SENATE BILL No. 313

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-4.1-28.

Synopsis: Paid family and medical leave program. Requires the department of workforce development to establish a paid family and medical leave program to provide payments for employees who take family and medical leave. Establishes the family and medical leave fund to be funded with appropriations from the general assembly and payroll contributions. Specifies requirements for administration of the paid family and medical leave program. Provides for the department of workforce development to approve an employer's use of a private plan to meet the paid family and medical leave program obligations.

Effective: July 1, 2021.

Yoder

January 12, 2021, read first time and referred to Committee on Pensions and Labor.

Introduced

First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

SENATE BILL No. 313

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 22-4.1-28 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

Chapter 28. Paid Family and Medical Leave Program

Sec. 1. As used in this chapter, "act" refers to the federal Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.) as in effect on July 1, 2021.

Sec. 2. As used in this chapter, "application year" is the twelve (12) month period beginning on the first day of the calendar week during which an individual files an application for program benefits.

Sec. 3. As used in this chapter, "benefit payments" means payments to a covered individual under the program.

Sec. 4. As used in this chapter, "commissioner" refers to the commissioner of the department appointed under IC 22-4.1-3-1.

Sec. 5. As used in this chapter, "covered individual" means an individual who:

(1) is eligible for program benefit payments under section 21 of this chapter; and

(2) meets the application and other administrative requirements of this chapter.

Sec. 6. As used in this chapter, "covered service member" means one (1) of the following:

(1) A member of the armed forces of the United States or their reserves, including a member of the National Guard or reserves, who is:

(A) undergoing medical treatment, recuperation, or therapy;

(B) otherwise in outpatient status; or

(C) otherwise on the temporary disability retired list;

for a serious injury or illness that was incurred by the member in the line of duty on active duty in the armed forces, or a serious injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the armed forces.

(2) A former member of the armed forces of the United States or their reserves, including a former member of the National Guard or reserves, who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness that was incurred by the member in the line of duty on active duty in the armed forces, or a serious injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the armed forces and manifested before or after the member was discharged or released from service.

Sec. 7. As used in this chapter, "department" refers to the department of workforce development established by IC 22-4.1-2-1.

Sec. 8. As used in this chapter, "employee" means an individual who works directly for an employer under an express or implied contract of hire.

Sec. 9. As used in this chapter, "employer" has the meaning set forth in IC 6-3-1-5. The term includes the following:

(1) The state.

(2) A political subdivision.

Sec. 10. As used in this chapter, "family member", with respect to a covered individual, means the following:

(1) A biological, adopted, or foster:

(A) child;

(B) stepchild; or
(C) legal ward;
of the covered individual, regardless of age.
(2) A biological, adoptive, or foster:
(A) parent;
(B) stepparent; or
(C) legal guardian;
of the covered individual or the covered individual's spouse.
(3) An individual to whom the covered individual is legally married under the laws of any state.
(4) A biological, adoptive, or foster:
(A) grandparent;
(B) stepgrandparent;
(C) grandchild;
(D) stepgrandchild;
(E) sibling; or
(F) stepsibling;
of the covered individual or the covered individual's spouse.

Sec. 11. As used in this chapter, "fund" refers to the family and medical leave fund established by section 19 of this chapter.

Sec. 12. As used in this chapter, "health care provider" means a person licensed under federal or state law to provide medical or emergency services, including a doctor, nurse, emergency room personnel, or certified midwife.

Sec. 13. As used in this chapter, "next of kin" has the meaning set forth in 29 U.S.C. 2611(17).

Sec. 14. As used in this chapter, "program" refers to the paid family and medical leave program established under section 17 of this chapter.

Sec. 15. As used in this chapter, "qualifying exigency leave" means leave for a need arising from a covered individual's family member's active duty service or notice of an impending call or order to active duty in the armed forces of the United States, including:
(1) providing for the care or other needs of the military member's child or other family member;
(2) making financial or legal arrangements for the military member;
(3) attending counseling;
(4) attending military events or ceremonies;
(5) spending time with the military member during a rest and recuperation leave or following return from deployment; or

(6) making arrangements following the death of the military member.

Sec. 16. As used in this chapter, "serious health condition" has the meaning set forth in 29 U.S.C. 2611(11).

Sec. 17. (a) Not later than January 1, 2023, the department shall establish and administer a paid family and medical leave program through which a covered individual may receive benefit payments as described in section 21 of this chapter.

(b) The department shall do the following:

(1) Establish reasonable procedures and forms for filing:

(A) employer and employee payroll contributions to the fund under section 20 of this chapter; and

(B) claims for program benefits.

(2) Specify necessary documentation to support a claim for program benefits, including any documentation required from a health care provider for proof of a serious health condition.

(3) Notify the employer of an individual who applies for program benefits not more than five (5) business days after a claim for program benefits is filed.

(4) Use information sharing and integration technology to facilitate the disclosure of relevant information or records, as consented to by the individual under state law.

(5) Adopt rules under IC 4-22-2 to implement this chapter.

Sec. 18. (a) Information concerning an individual described in this chapter is confidential and may be used only for the purposes of this chapter.

(b) An individual described in subsection (a) or an authorized representative of the individual may review and receive information described in subsection (a) upon the presentation of the individual's signed authorization.

Sec. 19. (a) The family and medical leave fund is established for the purpose of providing family and medical leave program benefit payments to covered individuals. The fund shall be administered by the department.

(b) The fund consists of appropriations from the general assembly and payroll contributions under section 20 of this chapter.

(c) The expenses of administering the fund shall be paid from money in the fund.

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same

manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(e) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(f) Money in the fund is continually appropriated for the purpose of funding the program.

Sec. 20. (a) The department shall annually determine the amount of payroll contributions necessary to finance program benefits.

(b) Employers shall make contributions to the fund in an amount determined under subsection (a), not to exceed seven-tenths of one percent (0.7%) of an employee's wage in a twelve (12) month period. Employers may deduct up to fifty percent (50%) of the contribution determined under subsection (a) from the employee's wages.

Sec. 21. An individual is eligible for program benefit payments if the individual:

(1) either:

(A) earned at least six thousand three hundred dollars ($6,300) from at least one (1) employer during the twelve (12) month period immediately preceding the date on which the individual submits an application for program benefits; or

(B) is self-employed and elected to participate in the program under section 27 of this chapter; and

(2) is described in at least one (1) of the following:

(A) Is caring for a child during the first year after the birth, adoption, or foster care placement of the child.

(B) Is caring for a family member with a serious health condition.

(C) Has a serious health condition or pregnancy that makes the individual unable to perform the functions of the employment position described in subdivision (1).

(D) Is caring for a covered service member who is the individual's next of kin.

(E) Is eligible for qualifying exigency leave.

(F) Is subject to a state of emergency that affects the individual's ability to perform the functions of the employment position described in subdivision (1).

Sec. 22. Beginning July 1, 2023, the department shall make program benefit payments available to an individual who:

(1) is eligible under section 21 of this chapter; and

(2) applies for program benefits under this chapter.

Sec. 23. (a) A covered individual may receive program benefit payments for not more than twelve (12) weeks during an application year.

(b) A covered individual may not receive program benefit payments for less than eight (8) hours of family and medical leave taken in one (1) work week.

Sec. 24. (a) Subject to subsection (b), the weekly program benefit for family and medical leave is determined as follows:

(1) If the covered individual's average weekly wage is not more than fifty percent (50%) of the state average weekly wage, the employee's weekly benefit is ninety percent (90%) of the covered individual's average weekly wage.

(2) If the covered individual's average weekly wage is greater than fifty percent (50%) of the state average weekly wage, the covered individual's weekly benefit is the sum of:

(A) ninety percent (90%) of the covered individual's average weekly wage up to fifty percent (50%) of the state average weekly wage; plus

(B) fifty percent (50%) of the covered individual's average weekly wage that is greater than fifty percent (50%) of the state average weekly wage.

(b) The maximum weekly program benefit payment is an amount equal to the state average weekly wage.

Sec. 25. (a) A covered individual may take paid family and medical leave on an intermittent or reduced leave schedule under which all of the leave is not taken sequentially.

(b) Program benefit payments for an intermittent or reduced leave schedule must be prorated accordingly.

(c) A covered individual shall do the following:

(1) Make a reasonable effort to schedule paid family and medical leave so as not to unduly disrupt the operations of the employer.

(2) To the extent practicable, provide to the employer prior notice of the schedule on which the covered individual will take the family and medical leave.

(d) The total amount of paid family and medical leave available to a covered individual under this chapter is not reduced beyond the actual amount of paid family and medical leave taken under this section.

(e) This section does not entitle a covered individual to receive more paid family and medical leave than the amount of family and

medical leave specified in section 23(a) of this chapter.

Sec. 26. (a) An employer shall:

(1) upon hiring;

(2) upon an employee's leave request;

(3) when the employer acquires knowledge that an employee's leave may be qualifying exigency leave; and

(4) annually;

provide to the employee written notice as described in subsection (b).

(b) Notice required by subsection (a) must include the following:

(1) Notice of the employee's right to program benefits and the terms under which family and medical leave may be used.

(2) The amount of program benefit payments to which the employee would be entitled.

(3) The procedure for filing a claim for program benefits.

(4) That discrimination and retaliatory personnel actions against an employee for requesting, applying for, or using program benefits are prohibited.

(5) That the employee has a right to file a complaint for violations of this chapter.

(c) An employer shall 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 this section.

(d) The commissioner may adopt rules under IC 4-22-2 to establish additional requirements concerning the means by which employers distribute the notice required by this section.

Sec. 27. (a) An individual who is self-employed, including a sole proprietor, partner, or joint venturer, may elect to participate in the program for an initial period of not less than three (3) years.

(b) An individual who is self-employed as described in subsection (a) shall file a notice of election in writing with the commissioner, including all information required by the department.

(c) A notice of election filed under subsection (b) is effective on the date on which the notice is filed.

(d) An individual who is self-employed and who has elected to participate in the program under this chapter may withdraw from participation by filing a notice of withdrawal:

(1) less than thirty (30) days after the end of the three (3) year period described in subsection (a); or

(2) at other times provided by the commissioner.

A withdrawal under this subsection takes effect not earlier than

thirty (30) days after the notice of withdrawal is filed.

Sec. 28. (a) A person that interferes with, restrains, denies, or attempts to deny the exercise of a provision of this chapter violates this chapter.

(b) An employer, temporary help company, employment agency, employee organization, or other person shall not take retaliatory personnel action or otherwise discriminate against an individual because the individual does any of the following:

(1) Requests, files for, applies for, or uses program benefits.

(2) Communicates to the person or another person an intent to file a claim, a complaint with the department, a court action, or an appeal concerning program benefits.

(3) Testifies, intends to testify, or assists in an investigation, hearing, or proceeding concerning program benefits.

(4) Informs a person concerning an employer's alleged violation of this chapter.

(5) Informs a person of the person's rights under this chapter.

(c) An employer's absence policy may not 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 another adverse employment action.

(d) The protections of this section apply to an individual who in good faith alleges a violation of this chapter, regardless of whether the allegation is mistaken.

(e) The civil rights commission created by IC 22-9-1-4 shall enforce this section.

Sec. 29. Paid family and medical leave taken under this chapter that also qualifies as leave under the act runs concurrently with leave taken under the act.

Sec. 30. (a) An employer may require that program benefit payments made under 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.

(b) An employer shall provide to each employee written notice of a requirement described in subsection (a).

Sec. 31. This chapter does not diminish an employer's obligation to comply with any of the following that provide more generous leave:

(1) A collective bargaining agreement.

(2) An employer policy.

(3) Another law.

Sec. 32. (a) An individual's right to program benefit payments under this chapter may not be diminished by:

(1) a collective bargaining agreement that is entered into or renewed; or

(2) an employer policy adopted or retained;

after June 30, 2021.

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

Sec. 33. An individual's eligibility for program benefits under this chapter does not entitle the individual to job protection beyond the job protection required by the act.

Sec. 34. (a) This chapter does not do the following:

(1) Supersede an employer's obligation to comply with a company policy, law, or collective bargaining agreement that provides greater or additional rights to leave than provided in this chapter.

(2) Curtail the rights, privileges, or remedies of an employee under a collective bargaining agreement or employment contract.

(3) Allow an employer to compel an employee to exhaust rights to sick, vacation, or personal time before or while taking leave under this chapter.

(b) An employer may require that benefit payments under 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 such that the employee will receive the greater of the various benefits that are available for the covered reason.

(c) Leave provided under a collective bargaining agreement or employer policy that is used by the employee for a covered reason and paid at the same or higher rate than leave available under this chapter counts against the allotment of leave available under this chapter.

(d) An employer shall give each employee written notice of the requirements of this section.

Sec. 35. (a) The department shall establish a process for approving a private plan to be used by the employer to meet the employer's obligations under this chapter.

(b) An employer may apply to the department for approval of a private plan described in subsection (a).

(c) The department may approve an employer's private plan described in subsection (a) if the department determines that the

private plan confers all of the same rights, protections, and benefits provided to employees under this chapter, including the following:

(1) Providing paid family and medical leave to a covered individual for the reasons set forth in section 21 of this chapter, for the maximum number of weeks specified in section 23 of this chapter, in a benefit year.

(2) Providing a wage replacement rate during all family and medical leave at least equal to the amount required by section 24 of this chapter.

(3) Imposing no additional conditions or restrictions on the use of paid family and medical leave beyond the conditions or restrictions explicitly authorized by this chapter or rules adopted under this chapter.

(4) Allowing an employee covered under the private plan who is eligible to take paid family and medical leave under this chapter to take paid family and medical leave under the private plan.

Sec. 36. The department shall conduct a public education campaign to inform employees and employers regarding the availability of paid family and medical leave program benefits.

Sec. 37. The department may use state data collection and technology to the extent possible and integrate the program with existing state policies.

Sec. 38. The department shall annually report to the:

(1) legislative council in an electronic format under IC 5-14-6; and

(2) budget committee;

concerning projected and actual program participation, categorized by purpose of the leave, gender of employees taking leave, employer and employee contributions, fund balances, outreach efforts, and family members for whom leave was taken to provide care.