



**ILLINOIS STATE
BAR ASSOCIATION**

**Assembly Meeting
December 10, 2016**

**Agenda Item 13C
Legislation
(Family Leave Insurance Act Legislation)**



**ILLINOIS STATE
BAR ASSOCIATION**

MEMORANDUM

To: ISBA Assembly
From: Jim Covington
Date: November 10, 2016
In re: Family Leave Insurance Act

The Standing Committee on Women and the Law respectfully requests that the ISBA Assembly support passage of the Family Leave Insurance Act. A copy is attached of the proposed legislation that was introduced in July and will be re-introduced in January in the new General Assembly. Also attached is a short memo from WATL in support of this request.

These were recently sent to the following sections and committees for their review and comments:

- Corporate Law Section Council
- Employee Benefits Section Council
- Labor and Employment Section Council
- Standing Committee on Disability Law
- Family Law Section Council
- Child Law Section Council
- Young Lawyers Division
- Health Care Section Council
- Human Rights Section Council
- Insurance Law Section Council
- General Practice Section Council
- Standing Committee on SOGI
- Standing Committee on Law Office Management and Economics

Please call if you have any questions. Thank you.

MEMORANDUM

TO: Illinois State Bar Association Assembly

FROM: Standing Committee on Women and the Law

DATE: September 30, 2016

RE: Family Leave Insurance Act

The Standing Committee on Women and the Law (WATL) urges the ISBA to support passage of the Family Leave Insurance Act. This memorandum briefly explains the benefits of family leave insurance and the current status of similar programs in place outside of Illinois, and summarizes the Illinois Family Leave Insurance Act, in its current form.

The United States is the only industrialized nation in the world that does not have a mandatory workplace-based program that provides paid-time off of work for mothers who give birth or adopt a child. The United States is only one of nine industrialized countries that have no such program in place for fathers. Likewise, the United States stands essentially alone in its failure to have a system in place that mandates time off for an employee's own sickness, to take care of a sick family member or to take a vacation.¹ We are a nation that supports family values without any substance to support that claim. We value American families by taking steps to preserve the family structure, which is accomplished through the enactment of laws that protect our mothers and fathers, and our sons and daughters, in the workplace. Women are more likely to be the primary caregiver in the family and increasingly are becoming the primary breadwinners as well. As of 2013, 40% of all households with children under the age of 18 included mothers who were either the sole or the primary source of income for the family.² Paid family leave programs promote equality in the workplace by alleviating the stigma that women with children face which results in denied or delayed career advancement and equal wages.³ Paid family leave programs increase the likelihood that a new mother or father will return to the workplace with increased productivity as the result of improved loyalty and morale.⁴ In addition, as our workforce ages, so do their parents. The share of the population age 65 and older is larger today than it was at any point during the 20th century.⁵ It is therefore necessary and desirable for the State of Illinois to develop a system that helps families adapt to the competing interests of work and home while benefiting employer productivity and profit. Having a similar system in Illinois will allow smaller businesses to compete with larger businesses.

Four states, California, New Jersey, Rhode Island and most recently, New York, along with many businesses, have adopted paid family leave programs. California's employers all reported positive outcomes associated with its program, with small to medium-sized businesses reporting

¹ <http://www.npr.org/sections/itsallpolitics/2015/07/15/422957640/lots-of-other-countries-mandate-paid-leave-why-not-the-us>

² <http://www.pewsocialtrends.org/2013/05/29/breadwinner-moms/>

³ http://pubadvocate.nyc.gov/sites/advocate.nyc.gov/files/publicadvocate-paidfamilyreport_may_2015_1.pdf

⁴ <http://www.nationalpartnership.org/research-library/work-family/paid-leave/paid-leave-good-for-business.pdf>

⁵ https://www.whitehouse.gov/sites/default/files/docs/leave_report_final.pdf

the most positive outcomes overall.⁶ Very few employers suspect abuse and even fewer have reported abuse.⁷ In each of these states, the paid family leave is working. Millions of employees have taken paid leave to bond with a new child, to attend doctor appointments, breastfeed, and recover from childbirth. Businesses, both small and large, overwhelmingly have reported an easy adjustment with little to no administration costs and in fact, have seen cost savings.⁸ It is the public policy of the State of Illinois to promote legislation that balances workplace protections for Illinois families with business-friendly solutions. The Illinois State Bar Association has been a strong and vocal leader for the advancement of work-life balance. Support for substantive legislation furthers that goal and is consistent with these values.

Illinois Legislative Action

On July 5, 2016, Senator Daniel Biss filed the Family Leave Insurance Act as Senate Amendment 1 to Senate Bill 260. No action will likely be taken until the 100th General Assembly convenes in January, 2017. The Family Leave Insurance Act, as filed, provides an eligible employee with up to twelve (12) week of family leave within a twenty-four (24) month period, for the birth or adoption of a child, to care for a family member with a serious health condition or to recover from his/her own health condition. An eligible employee must be employed by the same employer in the State of Illinois for twelve (12) months or more or with a base of 1,200 hours worked during the preceding twelve (12) month period. For purposes of this Act, an employer is anyone who employs one or more employees, with certain exceptions. The Family Leave Insurance Act provides job protections during the period that the employee is entitled to take leave. Specifically, upon return from leave the employee must be restored to the same or an equivalent position of employment. Like the other states, the program is funded by an employee payroll premium deduction of .3% of taxable wages, with (a current) annual total contribution cap of \$38.88 per employee. The employee is compensated at two-thirds (2/3) of his/her average weekly wage. The program would be administered by the Department of Employment Security. Illinois' Family Leave Insurance Act is solely funded by employees and has no mandatory contribution by employers.

Proposed Action

We ask the ISBA Assembly to vote in favor of a resolution in support of the Family Leave Insurance Act.

⁶ Applebaum, E., & Milkman, R. (2011, January 19). Paid Family Leave Pays Off in California. Harvard Business Review, HBR Blog Network. Retrieved 5 March 2015, from <http://blogs.hbr.org/2011/01/paid-family-leave-pays-off-in/>

⁷ See note 6.

⁸ <http://www.nationalpartnership.org/research-library/work-family/paid-leave/paid-leave-good-for-business.pdf>

Sen. Daniel Biss

Filed: 7/5/2016

09900SB0260sam001

LRB099 03422 MLM 49734 a

1 AMENDMENT TO SENATE BILL 260

2 AMENDMENT NO. 1. Amend Senate Bill 260 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Family Leave Insurance Act.

6 Section 5. Declaration of policy and intent.

7 (a) Many employees do not have access to family and medical
8 leave programs, and those who do may not be in a financial
9 position to take family or medical leave that is unpaid, and
10 employer-paid benefits meet only a relatively small part of
11 this need. It is the public policy of this State to protect
12 working families against the economic hardship caused by the
13 need to take time off from work to care for themselves or
14 family members who are suffering from a serious illness or to
15 care for a newborn or a newly adopted child.

16 Moreover, many women are single mothers or the primary

1 breadwinners for their families. If any of these women take an
2 unpaid maternity leave, her whole family, and Illinois,
3 suffers.

4 The United States is the only industrialized nation in the
5 world that does not have a mandatory workplace-based program
6 for such income support.

7 It is therefore desirable and necessary to develop systems
8 that help families adapt to the competing interests of work and
9 home which not only benefit workers, but also benefit employers
10 by reducing employee turnover and increasing worker
11 productivity.

12 (b) It is the intent of the General Assembly to create a
13 family leave program to relieve the serious menace to health,
14 morals, and welfare of Illinois families, to increase workplace
15 productivity, and to alleviate the enormous and growing stress
16 on working families of balancing the demands of work and family
17 needs.

18 Section 10. Definitions. In this Act:

19 (1) (A) "Average weekly wage" means the amount derived by
20 dividing a covered employee's total wages earned from the
21 employee's most recent covered employer during the base weeks
22 in the 8 calendar weeks immediately preceding the calendar week
23 in which a period of family leave commenced by the number of
24 such base weeks.

25 (B) If the computation in paragraph (A) yields a result

1 that is less than the employee's average weekly earnings in
2 employment with all covered employers during the base weeks in
3 such 8 calendar weeks, then the average weekly wage shall be
4 computed on the basis of earnings from all covered employers
5 during the base weeks in the 8 calendar weeks immediately
6 preceding the week in which the period of family leave
7 commences.

8 (C) For periods of family leave, if the computations in
9 paragraphs (A) and (B) both yield a result which is less than
10 the employee's average weekly earnings in employment with all
11 covered employers during the base weeks in the 26 calendar
12 weeks immediately preceding the week in which the period of
13 family leave commenced, then the average weekly wage shall,
14 upon a written request to the Department by the employee on a
15 form provided by the Department, be computed by the Department
16 on the basis of earnings from all covered employers of the
17 employee during the base weeks in those 26 calendar weeks.

18 (2) "Base hours" means the hours of work for which an
19 employee receives compensation. "Base hours" includes overtime
20 hours for which the employee is paid additional or overtime
21 compensation and hours for which the employee receives workers'
22 compensation benefits. "Base hours" also includes hours an
23 employee would have worked except for having been in military
24 service. At the option of the employer, "base hours" may
25 include hours for which the employee receives other types of
26 compensation, such as administrative, personal leave, vacation

1 or sick leave.

2 (3) "Care" includes, but is not limited to, physical care,
3 emotional support, visitation, arranging for a change in care,
4 assistance with essential daily living matters, and personal
5 attendant services.

6 (4) "Child" means a biological, adopted, or foster child,
7 stepchild, or legal ward of an eligible employee, child of a
8 spouse of the eligible employee, or child of a civil union
9 partner of the eligible employee, who is less than 19 years of
10 age or is 19 years of age or older, but incapable of self-care
11 because of a mental or physical impairment.

12 (5) "Civil union" means a civil union as defined in the
13 Illinois Religious Freedom Protection and Civil Union Act.

14 (6) "Consecutive leave" means leave that is taken without
15 interruption based upon an employee's regular work schedule and
16 does not include breaks in employment in which an employee is
17 not regularly scheduled to work. For example, when an employee
18 is normally scheduled to work from September through June and
19 is not scheduled to work during July and August, a leave taken
20 continuously during May, June, and September shall be
21 considered a consecutive leave.

22 (7) "Department" means the Department of Employment
23 Security.

24 (8) "Director" means the Director of Employment Security
25 and any transaction or exercise of authority by the Director
26 shall be deemed to be performed by the Department.

1 (9) "Eligible employee" means an employee employed by the
2 same employer, as defined in paragraph (10), in the State of
3 Illinois for 12 months or more who has worked 1,200 or more
4 base hours during the preceding 12-month period. An employee is
5 considered to be employed in the State of Illinois if:

6 (A) the employee works in Illinois; or

7 (B) the employee routinely performs some work in
8 Illinois and the employee's base of operations or the place
9 from which the work is directed and controlled is in
10 Illinois.

11 (10) "Employer" means any partnership, association, trust,
12 estate, joint-stock company, insurance company, or
13 corporation, whether domestic or foreign, or the receiver,
14 trustee in bankruptcy, trustee, or person that has in its
15 employ one or more employees performing services for it within
16 this State. "Employer" also includes any employer subject to
17 the Unemployment Insurance Act, except the State, its political
18 subdivisions, and any instrumentality of the State. All
19 employees performing services within this State for any
20 employing unit that maintains 2 or more separate establishments
21 within this State shall be deemed to be employed by a single
22 employing unit for all purposes of this Act.

23 (11) "Family member" means an eligible employee's child,
24 spouse, party to a civil union, parent, or any other individual
25 related by blood or whose close relationship with the employee
26 is the equivalent of a family relationship.

1 (12) "Family leave" means leave taken by an eligible
2 employee from work with an employer: (A) to participate in the
3 providing of care, including physical or psychological care,
4 for the employee or a family member of the eligible employee
5 made necessary by a serious health condition of the family
6 member; (B) to be with a child during the first 12 months after
7 the child's birth, if the employee, the employee's spouse, or
8 the party to a civil union with the employee, is a biological
9 parent of the child, or the first 12 months after the placement
10 of the child for adoption or foster care with the employee; (C)
11 for the employee's own serious health condition; or (D) because
12 of any qualifying exigency as interpreted under the Family and
13 Medical Leave Act of 1993 (29 U.S.C. 2612(a)(1)(E) and 29 CFR
14 825.126) arising out of the fact that the spouse, party to a
15 civil union, child, parent of the employee, or any other
16 individual related by blood or whose close relationship with
17 the employee is equivalent to a family relationship is on
18 active duty (or has been notified of an impending call or order
19 to active duty) in the armed forces as of the United States.
20 "Family leave" does not include any period of time during which
21 an eligible employee is paid benefits pursuant to the Workers'
22 Compensation Act or the Unemployment Insurance Act because the
23 employee is unable to perform the duties of the employee's
24 employment due to the employee's own disability.

25 (13) "Family leave benefits" means any payments that are
26 payable to an eligible employee for all or part of a period of

1 family leave.

2 (14) "Health care provider" means any person licensed under
3 federal, State, or local law or the laws of a foreign nation to
4 provide health care services or any other person who has been
5 authorized to provide health care by a licensed health care
6 provider.

7 (15) "Intermittent leave" means a non-consecutive leave
8 consisting of intervals, each of which is at least one, but
9 fewer than 12, weeks within a consecutive 12-month period.

10 (16) "Parent of an eligible employee" means a biological
11 parent, foster parent, adoptive parent, or stepparent of the
12 eligible employee or a person who was a legal guardian of, or
13 who stood in loco parentis to, the eligible employee when the
14 eligible employee was a child.

15 (17) "Placement for adoption" means the time when an
16 eligible employee adopts a child or becomes responsible for a
17 child pending adoption by the eligible employee.

18 (18) "Serious health condition" means an illness, injury,
19 impairment, or physical or mental condition that requires
20 inpatient care in a hospital, hospice, or residential medical
21 care facility or continuing medical treatment or continuing
22 supervision by a health care provider.

23 (19) "12-month period" means, with respect to an employee
24 who establishes a valid claim for family leave benefits during
25 a period of family leave, the 365 consecutive days that begin
26 with the first day that the employee first establishes the

1 claim.

2 Section 15. Family leave program.

3 (a) Subject to appropriation, the Department shall
4 establish and administer a family leave program.

5 (b) The Department shall establish procedures and forms for
6 filing claims for benefits under this Act.

7 (c) The Department shall use information sharing and
8 integration technology to facilitate the disclosure of
9 relevant information or records by the Department of Employment
10 Security.

11 (d) Information contained in the files and records
12 pertaining to an employee under this Act is confidential and
13 not open to public inspection, other than to public employees
14 in the performance of their official duties. However, the
15 employee or an authorized representative of an employee may
16 review the records or receive specific information from the
17 records on the presentation of the signed authorization of the
18 employee. An employer or the employer's duly authorized
19 representative may review the records of an employee employed
20 by the employer in connection with a pending claim. At the
21 Department's discretion, other persons may review records when
22 such persons are rendering assistance to the Department at any
23 stage of the proceedings on any matter pertaining to the
24 administration of this Act.

25 An employer must keep at its place of business records of

1 employment from which the information needed by the Department
2 for purposes of this Act may be obtained. The records shall at
3 all times be open to the inspection of the Department pursuant
4 to rules adopted by the Department.

5 (e) The Department shall develop and implement an outreach
6 program to ensure that individuals who may be eligible to
7 receive family leave benefits under this Act are made aware of
8 these benefits. Outreach information shall explain, in an easy
9 to understand format, eligibility requirements, the claims
10 process, weekly benefit amounts, maximum benefits payable,
11 notice requirements, reinstatement and nondiscrimination
12 rights, confidentiality, and coordination of leave under this
13 Act and other laws, collective bargaining agreements, and
14 employer policies. Outreach information shall be available in
15 English and in languages other than English that are spoken as
16 a primary language by a significant portion of the State's
17 population, as determined by the Department.

18 Section 20. Eligibility for benefits.

19 (a) The Department may require that a claim for family
20 leave benefits under this Section be supported by a
21 certification issued by a health care provider who is providing
22 care to the employee or the employee's family member if
23 applicable.

24 (b) An employee is not eligible for family leave benefits
25 under this Section for any week for which the employee receives

1 paid family leave from his or her employer. If an employer
2 provides paid family leave, the employee may elect whether
3 first to use the paid family leave or to receive family leave
4 benefits under this Section. An employee may not be required to
5 use paid family leave to which the employee is entitled before
6 receiving family leave benefits under this Section.

7 (c) This Section does not limit an employee's right to take
8 leave from employment under other laws or employer policy.

9 (d) The eligibility of an employee for benefits is not
10 affected by a strike or lockout at the factory, establishment,
11 or other premises at which the employee is or was last
12 employed.

13 (e) An employee who has received benefits under this
14 Section may not lose any other employment benefits, including
15 seniority or pension rights, accrued before the date that
16 family leave commenced. However, this Section does not entitle
17 an employee to accrue employment benefits during a period of
18 family leave or to a right, benefit, or position of employment
19 other than a right, benefit, or position to which the employee
20 would have been entitled had the employee not taken family
21 leave.

22 (f) This Section does not diminish an employer's obligation
23 to comply with a collective bargaining agreement or an
24 employment benefits program or plan that provides greater
25 benefits to employees than the benefits provided under this
26 Section.

1 (g) An agreement by an employee to waive the employee's
2 rights under this Section is void as contrary to public policy.
3 The benefits under this Section may not be diminished by a
4 collective bargaining agreement or another employment benefits
5 program or plan entered into or renewed after the effective
6 date of this Act.

7 (h) Nothing in this Act shall be deemed to affect the
8 validity or change the terms of bona fide collective bargaining
9 agreements in force on the effective date of this Act. After
10 that date, requirements of this Act may be waived in a bona
11 fide collective bargaining agreement, but only if the waiver is
12 set forth explicitly in such agreement in clear and unambiguous
13 terms.

14 (i) This Section does not create a continuing entitlement
15 or contractual right.

16 Section 25. Disqualification from benefits.

17 (a) An employee is disqualified from family leave benefits
18 under this Act if the employee:

19 (1) willfully makes a false statement or
20 misrepresentation regarding a material fact, or willfully
21 fails to disclose a material fact, to obtain benefits;

22 (2) seeks benefits based on an intentionally
23 self-inflicted serious health condition; or

24 (3) seeks benefits based on a serious health condition
25 that resulted from the employee's commission of a felony.

1 (b) A disqualification for family leave benefits is for a
2 period of 2 years, and commences on the first day of the
3 calendar week in which the employee filed a claim for benefits
4 under this Act. An employee who is disqualified for benefits is
5 liable to the Department for a penalty in an amount equal to
6 15% of the amount of benefits received by the employee.

7 Section 30. State Benefits Fund.

8 (a) The State Benefits Fund is created as a special fund in
9 the State treasury. Subject to appropriation, moneys in the
10 Fund may be used for the payment of family leave benefits and
11 for the administration of this Act. All interest and other
12 earnings that accrue from investment of moneys in the Fund
13 shall be credited to the Fund.

14 (b) An employer shall retain from all employees a payroll
15 premium deduction in the amount of 0.3% of wages as defined in
16 Section 235 of the Unemployment Insurance Act. The Department
17 shall by rule provide for the collection of this payroll
18 premium deduction.

19 The amount of the payroll premium imposed under this
20 Section, less refunds authorized by this Act, and all
21 assessments and penalties collected under this Act shall be
22 deposited into and credited to the Fund.

23 (c) A separate account, to be known as the Administration
24 Account, shall be maintained in the Fund. An amount determined
25 by the Department sufficient for proper administration, not to

1 exceed, however, 0.1% of wages as defined in this Section,
2 shall be credited to the Administration Account. The expenses
3 of the Department in administering the Fund and its accounts
4 shall be charged against the Administration Account. The costs
5 of administration of this Act shall be charged to the
6 Administration Account.

7 (d) A separate account, to be known as the Family Leave
8 Benefits Account, shall be maintained in the Fund. The account
9 shall be charged with all benefit payments. Prior to July 1 of
10 each calendar year, the Department shall determine the average
11 rate of interest and other earnings on all investments of the
12 Fund for the preceding calendar year. If there is an
13 accumulated deficit in the Family Leave Benefits Account in
14 excess of \$200,000 at the end of any calendar year after
15 interest and other earnings have been credited as provided in
16 this Section, the Department shall determine the ratio of the
17 deficit to the total of all taxable wages paid during the
18 preceding calendar year and shall make an assessment against
19 all employers in an amount equal to the taxable wages paid by
20 them during the preceding calendar year to employees,
21 multiplied by the ratio, but in no event shall any such
22 assessment exceed 0.1% of such wages. The amounts shall be
23 collectible by the Department in the same manner as provided
24 for the collection of employer contributions under the
25 Unemployment Insurance Act. In making this assessment, the
26 Department shall furnish to each affected employer a brief

1 summary of the determination of the assessment. The amount of
2 such assessments collected by the Department shall be credited
3 to the Family Leave Benefits Account. As used in this Section,
4 "wages" means wages as provided in Section 235 of the
5 Unemployment Insurance Act.

6 (e) A board of trustees, consisting of the State Treasurer,
7 the Secretary of State, the Director of Labor, the Director of
8 Employment Security, and the State Comptroller, is hereby
9 created. The board shall invest and reinvest all moneys in the
10 Fund in excess of its cash requirements in obligations legal
11 for savings banks.

12 (f) The Department may adjust rates, not to exceed the
13 amount established in subsection (b) of this Section, for the
14 collection of premiums pursuant to subsection (b) of this
15 Section. The Department shall set rates for premiums in a
16 manner that minimizes the volatility of the rates assessed and
17 so that at the end of the period for which the rates are
18 effective, the cash balance shall be an amount approximating 12
19 months of projected expenditures from the Fund, considering the
20 functions and duties of the Department under this Act.

21 (g) An employer required to pay premiums under this Section
22 shall make and file a report of employee hours worked and
23 amounts due under this Section upon a combined report form
24 prescribed by the Department. The report shall be filed with
25 the Department at the times and in the manner prescribed by the
26 Department.

1 (h) If the employer is a temporary employment agency that
2 provides employees on a temporary basis to its customers, the
3 temporary employment agency is considered the employer for
4 purposes of this Section.

5 (i) When an employer quits business or sells out,
6 exchanges, or otherwise disposes of the business or stock of
7 goods, any premium payable under this Section is immediately
8 due and payable, and the employer shall, within 10 days
9 thereafter, pay the premium due. A person who becomes a
10 successor to the business is liable for the full amount of the
11 premium and shall withhold from the purchase price a sum
12 sufficient to pay any premium due from the employer until the
13 employer produces a receipt from the Department showing payment
14 in full of any premium due or a certificate that no premium is
15 due. If the premium is not paid by the employer within 10 days
16 after the date of the sale, exchange, or disposal, the
17 successor is liable for the payment of the full amount of the
18 premium. The successor's payment of the premium is, to the
19 extent of the payment, a payment upon the purchase price, and
20 if the payment is greater in amount than the purchase price,
21 the amount of the difference is a debt due the successor from
22 the employer.

23 A successor is not liable for any premium due from the
24 person from whom the successor has acquired a business or stock
25 of goods if the successor gives written notice to the
26 Department of the acquisition and no assessment is issued by

1 the Department within one year after receipt of the notice
2 against the former operator of the business.

3 Section 35. Compensation for family leave.

4 (a) An individual's weekly benefit rate shall be two-thirds
5 of his or her average weekly wage, subject to a maximum of 53%
6 of the Statewide average weekly wage paid to workers by
7 employers, as determined pursuant to Section 401 of the
8 Unemployment Insurance Act, provided, however, that the
9 individual's benefit rate shall be computed to the next lower
10 multiple of \$1 if not already a multiple thereof. The amount of
11 benefits for each day of family leave for which benefits are
12 payable shall be one-seventh of the corresponding weekly
13 benefit amount; provided that the total benefits for a
14 fractional part of a week shall be computed to the next lower
15 multiple of \$1 if not already a multiple thereof.

16 (b) With respect to any period of family leave and while an
17 individual is an eligible employee, family benefits not in
18 excess of the individual's maximum benefits shall be payable
19 with respect to the first day of leave taken after the first
20 one-week period following the commencement of the period of
21 family leave and each subsequent day of family leave during
22 that period of family leave; and if benefits become payable on
23 any day after the first 3 weeks in which leave is taken, then
24 benefits shall also be payable with respect to any leave taken
25 during the first one-week period in which leave is taken. The

1 maximum total benefits payable to any eligible individual
2 commencing on or after the effective date of this Act shall be
3 12 times the individual's weekly benefit amount or one-third of
4 his or her total wages in his or her base year, whichever is
5 the lesser; provided that the maximum amount shall be computed
6 in the next lower multiple of \$1 if not already a multiple
7 thereof.

8 (c) All of the family leave benefits paid to an eligible
9 employee during a period of family leave with respect to any
10 one birth or adoption shall be for a single continuous period
11 of time, except that the employer of the eligible employee may
12 permit the eligible employee to receive the family leave
13 benefits during non-consecutive weeks in a manner mutually
14 agreed to by the employer and the eligible employee and
15 disclosed to the Department by the employer.

16 (d) Nothing in this Act shall be construed to prohibit the
17 establishment by an employer, without approval by the
18 Department, of a supplementary plan or plans providing for the
19 payment to employees, or to any class or classes of employees,
20 of benefits in addition to the benefits provided by this Act or
21 to prohibit the collection or receipt of additional voluntary
22 contributions from employees toward the cost of the additional
23 benefits. The rights, duties, and responsibilities of all
24 interested parties under the supplementary plans shall be
25 unaffected by any provision of this Act.

1 Section 40. Family leave; duration. An eligible employee
2 may take 12 weeks of family leave within any 24-month period in
3 order to provide care made necessary by reasons identified in
4 Section 10. An eligible employee may take family leave on an
5 intermittent schedule in which all of the leave authorized
6 under this Act is not taken sequentially.

7 Section 45. Annual reports; contents.

8 (a) The Department shall issue and make available to the
9 public, not later than July 1, 2018 and July 1 of each
10 subsequent year, annual reports providing data on family leave
11 benefits claims involving pregnancy and childbirth, and family
12 leave benefits, including separate data for each of the
13 following categories of claims: the employee's own serious
14 illness; care of newborn children; care of newly adopted
15 children; care of sick children; care of sick spouses; and care
16 of other sick family members. The reports shall include, for
17 each category of claims, the number of workers receiving the
18 benefits, the amount of benefits paid, the average duration of
19 benefits, the average weekly benefit, and any reported amount
20 of sick leave, vacation, or other fully paid time which
21 resulted in reduced benefit duration. The report shall provide
22 data by gender and by any other demographic factors determined
23 to be relevant by the Department. The reports shall also
24 provide, for all family leave benefits, the total costs of
25 benefits and the total cost of administration, the portion of

1 benefits for claims during family leave, and the total revenues
2 from employer assessments, where applicable; employee
3 assessments; and other sources.

4 (b) The Department may, in its discretion, conduct surveys
5 and other research regarding, and include in the annual reports
6 descriptions and evaluations of the impact and potential future
7 impact of the costs and benefits resulting from the provisions
8 of this Act for:

9 (1) employees and their families, including surveys
10 and evaluations of what portion of the total number of
11 employees taking leave would not have taken leave, or would
12 have taken less leave, without the availability of
13 benefits; what portion of employees return to work after
14 receiving benefits and what portion are not permitted to
15 return to work; and what portion of employees who are
16 eligible for benefits do not claim or receive them and why
17 they do not;

18 (2) employers, including benefits such as reduced
19 training and other costs related to reduced turnover of
20 personnel, and increased affordability of family leave
21 through the State, with special attention given to small
22 businesses; and

23 (3) the public, including savings caused by any
24 reduction in the number of people receiving public
25 assistance.

26 (c) The total amount of any expenses that the Department

1 determines are necessary to carry out its duties pursuant to
2 this Section shall be charged to the Administration Account of
3 the Fund.

4 Section 50. Hearings. A person aggrieved by a decision of
5 the Department under this Act may request a hearing. The
6 Department shall adopt rules governing hearings and the
7 issuance of final orders under this Act in accordance with the
8 provisions of the Illinois Administrative Procedure Act. All
9 final administrative decisions of the Department under this Act
10 are subject to judicial review under the Administrative Review
11 Law.

12 Section 55. Prohibited acts. No employer, temporary
13 employment agency, employment agency, employee organization,
14 or other person shall discharge, expel, or otherwise
15 discriminate against a person because the person has filed or
16 communicated to the employer an intent to file a claim, a
17 complaint, or an appeal or has testified or is about to testify
18 or has assisted in any proceeding, under this Act, at any time.

19 Section 60. Penalties.

20 (a) A person who makes a false statement or representation,
21 knowing it to be false, or knowingly fails to disclose a
22 material fact to obtain or increase any family leave benefit
23 during a period of family leave, either for himself or herself

1 or for any other person, shall be liable for a civil penalty of
2 \$250 to be paid to the Department. Each such false statement or
3 representation or failure to disclose a material fact shall
4 constitute a separate offense. Upon refusal to pay such civil
5 penalty, the civil penalty shall be recovered in a civil action
6 by the Attorney General on behalf the Department in the name of
7 the State of Illinois. If, in any case in which liability for
8 the payment of a civil penalty has been determined, any person
9 who has received any benefits under this Act by reason of the
10 making of such false statements or representations or failure
11 to disclose a material fact shall not be entitled to any
12 benefits under this Act for any leave occurring prior to the
13 time he or she has discharged his or her liability to pay the
14 civil penalty.

15 (b) A person who willfully violates any provision of this
16 Act or any rule adopted under this Act for which a civil
17 penalty is neither prescribed in this Act nor provided by any
18 other applicable law shall be subject to a civil penalty of
19 \$500 to be paid to the Department. Upon the refusal to pay such
20 civil penalty, the civil penalty shall be recovered in a civil
21 action by the Attorney General on behalf of the Department in
22 the name of the State of Illinois.

23 (c) A person, employing unit, employer, or entity violating
24 any provision of this Section with intent to defraud the
25 Department is guilty of a Class C misdemeanor. The fine upon
26 conviction shall be payable to the Fund. Any penalties imposed

1 by this subsection shall be in addition to those otherwise
2 prescribed in this Section.

3 Section 70. Leave and employment protection.

4 (a) During a period in which an employee receives family
5 leave benefits under this Act, the employee is entitled to
6 family leave and, at the established ending date of leave, to
7 be restored to a position of employment with the employer from
8 whom leave was taken as provided under subsection (b).

9 (b) Except as provided in subsection (f), an employee who
10 receives family leave benefits under this Act for the intended
11 purpose of the family leave is entitled, on return from the
12 leave:

13 (1) to be restored by the employer to the position of
14 employment held by the employee when the family leave
15 commenced; or

16 (2) to be restored to an equivalent position with
17 equivalent employment benefits, pay, and other terms and
18 conditions of employment at a workplace within 20 miles of
19 the employee's workplace when the family leave commenced.

20 (c) The taking of family leave under this Act may not
21 result in the loss of any employment benefits accrued before
22 the date on which the family leave commenced.

23 (d) Nothing in this Section entitles a restored employee
24 to:

25 (1) the accrual of any seniority or employment benefits

1 during any period of family leave; or

2 (2) any right, benefit, or position of employment other
3 than any right, benefit, or position to which the employee
4 would have been entitled to had the employee not taken the
5 family leave.

6 (e) Nothing in this Section prohibits an employer from
7 requiring an employee on family leave to report periodically to
8 the employer on the status and intention of the employee to
9 return to work.

10 (f) An employer may deny restoration under subsection (b)
11 to a salaried employee who is among the highest paid 10% of the
12 employees employed by the employer within 75 miles of the
13 facility at which the employee is employed if:

14 (1) denial is necessary to prevent substantial and
15 grievous economic injury to the operations of the employer;

16 (2) the employer notifies the employee of the intent of
17 the employer to deny restoration on such basis at the time
18 the employer determines that the injury would occur; and

19 (3) the family leave has commenced and the employee
20 elects not to return to employment after receiving the
21 notice.

22 Section 75. Notice to employer.

23 (a) If the necessity for family leave for the birth or
24 placement of a child is foreseeable based on an expected birth
25 or placement, the employee shall provide the employer with not

1 less than 30 days' notice, before the date the leave is to
2 begin, of the employee's intention to take leave for the birth
3 or placement of a child, except that if the date of the birth
4 or placement requires leave to begin in less than 30 days, the
5 employee shall provide such notice as is practicable.

6 (b) If the necessity for family leave for an employee's or
7 a family member's serious health condition is foreseeable based
8 on planned medical treatment, the employee:

9 (1) must make a reasonable effort to schedule the
10 treatment so as not to disrupt unduly the operations of the
11 employer; and

12 (2) must provide the employer with not less than 30
13 days' notice, before the date the leave is to begin, of the
14 employee's intention to take leave for his, her, or a
15 family member's serious health condition, except that if
16 the date of the treatment requires leave to begin in less
17 than 30 days, the employee must provide such notice as is
18 practicable.

19 Section 80. Employment by same employer. If spouses who are
20 entitled to leave under this Act are employed by the same
21 employer, the employer may require that spouses not take such
22 leave concurrently.

23 Section 85. Coordination of leave.

24 (a) Family leave taken under this Act must be taken

1 concurrently with any leave taken under the federal Family and
2 Medical Leave Act of 1993.

3 (b) An employer may require that family leave taken under
4 this Act be taken concurrently or otherwise coordinated with
5 leave allowed under the terms of a collective bargaining
6 agreement or employer policy, as applicable, for the birth or
7 placement of a child. The employer must give his or her
8 employees written notice of this requirement.

9 Section 90. Rules. The Department may adopt any rules
10 necessary to implement the provisions of this Act. In adopting
11 rules, the Department shall maintain consistency with the
12 regulations adopted to implement the federal Family and Medical
13 Leave Act of 1993 to the extent such regulations are not in
14 conflict with this Act.

15 Section 95. Authority to contract. The Department may
16 contract or enter into interagency agreements with other State
17 agencies for the initial administration of the Family Leave
18 Program.

19 Section 175. Severability. The provisions of this Act are
20 severable under Section 1.31 of the Statute on Statutes.

21 Section 900. The State Finance Act is amended by adding
22 Section 5.875 as follows:

1 (30 ILCS 105/5.875 new)

2 Sec. 5.875. The State Benefits Fund.

3 Section 999. Effective date. This Act takes effect upon
4 becoming law."