

1 H.652

2 Introduced by Representative Krowinski of Burlington

3 Referred to Committee on

4 Date:

5 Subject: Labor; employment practices; paid family leave

6 Statement of purpose of bill as introduced: This bill proposes to establish a
7 system giving qualified employees up to six weeks of paid leave for various
8 family reasons.

9 An act relating to employee-funded paid family leave

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. 21 V.S.A. § 472c is added to read:

12 § 472c. EMPLOYEE-FUNDED PAID FAMILY LEAVE

13 (a) As used in this subchapter:

14 (1) "Employee" means a person who, in consideration of direct or
15 indirect gain or profit, has been employed for a period of one year for an
16 average of at least 20 hours per week while earning at least the minimum
17 hourly wage, as defined in section 384 of this title, and has paid into the fund
18 established under subsection (m) of this section for at least one year prior to
19 the date of leave.

1 (2) “Employer” means an individual, organization, governmental body,
2 partnership, association, corporation, legal representative, trustee, receiver,
3 trustee in bankruptcy and any common carrier by rail, motor, water, air, or
4 express company doing business in or operating within this State.

5 (3) “Family leave” means a leave of absence from employment by an
6 employee who works for an employer for one of the following reasons:

7 (A) the serious illness of the employee;

8 (B) the serious illness of the employee’s child, stepchild, ward who
9 lives with the employee, foster child, parent, spouse, or parent of the
10 employee’s spouse;

11 (C) the birth of the employee’s child; or

12 (D) the initial placement of a child 16 years of age or younger with
13 the employee for the purpose of adoption.

14 (4) “Livable wage” means an hourly rate of not less than the livable
15 wage determined in accordance with 2 V.S.A. § 505.

16 (5) “Serious illness” means an accident, disease, or physical or mental
17 condition that:

18 (A) poses imminent danger of death;

19 (B) requires inpatient care in a hospital; or

20 (C) requires continuing in-home care under the direction of a
21 physician.

1 (6) “Wage” means the average weekly wage earned by the employee
2 during the previous calendar quarter.

3 (b) During any 12-month period, an employee shall be entitled to take paid
4 family leave for a total period not to exceed six weeks. After benefits begin,
5 the six-week leave may be used intermittently or consecutively by the hour,
6 day, or week during the year.

7 (c) An employee shall file an application for benefits under this section
8 with the Commissioner on a form provided by the Commissioner at least five
9 days before the arrival of a child and as soon as practicable for a serious health
10 condition of the employee or a member of the employee’s immediate family.
11 The Commissioner shall determine eligibility of the employee based on the
12 following criteria:

13 (1) The employee is qualified.

14 (2) The purposes for which the claim is made are documented.

15 (3) The employee provided the employer with reasonable advanced
16 notice of the requested leave.

17 (d) An employee awarded benefits under this section shall receive the
18 employee’s average weekly wage. The highest possible amount any employee
19 may receive under this section shall be capped at the amount equivalent to six
20 20-hour work weeks paid at a rate double that of the livable wage.

1 (e) The employer shall continue employment benefits for the duration of
2 the leave at the level and under the conditions that would be provided if the
3 employee were employed continuously for the duration of the leave. The
4 employer may require that the employee contribute to the cost of the benefits
5 during the leave at the existing rate of employee contribution.

6 (f) The employer shall post and maintain in a conspicuous place in and
7 about each of his or her places of business printed notices of the provisions of
8 this subchapter on forms provided by the Commissioner of Labor.

9 (g) An employee shall give reasonable written notice to the employer of
10 intent to take leave under this subchapter. Notice shall include the date the
11 leave is expected to commence and the estimated duration of the leave. In the
12 case of the adoption or birth of a child, an employer shall not require that
13 notice be given more than six weeks prior to the anticipated commencement of
14 the leave. In the case of serious illness of the employee or a member of the
15 employee's family, an employee shall give notice as soon as practicable. In
16 the case of serious illness of the employee or a member of the employee's
17 family, an employer may require certification from a physician to verify the
18 condition and the amount and necessity for the leave requested. An employee
19 may return from leave earlier than estimated upon approval of the employer.
20 An employee shall provide reasonable notice to the employer of his or her need
21 to extend leave to the extent provided by this chapter.

1 (h) Upon return from leave taken under this subchapter, an employee shall
2 be offered the same or comparable job at the same level of compensation,
3 employment benefits, seniority or any other term or condition of the
4 employment existing on the day leave began. This subchapter shall not apply
5 if, prior to requesting leave, the employee had been given notice or had given
6 notice that the employment would terminate. This subsection shall not apply if
7 the employer can demonstrate by clear and convincing evidence that:

8 (1) during the period of leave the employee's job would have been
9 terminated or the employee laid off for reasons unrelated to the leave or the
10 condition for which the leave was granted; or

11 (2) the employee performed unique services and hiring a permanent
12 replacement during the leave, after giving reasonable notice to the employee of
13 intent to do so, was the only alternative available to the employer to prevent
14 substantial and grievous economic injury to the employer's operation.

15 (i) An employer may adopt a leave policy more generous than the leave
16 policy provided by this subchapter. Nothing in this subchapter shall be
17 construed to diminish an employer's obligation to comply with any collective
18 bargaining agreement or any employment benefit program or plan which
19 provides greater leave rights than the rights provided by this subchapter. A
20 collective bargaining agreement or employment benefit program or plan may
21 not diminish rights provided by this subchapter. Notwithstanding the

1 provisions of this subchapter, an employee may, at the time a need for parental
2 or family leave arises, waive some or all the rights under this subchapter
3 provided the waiver is informed and voluntary and any changes in conditions
4 of employment related to any waiver shall be mutually agreed upon between
5 employer and employee.

6 (j) Except for serious illness of the employee, an employee who does not
7 return to employment with the employer who provided the leave shall return to
8 the employer the value of any compensation paid to or on behalf of the
9 employee during the leave, except payments for accrued sick leave or
10 vacation leave.

11 (k) If two employees from the same family request leave under this section,
12 the employer may require that the employees take leave at separate times.

13 (l) The Commissioner shall make a determination of each claim no later
14 than five days after the date the claim is filed, and benefits shall be paid from
15 the fund created pursuant to subsection (m) of this section. An employee or
16 employer aggrieved by a decision of the Commissioner under this chapter may
17 file with the Commissioner a request for reconsideration within 30 days after
18 receipt of the Commissioner's decision. Thereafter, an applicant denied
19 reconsideration may file an appeal to the Civil Division of the Superior Court
20 in the county where the employment is located.

1 (m) A Paid Parental Leave Fund is created pursuant to 32 V.S.A. chapter 7,
2 subchapter 5 to be expended by the Commissioner for the benefits awarded
3 and administration of the paid parental leave. The Fund shall consist of a
4 0.63 percent contribution to be deducted from employees' wages. The
5 employer shall submit these taxes to the Commissioner in a form and at times
6 determined by the Commissioner.

7 (n) A person who willfully makes a false statement or representation for the
8 purpose of obtaining any benefit or payment under the provisions of this
9 chapter, either for herself or himself or for any other person, after notice and
10 opportunity for hearing, may be assessed an administrative penalty of not more
11 than \$20,000.00, and shall forfeit all or a portion of any right to compensation
12 under the provisions of this chapter, as determined to be appropriate by the
13 Commissioner after a determination by the Commissioner that the person has
14 willfully made a false statement or representation of a material fact. In
15 addition, an employer found to have violated this section is prohibited from
16 contracting, directly or indirectly, with the State or any of its subdivisions for
17 up to three years following the date the employer was found to have made a
18 false statement or misrepresentation of a material fact, as determined by the
19 Commissioner in consultation with the Commissioner of Buildings and
20 General Services or the Secretary of Transportation, as appropriate. Either the
21 Secretary or the Commissioner, as appropriate, shall be consulted in any

1 contest relating to the prohibition of the employer from contracting with the
2 State or its subdivisions.

3 Sec. 2. EFFECTIVE DATE

4 This act shall take effect on July 1, 2014. Employers shall begin deducting
5 contributions from employees' wages on July 1, 2015, and beginning
6 January 1, 2016, qualified employees may begin to receive benefits under
7 this law.