

**ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019**  
**COMMITTEE STATEMENT**  
**LB311**

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**Hearing Date:** Monday February 04, 2019  
**Committee On:** Business and Labor  
**Introducer:** Crawford  
**One Liner:** Adopt the Paid Family and Medical Leave Insurance Act

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**

<b>Aye:</b>	4	Senators Chambers, Crawford, Hansen, M., Lathrop
<b>Nay:</b>	2	Senators Halloran, Slama
<b>Absent:</b>		
<b>Present Not Voting:</b>	1	Senator Hansen, B.

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**Oral Testimony:**

**Proponents:**

Sue Crawford  
Jennifer Villotta  
Sheena Helgenberger  
Amanda Sullivan  
Catherine Huddleston-Casas  
Sean Flowerday  
Gary Bren  
Maddie Cunningham  
Terry Streetman  
Karn Bell-Dancy  
Tiffany Joekel  
Aubrey Mancuso  
Jina Ragland  
Edison McDonald  
Spike Eickholt  
Ken Smith  
Susan Martin

**Representing:**

District 45 Senator  
Self, La Vista  
Self, Elkhorn  
Self, Alda  
Sam Meisels; Self, Omaha  
Self, Lincoln  
Turner Technology  
Self, Papillion  
Alzheimer's Association  
YWCA Lincoln  
Women's Fund of Omaha  
Voices for Children  
AARP Nebraska  
The Arc of Nebraska  
ACLU of Nebraska  
Nebraska Appleseed  
Nebraska State AFL-CIO

**Opponents:**

John Albin  
Erin Ebeler Rolf  
  
Kathy Siefken

**Representing:**

Nebraska Department of Labor  
Lincoln Independent Business Association (LIBA); State Chamber of Commerce; National Federation of Independent Business  
Nebraska Grocery Industry Association; Nebraska Retail Federation; Nebraska Restaurant Association

**Neutral:**

Fernanado Wilson

**Representing:**

Self, Omaha

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## Summary of purpose and/or changes:

LB 311 adopts the Paid Family and Medical Leave Insurance Act. The act creates a paid family and medical leave insurance program to provide partial wage replacement for eligible works to care for themselves or family members.

### Section-by-Section Summary:

Section 1: Creates the Paid Family and Medical Leave Insurance Act.

Section 2: Definition Section. Defines: Base Period; Benefit year; Commissioner; Covered active duty; Covered employer; Covered individual; Covered service member; Domestic partner; Family member; Health care provider; Individual average weekly wage; Military member; Next of kin; Paid family and medical leave; Qualifying exigency leave; Retaliatory personnel action; Serious health condition; State average weekly wage; Week;

#### Select Definitions:

Domestic partner means an individual who: shares common living quarters with another person; lives in a committed, intimate relationship with that person, and is not married to that other person.

Family member means a biological, adopted, or foster child, a stepchild, or ward of a covered individual; biological, adoptive, or foster parent, stepparent or legal guardian; spouse or domestic partner; grandparent, grandchild, or sibling.

Section 3: Beginning July 1, 2021 a covered individual may take paid family and medical leave for the following reasons: (1) to care for a new child of the individual during the first year after birth, adoption, or placement through foster care; (2) to care for a family member who has a serious health condition; (3) to care for a service member who is the individual's next of kin; or (4) for qualifying exigency leave for active duty individuals and their families that are the same as the Federal Family and Medical Leave Act. (5) because the individual has a serious health condition, including pregnancy, that makes him/her unable to perform the functions of the position;

The maximum amount of leave an individual may take is 12 weeks during a year if leave is taken because of a new child or the individual's serious health condition, or 6 weeks during a year if leave is taken for any other reason except for a military member notified of an impending call or to spend time with the military member who is on short-term leave.

Section 4: Leave benefits to be paid to the individual are prorated based on the individual's wages. Benefits are 95% of the individual's wages if his/her yearly earnings are 20% or less of Nebraska's annual median wage. Leave benefits equal 90% of an individual's wages if his/her yearly earnings are more than 20% but not more than 30% of the median wage. Leave benefits equal 85% of the individuals' wages if his/her yearly earnings are more than 30% but not more than 50% of the median wage. Leave benefits equal 66% of the individual's wages if his/her yearly earnings are more than 50% of the median wage.

There is a waiting period where benefits are not payable for the first week the year that an individual takes paid family medical leave. If the individual takes 10 or more days of leave in a year, he/she will be paid for the waiting period. The first payment of leave benefits must be made within three weeks after a claim is filed, then subsequent payments must be made every week thereafter. An individual cannot receive family medical leave and unemployment benefits simultaneously.

Section 5: Requires individuals to file a claim for benefits with the commissioner on a form that includes identifying information, the reason for leave, a schedule of leave to the extent known, wage information, health care documentation as necessary, and employer information. Once a claim is filed, the commissioner will notify the employer of the claim and determine the individual's eligibility. If the individual is eligible, the commissioner will pay the benefits to the individual. If the individual is ineligible, the commissioner will notify the individual, and the individual may appeal.

Section 6: Creates the Paid Family Medical Leave Insurance Fund, which will be administered by the commissioner. The fund will consist of contributions from covered individuals as payroll deductions. Such contributions will be used to pay benefits under the act. The commissioner will evaluate the amount of contributions necessary to finance the amount of

benefits payable under the act.

Beginning on the effective date and continuing until September 30, 2019 the commissioner shall accept private donation to pay upfront administrative costs. On October 1, 2019 the State Treasurer shall transfer XX dollars from the Nebraska Health Care Cash Fund to administer the program. Those costs shall be reimbursed by October 1, 2021 to the Health Care Cash Fund.

Section 7: Allows an individual to take family medical leave on an intermittent basis to care for a seriously ill family member, to care for his/her own serious health condition, or to care for a newborn or newly adopted or foster care child with the employer's approval. Benefits for intermittent leave will be prorated. If an individual needs intermittent leave for foreseeable medical treatments, the individual must work with the employer to schedule leave. In such cases, the employer may temporarily transfer the individual to an alternative job to accommodate the recurring periods of leave, so long as the temporary job has equivalent pay and benefits. Nothing in this section entitles an individual to more leave than he/she is entitled.

Section 8: Upon return from leave an individual shall be restored to an equivalent position with equivalent benefits. Health care benefits must be maintained by the employer during leave. An employer cannot require an individual to exhaust accrued vacation or sick time prior to taking paid family and medical leave.

Section 9: Prohibits employers from interfering with any rights protected under the act or from taking retaliatory action against an individual because he or she exercised such rights. Rights include the right to request or use leave, to communicate to the employer an intent to file a claim for leave, to appeal eligibility decisions, to testify or participate in an investigation, and to inform the commissioner of any alleged violation. It is unlawful for an employer to count paid family medical leave as an absence under an absence control policy.

Section 10: Provides that a covered individual who takes leave under the federal FMLA or any kind of disability or family care leave under a collective-bargaining agreement to be taken concurrently with the Paid Family and Medical Leave Insurance Act.

Section 11: Requires each employer to provide written notice to the employee upon hiring and annually thereafter. Notice shall include: explanation of the individual's right to benefits; the amount of benefits; the procedure to file a claim; explanation of protections; a statement saying that retaliatory actions are prohibited; and a statement about the right to file a complaint. The employer shall also display a poster with this information.

Section 12: Requires all claims and appeals to be confidential and not public record except for use by a public official in official duties; or in response to a court order or subpoena. Any person who violates this section shall be guilty of a Class III misdemeanor.

Section 13: Disqualifies a covered individual from receiving benefits for one year if the commissioner determines the individual willfully made a false statement regarding a material fact in order to obtain benefits. If benefits are paid erroneously or as a result of willful misrepresentation, the commissioner may seek repayment from the recipient.

Section 14: Intent language stating that the commissioner should use data and technology available for other state programs, such as unemployment insurance.

Section 15: Requires the commissioner to advise claimants of requirements and deductions if the Internal Revenue Service determines that leave benefits are subject to federal income tax. If the individual elects to have federal tax payments withheld, the commissioner will deduct and withhold the specified amount, and such amount must remain in the fund until transferred to the federal taxing authority.

Section 16: Authorizes the commissioner to conduct investigations in order to determine compliance with this act. The commissioner shall issue a citation for a violation of this act of not more than five-hundred dollars for a first violation and not more than five thousand dollars for subsequent violations.

Section 17: Requires the commissioner to file an electronic report to the Legislature on or before December 31, 2021 and each year thereafter. The report will include: (1) the amount and percentage of benefits paid for each type of leave; (2) the percentage of benefits paid to each gender for each type of leave; (3) the amount of contributions collected by employers; (4) the median benefit payment level; (5) the occupation and industry of individuals receiving benefits; (6) the fund's balance; (7) a summary of outreach efforts to increase awareness; and (8) the types of family members for whom leave was taken.

Section 18: An employer that provides paid leave at least as generous as this act may apply for an exemption from the commissioner. The exemption must be applied for annually. The employer is still subject to sections 8 and 9 and the employer must provide written notice required under section 11. The employer is also subject to investigations and citations under section 16.

Section 19: Authorizes the commissioner to promulgate rules and regulations for the act.

Section 20: Amends the Employment Security Law so that no benefits shall be charged to the experience account of any employer if such benefits were paid to: an individual who worked for twenty weeks or less to temporarily replace an employee receiving family and medical leave benefits and who was laid off due to the return of such permanent employee; an individual who failed to return to work after the expiration of paid family and medical leave; or an individual who left work voluntarily while on paid family and medical leave.

Section 21: Severability clause.

Section 22: Repeals the original section.

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**Explanation of amendments:**

AM570 makes the following changes:

- 1.Changes the payback to the Health Care Cash Fund from two year to four year timeline.
- 2.Allows one year of contribution collections prior to benefit payout as opposed to six months in the original bill.
- 3.Allows employees to take six weeks of personal medical leave instead of twelve.
- 4.Removes the term domestic partner.

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Matt Hansen, M., Chairperson