

110TH CONGRESS  
1ST SESSION

# S. 1681

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

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IN THE SENATE OF THE UNITED STATES

JUNE 21, 2007

Mr. DODD (for himself and Mr. STEVENS) introduced the following bill; which  
was read twice and referred to the Committee on Finance

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## 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 2007”.

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

7 Congress finds the following:

8 (1) Since its passage, the Family and Medical  
9 Leave Act of 1993 (referred to in this section as the  
10 “FMLA”) has assisted millions of employees in bal-

1       ancing the demands of their jobs with their family  
2       responsibilities. However, many eligible employees  
3       are not able to utilize the benefits of the FMLA be-  
4       cause FMLA leave is unpaid. According to a 2000  
5       survey on the FMLA by the Department of Labor,  
6       among those employees who need FMLA leave and  
7       don't take it, 78 percent don't take it because they  
8       can't afford it.

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

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

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

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

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

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

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

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

23          (7) According to the Bureau of the Census and  
24          the Bureau of Labor Statistics, 56 percent of women  
25          with children under age 1 are in the labor force,

1 while 71 percent of all women with dependent chil-  
2 dren under age 18 are in the labor force.

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

6 **SEC. 3. GENERAL DEFINITIONS.**

7 (a) IN GENERAL.—The definitions provided by sec-  
8 tion 101 of the Family and Medical Leave Act of 1993  
9 (29 U.S.C. 2611), other than the definitions of the terms  
10 “eligible employee” and “employer”, shall apply for pur-  
11 poses of this Act.

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

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

17 (2) INSURANCE FUND.—The term “Insurance  
18 Fund” means the Family and Medical Leave Insur-  
19 ance Fund established under section 301.

20 (3) MANAGING TRUSTEE.—The term “Man-  
21 aging Trustee” means the Managing Trustee of the  
22 Board of Trustees of the Insurance Fund.

1 **TITLE I—FAMILY AND MEDICAL**  
2 **LEAVE INSURANCE PROGRAM**

3 **SEC. 101. PROGRAM DEFINITIONS.**

4 In this title:

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

7 (A) An employee who—

8 (i) is an eligible employee, as defined  
9 in section 101(2) of the Family and Med-  
10 ical Leave Act of 1993 (29 U.S.C.  
11 2611(2)) but is not an employee of the  
12 Federal Government; and

13 (ii) earned wages with a covered em-  
14 ployer for 12 of the last 18 months, prior  
15 to filing an application for leave benefits  
16 under this title.

17 (B) An employee—

18 (i) of a small employer that has elect-  
19 ed to participate in the Program under  
20 this title in accordance with such regula-  
21 tions as the Secretary shall prescribe;

22 (ii) who meets the requirements of  
23 subparagraphs (A) and (C) of section  
24 101(2) of such Act (29 U.S.C. 2611(2)),

but is not an employee of the Federal Government; and

(iii) earned wages with a covered employer for 12 of the last 18 months, prior to filing an application for leave benefits under this title.

(C) A self-employed individual who has—

(i) elected to participate in the Program under this title in accordance with such regulations as the Secretary shall prescribe;

(ii) self-employment income while a covered employer for 12 of the last 18 months, prior to filing an application for leave benefits under this title; and

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

(2) EMPLOYER-RELATED DEFINITIONS.—

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

(i) that is—

(I) an employer;

1 (II) a small employer that has  
2 elected to participate in the Program  
3 under this title in accordance with  
4 such regulations as the Secretary shall  
5 prescribe; or

6 (III) a self-employed individual  
7 who has elected to so participate; and  
8 (ii) that is not a voluntary plan em-  
9 ployer.

10 (B) EMPLOYER.—The term “employer”  
11 means a person that—

12 (i) is an employer, as defined in sec-  
13 tion 101(4) of the Family and Medical  
14 Leave Act of 1993 (29 U.S.C. 2611(4));  
15 but

16 (ii) is not an entity of the Federal  
17 Government.

18 (C) SMALL EMPLOYER.—The term “small  
19 employer”—

20 (i) means any person engaged in com-  
21 merce or in any industry or activity affect-  
22 ing commerce who employs not less than 2  
23 and not more than 49 employees for each  
24 working day during each of 20 or more

1 calendar workweeks in the current or pre-  
2 ceding calendar year; and

3 (ii) includes—

4 (I) any person who acts, directly  
5 or indirectly, in the interest of an em-  
6 ployer described in clause (i) to any of  
7 the employees of such employer;

8 (II) any successor in interest of  
9 an employer described in clause (i);  
10 and

11 (III) any public agency, as de-  
12 fined in section 3(x) of the Fair Labor  
13 Standards Act of 1938 (29 U.S.C.  
14 203(x)) that is an employer described  
15 in clause (i) but is not an entity of the  
16 Federal Government.

17 (D) VOLUNTARY PLAN EMPLOYER.—The  
18 term “voluntary plan employer” means an em-  
19 ployer for which the Secretary has approved a  
20 voluntary plan under section 104 for the period  
21 involved.

22 (3) LEAVE BENEFIT.—The term “leave benefit”  
23 means a family and medical leave insurance benefit  
24 described in section 103.

1           (4) PROGRAM.—The term “Program” means  
 2           the Family and Medical Leave Insurance Program  
 3           established under section 102.

4           (5) VOLUNTARY PAID BENEFIT.—The term  
 5           “voluntary paid benefit” means a family and medical  
 6           leave insurance benefit provided under a voluntary  
 7           plan approved under section 104 for the period in-  
 8           volved.

9   **SEC. 102. ESTABLISHMENT OF PROGRAM.**

10          (a) FEDERAL PROGRAM.—The Secretary of Labor  
 11          shall establish a Family and Medical Leave Insurance Pro-  
 12          gram. In carrying out the Program, the Secretary shall  
 13          ensure that covered employers provide family and medical  
 14          leave insurance benefits described in section 103 to eligible  
 15          employees. At the direction of the Secretary, the Managing  
 16          Trustee shall pay funds from the Insurance Fund to reim-  
 17          burse the covered employers for the leave benefits.

18          (b) EMPLOYER PARTICIPATION.—Each covered em-  
 19          ployer shall participate in the Program.

20   **SEC. 103. PROGRAM BENEFITS.**

21          (a) ENTITLEMENT.—Subject to subsections (b), (d),  
 22          and (e), an eligible employee of a covered employer shall  
 23          be entitled to a family and medical leave insurance benefit  
 24          for a total of 8 workweeks of leave taken under the Family  
 25          and Medical Leave Act of 1993 or other authority during

1 any 12-month period for 1 or more of the following rea-  
2 sons:

3 (1) Because of the birth of a son or daughter  
4 of the employee and in order to care for such son  
5 or daughter.

6 (2) Because of the placement of a son or  
7 daughter with the employee for adoption or foster  
8 care.

9 (3) In order to care for the spouse, or a son,  
10 daughter, or parent, of the employee, if such spouse,  
11 son, daughter, or parent has a serious health condi-  
12 tion.

13 (4) Because of a serious health condition that  
14 makes the employee unable to perform the functions  
15 of the position of such employee.

16 (b) WAITING PERIOD.—During each 12-month pe-  
17 riod described in subsection (a), each eligible employee  
18 shall be subject to a waiting period of 5 consecutive work-  
19 days of leave described in subsection (a) (but not more  
20 than 7 calendar days), during which a leave benefit shall  
21 not be paid to the employee. The waiting period shall not  
22 reduce the 8 workweeks of leave benefits available under  
23 subsection (a).

24 (c) BENEFIT AMOUNT.—

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

5                   (A) in the case of an employee with an an-  
6                   nual income of not more than \$20,000, an  
7                   amount equal to 100 percent of that employee’s  
8                   daily earnings;

9                   (B) in the case of an employee with an an-  
10                  nual income of more than \$20,000 and not  
11                  more than \$30,000, an amount equal to the  
12                  greater of—

13                           (i) 75 percent of that employee’s daily  
14                           earnings; or

15                           (ii) 100 percent of the daily earnings  
16                           of an employee with an annual income of  
17                           \$20,000;

18                   (C) in the case of an employee with an an-  
19                   nual income of more than \$30,000 and not  
20                   more than \$60,000, an amount equal to the  
21                   greater of—

22                           (i) 55 percent of that employee’s daily  
23                           earnings; or

1 (ii) 75 percent of the daily earnings of  
2 an employee with an annual income of  
3 \$30,000;

4 (D) in the case of an employee with an an-  
5 nual income of more than \$60,000 and not  
6 more than \$97,000, an amount equal to the  
7 greater of—

8 (i) 40 percent of that employee's daily  
9 earnings; or

10 (ii) 55 percent of the daily earnings of  
11 an employee with an annual income of  
12 \$60,000; and

13 (E) in the case of an employee with an an-  
14 nual income of more than \$97,000, an amount  
15 equal to 40 percent of the daily earnings of an  
16 employee with an annual income of \$97,000.

17 (2) INDEXING OF ANNUAL INCOME CAT-  
18 EGORIES.—

19 (A) IN GENERAL.—The Secretary shall  
20 index the annual income amounts specified in  
21 paragraph (1) for each calendar year, using the  
22 national average wage index, as determined  
23 under section 209(k) of the Social Security Act  
24 (42 U.S.C. 409(k)).

1 (B) PUBLICATION.—Not later than the  
2 November 1 preceding each calendar year, the  
3 Secretary shall publish in the Federal Register  
4 the indexed amount determined under subpara-  
5 graph (A) for that calendar year.

6 (d) APPLICATION.—

7 (1) IN GENERAL.—To be qualified to receive a  
8 leave benefit under the Program, an eligible em-  
9 ployee shall submit an application to the covered em-  
10 ployer of the employee at such time, in such manner,  
11 and containing the information specified in para-  
12 graph (2), as appropriate, and such additional infor-  
13 mation as the Secretary may by regulation require.

14 (2) CERTIFICATION REQUIREMENTS.—

15 (A) IN GENERAL.—The covered employer  
16 shall require that an application submitted  
17 under paragraph (1) for a leave benefit related  
18 to leave taken for a basis described in para-  
19 graph (3) or (4) of subsection (a) contain a cer-  
20 tification, submitted in a timely manner, issued  
21 by the health care provider of the eligible em-  
22 ployee or of the son, daughter, spouse, or par-  
23 ent, as appropriate, and meeting the require-  
24 ments of subsection (b) of section 103 of the

1           Family and Medical Leave Act of 1993 (29  
2           U.S.C. 2613) in connection with such leave.

3           (B) RECERTIFICATION.—In any case in  
4           which the covered employer has reason to doubt  
5           the validity of the certification provided under  
6           subparagraph (A), the covered employer may  
7           require, at the expense of the covered employer,  
8           that the eligible employee obtain the opinion of  
9           a second health care provider designated or ap-  
10          proved by the covered employer (subject to sub-  
11          section (c) of such section 103) concerning the  
12          information certified under subparagraph (A).  
13          The employee shall submit the opinion as an  
14          amendment to the application.

15          (C) RESOLUTION.—In any case in which  
16          the second opinion described in subparagraph  
17          (B) differs from the opinion in the original cer-  
18          tification provided under subparagraph (A), the  
19          covered employer may require, at the expense of  
20          the covered employer, that the employee obtain  
21          the opinion of a third health care provider des-  
22          ignated or approved jointly by the covered em-  
23          ployer and the employee concerning the infor-  
24          mation certified under subparagraph (A). The  
25          opinion of the third health care provider con-

1 cerning such information shall be considered to  
2 be final and shall be binding on the covered em-  
3 ployer and the employee. The employee shall  
4 submit the opinion as an amendment to the ap-  
5 plication.

6 (e) PAYMENT OF BENEFITS TO ELIGIBLE EMPLOY-  
7 EES.—

8 (1) DETERMINATION.—The covered employer  
9 shall review the application of the eligible employee  
10 and determine whether to certify a leave benefit pay-  
11 ment for the employee.

12 (2) PROVISION OF PAYMENT.—If the covered  
13 employer determines that the employer will certify  
14 the payment, the employer shall provide the payment  
15 to the eligible employee. Subject to subsection (d)(2)  
16 and paragraph (4), the covered employer shall pro-  
17 vide the payment to the employee so as to maintain,  
18 as closely as possible, the regular payment schedule  
19 used for the employee.

20 (3) REVIEW.—Any eligible employee dissatisfied  
21 with any initial determination under paragraph (1)  
22 shall be entitled to—

23 (A) reconsideration of the determination by  
24 the covered employer;

1 (B) an appeal to the Secretary of the em-  
2 ployer's final determination after such reconsid-  
3 eration; and

4 (C) judicial review of the Secretary's final  
5 decision after that appeal.

6 (4) WITHHOLDING OF CERTIFICATION AND  
7 PAYMENT.—In any case in which reconsideration, an  
8 appeal, or a review, relating to a covered employer's  
9 determination about certification of a leave benefit  
10 payment, is or may be sought under paragraph (3),  
11 the covered employer may withhold certification of  
12 the payment, and provision of the payment, pending  
13 such reconsideration, appeal, or review.

14 (5) OTHER COMPENSATION.—Except as other-  
15 wise provided in this title, no employee shall be eligi-  
16 ble to receive a leave benefit under the Program for  
17 any period during which—

18 (A) the employee is receiving worker's  
19 compensation, or unemployment compensation,  
20 in connection with the event for which the em-  
21 ployee is taking the leave; or

22 (B) the employee is receiving a voluntary  
23 paid benefit from an employer under a vol-  
24 untary plan approved under section 104 for the  
25 period.

1 (f) REIMBURSEMENT TO COVERED EMPLOYERS FOR  
2 BENEFITS.—

3 (1) CERTIFICATION TO SECRETARY.—Subject to  
4 subsection (e)(4), on the final decision of the covered  
5 employer or on the final judgment of a court pursu-  
6 ant to subsection (e)(3) that any eligible employee is  
7 entitled to any payment under this section, and not  
8 later than 1 year after making the payment to the  
9 employee, the covered employer shall submit to the  
10 Secretary an application in which the employer—

11 (A) certifies the name of the employee, the  
12 date on which the payment was made, the  
13 amount of the payment, and the address of the  
14 employer; and

15 (B) requests reimbursement of the pay-  
16 ment.

17 (2) REVIEW AND REIMBURSEMENT.—

18 (A) REVIEW PERIOD.—The Secretary shall  
19 review the application. Not later than 30 days  
20 after receiving the application, the Secretary  
21 shall approve or deny the application.

22 (B) REIMBURSEMENT.—If the Secretary  
23 approves the application—

24 (i) the Secretary shall certify to the  
25 Managing Trustee the name and address

1 of the covered employer, and the amount  
2 of the payment; and

3 (ii) the Managing Trustee shall imme-  
4 diately reimburse the covered employer by  
5 paying the amount certified by the Sec-  
6 retary from the Insurance Fund to the cov-  
7 ered employer, subject to paragraph (4).

8 (3) PAYMENT FROM INSURANCE FUND.—In  
9 making reimbursements for leave benefit payments  
10 under this section, the Managing Trustee may only  
11 use amounts paid from the Insurance Fund.

12 (4) LIMITATION ON PAYMENTS.—

13 (A) IN GENERAL.—The Managing Trustee  
14 shall not pay an amount from the Insurance  
15 Fund that is greater than the amount remain-  
16 ing in the Insurance Fund.

17 (B) NOTICE OF INSUFFICIENT FUNDS.—  
18 The Managing Trustee shall publish in the Fed-  
19 eral Register a notice of insufficient funds when  
20 the Managing Trustee determines that insuffi-  
21 cient funds remain in the Insurance Fund to  
22 reimburse covered employers for leave benefit  
23 payments. When such a notice is in effect, the  
24 employers shall not be required to pay leave  
25 benefits under this section.

1 (C) REVOCATION OF NOTICE.—If a notice  
2 of insufficient funds is in effect, and the Man-  
3 aging Trustee determines that sufficient funds  
4 have been deposited to the Insurance Fund to  
5 make such reimbursements, the Managing  
6 Trustee shall revoke the notice, by publication  
7 in the Federal Register. On revocation of the  
8 notice, covered employers shall be required to  
9 pay leave benefits under this section (including  
10 leave benefits requested by eligible employees  
11 for periods when the notice was in effect).

12 (5) FINDING REGARDING CONGRESSIONAL AU-  
13 THORITY.—Congress finds that Congress has the au-  
14 thority to appropriate funds to the Insurance Fund,  
15 including appropriating such funds in periods of na-  
16 tional crisis such as a period following a national  
17 disaster.

18 **SEC. 104. VOLUNTARY EMPLOYER PLAN.**

19 (a) IN GENERAL.—Any employer may submit an ap-  
20 plication to the Secretary for approval of a voluntary plan.  
21 The Secretary may require the employer to resubmit the  
22 plan for approval on an annual basis. During a period for  
23 which the Secretary has approved a plan, the applicant  
24 shall provide a voluntary paid benefit under the plan rath-  
25 er than participating in the Program.

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

4 (1) The rights afforded to the employees cov-  
5 ered under the plan are equal to or greater than the  
6 rights afforded through the Program.

7 (2) The plan has been made available to all of  
8 the employees of the applicant employed in the  
9 United States or to all employees at any 1 distinct,  
10 separate establishment maintained by the applicant  
11 in the United States.

12 (3) The plan provides for insurance to be issued  
13 by an admitted disability insurer approved by the  
14 Secretary or equivalent insurance (which may be  
15 self-insurance).

16 (4) The applicant has consented to the plan and  
17 has agreed to make the premium contributions re-  
18 quired, if any, and transmit the proceeds to the dis-  
19 ability insurer, if any.

20 (5) The plan provides for the inclusion of future  
21 employees.

22 (6)(A) The plan will be in effect for a period of  
23 not less than 1 year and, thereafter, continuously  
24 unless the Secretary finds that the applicant has  
25 given notice of intent to terminate the plan, as de-

1       scribed in subparagraph (B), and that the fee de-  
2       scribed in subparagraph (C) has been paid.

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

5                       (i) on the anniversary of the effective date  
6                       of the plan next following the date of the filing  
7                       of the notice; or

8                       (ii) if such anniversary would occur less  
9                       than 30 days after the date of the filing of the  
10                      notice, on the next anniversary of that effective  
11                      date.

12              (C) The applicant shall pay a fee to the Sec-  
13       retary in such amount as the Secretary determines  
14       to be adequate to provide leave benefits under this  
15       title to all eligible employees of the applicant for a  
16       period of at least 4 months, plus an amount to pay  
17       administrative costs related to processing and paying  
18       such benefits.

19              (D) Amounts received by the Secretary under  
20       this paragraph shall be deposited in the Insurance  
21       Fund.

22              (7) The amount of deductions from the wages  
23       of an employee that is in effect for the plan shall not  
24       be increased on any date other than on the date of  
25       an anniversary of the effective date of the plan.

1       (c) ORDERS AND WITHDRAWAL OF APPROVAL.—If  
2 the Secretary finds that a voluntary plan employer is not  
3 paying voluntary paid benefits required under the vol-  
4 untary plan to the employees under the plan, the Secretary  
5 may order the employer to make the payments. If the Sec-  
6 retary finds that a voluntary plan employer is not com-  
7 plying with the provisions of the plan, including by not  
8 paying voluntary paid benefits required under the plan,  
9 the Secretary may revoke the Secretary’s approval for the  
10 plan, and require the employer to participate in the Pro-  
11 gram.

12 **SEC. 105. ADDITIONAL BENEFITS.**

13       (a) ADDITIONAL EMPLOYER BENEFITS.—

14           (1) COVERED EMPLOYERS.—Nothing in this  
15 title shall be construed to discourage a covered em-  
16 ployer from providing an additional benefit in con-  
17 junction with leave described in section 103(a) to an  
18 eligible employee, in addition to the leave benefit  
19 provided to that employee. The additional employer  
20 benefit shall not reduce the amount of the leave ben-  
21 efit that an eligible employee receives under this  
22 title.

23           (2) VOLUNTARY PLAN EMPLOYERS.—Nothing  
24 in this title shall be construed to discourage a vol-  
25 untary plan employer from providing an additional

1 benefit in conjunction with leave described in section  
2 103(a) to an employee, in addition to the voluntary  
3 paid benefit provided to that employee. The addi-  
4 tional employer benefit shall not reduce the amount  
5 of the voluntary paid benefit that an employee re-  
6 ceives under a voluntary plan described in section  
7 104.

8 (b) COLLECTIVE BARGAINING.—

9 (1) MORE PROTECTIVE.—Nothing in this title  
10 shall be construed to diminish the obligation of a  
11 covered employer or voluntary plan employer to com-  
12 ply with any collective bargaining agreement or any  
13 employment benefit program or plan that provides  
14 greater paid leave rights to employees than the  
15 rights established under this title (including rights  
16 established under a plan described in section 104).

17 (2) LESS PROTECTIVE.—The rights established  
18 for employees under this title (including rights es-  
19 tablished under a plan described in section 104)  
20 shall not be diminished by any collective bargaining  
21 agreement or any employment benefit program or  
22 plan.

23 (c) SENSE OF THE SENATE.—It is the sense of the  
24 Senate that Federal law should be enacted to permit a  
25 State to continue to implement an existing (as of the date

1 of enactment of this Act) paid family and medical leave  
2 or temporary disability insurance program that is deter-  
3 mined by the Secretary to provide to employees equal or  
4 greater rights than the rights established under the Pro-  
5 gram.

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

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

11 (b) DISCRIMINATION.—It shall be unlawful for any  
12 covered employer to discharge or in any other manner dis-  
13 criminate against any individual for opposing any practice  
14 made unlawful by this title.

15 (c) INTERFERENCE WITH PROCEEDINGS OR INQUIR-  
16 IES.—It shall be unlawful for any person to discharge or  
17 in any other manner discriminate against any individual  
18 because such individual—

19 (1) has filed any charge, or has instituted or  
20 caused to be instituted any proceeding, under or re-  
21 lated to this title;

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

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

4   **SEC. 107. ENFORCEMENT.**

5       (a) CIVIL ACTION BY EMPLOYEES.—

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

9           (A) for damages equal to—

10           (i) the amount of—

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

15                   (II) in a case in which wages,  
16                   salary, employment benefits, or other  
17                   compensation have not been denied or  
18                   lost to the employee, any actual mone-  
19                   tary losses sustained by the employee  
20                   as a direct result of the violation, such  
21                   as the cost of providing care, up to a  
22                   sum equal to 8 weeks of wages or sal-  
23                   ary for the employee;

(ii) the interest on the amount described in clause (i) calculated at the prevailing rate; and

(iii) an additional amount as liquidated damages equal to the sum of the amount described in clause (i) and the interest described in clause (ii), except that if a covered employer who has violated section 106 proves to the satisfaction of the court that the act or omission which violated section 106 was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of section 106, such court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under clauses (i) and (ii), respectively; and

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

(2) RIGHT OF ACTION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), an action to recover the damages or equitable relief prescribed in para-

graph (1) may be maintained against any covered employer (including a public agency) in any Federal or State court of competent jurisdiction by any 1 or more employees for and on behalf of—

(i) the employees; or

(ii) the employees and other employees similarly situated.

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

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

(ii) on the filing of a complaint by the Secretary in an action under paragraph (1) or (2) of subsection (b) in which a recovery is sought of the damages described in paragraph (1)(A) owing to an eligible employee by an employer liable under paragraph (1),

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

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

10          (b) ACTIONS BY THE SECRETARY.—

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

18           (2) CIVIL ACTION.—

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

23           (B) SUMS RECOVERED.—Any sums recov-  
 24           ered by the Secretary pursuant to this para-  
 25           graph shall be held in a special deposit account

1 and shall be paid, on order of the Secretary, di-  
 2 rectly to each employee affected. Any such sums  
 3 not paid to an employee because of inability to  
 4 do so within a period of 3 years shall be depos-  
 5 ited into the Treasury of the United States as  
 6 miscellaneous receipts.

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

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

16 (B) to award such other equitable relief as  
 17 may be appropriate, including employment, re-  
 18 instatement, and promotion.

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

22 (c) LIMITATION.—

23 (1) Except as provided in paragraph (2), an ac-  
 24 tion may be brought under subsections (a) or (b) not  
 25 later than 2 years after the date of the last event

1       constituting the alleged violation for which the ac-  
2       tion is brought.

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

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

12      (d) INVESTIGATIVE AUTHORITY.—

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

19           (2) OBLIGATION TO KEEP AND PRESERVE  
20      RECORDS.—Any covered employer shall make, keep,  
21      and preserve records pertaining to compliance with  
22      this title in accordance with section 11(c) of the Fair  
23      Labor Standards Act of 1938 (29 U.S.C. 211(c))  
24      and in accordance with regulations issued by the

1 Secretary. The Secretary shall have access to the  
2 records for purposes of conducting audits.

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

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

18 **SEC. 108. PENALTIES.**

19 (a) PENALTIES FOR SUBMISSION OF FALSE CERTIFI-  
20 CATIONS.—If the Secretary finds that any individual sub-  
21 mits a false certification of the health condition of any  
22 person in order to obtain leave benefits under this title  
23 with the intent to defraud, the Secretary shall assess a  
24 penalty against the individual in an amount up to 100 per-  
25 cent of the benefits paid as a result of the false certifi-

1 cation. Penalties collected under this subsection shall be  
 2 deposited in the Insurance Fund, notwithstanding the pro-  
 3 visions of title 31, United States Code and used to reim-  
 4 burse the covered employers involved for the amount of  
 5 the leave benefits.

6 (b) CRIMINAL PENALTIES FOR FALSE STATEMENTS  
 7 AND SOLICITATIONS.—Whoever—

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

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

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

23 (4) knowingly assists, abets, solicits, or con-  
 24 spires with any person to engage in an act that is  
 25 prohibited under paragraph (1), (2), or (3),

1 shall be guilty of a felony and upon conviction shall be  
 2 fined under title 18, United States Code, or imprisoned  
 3 for not more than 5 years, or both.

4 **SEC. 109. EDUCATION PROGRAMS.**

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

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

14 **SEC. 110. TREATMENT OF PAYMENTS AND REIMBURSE-**  
 15 **MENTS.**

16 For purposes of the Internal Revenue Code of  
 17 1986—

18 (1) any payment of a leave benefit by any cov-  
 19 ered employer shall not be deductible; and

20 (2) any reimbursement of such payment shall  
 21 not be included in gross income.

22 **SEC. 111. REGULATIONS.**

23 The Secretary shall issue regulations to carry out this  
 24 title.

1 **SEC. 112. EFFECTIVE DATE.**

2 This title shall take effect on January 1, 2008, and  
3 shall apply to periods of leave that commence on or after  
4 January 1, 2009.

5 **TITLE II—CIVIL SERVICE FAM-**  
6 **ILY AND MEDICAL LEAVE IN-**  
7 **SURANCE PROGRAM**

8 **SEC. 201. PROGRAM DEFINITIONS.**

9 In this title:

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

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

15 (A) meets the requirements of paragraph  
16 (1) of section 6381 of title 5, United States  
17 Code; and

18 (B) has earned wages with an agency for  
19 12 of the last 18 months, prior to filing an ap-  
20 plication for leave benefits under this title.

21 **SEC. 202. ESTABLISHMENT OF PROGRAM.**

22 (a) IN GENERAL.—The Director of the Office of Per-  
23 sonnel Management shall establish a Civil Service Family  
24 and Medical Leave Insurance Program, and shall issue  
25 regulations providing for the implementation of the pro-  
26 gram. In issuing the regulations, the Director shall require

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

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

## 18 **TITLE III—FAMILY AND MED-** 19 **ICAL LEAVE INSURANCE** 20 **FUND**

### 21 **SEC. 301. ESTABLISHMENT.**

22 (a) IN GENERAL.—There is created in the Treasury  
 23 of the United States a trust fund to be known as the Fam-  
 24 ily and Medical Leave Insurance Fund. The Insurance  
 25 Fund shall consist of such amounts as may be deposited

1 in, or appropriated to, such fund as provided in this sec-  
 2 tion.

3 (b) APPROPRIATIONS TO INSURANCE FUND.—

4 (1) AMOUNTS APPROPRIATED.—There is appro-  
 5 priated to the Insurance Fund for fiscal year 2008  
 6 and each fiscal year thereafter, out of any moneys  
 7 in the Treasury not otherwise appropriated, amounts  
 8 equivalent to 100 percent of—

9 (A) the family and medical leave premiums  
 10 imposed by sections 3101(c) and 3111(c) of the  
 11 Internal Revenue Code of 1986 with respect to  
 12 wages (as defined in section 3121 of such Code)  
 13 reported to the Secretary of the Treasury or the  
 14 Secretary's delegate under subtitle F of such  
 15 Code after December 31, 2007, as determined  
 16 by the Secretary of the Treasury by applying  
 17 the applicable rates of premium payment under  
 18 such sections to such wages, which wages shall  
 19 be certified by the Commissioner of Social Se-  
 20 curity on the basis of the records of wages es-  
 21 tablished and maintained by the Commissioner  
 22 of Social Security in accordance with such re-  
 23 ports; and

24 (B) the family and medical leave premiums  
 25 imposed by section 1401(c) of such Code with

1           respect to self-employment income (as defined  
2           in section 1402 of such Code) reported to the  
3           Secretary of the Treasury or the Secretary's  
4           delegate on tax returns under subtitle F of such  
5           Code after December 31, 2007, as determined  
6           by the Secretary of the Treasury by applying  
7           the applicable rate of premium payment under  
8           such section 1401(c) to such self-employment  
9           income, which self-employment income shall be  
10          certified by the Commissioner of Social Security  
11          on the basis of the records of self-employment  
12          income established and maintained by the Com-  
13          missioner of Social Security in accordance with  
14          such returns.

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

1           (3) INVESTMENTS.—All amounts transferred to  
 2           the Insurance Fund under paragraph (2) shall be in-  
 3           vested by the Managing Trustee referred to in sec-  
 4           tion 302(c) in the same manner and to the same ex-  
 5           tent as the other assets of the Insurance Fund.

6 **SEC. 302. BOARD OF TRUSTEES.**

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

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

1 office or the date on which a report of the Board is first  
 2 issued under paragraph (2) after the expiration of the  
 3 member's term.

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

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

12 (1) hold the Insurance Fund;

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

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

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

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

1           (4) review the general policies followed in man-  
2           aging the Insurance Fund, and recommend changes  
3           in such policies, including necessary changes in the  
4           provisions of law that govern the way in which the  
5           Insurance Fund is to be managed.

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

21          (f) LIABILITY.—A person serving as a member of the  
22   Board of Trustees shall not be considered to be a fiduciary  
23   and shall not be personally liable for actions taken in such  
24   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 2007) 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 2007); 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 2007) 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 0.2 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 2007).”.

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, 2007.

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, 2007.

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