House Bill 1517

By: Representatives Schofield of the 60th, Beverly of the 143rd, Boddie of the 62nd, Scott of the 76th, and McClain of the 100th

A BILL TO BE ENTITLED

AN ACT

To amend Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations, so as to provide for the creation and administration of a family and medical leave insurance program; to provide for a short title; to provide for definitions; to provide for the promulgation of rules and regulations by the Commissioner of Labor; to provide for qualifications; to provide for coverage; to create the Family and Medical Leave Insurance Fund; to provide for funding; to provide for employer responsibilities; to provide for violations and complaints; to provide for intermittent leave; to provide for annual reports; to provide for public education and outreach; to provide for related matters; to provide a contingent effective and automatic repeal date; to provide for severability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations, is amended by revising Chapter 11, which was previously reserved, as follows:

″CHAPTER 11

34-11-1.

This chapter shall be known and may be cited as the 'Georgia Family Insurance Act.' ~~Reserved.~~

34-11-2.

As used in this chapter, the term:

(1) 'Application year' means the 12 month period beginning on the first day of the calendar week in which an individual files an application for family leave insurance benefits.

(2) 'Average weekly wage' means the average wages over the course of the weeks prior to the start of the leave or, if the covered individual was not employed for the entire 52 weeks, then taking the average wages from the weeks when the covered individual was employed.

(3) 'Commissioner' means the Commissioner of Labor or the Commissioner of Labor's designee.

(4) 'Covered individual' means any person who:

(A) Satisfies the wage requirements of subsection (a) of Code Section 34-8-193;

(B) Meets any administrative requirements that may be outlined in rules or regulations promulgated as provided in this chapter; and

(C) Submits an application.

(5) 'Department' means the Georgia Department of Labor.

(6) 'Employee' means any individual employed by any employer within this state.

(7) 'Employer' shall have the same meaning as set forth in the federal Fair Labor Standards Act of 1938, 29 U.S.C. Code Section 203(d).

(8) 'Family and medical leave insurance benefits' means the benefits provided under this chapter.

(9) 'Family member' means:

(A) A biological, adopted, or foster child, stepchild, or legal ward or child to whom the employee stands in loco parentis;

(B) A biological, foster, stepparent, or adoptive parent or legal guardian of a covered individual; a covered individual's spouse or domestic partner; or a person who stood in loco parentis when the employee or the employee's spouse or domestic partner was a minor child;

(C) A person to whom the employee is legally married under the laws of any state;

(D) A grandparent or step-grandparent of the employee or the employee's spouse or domestic partner;

(E) A grandchild or step-grandchild of the employee or the employee's spouse or domestic partner;

(F) A biological, foster, or adopted sibling or the spouse or domestic partner of the sibling;

(G) A domestic partner registered as such under the laws of any state or political subdivision; or

(H) Any other individual related by blood or whose close association with the covered individual is the equivalent of a family relationship.

(10) 'FMLA' means the federal Family and Medical Leave Act of 1993, 29 U.S.C. Code Section 2601 et seq.

(11) 'FMLI Fund' means the Family and Medical Leave Insurance Fund created in Code Section 34-11-6.

(12) 'Qualifying exigency leave' means leave for the family member of a service member for a need arising out of a covered individual's family member's active duty service or

notice of an impending call or order to active duty in the United States armed forces, including, but not limited to:

(A) Providing for the care or other needs of the service member's child or other family member;

(B) Making financial or legal arrangements for the service member;

(C) Attending counseling;

(D) Attending military events or ceremonies;

(E) Spending time with the service member during rest and recuperation leave;

(F) Spending time with the service member following a return from deployment; or

(G) Making arrangements following the death of the service member.

(13) 'Serious health condition' shall have the same meaning as provided in the federal Family and Medical Leave Act of 1993, 29 U.S.C. Section 2611(11).

(14) 'State average weekly wage' is the average wage determined annually by the department based on information submitted pursuant to Chapter 8 of this title and calculated by dividing the total dollars paid to all employees during the year by the average number of employees that is then divided by 52.

34-11-3.

(a) The Commissioner shall establish and administer a family and medical leave insurance program for the purpose of providing the family and medical leave insurance benefits consistent with the provisions of this chapter.

(b) Beginning on January 1, 2025, family and medical leave insurance benefits shall be payable to a covered individual who meets at least one of the following requirements:

(1) Because of birth, adoption, or placement through foster care, is caring for a new child during the first year after the birth, adoption, or placement;

(2) Is caring for a family member with a serious health condition;

(3) Has a serious health condition that makes the covered individual unable to perform the functions of the position of employee; or

(4) Has a qualifying exigency, which is a need arising out of the deployment of a family member of the covered individual.

(c) Benefits are payable to an individual who is not currently employed, but who is a covered individual meeting at least one of the requirements provided for in subsection (b) of this Code section.

34-11-4.

The maximum number of weeks during which family and medical leave insurance benefits are payable in an application year shall be 12 weeks.

34-11-5.

(a) The amount of family and medical leave insurance benefits paid shall be a weekly benefit of 80 percent of an employee's average weekly wage up to a maximum benefit amount of $1,000.00; provided, however, that beginning October 1, 2025, and annually thereafter and not later than October 1 of each year, the department shall adjust the maximum weekly benefit amount to 90 percent of the state average weekly wage. Such adjusted maximum weekly benefit amount shall take effect on January 1 of the year following such adjustment.

(b) If an employee's average weekly wage is less than $30.00 then the weekly benefit shall be $30.00.

(c) Family and medical leave insurance benefits are not payable for less than one day or eight consecutive hours of family and medical leave taken in one work week.

34-11-6.

(a)(1) There shall be created in the state treasury the Family and Medical Leave Insurance Fund to be known as the FMLI Fund. Moneys in the fund shall be used only to pay benefits under and to administer the family and medical leave insurance program pursuant to this chapter. Interest earned on the investment of moneys in the fund, and any moneys remaining in the fund at the end of a fiscal year, shall remain in the fund and shall not revert to the general fund or to any other fund. The FMLI Fund shall cover all costs to administer the family and medical leave insurance program. Only the Commissioner may authorize expenditures from the FMLI Fund.

(2) When, in the judgment of the state treasurer, there are in the FMLI Fund amounts in excess of the amount deemed by the state treasurer to be sufficient to meet the current expenditures properly payable therefrom, the state treasurer shall have full power to invest, reinvest, manage, contract, sell, or exchange investments acquired with such excess funds in the manner prescribed by law.

(b) The Commissioner shall, no later than October 1 of each year, determine the amount of premiums necessary to finance the family and medical leave insurance program for the coming calendar year. Beginning on October 1, 2023, the Commissioner shall set the premium as a percentage of employee wages based on sound actuarial principles. For calendar year 2025 and for each year thereafter, the Commissioner shall certify and publish the following information:

(1) The total amount of family and medical leave insurance benefits paid by the department during the previous fiscal year;

(2) The total amount remaining in the FMLI Fund at the close of such fiscal year;

(3) The total amount equal to 140 percent of the previous fiscal year's expenditure for family and medical leave insurance benefits paid and for the administration of the family and medical leave insurance program;

(4) The amount by which the total amount remaining in the FMLI Fund at the close of the previous fiscal year is less than or greater than 140 percent of the previous fiscal year's expenditure for family and medical leave insurance benefits paid and for the administration of the family and medical leave insurance program; and

(5) The amount by which the contribution rate shall be adjusted to ensure that the FMLI Fund shall maintain or achieve an annualized amount of not less than 140 percent of the previous fiscal year's expenditure for family and medical leave insurance benefits paid and for the administration of the family and medical leave insurance program. The contribution rate adjustment, if any, made as the result of the Commissioner's certification and report under this subsection shall supersede the rate previously set forth and shall become effective on January 1 of the following calendar year.

(c) Beginning on January 1, 2024, each employer shall:

(1) Deduct from each employee's wages an amount equal to 50 percent, or such lesser percentage as may be agreed upon by the employer and employee, of the contribution required for the employee by subsection (b) of this Code section; and

(2) Remit the full contribution required under subsection (b) of this Code section to the department for deposit in the FMLI Fund.

(d) Each employer shall collect the premium amount from each employee and shall remit the premium amount to the state treasurer, who shall transfer the premiums to the state treasury for deposit into the FMLI Fund.

34-11-7.

(a) Upon the expiration of family and medical leave taken pursuant to Code Section 34-11-3, an employer shall restore any covered individual who exercises the individual's right to family and medical leave benefits to the position held by the covered individual when the leave commenced, or to a position with equivalent seniority, status, employment benefits, pay, and other terms and conditions of employment, including, but not limited to, fringe benefits and service credits that the covered individual was entitled to at the commencement of leave.

(b) During any leave taken pursuant to Code Section 34-11-3, the employer shall maintain any healthcare benefits the covered individual had prior to taking the leave for the duration of the leave as if the covered individual remained in employment continuously from the date the individual commenced the leave until the date the family and medical leave insurance benefits terminate; provided, however, that the covered individual shall continue to pay the covered individual's share of the cost of healthcare benefits as required prior to the commencement of the leave.

34-11-8.

(a) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this chapter.

(b) No person shall discharge, expel, demote, or otherwise discriminate or take adverse employment action against an individual because the individual:

(1) Files, applies for, or uses benefits provided for under this chapter;

(2) Takes leave from work under this chapter;

(3) Communicates to the employer an intent to file a claim, a complaint, or an appeal;

(4) Testifies, is about to testify, or assists in any proceeding under this chapter at any time, including the period in which the individual receives family and medical leave insurance benefits under this chapter; or

(5) Exercises any other right under this chapter.

(c) It shall be unlawful for an employer's absence policy to count paid family and medical leave taken under this chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

(d) The protections provided pursuant to this Code section apply to any person that mistakenly but in good faith alleges a violation of this chapter.

<u>34-11-9.</u>

<u>(a) Any employer who violates Code Section 34-11-7 or Code Section 34-11-8 shall be held liable for damages and equitable relief as provided under 29 U.S.C. Section 2617(a), including that an action to recover such damages or equitable relief may be maintained against any employer who violates Code Section 34-11-7 or Code Section 34-11-8 in the manner prescribed by 29 U.S.C. Section 2617(a).</u>

<u>(b) It shall be the duty of the Commissioner to administer this chapter. The Commissioner shall have the power and authority to adopt, amend, or rescind such rules and regulations and to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as deemed necessary or suitable to that end, and such rules and regulations shall be effective upon publication in the manner, not inconsistent with this chapter, which the Commissioner shall prescribe. In promulgating such rules and regulations, the Commissioner shall maintain, to the extent possible, consistency with the rules promulgated to implement the FMLA.</u>

<u>34-11-10.</u>

<u>(a) If time taken by an employee for whom family and medical leave insurance benefits were paid under this chapter also qualifies as a reason for leave under the FMLA, then such time shall run concurrently with leave taken under the FMLA.</u>

<u>(b) An employer may require that any payment made pursuant to this chapter be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or an employer policy. The employer shall give individuals in its employ written notice of this requirement when the employee requests leave under this chapter, or when the employer acquires knowledge that an employee's leave may be for a qualifying reason under Code Section 34-11-3.</u>

(c) Nothing in this chapter shall diminish an employer's obligation to comply with a collective bargaining agreement or employer policy, as applicable, that provides greater leave for any of the purposes in Code Section 34-11-3.

(d) Any agreement by an individual to waive the individual's rights under this chapter is void as against public policy.

34-11-11.

(a) Claims for family and medical leave benefits shall be made in a manner consistent with this chapter and any rules or regulations prescribed by the Commissioner.

(b) Any individual dissatisfied with a determination with respect to eligibility under this chapter or the amount of benefits determined payable under this chapter may appeal in a manner provided by the Commissioner in rules and regulations.

(c) An individual has 90 days from the date of notification of the determination of eligibility and amount of benefits to appeal the determination in the manner provided in subsection (b) of this Code section.

34-11-12.

(a) A covered individual is disqualified from receiving family and medical leave insurance benefits for one year if such individual knowingly makes a false statement or misrepresentation regarding a material fact, or knowingly fails to report a material fact, to obtain benefits under this chapter.

(b) If family and medical leave insurance benefits are paid erroneously or as a result of a knowing misrepresentation, or if a claim for family and medical leave benefits is rejected after benefits are paid, the department may seek repayment of benefits from the recipient. The Commissioner shall exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

34-11-13.

(a) A self-employed person, including a sole proprietor, partner, or joint venturer, may elect coverage under this chapter for an initial period of not less than three years or a subsequent period of not less than one year immediately following another period of coverage. The self-employed person must file a notice of election in writing with the Commissioner as prescribed by rules and regulations promulgated by the Commissioner. Such election shall become effective on the date of filing of the notice of election.

(b) A self-employed person who has elected coverage may withdraw from coverage within 30 days after the end of the three-year period of coverage, or at other times as the Commissioner may prescribe by rules or regulations, by filing written notice with the Commissioner. The withdrawal shall take effect not sooner than 30 days after filing such notice of withdrawal.

34-11-14.

(a) The Commissioner shall establish procedures and forms for filing claims for benefits under this chapter.

(b) The department shall notify the employer within five business days of the department's receipt of a claim being filed pursuant to this chapter.

(c) The department shall use information sharing and integration technology to facilitate the disclosure of relevant information or records so long as an individual consents to the disclosure in the manner provided by applicable law.

(d) Information contained in the files and records pertaining to an individual under this chapter shall be confidential and shall not be open to public inspection under Article 4 of Chapter 18 of Title 50, other than to public employees in the performance of their official duties; provided, however, that an individual, or an authorized representative of an individual, may review the records or receive specific information from the records on the presentation of the signed authorization of the individual.

34-11-15.

If the United States Internal Revenue Service determines that family and medical leave insurance benefits under this chapter are subject to federal income tax, the department shall advise an individual filing a new claim for family and medical leave insurance benefits, at the time the individual files the claim, that:

(1) The United States Internal Revenue Service has determined that benefits are subject to federal income tax; and

(2) Requirements exist pertaining to estimated tax payments.

34-11-16.

(a) An employee may take, at the option of the employee, family and medical leave on an intermittent leave schedule.

(b) The employee must make a reasonable effort to schedule intermittent leave so as not to disrupt unduly the operations of the employer. The employee shall provide the employer with prior notice of the care, medical treatment, or continuing supervision by a healthcare provider necessary due to a serious health condition of a family member in a manner which is reasonable and practicable. Leave taken on an intermittent leave schedule must not result in a reduction of the total amount of leave to which an employee is entitled beyond the amount of leave actually taken.

34-11-17.

No later than April 1, 2026, and by April 1 of each year thereafter, the department shall report to the General Assembly on projected and actual family and medical leave insurance program participation, premium rates, fund balances, and outreach efforts.

34-11-18.

The department shall conduct public education campaigns to inform employees and employers about the availability of the family leave and medical leave insurance program. The department may use a portion of the funds collected for the family and medical leave insurance program in any given year to pay for such public education campaigns. Outreach information must be available in English and other languages spoken by more than 10 percent of the state's population as that group's primary language.

34-11-19.

The department is encouraged to use state data collection and technology to the extent possible in order to keep the cost of the family and medical leave insurance program down and to integrate the program with existing state policies.

34-11-20.

(a) Each employer shall provide a written notice to each employee upon hiring and each calendar year thereafter. An employer shall also provide a written notice to an employee when the employee requests leave under this chapter, or when the employer acquires knowledge that an employee's leave may be for a qualifying reason under Code Section 34-11-3. Such written notice shall include:

(1) The employee's right to family and medical leave insurance benefits under this chapter and the terms under which it may be used;

(2) The amount of family and medical leave insurance benefits;

(3) The procedure for filing a claim for benefits;

(4) The right to job protection and benefits continuation under Code Section 34-11-7;

(5) A statement that discrimination and retaliatory personnel actions against a person for requesting, applying for, or using family and medical leave insurance benefits is prohibited under Code Section 34-11-8;

(6) A statement informing the employee whether the employer requires payment pursuant to this chapter be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy under Code Section 34-11-9; and

(7) A statement informing the employee that such employee has the right to file a complaint for a violation of this chapter.

(b) An employer shall also display and maintain a poster in a conspicuous place accessible to employees at the employer's place of business that contains the information required by subsection (a) of this Code section in English, Spanish, and any language that is the first language spoken by at least 10 percent of the employer's workforce, so long as the notice has been made publicly available by the department. The Commissioner may adopt regulations to establish additional requirements concerning the means by which employers provide the information required by subsection (a) of this Code section."

SECTION 2.

This Act shall become effective on January 1, 2023, only if there is ratified at the November, 2022, state-wide general election an amendment to the Constitution of Georgia which authorizes the dedication of funds to the Family and Medical Leave Insurance Fund. If no such amendment is proposed by the General Assembly, if such amendment is rejected by the electors, or if the election to ratify the proposed amendment is not held at the time of the 2022 general election, this Act shall not become effective and shall stand repealed on January 1, 2023.

SECTION 3.

This Act shall be severable in accordance with Code Section 1-1-3 of the Official Code of Georgia Annotated.

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.