to take family or med-  
8 ical leave, if the individual has an employer, or to  
9 the Commissioner in all other cases.

10 (e) INELIGIBILITY; DISQUALIFICATION.—

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

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

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

1 (C) benefits under title XVI of such Act  
2 (42 U.S.C. 1381 et seq.) based on such individ-  
3 ual's status as a disabled individual (as deter-  
4 mined under section 1614 of such Act (42  
5 U.S.C. 1382e)).

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

13 (f) REVIEW OF ELIGIBILITY AND BENEFIT PAYMENT  
14 DETERMINATIONS.—

15 (1) ELIGIBILITY DETERMINATIONS.—

16 (A) IN GENERAL.—The Commissioner  
17 shall provide notice to an individual applying  
18 for benefits under this section of the initial de-  
19 termination of eligibility for such benefits, and  
20 the estimated benefit amount for a month in  
21 which one caregiving day of the individual oc-  
22 curs, as soon as practicable after the applica-  
23 tion is received.

24 (B) REVIEW.—An individual may request  
25 review of an initial adverse determination with

1           respect to such application at any time before  
2           the end of the 20-day period that begins on the  
3           date notice of such determination is received,  
4           except that such 20-day period may be extended  
5           for good cause. As soon as practicable after the  
6           individual requests review of the determination,  
7           the Commissioner shall provide notice to the in-  
8           dividual of a final determination of eligibility  
9           for benefits under this section.

10           (2) BENEFIT PAYMENT DETERMINATIONS.—

11           (A) IN GENERAL.—The Commissioner  
12           shall make any monthly benefit payment to an  
13           individual claiming benefits for a month under  
14           this section, or provide notice of the reason  
15           such payment will not be made if the Commis-  
16           sioner determines that the individual is not en-  
17           titled to payment for such month, not later  
18           than 20 days after the individual's monthly  
19           benefit claim report for such month is received.  
20           Such monthly report shall be filed with the  
21           Commissioner not later than 15 days after the  
22           end of each month.

23           (B) REVIEW.—If the Commissioner deter-  
24           mines that payment will not be made to an in-  
25           dividual for a month, or if the Commissioner

1 determines that payment shall be made based  
2 on a number of caregiving days in the month  
3 inconsistent with the number of caregiving days  
4 in the monthly benefit claim report of the indi-  
5 vidual for such month, the individual may re-  
6 quest review of such determination at any time  
7 before the end of the 20-day period that begins  
8 on the date notice of such determination is re-  
9 ceived, except that such 20-day period may be  
10 extended for good cause. Not later than 20 days  
11 after the individual requests review of the deter-  
12 mination, the Commissioner shall provide notice  
13 to the individual of a final determination of  
14 payment for such month, and shall make pay-  
15 ment to the individual of any additional amount  
16 not included in the initial payment to the indi-  
17 vidual for such month to which the Commis-  
18 sioner determines the individual is entitled.

19 (3) BURDEN OF PROOF.—An application for  
20 benefits under this section and a monthly benefit  
21 claim report of an individual shall each be presumed  
22 to be true and accurate, unless the Commissioner  
23 demonstrates by a preponderance of the evidence  
24 that information contained in the application is  
25 false.

1           (4) DEFINITION OF MONTHLY BENEFIT CLAIM  
2 REPORT.—For purposes of this subsection, the term  
3 “monthly benefit claim report” means, with respect  
4 to an individual for a month, the individual’s report  
5 to the Commissioner of the number of caregiving  
6 days of the individual in such month, which shall be  
7 filed no later than 15 days after the end of each  
8 month.

9           (5) REVIEW.—All final determinations of the  
10 Commissioner under this subsection shall be review-  
11 able according to the procedures set out in section  
12 205 of the Social Security Act (42 U.S.C. 405).

13           (g) RELATIONSHIP WITH STATE LAW; EMPLOYER  
14 BENEFITS.—

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

20           (2) GREATER BENEFITS ALLOWED.—Nothing  
21 in this Act shall be construed to diminish the obliga-  
22 tion of an employer to comply with any contract, col-  
23 lective bargaining agreement, or any employment  
24 benefit program or plan that provides greater paid

1 leave or other leave rights to employees than the  
2 rights established under this Act.

3 (h) PROHIBITED ACTS; ENFORCEMENT.—

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

9 (2) CIVIL ACTION BY AN INDIVIDUAL.—

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

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

15 (I) the amount of—

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

21 (bb) in a case in which  
22 wages, salary, employment bene-  
23 fits, or other compensation have  
24 not been denied or lost to the in-  
25 dividual, any actual monetary

1                    losses sustained by the individual  
2                    as a direct result of the violation,  
3                    such as the cost of providing  
4                    care, up to a sum equal to 60  
5                    calendar days of wages or salary  
6                    for the individual;

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

10                   (III) an additional amount as liq-  
11                   uidated damages equal to the sum of  
12                   the amount described in subclause (I)  
13                   and the interest described in sub-  
14                   clause (II), except that if a person  
15                   who has violated paragraph (1) proves  
16                   to the satisfaction of the court that  
17                   the act or omission which violated  
18                   paragraph (1) was in good faith and  
19                   that the person had reasonable  
20                   grounds for believing that the act or  
21                   omission was not a violation of para-  
22                   graph (1), such court may, in the dis-  
23                   cretion of the court, reduce the  
24                   amount of the liability to the amount

1                   and interest determined under sub-  
2                   clauses (I) and (II), respectively; and  
3                   (ii) for such equitable relief as may be  
4                   appropriate, including employment, rein-  
5                   statement, and promotion.

6                   (B) RIGHT OF ACTION.—An action to re-  
7                   cover the damages or equitable relief prescribed  
8                   in subparagraph (A) may be maintained against  
9                   any person in any Federal or State court of  
10                  competent jurisdiction by any individual for and  
11                  on behalf of—

12                   (i) the individual; or  
13                   (ii) the individual and other individ-  
14                  uals similarly situated.

15                  (C) FEES AND COSTS.—The court in such  
16                  an action shall, in addition to any judgment  
17                  awarded to the plaintiff, allow a reasonable at-  
18                  torney’s fee, reasonable expert witness fees, and  
19                  other costs of the action to be paid by the de-  
20                  fendant.

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

24                   (i) on the filing of a complaint by the  
25                  Commissioner in an action under para-

1 graph (5) in which restraint is sought of  
2 any further delay in the payment of the  
3 amount described in subparagraph (A)(I)  
4 to such individual by the person respon-  
5 sible under subparagraph (A) for the pay-  
6 ment; or

7 (ii) on the filing of a complaint by the  
8 Commissioner in an action under para-  
9 graph (3) in which a recovery is sought of  
10 the damages described in subparagraph  
11 (A)(I) owing to an individual by a person  
12 liable under subparagraph (A),

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

16 (3) ACTION BY THE COMMISSIONER.—

17 (A) CIVIL ACTION.—The Commissioner  
18 may bring an action in any court of competent  
19 jurisdiction to recover the damages described in  
20 paragraph (2)(A)(I).

21 (B) SUMS RECOVERED.—Any sums recov-  
22 ered by the Commissioner pursuant to subpara-  
23 graph (A) shall be held in a special deposit ac-  
24 count and shall be paid, on order of the Com-  
25 missioner, directly to each individual affected.

1 Any such sums not paid to an individual be-  
2 cause of inability to do so within a period of 3  
3 years shall be deposited into the Federal Family  
4 and Medical Leave Insurance Trust Fund.

5 (4) LIMITATION.—

6 (A) IN GENERAL.—An action may be  
7 brought under this subsection not later than 3  
8 years after the date of the last event consti-  
9 tuting the alleged violation for which the action  
10 is brought.

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

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

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

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

4 (i) SPECIAL RULE FOR RAILROAD EMPLOYEES.—For  
5 purposes of subsection (a)(1), an individual shall be  
6 deemed to be insured for disability insurance benefits if  
7 the individual would be so insured if the individual’s serv-  
8 ice as an employee (as defined in the section 1(b) of the  
9 Railroad Retirement Act of 1974) after December 31,  
10 1936, were included within the meaning of the term “em-  
11 ployment” for purposes of title II of the Social Security  
12 Act (42 U.S.C. 401 et seq.).

13 (j) DETERMINATION OF WHETHER AN ACTIVITY  
14 CONSTITUTES QUALIFIED CAREGIVING.—

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

18 (A) the term “spouse” (as used in section  
19 102(a) of the Family and Medical Leave Act  
20 (29 U.S.C. 2612(a))) includes the individual’s  
21 domestic partner; and

22 (B) the term “son or daughter” (as used  
23 in such section) includes a son or daughter (as  
24 defined in section 101 of such Act) of the indi-  
25 vidual’s domestic partner.

1 (2) DOMESTIC PARTNER.—

2 (A) IN GENERAL.—For purposes of para-  
3 graph (1), the term “domestic partner”, with  
4 respect to an individual, means another indi-  
5 vidual with whom the individual is in a com-  
6 mitted relationship.

7 (B) COMMITTED RELATIONSHIP DE-  
8 FINED.—The term “committed relationship”  
9 means a relationship between two individuals  
10 (each at least 18 years of age) in which each  
11 individual is the other individual’s sole domestic  
12 partner and both individuals share responsi-  
13 bility for a significant measure of each other’s  
14 common welfare. The term includes any such  
15 relationship between two individuals, including  
16 individuals of the same sex, that is granted  
17 legal recognition by a State or political subdivi-  
18 sion of a State as a marriage or analogous rela-  
19 tionship, including a civil union or domestic  
20 partnership.

21 (k) APPLICABILITY OF CERTAIN SOCIAL SECURITY  
22 ACT PROVISIONS.—The provisions of sections 204, 205,  
23 206, and 208 of the Social Security Act shall apply to  
24 benefit payments authorized by and paid out pursuant to  
25 this section in the same way that such provisions apply

1 to benefit payments authorized by and paid out pursuant  
2 to title II of such Act.

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

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

8 (a) IN GENERAL.—There is hereby created on the  
9 books of the Treasury of the United States a trust fund  
10 to be known as the “Federal Family and Medical Leave  
11 Insurance Trust Fund”. The Federal Family and Medical  
12 Leave Insurance Trust Fund shall consist of such gifts  
13 and bequests as may be made as provided in section  
14 201(i)(1) of the Social Security Act (42 U.S.C. 401(i)(1))  
15 and such amounts as may be appropriated to, or deposited  
16 in, the Federal Family and Medical Leave Insurance  
17 Trust Fund as provided in this section.

18 (b) AUTHORIZATION OF APPROPRIATIONS.—

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

23 (A) for the first three fiscal years begin-  
24 ning after the date of enactment of this Act,  
25 such sums as may be necessary for the Com-

1           missioner to administer the office established  
2           under section 4 and pay the benefits under sec-  
3           tion 5;

4           (B) 100 percent of the taxes imposed by  
5           sections 3101(c) and 3111(c) of the Internal  
6           Revenue Code of 1986 with respect to wages  
7           (as defined in section 3121 of such Code) re-  
8           ported to the Secretary of the Treasury pursu-  
9           ant to subtitle F of such Code, as determined  
10          by the Secretary of the Treasury by applying  
11          the applicable rate of tax under such sections to  
12          such wages;

13          (C) 100 percent of the taxes imposed by  
14          section 1401(c) of such Code with respect to  
15          self-employment income (as defined in section  
16          1402 of such Code) reported to the Secretary of  
17          the Treasury on tax returns under subtitle F of  
18          such Code, as determined by the Secretary of  
19          the Treasury by applying the applicable rate of  
20          tax under such section to such self-employment  
21          income; and

22          (D) 100 percent of the taxes imposed by  
23          sections 3201(c), 3211(c), and 3221(c) of such  
24          Code with respect to compensation (as defined  
25          in section 3231 of such Code) reported to the

1 Secretary of the Treasury on tax returns under  
2 subtitle F of such Code, as determined by the  
3 Secretary of the Treasury by applying the ap-  
4 plicable rate of tax under such sections to such  
5 compensation.

6 (2) REPAYMENT OF INITIAL APPROPRIATION.—  
7 Amounts appropriated pursuant to subparagraph  
8 (A) of paragraph (1) shall be repaid to the Treasury  
9 of the United States not later than 10 years after  
10 the first appropriation is made pursuant to such  
11 subparagraph.

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

23 (c) MANAGEMENT OF TRUST FUND.—The provisions  
24 of subsections (c), (d), (e), (f), (i), and (m) of section 201  
25 of the Social Security Act (42 U.S.C. 401) shall apply with

1 respect to the Federal Family and Medical Leave Insur-  
2 ance Trust Fund in the same manner as such provisions  
3 apply to the Federal Old-Age and Survivors Insurance  
4 Trust Fund and the Disability Insurance Trust Fund.

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

9 (e) ADMINISTRATION.—There are authorized to be  
10 made available for expenditure, out of the Federal Family  
11 and Medical Leave Insurance Trust Fund, such sums as  
12 may be necessary to pay the costs of the administration  
13 of section 5, including start-up costs, technical assistance,  
14 outreach, education, evaluation, and reporting.

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

20 **SEC. 7. INTERNAL REVENUE CODE PROVISIONS.**

21 (a) IN GENERAL.—

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

24 (A) by redesignating subsection (c) as sub-  
25 section (d), and

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

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

4 “(1) IN GENERAL.—In addition to other taxes,  
5 there is hereby imposed on the income of every indi-  
6 vidual a tax equal to the applicable percentage of the  
7 wages (as defined in section 3121(a)) received by the  
8 individual with respect to employment (as defined in  
9 section 3121(b)).

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

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

16 (A) by redesignating subsections (c)  
17 through (e) as subsections (d) through (f), re-  
18 spectively, and

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

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

22 “(1) IN GENERAL.—In addition to other taxes,  
23 there is hereby imposed on every employer an excise  
24 tax, with respect to having individuals in his employ,  
25 equal to the applicable percentage of the wages (as

1 defined in section 3121(a)) paid by the employer  
2 with respect to employment (as defined in section  
3 3121(b)).

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

8 (3) SELF-EMPLOYMENT INCOME CONTRIBU-  
9 TION.—

10 (A) IN GENERAL.—Section 1401 of such  
11 Code is amended—

12 (i) by redesignating subsection (c) as  
13 subsection (d), and

14 (ii) by inserting after subsection (b)  
15 the following:

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

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

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

1                   (B) EXCLUSION OF CERTAIN NET EARN-  
2                   INGS FROM SELF-EMPLOYMENT.—Section  
3                   1402(b)(1) of such Code is amended by striking  
4                   “tax imposed by section 1401(a)” and inserting  
5                   “taxes imposed by subsections (a) and (c) of  
6                   section 1401”.

7                   (b) RAILROAD RETIREMENT TAX ACT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

20                   (A) by redesignating subsections (c) and  
21                   (d) as subsections (d) and (e), respectively, and

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

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

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

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

11 (c) CONFORMING AMENDMENTS.—

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

14           (A) in paragraph (1)—

15           (i) by inserting “, section 3101(c),”  
16 after “by section 3101(a)”; and

17           (ii) by striking “both” and inserting  
18 “each”; and

19           (B) in paragraph (2), by inserting “or  
20 3101(c)” after “3101(a)” each place it appears.

21           (2) Section 15(a) of the Railroad Retirement  
22 Act of 1974 (45 U.S.C. 231n(a)) is amended by in-  
23 serting “(other than sections 3201(c), 3211(c), and  
24 3221(c))” before the period at the end.

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

4 **SEC. 8. REGULATIONS.**

5 The Commissioner, in consultation with the Secretary  
6 of Labor, shall prescribe regulations necessary to carry out  
7 this Act. In developing such regulations, the Commissioner  
8 shall consider the input from a volunteer advisory body  
9 comprised of not more than 15 individuals, including ex-  
10 perts in the relevant subject matter and officials charged  
11 with implementing State paid family and medical leave in-  
12 surance programs. The Commissioner shall take such pro-  
13 grams into account when proposing regulations. Such indi-  
14 viduals shall be appointed as follows:

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

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

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

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

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

1 **SEC. 9. GAO STUDY.**

2 Not later than 3 years after the date of enactment  
3 of this Act, the Comptroller General shall submit to Con-  
4 gress a report on family and medical leave insurance bene-  
5 fits paid under section 5 for any month during the 1-year  
6 period beginning on January 1, 2019. The report shall in-  
7 clude the following:

8 (1) An identification of the total number of ap-  
9 plications for such benefits filed for any month dur-  
10 ing such 1-year period, and the average number of  
11 days occurring in the period beginning on the date  
12 on which such an application is received and ending  
13 on the date on which the initial determination of eli-  
14 gibility with respect to the application is made.

15 (2) An identification of the total number of re-  
16 quests for review of an initial adverse determination  
17 of eligibility for such benefits made during such 1-  
18 year period, and the average number of days occur-  
19 ring in the period beginning on the date on which  
20 such review is requested and ending on the date on  
21 which the final determination of eligibility with re-  
22 spect to such review is made.

23 (3) An identification of the total number of  
24 monthly benefit claim reports for such benefits filed  
25 during such 1-year period, and the average number  
26 of days occurring in the period beginning on the

1 date on which such a claim report is received and  
2 ending on the date on which the initial determina-  
3 tion of eligibility with respect to the claim report is  
4 made.

5 (4) An identification of the total number of re-  
6 quests for review of an initial adverse determination  
7 relating to a monthly benefit claim report for such  
8 benefits made during such 1-year period, and the av-  
9 erage number of days occurring in the period begin-  
10 ning on the date on which such review is requested  
11 and ending on the date on which the final deter-  
12 mination of eligibility with respect to such review is  
13 made.

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

○