

HB 628-FN - AS AMENDED BY THE HOUSE

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2017 SESSION

17-0016  
06/10

HOUSE BILL

***628-FN***

AN ACT                   relative to a family and medical leave insurance program.

SPONSORS:           Rep. Gile, Merr. 27; Rep. Wallner, Merr. 10; Rep. LeBrun, Hills. 32; Rep. Rosenwald, Hills. 30; Rep. Fothergill, Coos 1; Rep. Gargasz, Hills. 27; Rep. McMahon, Rock. 7; Rep. Cilley, Straf. 4; Rep. King, Hills. 33; Sen. Woodburn, Dist 1; Sen. Fuller Clark, Dist 21; Sen. Feltes, Dist 15

COMMITTEE:       Labor, Industrial and Rehabilitative Services

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ANALYSIS

This bill establishes a system of paid family and medical leave insurance.

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Explanation:       Matter added to current law appears in ***bold italics***.  
                      Matter removed from current law appears ~~[in brackets and struckthrough.]~~  
                      Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

*In the Year of Our Lord Two Thousand Seventeen*

AN ACT relative to a family and medical leave insurance program.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 New Chapter; Family and Medical Leave Insurance. Amend RSA by inserting after chapter  
282-A the following new chapter:

## CHAPTER 282-B

## FAMILY AND MEDICAL LEAVE INSURANCE

282-B:1 Findings. The general court finds that family and medical leave insurance will help New Hampshire attract and retain workers, including younger workers, will enable parents to bond with biological, adopted, or foster children, will help meet the needs of an aging population, will advance the health of New Hampshire's workforce and workplace stability, and will enhance worker retention and productivity. The general court therefore finds that it is in the public interest to establish a system of family and medical leave insurance (FMLI) with benefits to be provided to qualified workers on a limited basis.

282-B:2 Definitions. In this chapter:

I. "Benefit year" means the 12-month period beginning with the first day of the calendar week in which the individual next files an application for FMLI benefits after the expiration of the individual's last preceding application year.

II. "Calendar quarter" has the same meaning as in RSA 282-A5.

III. "Child" has the same meaning as "son or daughter" in 29 U.S.C. section 2611(12).

IV. "Commissioner" means the commissioner of the department of employment security.

V. "Department" means the department of employment security.

VI. "Employer" has the same definition as relevant provisions of RSA 282-A:8, except as provided in RSA 282-A:9.

VII. "Employment" means wages paid for services by an employer that is covered by this chapter.

VIII. “Family member” means a “child”, as defined in RSA 282-B:2, III, a biological, adoptive or foster parent, stepparent, or legal guardian of the child or the child’s spouse or domestic partner, a biological, adoptive, or foster grandparent or step grandparent, or a spouse or domestic partner under RSA 457.

IX. "Family and medical leave" means leave from work:

(a) Because of the birth of a child of the employee, within the past 12 months; or

(b) Because of the placement of a child with the employee for adoption or fostering,

1 within the past 12 months; or

2 (c) Because of a serious health condition of a family member; or

3 (d) Because of a serious health condition of the employee that isn't related to  
4 employment.

5 X. "FMLI" means family and medical leave insurance.

6 XI. "Federal Family and Medical Leave Act" means the federal Family and Medical Leave  
7 Act of 1993, 29 U.S.C. chapter 28.

8 XII. "Serious health condition" means any illness covered by the federal family and medical  
9 leave act including treatment for addiction as prescribed by a treating clinician, consistent with  
10 American Society of Addiction Medicine criteria, as well as treatment for a mental health condition,  
11 consistent with American Psychiatric Association criteria.

12 XIII. "Fund" means the family and medical leave insurance fund as described in RSA 282-  
13 B:4.

14 282-B:3 Employer Applicability.

15 I. This chapter applies to all nongovernmental employers, provided that any employer  
16 participating in a self-insured plan or who is self-insured may opt out of this chapter upon  
17 certification by the commissioner or authorized representative that the employer provides an  
18 equivalent benefit for its employees. The state or its political subdivisions may opt into this chapter  
19 upon certification by the commissioner or authorized representative that this chapter's insurance  
20 benefits are at least equivalent to the benefits provided under the collective bargaining agreement,  
21 provided the applicable bargaining unit has first ratified this option.

22 II. All employers subject to this chapter shall remit FMLI premium payments on a calendar  
23 quarter basis. These quarterly insurance premium payments shall amount to 0.67 percent of wages  
24 per employee per week for each week of the preceding quarter. Employers may withhold or divert  
25 no greater than 0.67 percent of wages per week per employee to satisfy this paragraph, provided  
26 that such employers provide employees, before employment commences, a department approved  
27 information sheet containing conspicuous language explaining the costs and benefits of the  
28 insurance and indicating that employees are able to affirmatively opt-out of the insurance by  
29 downloading a form from the department and that such form, if the employee chooses to opt-out,  
30 shall be notarized and submitted to the department and the employer before employment  
31 commences, and that the employee shall be provided the opportunity to opt in on January 1 of each  
32 year. No employer shall make opting-out of the insurance a condition of employment nor  
33 discriminate against an employee in compensation or in terms, conditions, or privileges of  
34 employment based on whether or not the employee opts-out of the insurance.

35 III. The penalties for falsity by employers shall be in accordance and consistent with RSA  
36 282-A:166. The process for failing to adequately report shall be in accordance and consistent with  
37 RSA 282-A:151-152 and 282-A:166-a, and any resulting appeals shall be processed in accordance  
38 and consistent with RSA 282-A:94-98.

1       282-B:4 Family and Medical Leave Insurance Fund Administration. The department shall  
2 create and administer a family and medical leave insurance fund for deposits of insurance payments  
3 paid pursuant to RSA 282-B:3, and accept any other deposit of moneys as authorized by law or by  
4 the commissioner or authorized representative. No FMLI fund moneys shall be co-mingled with  
5 unemployment insurance fund moneys. The department is authorized to withdraw or deduct from  
6 the FMLI fund where there are qualifying FMLI benefit payments or for any amounts reasonably  
7 necessary to implement and administer the provisions of this chapter.

8       282-B:5 Employer and Employee Responsibilities.

9       I. An employee shall both file an application with the department, including any applicable  
10 medical certification or birth certificate, and provide his or her employer with written notice of  
11 intent to take a leave of absence at least 30 days before the leave will begin unless the leave was not  
12 reasonably foreseeable or the time of the leave changes due to circumstances that were not  
13 reasonably foreseeable. An employee's failure to provide required notice may delay or reduce  
14 benefits.

15       II. Any employee of an employer covered under the federal Family and Medical Leave Act  
16 who takes leave under this chapter shall be restored to the position he or she held in the application  
17 period or to an equivalent position by his or her employer. Employers shall continue to provide  
18 health insurance to employees during the leave, but employees remain responsible for any  
19 employee-shared costs associated with the health insurance benefits. Employers shall not retaliate  
20 against any employee solely for exercising his or her rights under this chapter.

21       III. An employer may require that leave taken under this chapter be taken concurrently or  
22 otherwise coordinated with leave allowed under the terms of a collective bargaining agreement or  
23 employer policy. The employer shall give individuals in its employ written notice of this  
24 requirement.

25       282-B:6 Eligibility Process, Calculation and Appeals.

26       I. An employee shall be limited up to 6 weeks of FMLI in any one application period. An  
27 employee shall have had premium payments remitted as a percent of his or her wages for at least 6  
28 months to be eligible for benefits and shall have worked in employment resulting in wages in the  
29 amount of at least 1,040 multiplied by the applicable minimum wage, in either the "base period" or  
30 "alternative base period", as those terms are defined in RSA 282-A:2.

31       II. An employee shall be eligible for FMLI for reasons identified in paragraph I and RSA  
32 282-B:2, IX.

33       III. The calculation of weekly FMLI benefits shall be the highest quarter of wages in either  
34 the base period or alternate base period as defined in RSA 282-A:2, then divided by 13 and  
35 multiplied by 0.6, provided that no such calculation of FMLI benefits shall be less than \$125 per  
36 week or greater than 0.85 of the average weekly wage in New Hampshire. The calculation for  
37 partial FMLI benefits shall be in a manner consistent with RSA 282-A:14.

38       IV. The process for FMLI benefits claims, violations, and any resulting appeals shall be in

accordance and consistent with RSA 282-A:42 through RSA 282:68 and RSA 282-A:118. The standard and process for handling overpayments shall be in accordance and consistent with RSA 282-A:29, RSA 282-A:141-RSA 282-A:156 and RSA 282-A:165. In addition, an individual shall be disqualified from FMLI benefits beginning with the first day of the calendar week, and continuing for the next 26 weeks, in which the individual has been found to willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this chapter.

285-B:7 Limitations. Nothing in this chapter shall diminish an employer's obligation to comply with a collective bargaining agreement or employer policy, nor does this chapter, or any decision by the commissioner or authorized representative under this chapter, limit the ability of employers to provide FMLI benefits or benefits beyond what is required by this chapter.

282-B:8 Report and Outreach.

I. The department shall make public and provide semi-annual reports to the governor, senate president, speaker of the house of representatives, and the advisory council established pursuant to RSA 282-A:128 involving a summary to include but not be limited to, compliance with this chapter, payments into and out of the fund, fund balance, participation rates including for low wage employees, and retention of employees who received FMLI benefits.

II. The department shall develop and implement an outreach program to ensure that individuals who may be eligible to receive FMLI benefits under this chapter are made aware of these benefits. Outreach information shall explain in an easy to understand format, eligibility requirements, the claims process, weekly benefit amounts, maximum benefits available, notice requirements, reinstatement and non-discrimination rights, confidentiality, and coordination of leave under this chapter and other laws, collective bargaining agreements, and employer policies.

282-B:9 Rulemaking. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to this chapter. In adopting rules, the commissioner shall maintain consistency with the rules adopted to implement the federal Family and Medical Leave Act, to the extent such rules are not in conflict with this chapter.

2 Advisory Council. Amend RSA 282-A:128 to read as follows:

282-A:128 Advisory Council. There is hereby created within the unemployment compensation bureau an advisory council on unemployment compensation *and family medical leave insurance*, hereinafter called the advisory council. The advisory council shall consist of 9 members to be appointed, with the exception of the legislative members, by the governor with the consent and advice of the governor's council. Three of the appointees of this advisory council shall be persons who, because of their vocations, employment or affiliations, shall be classed as representing the point of view of employers; 3 shall be persons who, because of their vocations, employment or affiliations, shall be classed as representing the point of view of employees; one shall be a senator from the insurance committee appointed by the senate president; one shall be a representative from the labor, industrial and rehabilitative services committee appointed by the speaker of the house;

1 the remaining appointee, who shall be designated as chairman, shall be a person whose training  
2 and experience qualify him to deal with the problems of unemployment compensation. Such  
3 advisory council shall meet no later than 45 days after each calendar quarter and aid the  
4 commissioner in formulating policies and discussing problems related to the administration of this  
5 chapter ***and RSA 282-B*** and in assuring impartiality and freedom from political influence in the  
6 solution of such problems. Advisory council meetings shall provide opportunity for public comment.  
7 ***The advisory council shall quarterly review and evaluate family medical leave insurance***  
8 ***and, after 2 years of administration, the commissioner shall assess utilization, finances,***  
9 ***and benefit levels and provide the general court with rate adjustment or fiscal***  
10 ***recommendations.***

11 3 New Subparagraph; State Treasurer; Application of Receipts. Amend RSA 6:12, I(b) by  
12 inserting after subparagraph (339) the following new subparagraph:

13 (340) Moneys deposited in the family and medial leave insurance fund established  
14 in RSA 282-B:4.

15 4 Family and Medical Leave Insurance Program; Funding. The initial administrative and  
16 implementation costs associated with this chapter shall either be a capital appropriation included in  
17 the state capital budget of the 2019 legislative session or an appropriation in fiscal year 2020 in the  
18 operating budget for the biennium ending June 30, 2021. Initial administrative and  
19 implementation costs shall be reimbursed to the general fund within 10 years.

20 5 Effective Date. This act shall take effect January 1, 2019.

**HB 628-FN- FISCAL NOTE**

as introduced

AN ACT relative to a family and medical leave insurance program.

**FISCAL IMPACT:**    ☒ State                    ☐ County                    ☐ Local                    ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2018	FY 2019	FY 2020	FY 2021
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	Indeterminable	Indeterminable	Indeterminable Increase	Indeterminable Increase
<b>Expenditures</b>	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other

**METHODOLOGY:**

This bill establishes a social insurance program that would be operated by New Hampshire Employment Security to provide for paid family and medical leave insurance (FMLI). This bill requires New Hampshire Employment Security to establish and administer the family and medical leave insurance fund. Funding for the program shall come from employers who must remit family and medical leave insurance premium payments on a quarterly basis which shall be 0.5 percent of wages per employee per week for each week of the preceeding quarter. The costs to operate the program are unknown.

New Hampshire Employment Security states this bill requires it to administer the FMLI program which includes the functions of accepting and managing employer deposits into the FMLI fund, adjudicating and paying benefits out of the FMLI fund, and providing outreach and awareness regarding the FMLI program. The Department estimates program development will take 24 months, during which time a new IT system would be developed. The Department assumes the new system would be developed and maintained by an outside vendor. Additional staff would need to be hired to administer the program. The table below details the Department's estimated costs and the number of new positions needed:

	FY 2018	FY 2019	FY 2020	FY 2021
Program Expenditures	\$662,000	\$1,300,000	\$4,100,000	\$3,700,000
New Positions	10	10.5	45	38

There may also be costs associated with hardware, software, maintenance, and other programming costs beyond program development not included in the table above. The

Department notes that this bill provides funding for the program from the FMLI fund but the IT system will need to be developed in advance of the program being operational. Consequently, additional funding will be needed while the new IT system is being developed prior to the program going live. The Department estimates the FMLI program would need to be launched 6 months prior to benefits being available to accumulate sufficient revenue to fund benefits and program operations.

The Insurance Department states insurance plans currently exist that would provide coverage for the types of benefits included in this legislation. That coverage is sold, on a voluntary basis, to employers who desire to provide these benefits to their employees. The Department does not know how much of this product is currently sold and if this bill becomes law, the aforementioned commercial insurance would become obsolete. This would decrease the premium tax base although the Department assumes this amount would be negligible. The Department does not know what the relationship is between voluntary premiums charged for this type of coverage and the proposed remittance this bill requires.

The Department of Labor states this bill will not impact its operating budget.

**AGENCIES CONTACTED:**

Insurance Department, Department of Labor, and New Hampshire Employment Security