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National Council of Insurance Legislators (NCOIL)

Paid Family Leave Insurance Model Act

**Sponsored by Sen. Paul Utke (MN)*

**Co-sponsored by Rep. Deborah Ferguson, DDS (AR)*

**Adopted by the NCOIL Life Insurance & Financial Planning Committee on November 17, 2022 and by the NCOIL Executive Committee on November 19, 2022.*

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Section 1. Title

This Act shall be known as the [State] Paid Family Leave Insurance Act

Section 2. Purpose

The purpose of this Act is to create a new line of insurance, known as paid family leave insurance, under which any insurer licensed to transact life insurance or disability income insurance business in this state may be authorized to issue policies covering such risk.

Section 3. Definitions

In the appropriate “Definitions” section of [State] Insurance Code, the following term shall be added:

“Family leave insurance” means an insurance policy issued to an employer related to a benefit program provided to an employee to pay for a percentage or portion of the employee’s income loss due to: (i) the birth of a child or adoption of a child by the employee; (ii) placement of a child with the employee for foster care; (iii) care of a family member of the employee who has a serious health condition; or (iv) circumstances arising out of the fact that the employee’s family member who is a service member is on active duty or has been notified of an impending call or order to active duty.

Family leave insurance may be written as an amendment or rider to a group disability income policy, included in a group disability income policy or written as a separate group insurance policy purchased by an employer.

Section 4. Paid Family Leave Insurance License

In the [State] Insurance Code, the following language shall be added to the Classes of Insurance section indicating what policies a licensed life insurer or disability income insurer may issue in this state: “family leave insurance”

Section 5. Rules

The commissioner may adopt rules as necessary to effectuate the provisions of this Act.

Section 6. Effective Date

This Act is effective immediately.

Section 7. Addendum

The following may be used to as a basis for developing rules referenced in Section 5, or, in the alternative, may be used as a basis for a more detailed statutory addition to a particular state’s insurance code.

The rules may be based on the following, or in the alternative may be included in the statute as law.

An insurance company licensed to issue life insurance or disability income insurance policies in accordance with this title may also offer paid family leave benefits providing

wage replacement caused by absences that are not based upon an insured's status as disabled. Such benefits may be offered either through a rider to a policy of disability income insurance or as a separate policy and must: (1) comply with the relevant sections of this title, and (2) [comply with any state disability income insurance filing requirements - cite state insurance code].

§ 100. Short Title

This Article shall be known and may be cited as the "Paid Family Leave Income Replacement Benefits Act".

§ 101. Purpose

[State] is a family-friendly state, and providing the workers of [State] with access to paid family leave insurance will encourage an entrepreneurial atmosphere, encourage economic growth, and promote a healthy business climate. Many workers need to take time off work for family reasons, including bonding with a new child or caring for an ill family member. Increasingly, employers in [State] want to make paid leave benefits available to workers who need time off for these reasons. Employers recognize workers will be healthier and more productive workers when able to take care of family responsibilities without a complete loss of income, and believe that offering paid family leave benefits to their employees will improve recruitment opportunities and reduce turnover in the workplace. Disability insurers currently offer income replacement benefits to workers who need time off from work because of their own disabling medical condition. Disability insurers have extensive experience, claims staff, systems, and expertise that can be used to provide fully insured paid family leave benefits for employees either through employer-sponsored group insurance policies or voluntarily purchased employee policies. It is in the best interests of [State's] workers and employers to permit disability insurers to expand their fully insured benefits in [State] to include paid family leave benefits.

§ 102. Definitions

As used in this Article:

1. "Armed forces of the United States" includes members of the National Guard and Reserves.
2. "Child" means a person who is (i)(a) under 18 years of age; or (b) 18 years of age or older and incapable of self-care because of a mental or physical disability; and (ii) a biological, adopted, or foster son or daughter; a stepson or stepdaughter; a legal ward; a son or daughter of a domestic partner; or a son or daughter of a person to whom the employee stands *in loco parentis*.

3. “Family Leave” is any leave taken by an employee from work for reasons enumerated in Section 103.

4. “Family Member” may include a child, spouse, or parent as defined in this Section or any other person defined as a “family member” in the policy of insurance.

5. “Health care provider” shall mean a person licensed under the public health law of the [State].

6. “Parent” means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood *in loco parentis* to the employee when the employee was a child.

7. “Serious health condition” means an illness, injury, impairment, or physical or mental condition, including transplantation preparation and recovery from surgery related to organ or tissue donation, that involves inpatient care in a hospital, hospice, or residential health care facility, continuing treatment or continuing supervision by a health care provider as defined in the insurance policy. Continuing supervision by a health care provider includes a period of incapacity which is permanent or long term due to a condition for which treatment may not be effective and where the family member need not be receiving active treatment by a health care provider.

§ 103. Family Leave Benefits:

Family leave benefits may be provided for any leave taken by an employee from work to:

- (a) participate in providing care, including physical or psychological care, for a family member of the employee made necessary by a serious health condition of the family member;
- (b) bond with the employee’s child during the first twelve months after the child’s birth, or the first twelve months after the placement of the child for adoption or foster care with the employee;
- (c) address a qualifying exigency as interpreted under the Family and Medical Leave Act, 29 U.S.C. § 2612(a)(1)(e) and 29 C.F.R. §§ 825.126(a)(1)-(8), arising out of the fact that the spouse, child, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces of the United States;
- (d) care for a family service member injured in the line of duty; or
- (e) take other leave to provide care for a family member or other family leave as specified in the policy of insurance.

§ 104. Explanation of Family Leave Reasons

The policy of insurance shall set forth the details and requirements with regard to each of the covered family leave reasons.

§ 105. Benefit Period

The policy of insurance shall set forth the length of family leave benefits that are available for each covered family leave reason, which will in no event be less than [two weeks] during a period of fifty-two consecutive calendar weeks. Fifty-two consecutive calendar weeks may be calculated by (i) a calendar year; (ii) any fixed period starting on a particular date such as the effective or anniversary date; (iii) the period measured forward from the employee's first day of family leave; (iv) a rolling period measured by looking back from the employee's first day of family leave; or (v) any other method that is specified in the policy of insurance.

§ 106. Waiting Period

The policy of insurance shall set forth whether there is an unpaid waiting period and, if so, the terms and conditions of the unpaid waiting period, which may include, but are not limited to: (i) whether the waiting period runs over a consecutive calendar day period, (ii) whether the waiting period is counted toward the annual allotment of family leave benefits or is in addition to the annual allotment of family leave benefits, (iii) whether the waiting period must be met only once per benefit year or must be met for each separate claim for benefits, and (iv) whether the employee may work or receive paid time off or other compensation by the employer during the waiting period.

§ 107. Amount of Family Leave Benefits/Other Income

- (a) The policy of insurance shall set forth: (i) the amount of benefits that will be paid for covered family leave reasons; (ii) the definition of the wages or other income upon which the amount of family leave benefits will be based; and (iii) how such wages or other income will be calculated.
- (b) If the family leave benefits are subject to offsets for wages or other income received or for which the insured may be eligible, the policy shall set forth: (i) all such wages or other income that may be set off and (ii) the circumstances under which it may be offset.

§ 108. Permissible Limitations, Exclusions, or Reductions

Eligibility for family leave benefits under this Article may be limited, excluded, or reduced, but any limitations, exclusions, or reductions shall be set forth in the policy of insurance. Permissible limitations, exclusions, or reductions may include, but are not limited to, any of the following reasons:

- (a) for any period of family leave wherein the required notice and medical certification as prescribed in the policy has not been provided;
- (b) for any family leave related to a serious health condition or other harm to a family member brought about by the willful intention of the employee;
- (c) for any period of family leave during which the employee performed work for remuneration or profit;
- (d) for any period of family leave for which the employee is eligible to receive from his or her employer, or from a fund to which the employer has contributed remuneration or maintenance;
- (e) for any period of family leave in which the employee is eligible to receive benefits under any other statutory program or employer-sponsored program, including, but not limited to, unemployment insurance benefits, worker's compensation benefits, statutory disability benefits, statutory paid leave benefits, or any paid time off or employer's paid leave policy;
- (f) for any period of family leave commencing before the employee becomes eligible for family leave benefits under the policy; or
- (g) for periods of family leave where more than one person seeks family leave for the same family member.

§ 109. Payment of Family Leave Benefits

Family leave benefits provided under this Article shall be paid periodically and promptly [If Applicable: {as provided for in Section "X" of (State) Insurance Code}] except as to a contested period of family leave and subject to any of the provisions of Section 108 of this Article.

§ 110. The Insurance Policy

- (a) Premiums for policies or riders providing paid family leave benefits in accordance with [State's] disability income insurance law shall be calculated in accordance with applicable provisions of the [State's] insurance law, including Subsection (X) of such law.

(b) Policies of insurance issued pursuant to this Article may offer coverage for paid family leave benefits or may offer paid family leave benefits as a rider to a policy of disability income insurance.