

113TH CONGRESS  
1ST SESSION

# S. 1810

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

---

## IN THE SENATE OF THE UNITED STATES

DECEMBER 12 (legislative day, DECEMBER 11), 2013

Mrs. GILLIBRAND introduced the following bill; which was read twice and  
referred to the Committee on Finance

---

## A BILL

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

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Family and Medical  
5 Insurance Leave Act of 2013”.

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

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

8               (1) In nearly two-thirds of families with chil-  
9       dren, all adults in the household work. Three in four  
10      caregivers have worked at a paying job at some

1 point during their caregiving experience. Without  
2 paid family and medical leave, many workers are un-  
3 able to take time away from work to care for new-  
4 born children, ill or aging parents and relatives, or  
5 themselves.

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

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

1           (4) Only 12 percent of all workers had access  
2           to paid family leave in 2012 and it was available to  
3           only 4 percent of individuals working in the lowest  
4           paying jobs. Workers who lack paid family leave face  
5           lost wages or even job loss when they miss work be-  
6           cause of their own illness or to care for an ill child  
7           or parent. In this way, access to paid leave plays a  
8           critical role in families' efforts to maintain employ-  
9           ment and economic security.

10          (5) Caregiving has a high value but also comes  
11          at a high cost for family caregivers. The estimated  
12          value of unpaid family care provided in 2009 was  
13          \$450 billion. Caregivers face financial, physical and  
14          emotional hardships, and in many cases their ca-  
15          reers, incomes, and retirement security suffer be-  
16          cause of their family responsibilities. Working care-  
17          givers should not have to risk their family's eco-  
18          nomic security to fulfill their caregiving obligations.  
19          The average worker age 50 and older who leaves the  
20          workforce to care for an elderly parent loses more  
21          than \$300,000 in earnings and retirement income.

22          (6) The population over age 65 is expected to  
23          double within the next few decades. The number of  
24          people with chronic conditions is expected to reach  
25          157 million by 2020. Many of these individuals will

1 at some point require family care, and for older  
2 workers still in the workforce, many will need time  
3 off at some point to address serious health condi-  
4 tions.

5 (7) Ensuring working family caregivers have  
6 paid family leave to care for ailing elders could drive  
7 down Medicare costs by decreasing recurrences of  
8 ailments and re-admittance into hospitals.

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

17 (9) When new mothers have no choice but to  
18 return to work without taking leave, children can ex-  
19 perience a variety of negative outcomes including  
20 higher rates of infant mortality, lower rates of  
21 breastfeeding, lower rates of immunization, and a  
22 higher incidence of maternal physical and mental  
23 health concerns. California's paid family leave insur-  
24 ance program has increased the number of weeks of  
25 leave that women take after childbirth, with larger

1 effects among women in jobs that do not provide  
2 paid leave.

3 (10) A nationwide paid family leave program  
4 would address the persistent sex discrimination in  
5 the utilization of leave benefits and reduce the dis-  
6 parity between women and men regarding who takes  
7 time off from work to fulfill caregiving duties. This  
8 disparity is driven in part by the fact that men con-  
9 tinue to earn more than women, and, as a result, it  
10 often makes more economic sense for women in two-  
11 parent families to take unpaid leave and forgo their  
12 lower salary.

13 (11) Many men would like to be more involved  
14 in caregiving and report greater work-family conflict  
15 than ever before. In California, men's use of the  
16 State's paid family leave insurance program to care  
17 for a new child has doubled since the program's im-  
18 plementation.

19 (12) Paid family and medical leave promotes  
20 families' financial security and independence, in-  
21 creases worker retention, and promotes savings for  
22 taxpayers. Women who take paid leave after a  
23 child's birth are more likely to be in the labor force  
24 in the 9 to 12 months after a child's birth and to  
25 earn higher wages in the year following their child's

1 birth. Both men and women who take paid leave  
2 after a child's birth are less likely to receive food  
3 stamps and public assistance in the year following a  
4 child's birth.

5 (13) Without paid medical leave, workers who  
6 are ill or injured may return to work before being  
7 fully recovered, thus making them susceptible to a  
8 relapse or recurrence, and potentially placing addi-  
9 tional burdens on the health care system. When a  
10 job requires physical stamina or ability, individuals  
11 who return to work too early may put themselves or  
12 others in jeopardy.

13 (14) A social insurance model of providing paid  
14 family leave pioneered by the states of California  
15 and New Jersey has worked well for workers, their  
16 families, and employers. Between 2004 and 2012,  
17 Californians took more than 1.4 million leaves to  
18 care for a family member or bond with a new child.  
19 Between 2009 and 2012, more than 100,000 New  
20 Jersey workers filed eligible claims for family leave.  
21 The overwhelming majority of California employers  
22 report that the program had a positive or neutral ef-  
23 fect on their business. Researchers conclude that  
24 some employers experienced cost savings by coordi-

1 nating their own benefits with those offered through  
2 the State paid family leave program.

3 (15) Employers and employees benefit when  
4 workers have access to paid leave. Social Security is  
5 one of the Nation's primary social insurance systems  
6 and it provides retirement assistance and disability  
7 benefits. When Social Security was created in 1934,  
8 most families had a stay at home caregiver. That is  
9 no longer the case. For the first time in the Nation's  
10 history, half of all workers in the United States are  
11 women. The system needs to be changed to reflect  
12 the realities of today's workforce and provide work-  
13 ers with income when they need leave from work due  
14 to the birth of a child or a serious health condition.

15 (16) When workers can care for themselves and  
16 their loved ones, employers experience positive im-  
17 pacts. More than four times as many worksites cov-  
18 ered by FMLA reported positive effects on employee  
19 productivity, absenteeism, turnover, career advance-  
20 ment and morale, as well as the business' profit-  
21 ability as reported negative effects in the Depart-  
22 ment of Labor's 2012 survey on the FMLA.

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

24 (1) to help working families, including single  
25 working parents and dual-earner families, afford to

1 take time away from work to provide care for a fam-  
 2 ily member and be good workers;

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

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

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

18 **SEC. 3. DEFINITIONS.**

19 In this Act, the following definitions apply:

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

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



1           (3) DEPUTY COMMISSIONER.—The term “Dep-  
 2       uty Commissioner” means the Deputy Commissioner  
 3       who heads the Office of Paid Family and Medical  
 4       Leave established under section 4(a).

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

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

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

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

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

1           (7) SELF-EMPLOYMENT INCOME.—The term  
 2           “self-employment income” has the same meaning as  
 3           such term in section 211(b) of such Act (42 U.S.C.  
 4           411(b)).

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

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

13          (10) 60-DAY LIMITATION PERIOD.—The term  
 14          “60-day limitation period” means a period—

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

20                (B) ending with the 60th caregiving day of  
 21                the individual occurring during the benefit pe-  
 22                riod and after the expiration of the 5-day wait-  
 23                ing period,  
 24                disregarding any caregiving day of the individual oc-  
 25                curring during any month in the benefit period after

1 the first 20 caregiving days of the individual occur-  
2 ring during such month.

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

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

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

12 (1) hiring personnel and making employment  
13 decisions with regard to such personnel;

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

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

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

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

1           (6) establishing and maintaining a system of  
2 records relating to the administration of such sec-  
3 tion;

4           (7) preventing fraud and abuse relating to such  
5 benefits;

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

13           (9) annually providing employers a notice in-  
14 forming employees of the availability of such bene-  
15 fits;

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

22           (11) tailoring culturally and linguistically com-  
23 petent education and outreach toward increasing uti-  
24 lization rates of benefits under such section.

1 (c) AVAILABILITY OF DATA.—The Commissioner  
 2 shall make available to the Deputy Commissioner such  
 3 data as the Commissioner determines necessary to enable  
 4 the Deputy Commissioner to effectively carry out the re-  
 5 sponsibilities described in subsection (b).

6 **SEC. 5. FAMILY AND MEDICAL LEAVE INSURANCE BENEFIT**  
 7 **PAYMENTS.**

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

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

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

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

19 (4) was engaged in qualified caregiving, or an-  
 20 ticipates being so engaged, during the period that  
 21 begins 90 days before the date on which such appli-  
 22 cation is filed or within 30 days after such date,  
 23 shall be entitled to such a benefit for each month in the  
 24 benefit period specified in subsection (c), not to exceed 60  
 25 caregiving days per benefit period.

1 (b) BENEFIT AMOUNT.—

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

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

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

18 (2) ANNUAL INCREASE OF MAXIMUM AND MIN-  
19 IMUM BENEFIT AMOUNTS.—

20 (A) For individuals who initially become el-  
21 igible for family and medical leave insurance  
22 benefits in the first full calendar year after the  
23 date of enactment of this Act, the maximum  
24 monthly benefit amount and the minimum

1 monthly benefit amount shall be \$4,000 and  
 2 \$580, respectively.

3 (B) For individuals who initially become el-  
 4 igible for family and medical leave insurance  
 5 benefits in any calendar year after such first  
 6 full calendar year the maximum benefit amount  
 7 and the minimum benefit amount shall be, re-  
 8 spectively, the product of the corresponding  
 9 amount determined with respect to the first cal-  
 10 endar year under subparagraph (A) and the  
 11 quotient obtained by dividing—

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

18 (ii) the national average wage index  
 19 (as so defined) for 2013.

20 (3) LIMITATIONS ON BENEFITS PAID.—

21 (A) NONPAYABLE WAITING PERIOD.—Any  
 22 calendar day during an individual's benefit pe-  
 23 riod which occurs before the expiration of an  
 24 initial waiting period shall not be taken into ac-

1 count under this subsection as a caregiving day  
2 of the individual.

3 (B) LIMITATION ON TOTAL BENEFITS  
4 PAID.—Any calendar day during an individual's  
5 benefit period which occurs after the expiration  
6 of a 60-day limitation period shall not be taken  
7 into account under this subsection as a  
8 caregiving day of the individual.

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

17 (A) periodic benefits on account of such in-  
18 dividual's total or partial disability under a  
19 workmen's compensation law or plan of the  
20 United States or a State; and

21 (B) periodic benefits on account of an indi-  
22 vidual's employment status under an unemploy-  
23 ment law or plan of the United States or a  
24 State.



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

14      (c) BENEFIT PERIOD.—

15           (1) IN GENERAL.—Except as provided in para-  
16      graph (2), the benefit period specified in this sub-  
17      section shall begin on the 1st day of the 1st month  
18      in which the individual meets the criteria specified in  
19      paragraphs (1), (2), and (3) of subsection (a), and  
20      shall end on the date that is 365 days after the 1st  
21      day of the benefit period.

22           (2) RETROACTIVE BENEFITS.—In the case of  
23      an application for benefits under this section for  
24      qualified caregiving in which the individual was en-  
25      gaged at any time during the 90-day period pre-

1 ceding the date on which such application is sub-  
 2 mitted, the benefit period specified in this subsection  
 3 shall begin on the later of—

4 (A) the 1st day of the 1st month in which  
 5 the individual engaged in such qualified  
 6 caregiving; or

7 (B) the 1st day of the 1st month that be-  
 8 gins during such 90-day period,  
 9 and shall end on the date that is 365 days after the  
 10 1st day of the benefit period.

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

13 (1) a statement that the individual was engaged  
 14 in qualified caregiving, or anticipates being so en-  
 15 gaged, during the period that begins 90 days before  
 16 the date on which the application is submitted or  
 17 within 30 days after such date;

18 (2) if the qualified caregiving described in the  
 19 statement in paragraph (1) is engaged in by the in-  
 20 dividual because of a serious health condition of the  
 21 individual or a relative of the individual, a certifi-  
 22 cation, issued by the health care provider treating  
 23 such serious health condition, that affirms the infor-  
 24 mation specified in paragraph (1) and contains such  
 25 information as the Commissioner shall specify in

1 regulations, which shall be no more than the infor-  
 2 mation that is required to be stated under section  
 3 103(b) of the Family and Medical Leave Act of  
 4 1993 (29 U.S.C. 2613(b));

5 (3) if such qualified caregiving is engaged in by  
 6 the individual for any other authorized reason, a cer-  
 7 tification, issued by a relevant authority determined  
 8 under regulations issued by the Commissioner, that  
 9 affirms the circumstances giving rise to such reason;  
 10 and

11 (4) an attestation from the applicant that his or  
 12 her employer has been provided with written notice  
 13 of the individual's intention to take family or med-  
 14 ical leave, if the individual has an employer, or to  
 15 the Commissioner in all other cases.

16 (e) INELIGIBILITY; DISQUALIFICATION.—

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

21 (A) disability insurance benefits under sec-  
 22 tion 223 of the Social Security Act (42 U.S.C.  
 23 423) or a similar permanent disability program  
 24 under any law or plan of a State or political  
 25 subdivision or instrumentality of a State (as

1 such terms are used in section 218 of the Social  
2 Security Act (42 U.S.C. 418));

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

7 (C) benefits under title XVI of such Act  
8 (42 U.S.C. 1381 et seq.) based on such individ-  
9 ual's status as a disabled individual (as deter-  
10 mined under section 1614 of such Act (42  
11 U.S.C. 1382c)).

12 (2) DISQUALIFICATION.—An individual who has  
13 been convicted of a violation under section 208 of  
14 the Social Security Act (42 U.S.C. 408) or who has  
15 been found to have used false statement to secure  
16 benefits under this section, shall be ineligible for  
17 benefits under this section for a 1-year period fol-  
18 lowing the date of such conviction.

19 (f) REVIEW OF ELIGIBILITY AND BENEFIT PAYMENT  
20 DETERMINATIONS.—

21 (1) ELIGIBILITY DETERMINATIONS.—

22 (A) IN GENERAL.—The Commissioner  
23 shall provide notice to an individual applying  
24 for benefits under this section of the initial de-  
25 termination of eligibility for such benefits, and

1 the estimated benefit amount for a month in  
2 which one caregiving day of the individual oc-  
3 curs, as soon as practicable after the applica-  
4 tion is received.

5 (B) REVIEW.—An individual may request  
6 review of an initial adverse determination with  
7 respect to such application at any time before  
8 the end of the 20-day period that begins on the  
9 date notice of such determination is received,  
10 except that such 20-day period may be extended  
11 for good cause. As soon as practicable after the  
12 individual requests review of the determination,  
13 the Commissioner shall provide notice to the in-  
14 dividual of a final determination of eligibility  
15 for benefits under this section.

16 (2) BENEFIT PAYMENT DETERMINATIONS.—

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

1           Such monthly report shall be filed with the  
2           Commissioner not later than 15 days after the  
3           end of each month.

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

1           (3) BURDEN OF PROOF.—An application for  
 2           benefits under this section and a monthly benefit  
 3           claim report of an individual shall each be presumed  
 4           to be true and accurate, unless the Commissioner  
 5           demonstrates by a preponderance of the evidence  
 6           that information contained in the application is  
 7           false.

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

16          (5) REVIEW.—All final determinations of the  
 17          Commissioner under this subsection shall be review-  
 18          able according to the procedures set out in section  
 19          205 of the Social Security Act (42 U.S.C. 405).

20          (g) RELATIONSHIP WITH STATE LAW; EMPLOYER  
 21          BENEFITS.—

22          (1) IN GENERAL.—This section does not pre-  
 23          empt or supercede any provision of State or local  
 24          law that authorizes a State or local municipality to

1 provide paid family and medical leave benefits simi-  
 2 lar to the benefits provided under this section.

3 (2) GREATER BENEFITS ALLOWED.—Nothing  
 4 in this Act shall be construed to diminish the obliga-  
 5 tion of an employer to comply with any contract, col-  
 6 lective bargaining agreement, or any employment  
 7 benefit program or plan that provides greater paid  
 8 leave or other leave rights to employees than the  
 9 rights established under this Act.

10 (h) PROHIBITED ACTS; ENFORCEMENT.—

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

16 (2) CIVIL ACTION BY AN INDIVIDUAL.—

17 (A) LIABILITY.—Any person who violates  
 18 paragraph (1) shall be liable to any individual  
 19 employed by such person who is affected by the  
 20 violation—

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

22 (I) the amount of—

23 (aa) any wages, salary, em-  
 24 ployment benefits, or other com-  
 25 pensation denied or lost to such



1 individual by reason of the viola-  
2 tion; or

3 (bb) in a case in which  
4 wages, salary, employment bene-  
5 fits, or other compensation have  
6 not been denied or lost to the in-  
7 dividual, any actual monetary  
8 losses sustained by the individual  
9 as a direct result of the violation,  
10 such as the cost of providing  
11 care, up to a sum equal to 60  
12 calendar days of wages or salary  
13 for the individual;

14 (II) the interest on the amount  
15 described in subclause (I) calculated  
16 at the prevailing rate; and

17 (III) an additional amount as liq-  
18 uidated damages equal to the sum of  
19 the amount described in subclause (I)  
20 and the interest described in sub-  
21 clause (II), except that if a person  
22 who has violated paragraph (1) proves  
23 to the satisfaction of the court that  
24 the act or omission which violated  
25 paragraph (1) was in good faith and

1           that the person had reasonable  
2           grounds for believing that the act or  
3           omission was not a violation of para-  
4           graph (1), such court may, in the dis-  
5           cretion of the court, reduce the  
6           amount of the liability to the amount  
7           and interest determined under sub-  
8           clauses (I) and (II), respectively; and  
9           (ii) for such equitable relief as may be  
10          appropriate, including employment, rein-  
11          statement, and promotion.

12          (B) RIGHT OF ACTION.—An action to re-  
13          cover the damages or equitable relief prescribed  
14          in subparagraph (A) may be maintained against  
15          any person in any Federal or State court of  
16          competent jurisdiction by any individual for and  
17          on behalf of—

18               (i) the individual; or

19               (ii) the individual and other individ-  
20          uals similarly situated.

21          (C) FEES AND COSTS.—The court in such  
22          an action shall, in addition to any judgment  
23          awarded to the plaintiff, allow a reasonable at-  
24          torney's fee, reasonable expert witness fees, and

1 other costs of the action to be paid by the de-  
 2 fendant.

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

6 (i) on the filing of a complaint by the  
 7 Commissioner in an action under para-  
 8 graph (5) in which restraint is sought of  
 9 any further delay in the payment of the  
 10 amount described in subparagraph (A)(I)  
 11 to such individual by the person respon-  
 12 sible under subparagraph (A) for the pay-  
 13 ment; or

14 (ii) on the filing of a complaint by the  
 15 Commissioner in an action under para-  
 16 graph (3) in which a recovery is sought of  
 17 the damages described in subparagraph  
 18 (A)(I) owing to an individual by a person  
 19 liable under subparagraph (A),  
 20 unless the action described in clause (I) or (ii)  
 21 is dismissed without prejudice on motion of the  
 22 Commissioner.

23 (3) ACTION BY THE COMMISSIONER.—

24 (A) CIVIL ACTION.—The Commissioner  
 25 may bring an action in any court of competent

1 jurisdiction to recover the damages described in  
2 paragraph (2)(A)(I).

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

12 (4) LIMITATION.—

13 (A) IN GENERAL.—An action may be  
14 brought under this subsection not later than 3  
15 years after the date of the last event consti-  
16 tuting the alleged violation for which the action  
17 is brought.

18 (B) COMMENCEMENT.—An action brought  
19 by the Commissioner under this subsection shall  
20 be considered to be commenced on the date  
21 when the complaint is filed.

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

1 (A) to restrain violations of paragraph (1),  
 2 including the restraint of any withholding of  
 3 payment of wages, salary, employment benefits,  
 4 or other compensation, plus interest, found by  
 5 the court to be due to an individual; or

6 (B) to award such other equitable relief as  
 7 may be appropriate, including employment, re-  
 8 instatement, and promotion.

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

18 (j) DETERMINATION OF WHETHER AN ACTIVITY  
 19 CONSTITUTES QUALIFIED CAREGIVING.—

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

23 (A) the term “spouse” (as used in section  
 24 102(a) of the Family and Medical Leave Act

1 (29 U.S.C. 2612(a))) includes the individual's  
 2 domestic partner; and

3 (B) the term “son or daughter” (as used  
 4 in such section) includes a son or daughter (as  
 5 defined in section 101 of such Act) of the indi-  
 6 vidual's domestic partner.

7 (2) DOMESTIC PARTNER.—

8 (A) IN GENERAL.—For purposes of para-  
 9 graph (1), the term “domestic partner”, with  
 10 respect to an individual, means another indi-  
 11 vidual with whom the individual is in a com-  
 12 mitted relationship.

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

1           tionship, including a civil union or domestic  
2           partnership.

3           (k) **APPLICABILITY OF CERTAIN SOCIAL SECURITY**  
4 **ACT PROVISIONS.**—The provisions of sections 204, 205,  
5 206, and 208 of the Social Security Act shall apply to  
6 benefit payments authorized by and paid out pursuant to  
7 this section in the same way that such provisions apply  
8 to benefit payments authorized by and paid out pursuant  
9 to title II of such Act.

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

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

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

25          (b) **AUTHORIZATION OF APPROPRIATIONS.**—

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

5           (A) for the first three fiscal years begin-  
6       ning after the date of enactment of this Act,  
7       such sums as may be necessary for the Com-  
8       missioner to administer the office established  
9       under section 4 and pay the benefits under sec-  
10      tion 5;

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

20          (C) 100 percent of the taxes imposed by  
21      section 1401(c) of such Code with respect to  
22      self-employment income (as defined in section  
23      1402 of such Code) reported to the Secretary of  
24      the Treasury on tax returns under subtitle F of  
25      such Code, as determined by the Secretary of



1 the Treasury by applying the applicable rate of  
 2 tax under such section to such self-employment  
 3 income; and

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

13 (2) REPAYMENT OF INITIAL APPROPRIATION.—

14 Amounts appropriated pursuant to subparagraph  
 15 (A) of paragraph (1) shall be repaid to the Treasury  
 16 of the United States not later than 10 years after  
 17 the first appropriation is made pursuant to such  
 18 subparagraph.

19 (3) TRANSFER TO TRUST FUND.—The amounts

20 described in paragraph (2) shall be transferred from  
 21 time to time from the general fund in the Treasury  
 22 to the Federal Family and Medical Leave Insurance  
 23 Trust Fund, such amounts to be determined on the  
 24 basis of estimates by the Secretary of the Treasury  
 25 of the taxes, specified in such paragraph, paid to or

1       deposited into the Treasury. Proper adjustments  
2       shall be made in amounts subsequently transferred  
3       to the extent prior estimates were inconsistent with  
4       the taxes specified in such paragraph.

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

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

16      (e) ADMINISTRATION.—There are authorized to be  
17      made available for expenditure, out of the Federal Family  
18      and Medical Leave Insurance Trust Fund, such sums as  
19      may be necessary to pay the costs of the administration  
20      of section 5, including start-up costs, technical assistance,  
21      outreach, education, evaluation, and reporting.

22      (f) PROHIBITION.—No funds from the Social Secu-  
23      rity Trust Fund or appropriated to the Social Security Ad-  
24      ministration to administer Social Security programs may

1 be used for Federal Family and Medical Leave Insurance  
 2 benefits or administration set forth under this Act.

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

4 (a) IN GENERAL.—

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

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

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

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

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

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

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

24 (A) by redesignating subsections (c) and  
 25 (d) as subsections (d) and (e), respectively, 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 every employer an excise  
 6 tax, with respect to having individuals in his employ,  
 7 equal to the applicable percentage of the wages (as  
 8 defined in section 3121(a)) paid by the employer  
 9 with respect to employment (as defined in section  
 10 3121(b)).

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

15 (3) SELF-EMPLOYMENT INCOME CONTRIBU-  
 16 TION.—

17 (A) IN GENERAL.—Section 1401 of such  
 18 Code is amended—

19 (i) by redesignating subsection (c) as  
 20 subsection (d), and

21 (ii) by inserting after subsection (b)  
 22 the following:

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

24 “(1) IN GENERAL.—In addition to other taxes,  
 25 there is hereby imposed for each taxable year, on the

self-employment income of every individual, a tax equal to the applicable percentage of the amount of the self-employment income for such taxable year.

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

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

(b) RAILROAD RETIREMENT TAX ACT.—

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

(A) by redesignating subsection (c) as subsection (d), and

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

“(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

“(1) IN GENERAL.—In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the applicable percentage of the compensation received during any calendar year

1 by such employee for services rendered by such em-  
 2 ployee.

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

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

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

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

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

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

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

24 (3) EMPLOYER CONTRIBUTION.—Section 3221  
 25 of such Code is amended—

1 (A) by redesignating subsections (c) and  
 2 (d) as subsections (d) and (e), respectively, and  
 3 (B) by inserting after subsection (b) the  
 4 following:

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

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

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

16 (c) EFFECTIVE DATE.—The amendments made by  
 17 subsections (a) and (b) shall take effect 120 days after  
 18 the date of enactment of this Act.

19 **SEC. 8. REGULATIONS.**

20 The Commissioner, in consultation with the Secretary  
 21 of Labor, shall prescribe regulations necessary to carry out  
 22 this Act. In developing such regulations, the Commissioner  
 23 shall consider the input from a volunteer advisory body  
 24 comprised of not more than 15 individuals, including ex-  
 25 perts in the relevant subject matter and officials charged

1 with implementing State paid family and medical leave in-  
2 surance programs. The Commissioner shall take such pro-  
3 grams into account when proposing regulations. Such indi-  
4 viduals shall be appointed as follows:

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

7 (2) Three individuals to be appointed by the  
8 majority leader of the Senate.

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

11 (4) Three individuals to be appointed by the  
12 Speaker of the House of Representatives.

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

15 **SEC. 9. GAO STUDY.**

16 Not later than 3 years after the date of enactment  
17 of this Act, the Comptroller General shall submit to Con-  
18 gress a report on family and medical leave insurance bene-  
19 fits paid under section 5 for any month during the 1-year  
20 period beginning on January 1, 2015. The report shall in-  
21 clude the following:

22 (1) An identification of the total number of ap-  
23 plications for such benefits filed for any month dur-  
24 ing such 1-year period, and the average number of  
25 days occurring in the period beginning on the date



1 on which such an application is received and ending  
2 on the date on which the initial determination of eli-  
3 gibility with respect to the application is made.

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

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

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

1 and ending on the date on which the final deter-  
 2 mination of eligibility with respect to such review is  
 3 made.

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

8 **SEC. 10. CONFORMING AMENDMENTS.**

9 (a) INTERNAL REVENUE CODE AMENDMENTS.—Sec-  
 10 tion 6413(c) of the Internal Revenue Code of 1986 is  
 11 amended—

12 (1) in paragraph (1)—

13 (A) by inserting “, section 3101(c),” after  
 14 “by section 3101(a)”; and

15 (B) by striking “both” and inserting  
 16 “each”; and

17 (2) in paragraph (2)—

18 (A) in subparagraph (B)—

19 (i) by inserting “or 3101(c)” after  
 20 “3101(a)” each place it appears; and

21 (ii) by inserting “or 235” after “218”  
 22 each place it appears; and

23 (B) in subparagraph (C), by inserting “or  
 24 3101(c)” after “3101(a)” each place it appears.

1       (b) RAILROAD RETIREMENT ACT OF 1974 AMEND-  
2   MENT.—Section 15(a) of the Railroad Retirement Act of  
3   1974 (45 U.S.C. 231n(a)) is amended by inserting “(other  
4   than sections 3201(c), 3211(c), and 3221(c))” before the  
5   period at the end.

○