118TH CONGRESS
1ST SESSION

S.

To provide paid family and medical leave benefits to certain individuals, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mrs. GILLIBRAND introduced the following bill; which was read twice and referred to the Committee on __________________________

A BILL

To provide paid family and medical leave benefits to certain individuals, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Family and Medical Insurance Leave Act” or the “FAMILY Act”.

SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) CAREGIVING DAY.—

(A) IN GENERAL.—The term “caregiving day” means, with respect to an individual,
calendar day in which the individual engaged in qualified caregiving.

(B) LIMITATIONS.—An individual may not exceed—

(i) with respect to any month, 20 caregiving days; or

(ii) with respect to any benefit period, 60 caregiving days.

(2) COMMISSIONER.—The term “Commissioner” means the Commissioner of Social Security.

(3) DEPUTY COMMISSIONER.—The term “Deputy Commissioner” means the Deputy Commissioner who heads the Office of Paid Family and Medical Leave established under section 3(a).

(4) ELIGIBLE INDIVIDUAL.—The term “eligible individual” means an individual who is entitled to a benefit under section 4 for a particular month, upon filing an application for such benefit for such month.

(5) QUALIFIED CAREGIVING.—

(A) IN GENERAL.—The term “qualified caregiving” means any activity engaged in by an individual, other than regular employment, for a qualifying reason.

(B) QUALIFYING REASON.—
(i) **In General.**—For purposes of subparagraph (A), the term “qualifying reason” means any of the following reasons for taking leave:

(I) Any reason for which an eligible employee would be entitled to leave under subparagraph (A), (B), or (E) of paragraph (1) of section 102(a) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)).

(II) In order to care for a qualified family member of the individual, if such qualified family member has a serious health condition.

(III) Because of a serious health condition that makes the individual unable to perform the services required under the terms of their regular employment.

(IV) In order to, as a result of domestic violence, sexual assault, or stalking—

(aa) seek medical attention for the employee or the employee’s child, parent, spouse, domes-
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tic partner, or any other indi-
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dual related by blood or affinity
whose close association with the
employee is the equivalent of a
family relationship, to recover
from physical or psychological in-
jury or disability caused by do-
mestic violence, sexual assault, or
stalking;

(bb) obtain or assist a re-
lated person described in item
(aa) in obtaining services from a
victim services organization;

(ee) obtain or assist a re-
lated person described in item
(aa) in obtaining psychological or
other counseling;

(dd) seek relocation; or

(ee) take legal action, in-
cluding preparing for or partici-
pating in any civil or criminal
legal proceeding related to or re-
sulting from domestic violence,
sexual assault, or stalking.
(ii) QUALIFIED FAMILY MEMBER; SERIOUS HEALTH CONDITION.—In this sub-
paragraph:

(I) QUALIFIED FAMILY MEMBER.—The term “qualified family member” means, which respect to an
individual—

(aa) a spouse (including a domestic partner in a civil union
or other registered domestic part-
nership recognized by a State) or
a parent of such spouse;

(bb) a child (regardless of age) or a child’s spouse;

(cc) a parent or a parent’s spouse;

(dd) a sibling or a sibling’s spouse;

(ee) a grandparent, a grand-
child, or a spouse of a grand-
parent or grandchild; and

(ff) any other individual who
is related by blood or affinity and
whose association with the em-
ployee is equivalent of a family relationship.

(II) Serious health condition.—The term “serious health condition” has the meaning given such term in section 101(11) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611(11)).

(iii) Other definitions.—For purposes of clause (i)(IV):

(I) Child.—The term “child” means, regardless of age, a biological, foster, or adopted child, a stepchild, a child of a domestic partner, a legal ward, or a child of a person standing in loco parentis.

(II) Domestic partner.—

(aa) In general.—The term “domestic partner”, with respect to an individual, means another individual with whom the individual is in a committed relationship.

(bb) Committed relationship defined.—The term “com-
mitted relationship” means a relationship between 2 individuals, each at least 18 years of age, in which each individual is the other individual’s sole domestic partner and both individuals share responsibility for a significant measure of each other’s common welfare. The term includes any such relationship between 2 individuals, including individuals of the same sex, that is granted legal recognition by a State or political subdivision of a State as a marriage or analogous relationship, including a civil union or domestic partnership.

(III) DOMESTIC VIOLENCE.—The term “domestic violence” has the meaning given the term in section 40002(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12291(a)), except that the reference in such section to the term “jurisdiction receiving grant monies” shall be
deemed to mean the jurisdiction in which the victim lives or the jurisdiction in which the employer involved is located. Such term also includes “dating violence”, as that term is defined in such section.

(IV) Parent.—The term “parent” means a biological, foster, or adoptive parent of an employee, a stepparent of an employee, parent-in-law, parent of a domestic partner, or a legal guardian or other person who stood in loco parentis to an employee when the employee was a child.

(V) Sexual assault.—The term “sexual assault” has the meaning given the term in section 40002(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12291(a)).

(VI) Spouse.—The term “spouse”, with respect to an employee, has the meaning given such term by the marriage laws of the State in which the marriage was celebrated.
(VII) STALKING.—The term “stalking” has the meaning given the term in section 40002(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12291(a)).

(VIII) VICTIM SERVICES ORGANIZATION.—The term “victim services organization” means a nonprofit, non-governmental organization that provides assistance to victims of domestic violence, sexual assault, or stalking or advocates for such victims, including a rape crisis center, an organization carrying out a domestic violence, sexual assault, or stalking prevention or treatment program, an organization operating a shelter or providing counseling services, or a legal services organization or other organization providing assistance through the legal process.

(C) TREATMENT OF INDIVIDUALS COVERED BY LEGACY STATE COMPREHENSIVE PAID LEAVE PROGRAM.—
(i) IN GENERAL.—For purposes of subparagraph (A), an activity engaged in by an individual shall not be considered as other than regular employment if, for the time during which the individual was so engaged, the individual is taking leave from covered employment under the law of a legacy State (as defined in section 4(c)).

(ii) UNEMPLOYED.—In the case of an individual who is no longer employed, such individual shall be treated, for purposes of clause (i), as taking leave from covered employment under the law of a legacy State (as so defined) with respect to the portion of the time during which the individual was engaged in an activity for a qualifying reason corresponding to the share of the individual’s workweek that was in covered employment under the law of a legacy State (as so defined).

(6) NATIONAL AVERAGE WAGE INDEX.—The term “national average wage index” has the meaning given such term in section 209(k)(1) of the Social Security Act (42 U.S.C. 409(k)(1)).
(7) **Self-employment income.**—The term “self-employment income” has the same meaning as such term in section 211(b) of such Act (42 U.S.C. 411(b)).

(8) **State.**—The term “State” means any State of the United States or the District of Columbia or any territory or possession of the United States.

(9) **Wages.**—The term “wages” has the meaning given such term in section 3121(a) of the Internal Revenue Code of 1986 for purposes of the taxes imposed by sections 3101(b) and 3111(b) of such Code (without regard to section 3121(u)(2)(C) of such Code), except that such term also includes—

(A) compensation, as defined in section 3231(e) of such Code for purposes of the Railroad Retirement Tax Act; and

(B) unemployment compensation, as defined in section 85(b) of such Code.

**SEC. 3. OFFICE OF PAID FAMILY AND MEDICAL LEAVE.**

(a) **Establishment of Office.**—There is established within the Social Security Administration an office to be known as the Office of Paid Family and Medical Leave. The Office shall be headed by a Deputy Commissioner who shall be appointed by the Commissioner.
(b) **Responsibilities of Deputy Commissioner.**—The Commissioner, acting through the Deputy Commissioner, shall be responsible for—

1. hiring personnel and making employment decisions with regard to such personnel;
2. issuing such regulations as may be necessary to carry out the purposes of this Act;
3. entering into cooperative agreements with other agencies and departments to ensure the efficiency of the administration of the program;
4. determining eligibility for family and medical leave insurance benefits under section 4;
5. determining benefit amounts for each month of such eligibility and making timely payments of such benefits to entitled individuals in accordance with such section;
6. establishing and maintaining a system of records relating to the administration of such section;
7. preventing fraud and abuse relating to such benefits;
8. providing information on request regarding eligibility requirements, the claims process, benefit amounts, maximum benefits payable, notice requirements, nondiscrimination rights, confidentiality, co-
ordination of leave under this Act and other laws,
collective bargaining agreements, and employer poli-
cies;

(9) annually providing employers a notice in-
forming employees of the availability of such bene-
fits;

(10) annually making available to the public a
report that includes the number of individuals who
received such benefits, the purposes for which such
benefits were received, and an analysis of utilization
rates of such benefits by gender, race, ethnicity, and
income levels; and

(11) tailoring culturally and linguistically com-
petent education and outreach toward increasing uti-
лизation rates of benefits under such section.

(e) Availability of Data.—Notwithstanding any
other provision of law, the Commissioner shall make avail-
able to the Deputy Commissioner such data as the Com-
missioner determines necessary to enable the Deputy
Commissioner to effectively carry out the responsibilities
described in subsection (b).

SEC. 4. FAMILY AND MEDICAL LEAVE INSURANCE BENEFIT
PAYMENTS.

(a) In General.—

(1) Requirements.—Every individual who—
(A) has filed an application for a family and medical leave insurance benefit in accordance with subsection (d);

(B) was engaged in qualified caregiving, or anticipates being so engaged, during the period that begins 90 days before the date on which such application is filed or within 30 days after such date;

(C) has wages or self-employment income at any time during the period—

(i) beginning with the most recent calendar quarter that ends at least 4 months prior to the beginning of the individual’s benefit period specified in subsection (c); and

(ii) ending with the month before the month in which such benefit period begins; and

(D) has at least the specified amount of wages and self-employment income during the most recent 8-calendar quarter period that ends at least 4 months prior to the beginning of the individual’s benefit period specified in subsection (c),
shall be entitled to such a benefit for each month in such benefit period.

(2) SPECIFIED AMOUNT.—For purposes of paragraph (1)(D), the specified amount shall be—

(A) if the benefit period begins in calendar year 2024, $2,000; and

(B) if the benefit period begins in any calendar year after 2024, an amount equal to the greater of—

(i) the specified amount applicable for the preceding calendar year; or

(ii) an amount equal to the product of—

(I) $2,000; multiplied by

(II) an amount equal to the quotient of—

(aa) the national average wage index for the second calendar year preceding such calendar year; divided by

(bb) the national average wage index for 2022.

(b) BENEFIT AMOUNT.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the benefit amount to which
an individual is entitled under this section for a
month shall be an amount equal to the greater of—

(A) the lesser of—

(i) an amount equal to the monthly
benefit rate determined under paragraph
(2); and

(ii) the maximum benefit amount de-
termined under paragraph (3); and

(B) the minimum benefit amount deter-
mined under paragraph (3),

multiplied by the quotient (not greater than 1) ob-
tained by dividing the number of caregiving days of
the individual in such month by 20.

(2) MONTHLY BENEFIT RATE.—

(A) IN GENERAL.—For purposes of this
subsection, the monthly benefit rate of an indi-
vidual shall be an amount equal to the sum
of—

(i) 85 percent of the individual’s aver-
age monthly earnings to the extent that
such earnings do not exceed the amount
established for purposes of this clause by
subparagraph (B);

(ii) 69 percent of the individual’s av-
verage monthly earnings to the extent that
such earnings exceed the amount established for purposes of clause (i) but do not exceed the amount established for purposes of this clause by subparagraph (B); and

(iii) 50 percent of the individual’s average monthly earnings to the extent that such earnings exceed the amount established for purposes of clause (ii) but do not exceed the amount established for purposes of this clause by subparagraph (B).

(B) AMOUNTS ESTABLISHED.—

(i) INITIAL AMOUNTS.—For individuals whose benefit period begins in calendar year 2024, the amount established for purposes of clauses (i), (ii), and (iii) of subparagraph (A) shall be $1,257, $3,500, and $6,200, respectively.

(ii) WAGE INDEXING.—For individuals whose benefit period begins in any calendar year after 2024, each of the amounts so established shall equal the corresponding amount established for the calendar year preceding such calendar year, or, if larger, the product of the corresponding amount established with re-
spect to the calendar year 2024 and the quotient obtained by dividing—

(I) the national average wage index for the second calendar year preceding such calendar year, by

(II) the national average wage index for calendar year 2022.

(iii) Rounding.—Each amount established under clause (ii) for any calendar year shall be rounded to the nearest $1, except that any amount so established which is a multiple of $0.50 but not of $1 shall be rounded to the next higher $1.

(C) Average Monthly Earnings.—For purposes of this subsection, the average monthly earnings of an individual shall be an amount equal to \( \frac{1}{12} \) of the wages and self-employment income of the individual for the calendar year in which such wages and self-employment income are the highest among the most recent 3 calendar years.

(3) Maximum and Minimum Benefit Amounts.—

(A) In General.—For individuals who initially become eligible for family and medical
leave insurance benefits in the first full calendar year after the date of enactment of this Act, the maximum monthly benefit amount and the minimum monthly benefit amount shall be $4,000 and $580, respectively.

(B) Wage Indexing.—For individuals who initially become eligible for family and medical leave insurance benefits in any calendar year after such first full calendar year the maximum benefit amount and the minimum benefit amount shall be, respectively, the product of the corresponding amount determined with respect to the first calendar year under subparagraph (A) and the quotient obtained by dividing—

(i) the national average wage index for the second calendar year preceding the calendar year for which the determination is made, by

(ii) the national average wage index for the second calendar year preceding the first full calendar year after the date of enactment of this Act.

(4) Reduction in Benefit Amount on Account of Receipt of Certain Benefits.—A benefit under this section for a month shall be reduced
by the amount, if any, in certain benefits (as determined under regulations issued by the Commissioner) as may be otherwise received by an individual. For purposes of the preceding sentence, certain benefits include—

(A) periodic benefits on account of such individual’s total or partial disability under a workmen’s compensation law or plan of the United States or a State; and

(B) periodic benefits on account of an individual’s employment status under an unemployment law or plan of the United States or a State.

(5) Coordination of benefit amount with certain state benefits.—A benefit received under this section shall be coordinated, in a manner determined by regulations issued by the Commissioner, with the periodic benefits received from temporary disability insurance or family leave insurance programs under any law or plan of a State, a political subdivision (as that term is used in section 218(b)(2) of the Social Security Act (42 U.S.C. 418(b)(2))), or an instrumentality of two or more States (as that term is used in section 218(g) of such Act (42 U.S.C. 418(g))).
(c) Benefit Period.—

(1) In general.—Except as provided in paragraph (2), the benefit period specified in this subsection is the 12-month period that begins on the 1st day of the 1st month in which the individual—

(A) meets the criteria specified in subparagraphs (A) and (B) of subsection (a)(1); and

(B) would meet the criteria specified in subparagraphs (C) and (D) of such subsection if such subparagraphs were applied by substituting such 12-month period for each reference to the individual’s benefit period.

(2) Retroactive benefits.—In the case of an application for benefits under this section for qualified caregiving in which the individual was engaged at any time during the 90-day period preceding the date on which such application is submitted, the benefit period specified in this subsection shall begin on the later of—

(A) the 1st day of the 1st month in which the individual engaged in such qualified caregiving; or

(B) the 1st day of the 1st month that begins during such 90-day period,
and shall end on the date that is 365 days after the
1st day of the benefit period.

(d) APPLICATION.—An application for a family and
medical leave insurance benefit shall include—

(1) a statement that the individual was engaged
in qualified caregiving, or anticipates being so en-
gaged, during the period that begins 90 days before
the date on which the application is submitted or
within 30 days after such date;

(2) if the qualified caregiving described in the
statement in paragraph (1) is engaged in by the in-
dividual because of a serious health condition (as de-
defined in subclause (II) of section 2(5)(B)(ii)) of the
individual or a qualified family member (as defined
in subclause (I) of such section) of the individual, a
certification, issued by the health care provider
treating such serious health condition, that affirms
the information specified in paragraph (1) and con-
tains such information as the Commissioner shall
specify in regulations, which shall be no more than
the information that is required to be stated under
section 103(b) of the Family and Medical Leave Act
of 1993 (29 U.S.C. 2613(b));

(3) if such qualified caregiving is engaged in by
the individual for any other qualifying reason (as de-
fined in section 2(5)(B)(i)), a certification, issued by
a relevant authority determined under regulations
issued by the Commissioner, that affirms the cir-
cumstances giving rise to such reason; and

(4) an attestation from the applicant that his or
her employer has been provided with written notice
of the individual’s intention to take family or med-
ical leave, if the individual has an employer, or to
the Commissioner in all other cases.

e) INELIGIBILITY; DISQUALIFICATION.—

(1) INELIGIBILITY FOR BENEFIT.—An indi-
vidual shall be ineligible for a benefit under this sec-
tion for any month for which the individual is enti-
tled to—

(A) disability insurance benefits under sec-
tion 223 of the Social Security Act (42 U.S.C.
423) or a similar permanent disability program
under any law or plan of a State or political
subdivision or instrumentality of a State (as
such terms are used in section 218 of the Social
Security Act (42 U.S.C. 418));

(B) monthly insurance benefits under sec-
tion 202 of such Act (42 U.S.C. 402) based on
such individual’s disability (as defined in sec-
tion 223(d) of such Act (42 U.S.C. 423(d))); or
(C) benefits under title XVI of such Act
(42 U.S.C. 1381 et seq.) based on such individ-
al’s status as a disabled individual (as deter-
mined under section 1614 of such Act (42
U.S.C. 1382c)).

(2) DISQUALIFICATION.—An individual who has
been convicted of a violation under section 208 of
the Social Security Act (42 U.S.C. 408) or who has
been found to have used false statements to secure
benefits under this section, shall be ineligible for
benefits under this section for a 1-year period fol-
lowing the date of such conviction.

(f) REVIEW OF ELIGIBILITY AND BENEFIT PAYMENT
DETERMINATIONS.—

(1) ELIGIBILITY DETERMINATIONS.—

(A) IN GENERAL.—The Commissioner
shall provide notice to an individual applying
for benefits under this section of the initial de-
termination of eligibility for such benefits, and
the estimated benefit amount for a month in
which one caregiving day of the individual oc-
curs, as soon as practicable after the applica-
tion is received.

(B) REVIEW.—An individual may request
review of an initial adverse determination with
respect to such application at any time before
the end of the 20-day period that begins on the
date notice of such determination is received,
except that such 20-day period may be extended
for good cause. As soon as practicable after the
individual requests review of the determination,
the Commissioner shall provide notice to the in-
dividual of a final determination of eligibility
for benefits under this section.

(2) BENEFIT PAYMENT DETERMINATIONS.—

(A) IN GENERAL.—The Commissioner
shall make any monthly benefit payment to an
individual claiming benefits for a month under
this section, or provide notice of the reason
such payment will not be made if the Commis-
sioner determines that the individual is not en-
titled to payment for such month, not later
than 20 days after the individual’s monthly
benefit claim report for such month is received.
Such monthly report shall be filed with the
Commissioner not later than 15 days after the
end of each month.

(B) REVIEW.—If the Commissioner deter-
mines that payment will not be made to an in-
dividual for a month, or if the Commissioner
determines that payment shall be made based
on a number of caregiving days in the month
inconsistent with the number of caregiving days
in the monthly benefit claim report of the indi-
vidual for such month, the individual may re-
quest review of such determination at any time
before the end of the 20-day period that begins
on the date notice of such determination is re-
ceived, except that such 20-day period may be
extended for good cause. Not later than 20 days
after the individual requests review of the deter-
mination, the Commissioner shall provide notice
to the individual of a final determination of
payment for such month, and shall make pay-
ment to the individual of any additional amount
not included in the initial payment to the indi-
vidual for such month to which the Commis-
sioner determines the individual is entitled.

(3) BURDEN OF PROOF.—An application for
benefits under this section and a monthly benefit
claim report of an individual shall each be presumed
to be true and accurate, unless the Commissioner
demonstrates by a preponderance of the evidence
that information contained in the application is
false.
(4) Definition of monthly benefit claim report.—For purposes of this subsection, the term “monthly benefit claim report” means, with respect to an individual for a month, the individual’s report to the Commissioner of the number of caregiving days of the individual in such month, which shall be filed no later than 15 days after the end of each month.

(5) Review.—All final determinations of the Commissioner under this subsection shall be reviewable according to the procedures set out in section 205 of the Social Security Act (42 U.S.C. 405).

(g) Relationship With State Law; Employer Benefits.—

(1) In general.—This section does not preempt or supersede any provision of State or local law that authorizes a State or local municipality to provide paid family and medical leave benefits similar to the benefits provided under this section.

(2) Greater benefits allowed.—Nothing in this Act shall be construed to diminish the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan that provides greater paid
leave or other leave rights to employees than the rights established under this Act.

(h) **Employment and Benefits Protection and Enforcement.**

(1) **Employment and benefits protection.**

(A) **In general.**—

(i) **Prohibited acts.**—It shall be unlawful for any person to interfere with, restrain, deny, or retaliate against an individual because of the exercise of, or the attempt to exercise, any right provided under this section, including through—

(I) discharging or in any other manner discriminating against (including retaliating against) an individual because the individual has applied for, indicated an intent to apply for, or received family and medical leave insurance benefits; or

(II) using the application for or the receipt of such benefits as a negative factor in an employment action.

(ii) **Restoration to position.**—It shall be interference with the right of an
individual for purposes of clause (i) for an employer of the individual to, upon the conclusion of any leave for which the individual received a family and medical leave insurance benefit under this section, fail to—

(I) restore the individual to the position of employment held by the individual when the leave commenced; or

(II) restore the individual to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(iii) MAINTENANCE OF HEALTH BENEFITS.—It shall be interference with the right of an individual for purposes of clause (i) for an employer of the individual to fail to maintain, for the duration of any leave for which the individual received a family and medical leave insurance benefit under this section, coverage of the individual under any group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986) at the level and
under the conditions coverage would have
been provided if the individual had contin-
ued in employment continuously for the
duration of such leave.

(B) OPPOSING UNLAWFUL PRACTICES.—It
shall be unlawful for any employer to discharge
or in any other manner discriminate against
any individual for opposing any practice made
unlawful by this subsection.

(C) INTERFERENCE WITH PROCEEDINGS
OR INQUIRIES.—It shall be unlawful for any
person to discharge or in any other manner dis-
criminate against any individual because such
individual—

(i) has filed any charge, or has insti-
tuted or caused to be instituted any pro-
ceeding, under or related to this sub-
section;

(ii) has given, or is about to give, any
information in connection with any inquiry
or proceeding relating to any right pro-
vided under this section; or

(iii) has testified, or is about to tes-
tify, in any inquiry or proceeding relating
to any right provided under this section.
(D) **Rebuttable presumption of retaliation.**—Any adverse action (including any action described in subparagraph (C) or (D)) taken against an employee within 12 months of the employee taking any leave for which the individual received a family and medical leave insurance benefit under this section shall establish a rebuttable presumption that the action of the employer is retaliating against such employee in violation of subparagraph (A)(i).

(E) **Non-application for new hires.**—Clauses (ii) and (iii) of subparagraph (A) shall not apply to any individual during the 90-day period beginning with the day the individual begins work for an employer.

(2) **Civil action by an individual.**—

(A) **Liability.**—Any person who violates paragraph (1) shall be liable to any individual employed by such person who is affected by the violation—

(i) for damages equal to the sum of—

(I) the amount of—

(aa) any wages, salary, employment benefits, or other compensation denied or lost to such
individual by reason of the violation; or

(bb) in a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the individual, any actual monetary losses sustained by the individual as a direct result of the violation, such as the cost of providing care, up to a sum equal to 60 calendar days of wages or salary for the individual;

(II) the interest on the amount described in subclause (I) calculated at the prevailing rate; and

(III) an additional amount as liquidated damages equal to the sum of the amount described in subclause (I) and the interest described in subclause (II), except that if a person who has violated paragraph (1) proves to the satisfaction of the court that the act or omission which violated paragraph (1) was in good faith and
that the person had reasonable grounds for believing that the act or omission was not a violation of paragraph (1), such court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under subclauses (I) and (II), respectively; and

(ii) for such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(B) RIGHT OF ACTION.—An action to recover the damages or equitable relief prescribed in subparagraph (A) may be maintained against any person in any Federal or State court of competent jurisdiction by any individual for and on behalf of—

(i) the individual; or

(ii) the individual and other individuals similarly situated.

(C) FEES AND COSTS.—The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney’s fee, reasonable expert witness fees, and
other costs of the action to be paid by the defendant.

(D) LIMITATIONS.—The right provided by subparagraph (B) to bring an action by or on behalf of any individual shall terminate—

(i) on the filing of a complaint by the Commissioner in an action under paragraph (5) in which restraint is sought of any further delay in the payment of the amount described in subparagraph (A)(I) to such individual by the person responsible under subparagraph (A) for the payment; or

(ii) on the filing of a complaint by the Commissioner in an action under paragraph (3) in which a recovery is sought of the damages described in subparagraph (A)(I) owing to an individual by a person liable under subparagraph (A), unless the action described in clause (i) or (ii) is dismissed without prejudice on motion of the Commissioner.

(3) ACTION BY THE COMMISSIONER.—

(A) CIVIL ACTION.—The Commissioner may bring an action in any court of competent
jurisdiction to recover the damages described in paragraph (2)(A)(I).

(B) **Sums Recovered.**—Any sums recovered by the Commissioner pursuant to subparagraph (A) shall be held in a special deposit account and shall be paid, on order of the Commissioner, directly to each individual affected. Any such sums not paid to an individual because of inability to do so within a period of 3 years shall be deposited into the Federal Family and Medical Leave Insurance Trust Fund.

(4) **Limitation.**—

(A) **In General.**—An action may be brought under this subsection not later than 3 years after the date of the last event constituting the alleged violation for which the action is brought.

(B) **Commencement.**—An action brought by the Commissioner under this subsection shall be considered to be commenced on the date when the complaint is filed.

(5) **Action for Injunction by Commissioner.**—The district courts of the United States shall have jurisdiction, for cause shown, in an action brought by the Commissioner—
(A) to restrain violations of paragraph (1), including the restraint of any withholding of payment of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due to an individual; or

(B) to award such other equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(i) Applicability of Certain Social Security Act Provisions.—The provisions of sections 204, 205, 206, and 208 of the Social Security Act shall apply to benefit payments authorized by and paid out pursuant to this section in the same way that such provisions apply to benefit payments authorized by and paid out pursuant to title II of such Act.

(j) Effective Date for Applications.—Applications described in this section may be filed beginning 18 months after the date of enactment of this Act.

SEC. 5. FUNDING FOR STATE ADMINISTRATION OPTION FOR LEGACY STATES.

(a) In General.—

(1) Payments to Legacy States.—In each calendar year beginning with calendar year 2025, the Commissioner shall make a grant to each State that, for the calendar year preceding such calendar
year, was a legacy State and that met the data sharing requirements of subsection (e), in an amount equal to the lesser of—

(A) an amount, as estimated by the Commissioner, equal to the total amount of comprehensive paid leave benefits that would have been paid under section 4 (including the costs to the Commissioner to administer such benefits, not to exceed (for purposes of estimating such total amount under this subparagraph) 7 percent of the total amount of such benefits paid) to individuals who received paid family and medical leave benefits under a State law described in paragraph (1) or (3) of subsection (b) during the calendar year preceding such calendar year if the State had not been a legacy State for such preceding calendar year; or

(B) an amount equal to the total cost of paid family and medical leave benefits under a State law described in paragraph (1) or (3) of subsection (b) for the calendar year preceding such calendar year, including—

(i) any paid family and medical leave benefits provided by an employer (whether directly, under a contract with an insurer,
or provided through a multiemployer plan) as described in subsection (d); and

(ii) the full cost to the State of administering such law (except that such cost may not exceed 7 percent of the total amount of paid family and medical leave benefits paid under such State law).

(2) Estimated Payments.—In any case in which, during any calendar year, the Commissioner has reason to believe that a State will be a legacy State and meet the data sharing requirements of subsection (e) for such calendar year, the Commissioner may make estimated payments during such calendar year of the grant which would be paid to such State in the succeeding calendar year, to be adjusted as appropriate in the succeeding calendar year.

(b) Legacy State.—For purposes of this section, the term “legacy State” for a calendar year means a State with respect to which the Commissioner determines that—

(1) the State has enacted, not later than the date of enactment of this Act, a State law that provides paid family and medical leave benefits;

(2) for any calendar year that begins before the date that is 3 years after the date of enactment of
this Act, the State certifies to the Commissioner that the State intends to remain a legacy State and meet the data sharing requirements of subsection (e) at least through the first calendar year that begins on or after such date; and

(3) for any calendar year that begins on or after such date, a State law of the State provides for a State program to remain in effect throughout such calendar year that provides comprehensive paid family and medical leave benefits (which may be paid directly by the State or, if permitted under such State law, by an employer pursuant to such State law)—

(A) for at least 12 full workweeks of leave during each 12-month period to at least all of those individuals in the State who would be eligible for comprehensive paid leave benefits under section 4 (without regard to section 2(5)(C)), except that the State shall provide such benefits for leave from employment by the State or any political subdivision thereof, and may elect to provide such benefits for leave from any other governmental employment; and

(B) at a wage replacement rate that is at least equivalent to the wage replacement rate under the comprehensive paid leave benefit pro-
gram under section 4 (without regard to section 2(5)(C)).

(c) Covered Employment Under the Law of a Legacy State.—For purposes of this Act, the term “covered employment under the law of a legacy State” means employment (or self-employment) with respect to which an individual would be eligible to receive paid family and medical benefits under the State law of a State, as described in paragraph (1) or (3) of subsection (b), during any period during which such State is a legacy State.

(d) Employer-provided Benefits in a Legacy State.—

(1) Treatment for Purposes of this Title.—In the case of a State that permits paid family and medical leave benefits to be provided by an employer (whether directly, under a contract with an insurer, or provided through a multiemployer plan) pursuant to a State law described in paragraph (1) or (3) of subsection (b)—

(A) such benefits shall be considered, for all purposes under this Act, paid family and medical leave benefits under the law of a legacy State; and

(B) leave for which such benefits are paid shall be considered, for all such purposes, leave
from covered employment under the law of a legacy State.

(2) DISTRIBUTION OF GRANT FUNDS.—In any case in which paid family and medical leave benefits are provided by 1 or more employers (whether directly, under a contract with an insurer, or provided through a multiemployer plan) in a legacy State pursuant to a State law described in paragraph (1) or (3) of subsection (b), the State, upon the receipt of any grant amount under subsection (a), may distribute an appropriate share of such grant to each such employer.

(e) DATA SHARING.—As a condition of receiving a grant under subsection (a) in a calendar year, a State shall enter into an agreement with the Commissioner under which the State shall provide the Commissioner—

(1) with information, to be provided periodically as determined by the Commissioner, concerning individuals who received a paid leave benefit under a State law described in paragraph (1) or (3) of subsection (b), including—

(A) each individual’s name;

(B) information to establish the individual’s identity;
(C) dates for which such paid leave benefits were paid;
(D) the amount of such paid leave benefit; and
(E) to the extent available, such other information concerning such individuals as necessary for the purpose of carrying out this section and section 2(5)(C);

(2) not later than July 1 of such calendar year, the amount described in subsection (a)(2) for the calendar year preceding such calendar year; and

(3) such other information as needed to determine compliance with grant requirements.

SEC. 6. ESTABLISHMENT OF FAMILY AND MEDICAL LEAVE INSURANCE TRUST FUND.

(a) In General.—There is hereby created on the books of the Treasury of the United States a trust fund to be known as the “Federal Family and Medical Leave Insurance Trust Fund”. The Federal Family and Medical Leave Insurance Trust Fund shall consist of such gifts and bequests as may be made as provided in section 201(i)(1) of the Social Security Act (42 U.S.C. 401(i)(1)) and such amounts as may be appropriated to, or deposited in, the Federal Family and Medical Leave Insurance Trust Fund as provided in this section.
(b) Authorization of Appropriations.—

(1) IN GENERAL.—There is authorized to be appropriated to the Federal Family and Medical Leave Insurance Trust Fund out of moneys in the Treasury not otherwise appropriated—

(A) for the first 3 fiscal years beginning after the date of enactment of this Act, such sums as may be necessary for the Commissioner to—

(i) administer the office established under section 3;

(ii) pay the benefits under section 4; and

(iii) provide the grants under section 5;

(B) 100 percent of the taxes imposed by sections 3101(c) and 3111(c) of the Internal Revenue Code of 1986 with respect to wages (as defined in section 3121 of such Code) reported to the Secretary of the Treasury pursuant to subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such sections to such wages;
(C) 100 percent of the taxes imposed by section 1401(c) of such Code with respect to self-employment income (as defined in section 1402 of such Code) reported to the Secretary of the Treasury on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such section to such self-employment income; and

(D) 100 percent of the taxes imposed by sections 3201(c), 3211(c), and 3221(c) of such Code with respect to compensation (as defined in section 3231 of such Code) reported to the Secretary of the Treasury on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such sections to such compensation.

(2) Repayment of initial appropriation.—Amounts appropriated pursuant to subparagraph (A) of paragraph (1) shall be repaid to the Treasury of the United States not later than 10 years after the first appropriation is made pursuant to such subparagraph.
(3) Transfer to Trust Fund.—The amounts described in paragraph (2) shall be transferred from time to time from the general fund in the Treasury to the Federal Family and Medical Leave Insurance Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in such paragraph, paid to or deposited into the Treasury. Proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were inconsistent with the taxes specified in such paragraph.

(c) Management of Trust Fund.—The provisions of subsections (c), (d), (e), (f), (i), and (m) of section 201 of the Social Security Act (42 U.S.C. 401) shall apply with respect to the Federal Family and Medical Leave Insurance Trust Fund in the same manner as such provisions apply to the Federal Old-Age and Survivors Insurance Trust Fund and the Disability Insurance Trust Fund.

(d) Benefits and Grants Paid From Trust Fund.—Benefit payments required to be made under section 4 and grants provided under section 5 shall be made only from the Federal Family and Medical Leave Insurance Trust Fund.

(e) Administration.—There are authorized to be made available for expenditure, out of the Federal Family
and Medical Leave Insurance Trust Fund, such sums as may be necessary to pay the costs of the administration of sections 4 and 5, including start-up costs, technical assistance, outreach, education, evaluation, and reporting.

(f) PROHIBITION.—No funds from the Social Security Trust Fund or appropriated to the Social Security Administration to administer Social Security programs may be used for Federal Family and Medical Leave Insurance benefits or administration set forth under this Act.

SEC. 7. INTERNAL REVENUE CODE PROVISIONS.

(a) In General.—

(1) Employee Contribution.—Section 3101 of the Internal Revenue Code of 1986 is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following:

“(c) Family and Medical Leave Insurance.—

“(1) In General.—In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the applicable percentage of the wages (as defined in section 3121(a)) received by the individual with respect to employment (as defined in section 3121(b)).
“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term ‘applicable percentage’ means 0.2 percent in the case of wages received in any calendar year.

“(3) APPLICATION OF TAX TO FEDERAL, STATE, AND LOCAL EMPLOYMENT.—For purposes of the tax imposed by paragraph (1) and the application of section 3121(b) with respect to such tax, rules similar to the rules under paragraphs (1) and (2) of section 3121(u) shall apply (without regard to paragraph (2)(C) of such section).”.

(2) EMPLOYER CONTRIBUTION.—Section 3111 of such Code is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following:

“(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

“(1) IN GENERAL.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the applicable percentage of the wages (as defined in section 3121(a)) paid by the employer with respect to employment (as defined in section 3121(b)).
“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term ‘applicable percentage’ means 0.2 percent in the case of wages paid in any calendar year.

“(3) APPLICATION OF TAX TO FEDERAL, STATE, AND LOCAL EMPLOYMENT.—For purposes of the tax imposed by paragraph (1) and the application of section 3121(b) with respect to such tax, rules similar to the rules under paragraphs (1) and (2) of section 3121(u) shall apply (without regard to paragraph (2)(C) of such section).”.

(3) SELF-EMPLOYMENT INCOME CONTRIBUTION.—

(A) IN GENERAL.—Section 1401 of such Code is amended—

(i) by redesignating subsection (c) as subsection (d); and

(ii) by inserting after subsection (b) the following:

“(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

“(1) IN GENERAL.—In addition to other taxes, there is hereby imposed for each taxable year, on the self-employment income of every individual, a tax equal to the applicable percentage of the amount of the self-employment income for such taxable year.
“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term ‘applicable percentage’ means 0.4 percent in the case of self-employment income in any taxable year.”.

(B) EXCLUSION OF CERTAIN NET EARNINGS FROM SELF-EMPLOYMENT.—Section 1402(b)(1) of such Code is amended by striking “tax imposed by section 1401(a)” and inserting “taxes imposed by subsections (a) and (c) of section 1401”.

(b) RAILROAD RETIREMENT TAX ACT.—

(1) EMPLOYEE CONTRIBUTION.—Section 3201 of such Code is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following:

“(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

“(1) IN GENERAL.—In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the applicable percentage of the compensation received during any calendar year by such employee for services rendered by such employee.
“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term ‘applicable percentage’ means 0.2 percent in the case of compensation received in any calendar year.”.

(2) EMPLOYEE REPRESENTATIVE CONTRIBUTION.—Section 3211 of such Code is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following:

“(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

“(1) IN GENERAL.—In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the applicable percentage of the compensation received during any calendar year by such employee representative for services rendered by such employee representative.

“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term ‘applicable percentage’ means 0.2 percent in the case of compensation received in any calendar year.”.

(3) EMPLOYER CONTRIBUTION.—Section 3221 of such Code is amended—

(A) by redesignating subsection (c) as subsection (d); and
(B) by inserting after subsection (b) the following:

“(c) FAMILY AND MEDICAL LEAVE INSURANCE.—

“(1) IN GENERAL.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the applicable percentage of the compensation paid during any calendar year by such employer for services rendered to such employer.

“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term ‘applicable percentage’ means 0.2 percent in the case of compensation paid in any calendar year.”.

(e) CONFORMING AMENDMENTS.—

(1) Section 6413(c) of the Internal Revenue Code of 1986 is amended—

(A) in paragraph (1)—

(i) by inserting ‘‘, section 3101(e),’’ after ‘‘by section 3101(a)’’; and

(ii) by striking ‘‘both’’ and inserting ‘‘each’’; and

(B) in paragraph (2), by inserting ‘‘or 3101(c)’’ after ‘‘3101(a)’’ each place it appears.

(2) Section 15(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(a)) is amended by in-
serting ``(other than sections 3201(c), 3211(c), and 3221(c))'' before the period at the end.

(d) Effective Date.—The amendments made by this section shall take effect 120 days after the date of the enactment of this Act.

SEC. 8. REGULATIONS.

The Commissioner, in consultation with the Secretary of Labor, shall prescribe regulations necessary to carry out this Act. In developing such regulations, the Commissioner shall consider the input from a volunteer advisory body comprised of not more than 15 individuals, including experts in the relevant subject matter and officials charged with implementing State paid family and medical leave insurance programs. The Commissioner shall take such programs into account when proposing regulations. Such individuals shall be appointed as follows:

(1) Five individuals to be appointed by the President.

(2) Three individuals to be appointed by the majority leader of the Senate.

(3) Two individuals to be appointed by the minority leader of the Senate.

(4) Three individuals to be appointed by the Speaker of the House of Representatives.
(5) Two individuals to be appointed by the minority leader of the House of Representatives.

SEC. 9. GAO STUDY.

As soon as practicable after calendar year 2024, the Comptroller General shall submit to Congress a report on family and medical leave insurance benefits paid under section 4 for any month during the 1-year period beginning on January 1, 2024. The report shall include the following:

(1) An identification of the total number of applications for such benefits filed for any month during such 1-year period, and the average number of days occurring in the period beginning on the date on which such an application is received and ending on the date on which the initial determination of eligibility with respect to the application is made.

(2) An identification of the total number of requests for review of an initial adverse determination of eligibility for such benefits made during such 1-year period, and the average number of days occurring in the period beginning on the date on which such review is requested and ending on the date on which the final determination of eligibility with respect to such review is made.
(3) An identification of the total number of monthly benefit claim reports for such benefits filed during such 1-year period, and the average number of days occurring in the period beginning on the date on which such a claim report is received and ending on the date on which the initial determination of eligibility with respect to the claim report is made.

(4) An identification of the total number of requests for review of an initial adverse determination relating to a monthly benefit claim report for such benefits made during such 1-year period, and the average number of days occurring in the period beginning on the date on which such review is requested and ending on the date on which the final determination of eligibility with respect to such review is made.

(5) An identification of any excessive delay in any of the periods described in paragraphs (1) through (4), and a description of the causes for such delay.