

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 290

Introduced by Cavanaugh, M., 6; Blood, 3; Cavanaugh, J., 9; Hansen, M.,
26; Hunt, 8; Lathrop, 12; McDonnell, 5; McKinney, 11;
Morfeld, 46; Pansing Brooks, 28; Wayne, 13; Wishart, 27.

Read first time January 12, 2021

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to employment; to amend sections 48-652 and
- 2 71-7611, Revised Statutes Cumulative Supplement, 2020; to adopt the
- 3 Paid Family and Medical Leave Insurance Act; to create a fund; to
- 4 transfer funds; to change provisions relating to experience accounts
- 5 under the Employment Security Law; to harmonize provisions; to
- 6 provide severability; and to repeal the original sections.
- 7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 20 of this act shall be known and may be
2 cited as the Paid Family and Medical Leave Insurance Act.

3 Sec. 2. For purposes of the Paid Family and Medical Leave Insurance
4 Act:

5 (1) Base period means the first four of the last five completed
6 calendar quarters immediately preceding the first day of a covered
7 individual's benefit year;

8 (2) Benefit year means the one-year period beginning with the first
9 day of the first week with respect to which the covered individual first
10 files a valid claim for family and medical leave benefits, and thereafter
11 the one-year period beginning with the first day of the first week with
12 respect to which the covered individual next files a valid claim for
13 family and medical leave benefits after the termination of his or her
14 last preceding benefit year. For purposes of this subdivision, a week
15 with respect to which a covered individual files a valid claim shall be
16 deemed to be in, within, or during that benefit year which includes the
17 greater part of such week;

18 (3) Commissioner means the Commissioner of Labor;

19 (4) Covered active duty or call to covered active duty status has
20 the same meaning as in 29 C.F.R. 825.126(a)(1) and (2), as such
21 regulation existed on January 1, 2021;

22 (5) Covered employer means an employer that is subject to the
23 Employment Security Law;

24 (6) Covered individual means:

25 (a) An individual who is employed by a covered employer; or

26 (b) A self-employed individual who has elected coverage under the
27 act. Such election shall be made in a form and manner prescribed by the
28 commissioner;

29 (7) Covered servicemember has the same meaning as in 29 U.S.C. 2611
30 and the regulations issued thereunder, as such section and regulations
31 existed on January 1, 2021;

1 (8) Family and medical leave benefits means the benefits provided
2 under section 4 of this act for periods of paid family and medical leave;

3 (9) Family member means and includes:

4 (a) A biological, adopted, or foster child, a stepchild, or a legal
5 ward of a covered individual or the covered individual's spouse or a
6 person to whom the covered individual or the covered individual's spouse
7 stood in loco parentis when such person was a minor child, regardless of
8 the age or dependency status of such child, stepchild, legal ward, or
9 person;

10 (b) A biological, adoptive, or foster parent, a stepparent, or a
11 legal guardian of a covered individual or the covered individual's spouse
12 or a person who stood in loco parentis to the covered individual or the
13 covered individual's spouse when the covered individual or the covered
14 individual's spouse was a minor child;

15 (c) A covered individual's spouse;

16 (d) A grandparent, grandchild, or sibling, whether of a biological,
17 foster, adoptive, or step relationship, of the covered individual or the
18 covered individual's spouse; and

19 (e) One person designated by the covered individual as a family
20 member. Such designation shall be made in a form and manner prescribed by
21 the commissioner;

22 (10) Health care provider means any person licensed under federal or
23 state law to provide medical or emergency services, including, but not
24 limited to, doctors, nurses, emergency room personnel, and certified
25 nurse midwives;

26 (11) Individual average weekly wage means:

27 (a) For a covered individual who has earned wages during each
28 calendar quarter of the base period, the amount of wages paid to the
29 covered individual in the highest calendar quarter of the base period
30 divided by thirteen; or

31 (b) For a covered individual who has not earned wages during each

1 calendar quarter of the base period, the covered individual's average
2 weekly wage during the most recently completed calendar quarter;

3 (12) Military member means a covered individual's family member who
4 is in the armed forces of the United States;

5 (13) Next of kin has the same meaning as in 29 U.S.C. 2611 and the
6 regulations issued thereunder, as such section and regulations existed on
7 January 1, 2021;

8 (14) Paid family and medical leave means leave taken by a covered
9 individual for a qualifying reason described in section 3 of this act for
10 which the covered individual is eligible for family and medical leave
11 benefits;

12 (15) Qualifying exigency leave means leave taken by a covered
13 individual for the following purposes if the covered individual's family
14 member is on covered active duty or call to covered active duty status:

15 (a) Any of the purposes specified in 29 C.F.R. 825.126(b)(3)(i)
16 through (iv), as such regulation existed on January 1, 2021;

17 (b) Any of the purposes specified in 29 C.F.R. 825.126(b)(8)(i)
18 through (iv), as such regulation existed on January 1, 2021;

19 (c) To address any issue that arises from the fact that the military
20 member is notified of an impending call or order to covered active duty
21 seven or fewer calendar days prior to the date of deployment. Leave taken
22 for this purpose can be used for a period of seven calendar days
23 beginning on the date the military member is notified of an impending
24 call or order to covered active duty;

25 (d) To attend any official ceremony, program, or event sponsored by
26 the military that is related to the covered active duty or call to
27 covered active duty status of the military member;

28 (e) To attend family support or assistance programs and
29 informational briefings sponsored or promoted by the military, military
30 service organizations, or the American Red Cross that are related to the
31 covered active duty or call to covered active duty status of the military

1 member;

2 (f) To make or update financial or legal arrangements to address the
3 military member's absence while on covered active duty or call to covered
4 active duty status, such as preparing and executing financial and health
5 care powers of attorney, transferring bank account signature authority,
6 obtaining military identification cards, or preparing or updating a will
7 or living trust;

8 (g) To act as the military member's representative before a federal,
9 state, or local agency for the purposes of obtaining, arranging, or
10 appealing military service benefits while the military member is on
11 covered active duty or call to covered active duty status, and for a
12 period of ninety days following the termination of the military member's
13 covered active duty status;

14 (h) To attend counseling provided by someone other than a health
15 care provider for the covered individual, for the military member, for
16 the biological, adopted, or foster child, the stepchild, or the legal
17 ward of the military member, for a child of the military member's spouse,
18 or for a child to whom the military member stands in loco parentis, if
19 the need for counseling arises from the covered active duty or call to
20 covered active duty status of the military member;

21 (i) To spend time with the military member who is on short-term,
22 temporary, rest and recuperation leave during the period of deployment.
23 Leave taken for this purpose can be used for a period of fifteen calendar
24 days beginning on the date the military member commences each instance of
25 rest and recuperation leave;

26 (j) To attend arrival ceremonies, reintegration briefings and
27 events, and any other official ceremony or program sponsored by the
28 military during a period of ninety days following the termination of the
29 military member's covered active duty status;

30 (k) To address issues that arise from the death of the military
31 member while on covered active duty status, such as meeting and

1 recovering the body of the military member, making funeral arrangements,
2 and attending funeral services; and

3 (1) To address other events which arise out of the military member's
4 covered active duty or call to covered active duty status if the covered
5 employer and covered individual agree that such leave qualifies as an
6 exigency and agree to both the timing and duration of such leave;

7 (16) Retaliatory personnel action means denial of any right
8 guaranteed under the Paid Family and Medical Leave Insurance Act,
9 including, but not limited to:

10 (a) Any threat, discharge, suspension, demotion, or reduction of
11 hours of a covered individual or any other adverse action against a
12 covered individual for the exercise of any right guaranteed in the act;
13 and

14 (b) Interference with or punishment for participating in or
15 assisting with an investigation, proceeding, or hearing under the act;

16 (17) Serious health condition has the same meaning as in 29 U.S.C.
17 2611 and the regulations issued thereunder, as such section and
18 regulations existed on January 1, 2021;

19 (18) State average weekly wage means the state average weekly wage
20 as annually determined under section 48-121.02; and

21 (19) Week means a period of seven consecutive days ending Saturday
22 at midnight.

23 Sec. 3. (1) Beginning January 1, 2023, a covered individual may
24 take paid family and medical leave for the following qualifying reasons:

25 (a) To care for a new child of the covered individual during the
26 first year after the birth, adoption, or placement through foster care of
27 that child;

28 (b) To care for a family member of the covered individual who has a
29 serious health condition;

30 (c) To care for a covered servicemember if the covered individual is
31 a family member or the next of kin of the covered servicemember;

1 (d) For qualifying exigency leave; or

2 (e) Because the covered individual has a serious health condition,
3 including pregnancy, that makes the covered individual unable to perform
4 the functions of the position held by such covered individual.

5 (2) The maximum amount of paid family and medical leave that a
6 covered individual may take shall be twelve weeks or, for leave taken on
7 an intermittent basis, sixty work days during any benefit year.

8 Sec. 4. (1) Subject to subsection (2) of this section, the family
9 and medical leave benefits to be paid to the covered individual for any
10 week of paid family and medical leave shall be:

11 (a) Ninety percent of the portion of the individual average weekly
12 wage that is at or below fifty percent of the state average weekly wage;
13 and

14 (b) Fifty percent of the portion of the individual average weekly
15 wage that is above fifty percent of the state average weekly wage.

16 (2) The amount of family and medical leave benefits to be paid to a
17 covered individual in any week shall not exceed sixty-six percent of the
18 state average weekly wage.

19 (3) Family and medical leave benefits are not payable for the first
20 week in any benefit year that a covered individual takes paid family and
21 medical leave. Such week shall be known as the waiting period. If the
22 covered individual takes ten or more days of paid family and medical
23 leave in such benefit year, the covered individual shall be paid for the
24 waiting period. The waiting period shall occur only once in any benefit
25 year. This subsection shall not apply to paid family and medical leave
26 taken for the reasons stated in subdivisions (15)(c) and (15)(i) of
27 section 2 of this act or for the reason stated in subdivision (1)(a) of
28 section 3 of this act.

29 (4) Family and medical leave benefits are not payable for less than
30 one workday of paid family and medical leave taken in any one workweek.

31 (5) The first payment of family and medical leave benefits must be

1 made to the covered individual within three weeks after the initial claim
2 is filed under section 5 of this act, and subsequent payments of such
3 benefits must be made every week thereafter for as long as the covered
4 individual is eligible. Family and medical leave benefits shall be paid
5 in the manner prescribed by the commissioner, which may include
6 electronic payments.

7 (6) For purposes of the calculations required under this section,
8 only wages earned in employment as defined in section 48-604 shall be
9 considered.

10 (7) A covered individual shall not receive family and medical leave
11 benefits at the same time that he or she is receiving workers'
12 compensation benefits for total disability or benefits under the
13 Employment Security Law.

14 Sec. 5. (1) To receive family and medical leave benefits, a covered
15 individual shall file an initial claim for such benefits with the
16 commissioner on a form prescribed by the commissioner. The claim shall
17 include:

18 (a) The name and address of the covered individual;

19 (b) The reason for taking the paid family and medical leave;

20 (c) A schedule showing the dates during which the covered individual
21 intends to take paid family and medical leave, to the extent such dates
22 are known;

23 (d) Such wage information as the commissioner may require to
24 determine the amount of family and medical leave benefits;

25 (e) Such documentation as the commissioner may require from a health
26 care provider for proof of a serious health condition;

27 (f) The name and address of each covered employer that employs the
28 covered individual; and

29 (g) Such other information as required by the commissioner to
30 calculate and determine eligibility for family and medical leave
31 benefits.

1 (2) After an initial claim is filed, the commissioner shall send
2 notice of the filing of such claim to each covered employer that employs
3 the covered individual and shall include with such notice the schedule of
4 leave submitted under subdivision (1)(c) of this section. The
5 commissioner shall then determine the covered individual's eligibility
6 for family and medical leave benefits. If the commissioner determines
7 that the covered individual is eligible, the commissioner shall begin to
8 pay family and medical leave benefits to the covered individual pursuant
9 to section 4 of this act. If the commissioner determines that the covered
10 individual is ineligible, the commissioner shall notify the covered
11 individual of the commissioner's determination. Such determination of
12 ineligibility may be appealed, and the appeal shall be in accordance with
13 the Administrative Procedure Act.

14 (3) Information relating to the covered individual's use of paid
15 family and medical leave may be shared with any covered employer that
16 employs the covered individual upon the covered employer's request in a
17 manner prescribed by the commissioner.

18 (4) The commissioner shall notify a covered individual when such
19 covered individual's paid family and medical leave is set to terminate.
20 Such notification shall be sent in a manner prescribed by the
21 commissioner. The notification must be received by the covered individual
22 one week in advance of the day when such paid family and medical leave is
23 set to expire.

24 Sec. 6. (1) The Paid Family and Medical Leave Insurance Fund is
25 created. The fund shall be administered by the commissioner and shall
26 consist of private donations, money transferred to the fund by the
27 Legislature, and contributions from covered employers. Any money in the
28 fund available for investment shall be invested by the state investment
29 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
30 State Funds Investment Act.

31 (2) Beginning January 1, 2022, covered employers shall be required

1 to remit contributions as provided in this section. The contributions
2 shall become due and be paid by each covered employer to the commissioner
3 in such manner and at such times as the commissioner shall, by rule and
4 regulation, prescribe. The commissioner may require any covered employer
5 that had an annual payroll of one hundred thousand dollars or more in
6 either of the two preceding calendar years to pay the contributions by an
7 electronic method approved by the commissioner, except when the covered
8 employer establishes to the satisfaction of the commissioner that payment
9 of the contributions by an electronic method would work a hardship on the
10 covered employer. The commissioner shall remit the contributions to the
11 State Treasurer for credit to the Paid Family and Medical Leave Insurance
12 Fund. Such contributions shall be used to pay family and medical leave
13 benefits payable under the Paid Family and Medical Leave Insurance Act
14 and the administrative costs incurred in administering the act. The
15 commissioner shall be responsible for evaluating and determining on an
16 annual basis the contribution amounts necessary to finance the total
17 amount of family and medical leave benefits payable under the act. If at
18 any time during the year the commissioner determines that the
19 contribution amounts are not sufficient to pay the family and medical
20 leave benefits payable under the act, the commissioner shall increase the
21 contribution amounts by the lowest amount necessary to pay all such
22 benefits. In no case shall the contributions required from a covered
23 employer under this section exceed one percent of the gross wages paid to
24 covered individuals by such covered employer.

25 (3) Beginning on the effective date of this act, the commissioner
26 shall accept donations from any private individual or entity and shall
27 remit all donations received to the State Treasurer for credit to the
28 Paid Family and Medical Leave Insurance Fund. Such private donations
29 shall be used to pay the upfront administrative costs and ongoing
30 administrative costs related to the Paid Family and Medical Leave
31 Insurance Act. On October 1, 2021, the State Treasurer shall transfer

1 five million five hundred fifty-eight thousand dollars from the Nebraska
2 Health Care Cash Fund to the Paid Family and Medical Leave Insurance
3 Fund. Such transferred amount shall also be used to pay the upfront
4 administrative costs related to the act. The transferred amount shall be
5 repaid to the Nebraska Health Care Cash Fund when the commissioner
6 determines that the Paid Family and Medical Leave Insurance Fund will
7 have sufficient funds to pay all required family and medical leave
8 benefits after such repayment is made, but in no case shall such
9 repayment be made later than October 1, 2025. The commissioner shall
10 notify the State Treasurer when to make such repayment, and the State
11 Treasurer shall then transfer five million five hundred fifty-eight
12 thousand dollars from the Paid Family and Medical Leave Insurance Fund to
13 the Nebraska Health Care Cash Fund.

14 Sec. 7. (1) A covered individual may take paid family and medical
15 leave on an intermittent basis if:

16 (a) The intermittent leave is for the covered individual's own
17 serious health condition;

18 (b) The intermittent leave is to care for a family member with a
19 serious health condition; or

20 (c) The intermittent leave is to care for a newborn or a newly
21 placed adopted or foster care child of the covered individual and the
22 covered individual has received the covered employer's written approval
23 for such intermittent leave.

24 (2) A covered individual in need of intermittent leave to care for a
25 family member with a foreseeable serious health condition shall work with
26 his or her covered employer to schedule the leave so as not to unduly
27 disrupt the operations of the covered employer. In such cases, the
28 covered employer may transfer the covered individual temporarily to an
29 alternative job with equivalent pay and benefits that accommodates
30 recurring periods of leave better than the covered individual's regular
31 job. When the need for intermittent leave is unforeseeable, the covered

1 individual shall provide notice as soon as possible and practicable under
2 the circumstances.

3 (3) The minimum amount of intermittent leave that may be taken at
4 any one time is one workday.

5 (4) Family and medical leave benefits for intermittent leave shall
6 be prorated.

7 (5) Taking intermittent leave under this section shall not result in
8 a reduction of the total amount of leave to which a covered individual is
9 entitled beyond the amount of leave actually taken.

10 (6) Nothing in this section shall be construed to entitle a covered
11 individual to more paid family and medical leave than he or she is
12 otherwise entitled to under the Paid Family and Medical Leave Insurance
13 Act.

14 Sec. 8. (1) Any covered individual who takes paid family and
15 medical leave under the Paid Family and Medical Leave Insurance Act is
16 entitled, on return from the leave:

17 (a) To be restored by the covered employer to the position of
18 employment held by the covered individual when the leave commenced; or

19 (b) To be restored by the covered employer to an equivalent position
20 with equivalent employment benefits, pay, and other terms and conditions
21 of employment.

22 (2) During any paid family and medical leave taken, the covered
23 employer shall maintain any health benefits the covered individual had
24 prior to taking such leave for the duration of the leave as if the
25 covered individual had continued in employment continuously from the date
26 he or she commenced the leave until the date the family and medical leave
27 benefits terminate if the covered individual continues to pay the covered
28 individual's share of the cost of such health benefits as required prior
29 to the commencement of the leave.

30 (3) The taking of paid family and medical leave under the act shall
31 not result in the loss of any employment benefits accrued before the date

1 on which the leave commenced.

2 (4) A covered employer shall not require a covered individual to
3 exhaust his or her accrued vacation or sick time prior to taking paid
4 family and medical leave.

5 (5) Nothing in this section shall be construed to entitle any
6 covered individual to any right, benefit, or position of employment other
7 than any right, benefit, or position to which the covered individual
8 would have been entitled had he or she not taken the paid family and
9 medical leave.

10 (6) Nothing in this section shall be construed to prohibit a covered
11 employer from requiring a covered individual on paid family and medical
12 leave to report periodically to the covered employer on the status of the
13 covered individual and his or her intention to return to work.

14 (7) A covered individual who fraudulently obtains family and medical
15 leave benefits shall not be entitled to any of the protections provided
16 in this section.

17 Sec. 9. (1) It shall be unlawful for a covered employer to
18 interfere with, restrain, or deny the exercise of, or the attempt to
19 exercise, any right protected under the Paid Family and Medical Leave
20 Insurance Act or to take a retaliatory personnel action against a covered
21 individual because he or she exercised rights protected under the act.
22 Such rights include, but are not limited to:

23 (a) The right to request or use paid family and medical leave;

24 (b) The right to communicate to the covered employer an intent to
25 file a claim for family and medical leave benefits;

26 (c) The right to appeal eligibility determinations;

27 (d) The right to testify or participate in any investigation,
28 hearing, or proceeding under the act; and

29 (e) The right to inform the commissioner of any alleged violation of
30 the act.

31 (2) It shall be unlawful for a covered employer's absence control

1 policy to count paid family and medical leave taken under the act as an
2 absence that may lead to or result in discipline, discharge, demotion,
3 suspension, or any other adverse action.

4 Sec. 10. (1) A covered individual who is entitled to leave under
5 the federal Family and Medical Leave Act of 1993, 29 U.S.C. 2601 et seq.,
6 shall take any paid family and medical leave allowed under the Paid
7 Family and Medical Leave Insurance Act concurrently with leave taken
8 pursuant to the federal Family and Medical Leave Act of 1993.

9 (2) A covered individual who is entitled to any kind of disability
10 or family care leave under a collective-bargaining agreement or employer
11 policy shall take any paid family and medical leave allowed under the
12 Paid Family and Medical Leave Insurance Act concurrently with such
13 disability or family care leave if the different types of leave are being
14 granted for the same reason.

15 (3) Nothing in the Paid Family and Medical Leave Insurance Act shall
16 prohibit covered employers from providing leave benefits that are in
17 addition to the family and medical leave benefits required under the act.
18 Such additional leave benefits shall not be considered when calculating
19 family and medical leave benefits under section 4 of this act.

20 (4) The Paid Family and Medical Leave Insurance Act does not
21 diminish a covered employer's obligation to comply with any of the
22 following that provide more generous leave:

23 (a) A collective-bargaining agreement;

24 (b) An employer policy; or

25 (c) Any state or federal law.

26 (5) A covered individual's right to paid family and medical leave
27 under the Paid Family and Medical Leave Insurance Act may not be
28 diminished by a collective-bargaining agreement entered into or renewed,
29 or an employer policy adopted or retained, after the effective date of
30 this act.

31 Sec. 11. (1) Each covered employer shall provide written notice

1 regarding the Paid Family and Medical Leave Insurance Act to each covered
2 individual upon hiring and annually thereafter. A covered employer shall
3 also provide written notice to a covered individual when he or she
4 requests paid family and medical leave under the act or when the covered
5 employer acquires knowledge that a covered individual's leave may qualify
6 for family and medical leave benefits. Such notice shall include:

7 (a) An explanation of the covered individual's right to paid family
8 and medical leave and the terms under which it may be used;

9 (b) The amount of family and medical leave benefits;

10 (c) The procedure for filing a claim for family and medical leave
11 benefits;

12 (d) An explanation of the employee protections provided under
13 section 8 of this act;

14 (e) A statement explaining that retaliatory personnel actions
15 against a covered individual for requesting or using paid family and
16 medical leave are prohibited; and

17 (f) A statement explaining that the covered individual has a right
18 to file a complaint for violations of the Paid Family and Medical Leave
19 Insurance Act.

20 (2) A covered employer shall also display and maintain a poster in a
21 conspicuous place accessible to covered individuals at the covered
22 employer's place of business that contains the information required under
23 subsection (1) of this section.

24 Sec. 12. (1) Claims filed and appeals taken pursuant to the Paid
25 Family and Medical Leave Insurance Act and all related information shall
26 be confidential and shall not be a public record, except that:

27 (a) Information relating to a covered individual's use of paid
28 family and medical leave may be disclosed as described in subsection (3)
29 of section 5 of this act;

30 (b) Information may be disclosed to a public official for use in the
31 performance of his or her official duties. For purposes of this

1 subdivision, performance of official duties means the administration or
2 enforcement of law or the execution of the official responsibilities of a
3 federal, state, or local elected official. Administration of law includes
4 research related to the law administered by the public official.
5 Execution of official responsibilities does not include solicitation of
6 contributions or expenditures to or on behalf of a candidate for public
7 office or to a political party;

8 (c) Information may be disclosed in response to a court order or
9 subpoena; and

10 (d) Information about a particular covered individual or covered
11 employer may be disclosed to:

12 (i) Such covered individual or covered employer upon the
13 individual's or employer's written request;

14 (ii) One who acts as an agent for the covered individual or covered
15 employer if the agent presents a written release from the covered
16 individual or covered employer, where practicable, or other evidence of
17 authority to act on behalf of the covered individual or covered employer;

18 (iii) An elected official who is performing constituent services if
19 the official presents reasonable evidence that the covered individual or
20 covered employer has authorized such disclosure; or

21 (iv) An attorney who presents written evidence that he or she is
22 representing the covered individual or covered employer in a matter
23 arising under the Paid Family and Medical Leave Insurance Act.

24 (2) Any person who receives information under this section and
25 rediscloses such information for any purpose other than the purpose for
26 which it was originally obtained shall be guilty of a Class III
27 misdemeanor.

28 Sec. 13. (1) A covered individual is disqualified from receiving
29 family and medical leave benefits for one year if he or she is determined
30 by the commissioner to have willfully made a false statement or
31 misrepresentation regarding a material fact, or willfully failed to

1 report a material fact, to obtain family and medical leave benefits. The
2 one-year period of disqualification shall begin on the date of the
3 commissioner's determination.

4 (2) If family and medical leave benefits are paid erroneously or as
5 a result of willful misrepresentation, or if a claim for family and
6 medical leave benefits is rejected after benefits are paid, the
7 commissioner may seek repayment of such benefits from the recipient (a)
8 by civil action in the name of the commissioner, (b) by offset against
9 any future family and medical leave benefits payable to the covered
10 individual with respect to the benefit year current at the time of such
11 receipt or any benefit year which may commence within three years after
12 the end of such current benefit year, or (c) by issuing a levy on salary,
13 wages, or other regular payments due to or received by the covered
14 individual and such levy shall be continuous from the date the levy is
15 served until the amount of the levy is satisfied. Notice of the levy
16 shall be mailed to the covered individual whose salary, wages, or other
17 regular payment is levied upon at his or her last-known address not later
18 than the date that the levy is served. Exemptions or limitations on the
19 amount of salary, wages, or other regular payment that can be garnished
20 or levied upon by a judgment creditor shall apply to levies made pursuant
21 to this section. Any person upon whom a levy is served who fails or
22 refuses to honor the levy without cause may be held liable for the amount
23 of the levy up to the value of the assets of the covered individual
24 liable to repay the overpayment that are under the control of the person
25 upon whom the levy is served at the time of service and thereafter.

26 Sec. 14. It is the intent of the Legislature that the commissioner
27 utilize state data and technology that is used for other state programs,
28 including, but not limited to, unemployment insurance, to the maximum
29 extent possible for purposes of carrying out his or her responsibilities
30 under the Paid Family and Medical Leave Insurance Act.

31 Sec. 15. (1) If the Internal Revenue Service determines that family

1 and medical leave benefits are subject to federal income tax, the
2 commissioner shall advise any covered individual filing a claim for
3 family and medical leave benefits, at the time of filing such claim,
4 that:

5 (a) The Internal Revenue Service has determined that family and
6 medical leave benefits are subject to federal income tax;

7 (b) Requirements exist pertaining to estimated tax payments;

8 (c) The covered individual may elect to have federal income tax
9 deducted and withheld from the covered individual's family and medical
10 leave benefits; and

11 (d) The covered individual is permitted to change a previously
12 elected income withholding status.

13 (2) If the covered individual elects to have federal tax payments
14 withheld, the commissioner shall deduct and withhold the amount specified
15 in the Internal Revenue Code in a manner consistent with state and
16 federal law. Amounts deducted and withheld must remain in the Paid Family
17 and Medical Leave Insurance Fund until transferred to the federal taxing
18 authority as a payment of income tax.

19 Sec. 16. (1) The commissioner may conduct investigations in order
20 to determine whether there has been compliance with the Paid Family and
21 Medical Leave Insurance Act. Investigations shall take place at such
22 times and places as the commissioner directs. Investigations shall be
23 conducted so as not to unduly disrupt the operations of covered
24 employers.

25 (2) For purposes of any investigation under this section, the
26 commissioner may administer oaths and affirmations, subpoena witnesses,
27 compel their attendance, take evidence, and require the production of any
28 books, papers, correspondence, memoranda, agreements, or other documents
29 or records which the commissioner deems relevant or material to the
30 inquiry.

31 (3) In case of contumacy by or refusal to obey a subpoena issued to

1 any person, any court of competent jurisdiction, upon application by the
2 commissioner, may issue to such person an order requiring him or her to
3 appear before the commissioner and produce documentary evidence if so
4 ordered or give evidence touching the matter under investigation or in
5 question. Any failure to obey the order of the court may be punished by
6 the court as a contempt.

7 (4) The commissioner shall issue a citation to a covered employer
8 when an investigation reveals that the covered employer has violated the
9 act. When a citation is issued, the commissioner shall notify the covered
10 employer of the proposed administrative penalty, if any, by certified
11 mail or any other manner of delivery by which the United States Postal
12 Service can verify delivery. The administrative penalty shall be not more
13 than five hundred dollars in the case of a first violation and not more
14 than five thousand dollars in the case of a second or subsequent
15 violation. The covered employer shall have fifteen working days from the
16 date of the citation to contest it. Notice of contest shall be sent to
17 the commissioner who shall provide a hearing pursuant to the
18 Administrative Procedure Act.

19 Sec. 17. (1) A covered employer may satisfy the requirements of the
20 Paid Family and Medical Leave Insurance Act through a private employer
21 plan consisting of employer-provided benefits, insurance, or a
22 combination of both if the plan meets or exceeds the rights, protections,
23 and benefits provided under the act. A covered employer must file its
24 plan with the commissioner. The commissioner shall approve the plan if it
25 meets or exceeds such rights, protections, and benefits.

26 (2) If a plan is approved under this section, the covered employer
27 shall be exempt from the requirement to remit contributions under section
28 6 of this act.

29 (3) Covered individuals who are subject to a plan approved under
30 this section shall retain all applicable rights under the act.

31 (4) A plan approved under this section shall not impose any

1 additional conditions or restrictions on the use of paid family and
2 medical leave beyond those explicitly authorized in the act or in rules
3 and regulations adopted and promulgated under the act.

4 (5) If a covered individual is denied family and medical leave
5 benefits under a plan approved under this section, such covered
6 individual may appeal the denial to the commissioner. The appeal shall be
7 in accordance with the Administrative Procedure Act.

8 (6) Covered individuals who are subject to a plan approved under
9 this section may report any alleged violation of the act to the
10 commissioner, and the commissioner may investigate the complaint in
11 accordance with section 16 of this act.

12 (7) On or before November 30, 2023, and on or before November 30 of
13 each year thereafter, each covered employer with an approved plan under
14 this section shall electronically submit a report to the commissioner.
15 The report shall include:

16 (a) The amount and percentage of family and medical leave benefits
17 paid for each type of paid family and medical leave described in
18 subsection (1) of section 3 of this act;

19 (b) The percentage of family and medical leave benefits paid to each
20 gender for each type of paid family and medical leave described in
21 subsection (1) of section 3 of this act;

22 (c) The median payment level for family and medical leave benefits;

23 (d) The occupation and industry of covered individuals receiving
24 family and medical leave benefits;

25 (e) A summary of the outreach efforts made by the covered employer
26 to increase awareness of the availability of paid family and medical
27 leave; and

28 (f) The types of family members for whom paid family and medical
29 leave as described in subdivision (1)(b) of section 3 of this act was
30 taken.

31 (8) The commissioner shall include the information reported under

1 subsection (7) of this section in the report required under section 18 of
2 this act.

3 (9) A plan's approval under this section may be revoked by the
4 commissioner if terms or conditions of the plan have been violated.

5 Causes for revocation include, but are not limited to, the following:

6 (a) Failure to pay family and medical leave benefits;

7 (b) Failure to pay such benefits in a timely manner and in a manner
8 consistent with benefits paid by the commissioner under section 4 of this
9 act;

10 (c) Misuse of plan funds;

11 (d) Failure to submit reports as required in this section; and

12 (e) Failure to comply with any other requirements of the act.

13 Sec. 18. On or before December 31, 2023, and on or before December
14 31 of each year thereafter, the commissioner shall electronically submit
15 a report to the Legislature. The report shall include:

16 (1) The amount and percentage of family and medical leave benefits
17 paid for each type of paid family and medical leave described in
18 subsection (1) of section 3 of this act;

19 (2) The percentage of family and medical leave benefits paid to each
20 gender for each type of paid family and medical leave described in
21 subsection (1) of section 3 of this act;

22 (3) The amount of contributions remitted by covered employers
23 pursuant to section 6 of this act;

24 (4) The median payment level for family and medical leave benefits;

25 (5) The occupation and industry of covered individuals receiving
26 family and medical leave benefits;

27 (6) The balance of the Paid Family and Medical Leave Insurance Fund;

28 (7) A summary of the outreach efforts made by the commissioner and
29 by covered employers to increase awareness of the availability of paid
30 family and medical leave; and

31 (8) The types of family members for whom paid family and medical

1 leave as described in subdivision (1)(b) of section 3 of this act was
2 taken.

3 Sec. 19. Family and medical leave benefits shall not be considered
4 compensation under the County Employees Retirement Act, the Judges
5 Retirement Act, the Nebraska State Patrol Retirement Act, the School
6 Employees Retirement Act, the State Employees Retirement Act, or any
7 other retirement plan administered by the Public Employees Retirement
8 Board and shall not be eligible for deferral under any deferred
9 compensation plan administered by the Public Employees Retirement Board.

10 Sec. 20. The commissioner shall adopt and promulgate rules and
11 regulations as necessary to carry out the Paid Family and Medical Leave
12 Insurance Act.

13 Sec. 21. Section 48-652, Revised Statutes Cumulative Supplement,
14 2020, is amended to read:

15 48-652 (1)(a) A separate experience account shall be established for
16 each employer who is liable for payment of combined tax. Whenever and
17 wherever in the Employment Security Law the terms reserve account or
18 experience account are used, unless the context clearly indicates
19 otherwise, such terms shall be deemed interchangeable and synonymous and
20 reference to either of such accounts shall refer to and also include the
21 other.

22 (b) A separate reimbursement account shall be established for each
23 employer who is liable for payments in lieu of contributions. All
24 benefits paid with respect to service in employment for such employer
25 shall be charged to his or her reimbursement account, and such employer
26 shall be billed for and shall be liable for the payment of the amount
27 charged when billed by the commissioner. Payments in lieu of
28 contributions received by the commissioner on behalf of each such
29 employer shall be credited to such employer's reimbursement account, and
30 two or more employers who are liable for payments in lieu of
31 contributions may jointly apply to the commissioner for establishment of

1 a group account for the purpose of sharing the cost of benefits paid that
2 are attributable to service in the employ of such employers. The
3 commissioner shall adopt and promulgate such rules and regulations as he
4 or she deems necessary with respect to applications for establishment,
5 maintenance, and termination of group accounts authorized by this
6 subdivision.

7 (2) All contributions paid by an employer shall be credited to the
8 experience account of such employer. State unemployment insurance tax
9 payments shall not be credited to the experience account of each
10 employer. Partial payments of combined tax shall be credited so that at
11 least eighty percent of the combined tax payment excluding interest and
12 penalty is credited first to contributions due. Contributions with
13 respect to prior years which are received on or before January 31 of any
14 year shall be considered as having been paid at the beginning of the
15 calendar year. All voluntary contributions which are received on or
16 before January 10 of any year shall be considered as having been paid at
17 the beginning of the calendar year.

18 (3)(a) Each experience account shall be charged only for benefits
19 based upon wages paid by such employer. No benefits shall be charged to
20 the experience account of any employer if:

21 (i) Such benefits were paid on the basis of a period of employment
22 from which the claimant (A) left work voluntarily without good cause, (B)
23 left work voluntarily due to a nonwork-connected illness or injury, (C)
24 left work voluntarily with good cause to escape abuse as defined in
25 section 42-903 between household members as provided in subdivision (1)
26 of section 48-628.13, (D) left work from which he or she was discharged
27 for misconduct connected with his or her work, (E) left work voluntarily
28 and is entitled to unemployment benefits without disqualification in
29 accordance with subdivision (3) or (5) of section 48-628.13, or (F) was
30 involuntarily separated from employment and such benefits were paid
31 pursuant to section 48-628.17; and

1 (ii) The employer has filed timely notice of the facts on which such
2 exemption is claimed in accordance with rules and regulations adopted and
3 promulgated by the commissioner.

4 (b) No benefits shall be charged to the experience account of any
5 employer if such benefits were paid during a week when the individual was
6 participating in training approved under section 236(a)(1) of the federal
7 Trade Act of 1974, 19 U.S.C. 2296(a)(1).

8 (c) No benefits shall be charged to the experience account of any
9 employer if such benefits were paid to an individual who:

10 (i) Worked for an employer for twenty weeks or less to temporarily
11 replace a permanent employee receiving family and medical leave benefits
12 under the Paid Family and Medical Leave Insurance Act and who was laid
13 off due to the return of such permanent employee;

14 (ii) Was discharged due to his or her failure to return to work
15 after the expiration of paid family and medical leave taken pursuant to
16 the Paid Family and Medical Leave Insurance Act; or

17 (iii) Left work voluntarily while on paid family and medical leave
18 taken pursuant to the Paid Family and Medical Leave Insurance Act.

19 (d) ~~(e)~~ Each reimbursement account shall be charged only for
20 benefits paid that were based upon wages paid by such employer in the
21 base period that were wages for insured work solely by reason of section
22 48-627.01.

23 (e) ~~(d)~~ Benefits paid to an eligible individual shall be charged
24 against the account of his or her most recent employers within his or her
25 base period against whose accounts the maximum charges hereunder have not
26 previously been made in the inverse chronological order in which the
27 employment of such individual occurred. The maximum amount so charged
28 against the account of any employer, other than an employer for which
29 services in employment as provided in subdivision (4)(a) of section
30 48-604 are performed, shall not exceed the total benefit amount to which
31 such individual was entitled as set out in section 48-626 with respect to

1 base period wages of such individual paid by such employer plus one-half
2 the amount of extended benefits paid to such eligible individual with
3 respect to base period wages of such individual paid by such employer.
4 The commissioner shall adopt and promulgate rules and regulations
5 determining the manner in which benefits shall be charged against the
6 account of several employers for whom an individual performed employment
7 during the same quarter or during the same base period.

8 (4)(a) An employer's experience account shall be terminated one
9 calendar year after such employer has ceased to be subject to the
10 Employment Security Law, except that if the commissioner finds that an
11 employer's business is closed solely because one or more of the owners,
12 officers, partners, or limited liability company members or the majority
13 stockholder entered the armed forces of the United States, or of any of
14 its allies, such employer's account shall not be terminated and, if the
15 business is resumed within two years after the discharge or release from
16 active duty in the armed forces of such person or persons, the employer's
17 experience account shall be deemed to have been continuous throughout
18 such period.

19 (b) An experience account terminated pursuant to this subsection
20 shall be reinstated if:

21 (i) The employer becomes subject again to the Employment Security
22 Law within one calendar year after termination of such experience
23 account;

24 (ii) The employer makes a written application for reinstatement of
25 such experience account to the commissioner within two calendar years
26 after termination of such experience account; and

27 (iii) The commissioner finds that the employer is operating
28 substantially the same business as prior to the termination of such
29 experience account.

30 (5) All money in the Unemployment Compensation Fund shall be kept
31 mingled and undivided. In no case shall the payment of benefits to an

1 individual be denied or withheld because the experience account of any
2 employer does not have a total of contributions paid in excess of
3 benefits charged to such experience account.

4 (6)(a) For benefit years beginning before September 3, 2017, if an
5 individual's base period wage credits represent part-time employment for
6 a contributory employer and the contributory employer continues to employ
7 the individual to the same extent as during the base period, then the
8 contributory employer's experience account shall not be charged if the
9 contributory employer has filed timely notice of the facts on which such
10 exemption is claimed in accordance with rules and regulations adopted and
11 promulgated by the commissioner.

12 (b) For benefit years beginning on or after September 3, 2017, if an
13 individual's base period wage credits represent part-time employment for
14 an employer and the employer continues to employ the individual to the
15 same extent as during the base period, then the employer's experience
16 account, in the case of a contributory employer, or the employer's
17 reimbursement account, in the case of a reimbursable employer, shall not
18 be charged if the employer has filed timely notice of the facts on which
19 such exemption is claimed in accordance with rules and regulations
20 prescribed by the commissioner.

21 (7) If a contributory employer responds to the department's request
22 for information within the time period set forth in subsection (1) of
23 section 48-632 and provides accurate information as known to the employer
24 at the time of the response, the employer's experience account shall not
25 be charged if the individual's separation from employment is voluntary
26 and without good cause as determined under section 48-628.12.

27 Sec. 22. Section 71-7611, Revised Statutes Cumulative Supplement,
28 2020, is amended to read:

29 71-7611 (1) The Nebraska Health Care Cash Fund is created. The State
30 Treasurer shall transfer (a) sixty million three hundred thousand dollars
31 on or before July 15, 2014, (b) sixty million three hundred fifty

1 thousand dollars on or before July 15, 2015, (c) sixty million three
2 hundred fifty thousand dollars on or before July 15, 2016, (d) sixty
3 million seven hundred thousand dollars on or before July 15, 2017, (e)
4 five hundred thousand dollars on or before May 15, 2018, (f) sixty-one
5 million six hundred thousand dollars on or before July 15, 2018, (g)
6 sixty-two million dollars on or before July 15, 2019, (h) sixty-one
7 million four hundred fifty thousand dollars on or before July 15, 2020,
8 and (i) sixty-one million one hundred thousand dollars on or before every
9 July 15 thereafter from the Nebraska Medicaid Intergovernmental Trust
10 Fund and the Nebraska Tobacco Settlement Trust Fund to the Nebraska
11 Health Care Cash Fund, except that such amount shall be reduced by the
12 amount of the unobligated balance in the Nebraska Health Care Cash Fund
13 at the time the transfer is made. The state investment officer shall
14 advise the State Treasurer on the amounts to be transferred first from
15 the Nebraska Medicaid Intergovernmental Trust Fund until the fund balance
16 is depleted and from the Nebraska Tobacco Settlement Trust Fund
17 thereafter in order to sustain such transfers in perpetuity. The state
18 investment officer shall report electronically to the Legislature on or
19 before October 1 of every even-numbered year on the sustainability of
20 such transfers. The Nebraska Health Care Cash Fund shall also include
21 money received pursuant to section 77-2602. Except as otherwise provided
22 by law, no more than the amounts specified in this subsection may be
23 appropriated or transferred from the Nebraska Health Care Cash Fund in
24 any fiscal year.

25 The State Treasurer shall transfer ten million dollars from the
26 Nebraska Medicaid Intergovernmental Trust Fund to the General Fund on
27 June 28, 2018, and June 28, 2019.

28 Except for the transfer authorized in section 6 of this act and
29 except as otherwise provided in subsection (6) of this section, it is the
30 intent of the Legislature that no additional programs are funded through
31 the Nebraska Health Care Cash Fund until funding for all programs with an

1 appropriation from the fund during FY2012-13 are restored to their
2 FY2012-13 levels.

3 (2) Any money in the Nebraska Health Care Cash Fund available for
4 investment shall be invested by the state investment officer pursuant to
5 the Nebraska Capital Expansion Act and the Nebraska State Funds
6 Investment Act.

7 (3) The University of Nebraska and postsecondary educational
8 institutions having colleges of medicine in Nebraska and their affiliated
9 research hospitals in Nebraska, as a condition of receiving any funds
10 appropriated or transferred from the Nebraska Health Care Cash Fund,
11 shall not discriminate against any person on the basis of sexual
12 orientation.

13 (4) The State Treasurer shall transfer fifty thousand dollars on or
14 before July 15, 2016, from the Nebraska Health Care Cash Fund to the
15 Board of Regents of the University of Nebraska for the University of
16 Nebraska Medical Center. It is the intent of the Legislature that these
17 funds be used by the College of Public Health for workforce training.

18 (5) It is the intent of the Legislature that the cost of the staff
19 and operating costs necessary to carry out the changes made by Laws 2018,
20 LB439, and not covered by fees or federal funds shall be funded from the
21 Nebraska Health Care Cash Fund for fiscal years 2018-19 and 2019-20.

22 (6) It is the intent of the Legislature to fund the grants to be
23 awarded pursuant to section 75-1101 with the Nebraska Health Care Cash
24 Fund for FY2019-20 and FY2020-21.

25 Sec. 23. If any section in this act or any part of any section is
26 declared invalid or unconstitutional, the declaration shall not affect
27 the validity or constitutionality of the remaining portions.

28 Sec. 24. Original sections 48-652 and 71-7611, Revised Statutes
29 Cumulative Supplement, 2020, are repealed.