

DELAWARE STATE BAR ASSOCIATION
CONTINUING LEGAL EDUCATION

LABOR AND EMPLOYMENT LAW UPDATE 2023

DSBA WEBINAR VIA ZOOM

SPONSORED BY THE LABOR & EMPLOYMENT LAW
SECTION OF THE DELAWARE STATE BAR ASSOCIATION

WEDNESDAY, APRIL 5, 2023 | 9:00 A.M. – 12:15 P.M.

3.0 Hours of DE CLE credit including 0.8 hour of Enhanced Ethics for Delaware Attorneys
3.0 Hours of PA CLE credit including 0.5 hour of Enhanced Ethics for Pennsylvania Attorneys

ABOUT THE PROGRAM

Join us for the annual Labor and Employment Law Update seminar! This year, the seminar will look at ADR in employment litigation, legislative updates, the paid medical leave insurance program, and a presentation on wellness from DE-LAP.

CLE SCHEDULE

9:00 a.m. – 9:45 a.m.

ADR in Employment Litigation and Beyond

Moderator

Aaron M. Shapiro, Esquire
Connolly Gallagher LLP

Speakers

Magistrate Judge Sherry R. Fallon
U.S. District Court for the District of Delaware
Lauren P. DeLuca, Esquire
Connolly Gallagher LLP
Gary E. Junge, Esquire
Schmittinger & Rodriguez, P.A.

9:45 a.m. – 10:30 a.m.

Legislative Updates

G. Kevin Fasic, Esquire
Offit Kurman P.A.
Timothy M. Holly, Esquire
Connolly Gallagher LLP

Break | 10:30 a.m. – 10:45 a.m.

10:45 a.m. – 11:30 a.m.

Paid Family Medical Leave Insurance Program

Christopher Counihan
Delaware Department of Labor

11:30 a.m. – 12:15 p.m.

Mental Health and Wellness with DE-LAP

Scott Godshall, Esquire
Delaware Lawyers Assistance Program

Visit <https://www.dsba.org/event/labor-and-employment-law-update-2023/>
for all the DSBA CLE seminar policies.

Please note that the attached materials are supplied by the speakers and presenters and are current as of the date of this posting.

ADR in Employment Litigation and Beyond

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Kevin Fasic Bio

PRACTICE FOCUS

Kevin Fasic is the Managing Principal of Offit Kurman's Wilmington office. With over 25 years of legal experience in employment and construction law, Kevin's practice is primarily management-based and includes discrimination claims, wage and hour issues, Davis Bacon/ Prevailing Wage claims, employment agreements (including restrictive covenant issues and severance agreements), hiring and firing guidance, unemployment claims, mechanics' lien claims, general construction disputes, and legislative affairs. As a former investigator for the Delaware Department of Labor, Kevin's experience informs his approach as he appears before various administrative boards, agencies, and private dispute resolution forums.

Additionally, Kevin has extensive experience practicing before all of Delaware's state and federal trial and appellate courts. He is also certified by the Delaware Superior Court as both a Mediator and an Arbitrator that can serve in either capacity for labor/ employment and construction law disputes.

With a growing reputation as an engaging legal thought leader, Kevin frequently speaks on employment and construction law topics for various professional and trade organizations. He also publishes articles for these organizations on various employment law topics and recent developments in the law.

Kevin was born in Philadelphia, Pennsylvania, in 1965. He received his bachelor's degree from Lehigh University in 1988 and his law degree from the Widener University School of Law in 1995.

ACTIVITIES

- Board of Governors for the Delaware State Chamber of Commerce: 2014-Present
- Board of Managers, Small Business Alliance for the Delaware State Chamber of Commerce: 2008-Present; Co-Chair 2016-2017
- Joint Military Affairs Committee, Delaware State Chamber of Commerce: 2015-Present; Chair 2020-2021
- Employer Advocacy and Education Committee, Delaware State Chamber of Commerce: 2000-Present; Co-Chair 2003-2013

- National Legislative Committee, Associated Builders and Contractors: 2014-2020
- Legislative & Legal Affairs Committee, Associated Builders and Contractors – Delaware Chapter: 2007- Present
- Board of Directors, Associated Builders and Contractors – Delaware Chapter: 2009-2014
- Labor and Employment Law Section, Delaware State Bar Association: 1997-Present; Chair 2003-2004; Secretary 2002-2003
- Alternative Dispute Resolution Section, Delaware State Bar Association: 2018-Present
- Government Affairs Committee, New Castle County Chamber of Commerce: 2018-Present
- Government Affairs Committee, Delaware Contractor's Association (AGC Affiliate): 2020-Present
- Active in legislative affairs for various business groups and trade associations and a frequent advocate for their interests before the Delaware General Assembly and other legislative forums



CONNOLLY GALLAGHER LLP



Timothy M. Holly

302-252-4217

tholly@connollygallagher.com

Education

- Villanova University School of Law (J.D.; 2001)
- Xavier University (M.A. Industrial/Organizational Psychology; 1998)
- Georgetown College (B.A., cum laude; 1996)

Bar Admissions

- Delaware, 2001
- District of Columbia, 2005
- United States District Court – District of Delaware, 2002
- United States Court of Appeals for the Third Circuit, 2008

Honors

- Martindale-Hubbell AV® "Preeminent" Peer Review Rating and Client Review Rated 5 out of 5
- Chambers USA - Delaware - Employment & Labor
- The Best Lawyers in America® - Employment Law-Individuals
- Delaware Super Lawyers - Employment & Labor
- Delaware Today Top Lawyers -Labor and Employment law - top listing for management and individuals

As co-chair of the labor and employment law group and one of the firm's founding partners, Tim represents both employers and employees, including top executives, in a multitude of matters impacting the workplace generally and human resources and post-employment restrictions specifically. Tim's straight-forward approach to counseling, negotiation, and employment transactional services has enabled numerous clients to avoid legal disputes. When that has not been possible, Tim has successfully advocated for numerous clients in alternative dispute resolution, before administrative agencies, and in state and federal courts - including in pleading and motion practice, jury trial, and appeals.

With a master's degree in industrial / organizational psychology, Tim offers both employers and employees perspective from both his extensive experience and expertise with employment laws and his understanding of and focus on broader business concerns such as return on investment, leadership, team synergy, etc. Tim's clients also benefit from his knowledge of current and emerging issues in employment law, gleaned through his active involvement in labor and employment law legislative initiatives. At all steps and in all forums, Tim recognizes that even seemingly similar disputes are unique in numerous ways and that both companies and people are individuals that deserve to be treated as such. Clients experience this perspective by being made an active part of the decision-making process as to strategy, direction, and substance.

Tim has been repeatedly ranked as one of the top labor & employment practitioners in Delaware by *Chambers USA: Guide to America's Leading Lawyers for Business*. Tim has also been repeatedly selected for inclusion in *The Best Lawyers in America*® for employment law. And he is consistently rated as a top employment attorney by *Delaware Super Lawyers* and *Delaware Today Top Lawyers*, which has rated Tim as the top attorney in employment law for both individuals and for management. Tim is AV® rated in Martindale-Hubbell's Preeminent™ Peer Review and as a "Client Champion" based on client review.

A life member of the National Eagle Scout Association of the Boy Scouts of America, Tim has been recognized by the Del-Mar-Va Council, through the "Silver Beaver" award, for his positive impact on the lives of youth through distinguished self-sacrifice, dedication, and many years of service. Tim also previously served on the Board of Directors for the Delaware Humane Association.

Representative Experience

- Pestell v. CytoDyn Inc. et al., 2020 WL 6392820 (D. Del. Nov. 2, 2020)
- Kearns Brinen & Monaghan, Inc. v. Recovery Solutions Group, LLC, (Del. Ch. 2018)
- Independent School Management (3d Cir. August 2018)
- Romar Offshore Welding Services, LLC v. Industrial & Crane Services, LLC, et al., (Del. Super. 2017)
- EDIX Media Group, Inc. v. Mahani, (Del. Ch. 2006)
- Dougherty v. Blize, (D. Del. 2007)
- Washington v. Autozoner, Inc., (D. Del. 2004)
- Rohm and Haas Co., v. Dow Chemical Co., (Del. Ch. 2009)
- Dentsply Intern., Inc. v. Coley, (Del. Super. Ct. 2010)
- Eaton v. Raven Transport, Inc. et al., (Del. Super. Ct. 2012)
- Currie v. Dentsply Intern., Inc., (Del. Super. Ct. 2009)
- Alred v. Eli Lilly and Company, (D. Del 2008)
- Dunkin' Donuts Franchising LLC, et al. v. AARK Investments, LLC, (D. Del 2013)
- Bantry Bay America, Inc. v. Minihane, (D. Del 2014)
- James v. Mechanical Services, LLC et al., (Del. Super. Ct 2014)
- Dell, Inc. v. Stone, (Del. Super. Ct. 2015)
- Southland Insulators of Delaware, LLC v. Bautista, et al., (D. Ch. 2015)
- Brittingham v. Topping, (Del. Super. Ct 2011)
- Utilipath, LLC v. Hayes, (D. Ch. 2014)
- Gilliss v. Dentsply, LLC, (D. Del. 2014.)
- NFP Corp. v. Winston et al., (D. Ch. 2016)
- Doctors Pathology Services, P.A. v. Gerges, et al., (D. Ch. 2015)
- Executive Consulting Group, LLC v. Cox, (D. Del 2016)
- Air Products and Chemicals, Inc. v. Wiesemann, (D. Del 2014)
- Peacock v. KM2 Solutions, LLC, (Del. Super. Ct 2016)
- McCrann v. Advo Opco, LLC, (D. Del 2016)
- Judson Bennet, et al v. Mark S Lally & First State Compassion Center

Inc., (D. Del 2014)

- *Rumanek v. Independent School Management, Inc.*, (3d Cir. 2018)
- *Rumanek v. Independent School Management, Inc.*, (D. Del. 2012)
- *Matter of Gunn*, 122 A.3d 1292 (Del. 2015) (en banc)

Publications

- "Weed and Work, Beware of Employment-Related Provisions in Delaware Marijuana Legislation" *Delaware Business* May/June 2021.
- "When New Legal Authority Feels Like a Virus, 'Wear a Mask' By Learning" In *Delaware Business*, July/August 2020.
- "Should stereotypes (and hairstyles) be enshrined in law" In *Delaware Business Times*, February 4, 2020.
- Practical Law State Q&A Employee Privacy Laws: Delaware In *Thomson Reuters*, September 2019.
- "Sexual Harrassment in the Workplace" International Lawyers Network, *Labor & Employment Group*, May 22, 2019.
- "Analysis: Marijuana rulings tilt toward employee rights over employers" In *Delaware Business Times*, April 30, 2019.
- "Cannabis Confusion" In *Delaware Business*, May/June 2018.
- Whether Employees Complaining Internally to Employers Have Protection from Retaliation (a/k/a "Whistleblower Protection")
- "'Ban the Box' Law a Tricky New Issue for Employer" In *Delaware Business*, Jan/Feb. 2015.
- "The Causation Standard For Retaliation Claims Under Employment Discrimination Statutes: Ambiguity of 'Central Importance'", Del. L. Rev. vol. 15:1 (2014), at 71-82.
— Read Timothy's Insights
- "Four New Delaware Employment Laws That Every Delaware Employer Should Know About"
- "Recent Case Law Developments Relating to the Wage Payment and Collection Act of the State of Delaware", Del. L. Rev. vol. 14:1 (2013), at 71-74.
- "A New Protected Class Under Delaware Law: Firefighters and Ambulance Personnel."
- "Supreme Court Rules for Employers on Title VII Retaliation Claims."
- "Expect the Unexpected: Labor Law Issues Impacting Non-Unionized, Private Employers." In *Delaware Business*.
- "Managing Competition in the Medical Profession." In *Delaware Medical Journal*.
- "Employee Furloughs . . . Saving Costs or Creating

Liability?" In *Delaware Banker*.

- "Furlough Programs for US Employees – clever solutions or tricky traps?" In *Benefits & Compensation International*.
- "The Dangers in Managing Medical Leave." In *HR Times*.
- "New Rule 16: Now Mandatory Alternative Dispute Resolution." In *Delaware Business Law and Litigation Report*.
- "Restrictive Covenants in Employment Agreements Can Impact the Bottom Line." In *Delaware Business Law and Litigation Report*.
- "Finding Fraud Perpetrated Against the State of Delaware." In *Delaware Government Legal Quarterly*.
- "Good News For Reference Givers." In *DCA News*.
- "Pitfalls In Maintaining Personnel Files." In *Delaware Government Legal Quarterly*.
- "A Hire Standard: Improving Employee Selection Can Help Keep You Fully Staffed-and Out of Court." *HR Magazine*.
- "Potential Responsibility under CERCLA: Canadyne-Georgia Corp. v. NationsBank, N.A. (South) – An Illustration of why we need a Federal Rule Defining 'Owned' and 'Operated.'" In *Villanova Environmental Law Journal*.
- "Stereotyping: Self-Perceived Masculinity in Men and Men's Perceptions of Femininity in Women." *A Thesis Submitted to the Faculty of Xavier University*.

**Delaware State Bar Association
Labor & Employment Section
Legislative Action Subcommittee**

April 5, 2023

Legislative Update

**Timothy M. Holly – Connolly Gallagher LLP
G. Kevin Fasic – Offit Kurman, P.A.**

NEWER DELAWARE LAW

TAB 1	SB 35	Bond & Capital Improvements (Signed 1/26/23)
TAB 2	HB 354	Sanctuary Employers (Signed 10/21/22)
TAB 3	HB 311w/ HA 2	Disabilities in Public Accommodation (Signed 10/10/22)
TAB 4	SB 35	Criminal Liability for “Wage Theft” (Signed 10/7/22)
TAB 5	SS1 for SB 208	Wage Payment Defense Removal (Signed 10/7/22)
TAB 6	SA2 for SB 211	Age Inquiry in Applications (Signed 9/8/22)
TAB 7	HB 277 s/ HA1	Vicarious Liability For Employees (Signed 8/19/22)
TAB 8	HB 205	Mandatory Retirement Accounts (Signed 8/18/22; Effective Not Later 12/31/2025)
TAB 9	SS2 for SB1	Paid FMLA (Signed 5/10/22; Effective July 1, 2022) *Beware – Regulation Public Comment Starts 4/1/23
TAB 10	SS1 for SB 48	Electrician “Fraud” (Signed 10/5/21)
TAB 11	HB 88	Training Minimum Wage Take Back (Signed 9/30/21)
TAB 12	SB 51	Plumbing & HVAC Sanctions (Signed 9/30/21)
TAB 13	SB 15	Minimum Wage

(Signed 7/19/21)

TAB 14	SB 32	Stereotype Discrimination (Signed 4/13/21)
TAB 15	HB 65	Unemployment (Signed 2/8/21)
TAB 16	SB 31	“Equal Rights” Amendment

PENDING NEWER DELAWARE LEGISLATIVE ACTION

TAB 17	HB 1	Non-Medical Marijuana (Passed H. 3/27/23; Out of S. Committee 3/15/23) (SA 2 to HB 2 – 3/28/23)
TAB 18	SB 27	Wage Payment SOL Enlargement (Passed S. 1/26/23; Out of H. Committee 3/14/23)
TAB 19	HA1 for HB 65	Paid State Bereavement Leave (Introduced 1/26/23)
TAB 20	HB 331	Lemonade Stands (not joking) (Passed House 5/5/22; Committee Out 6/8/22)
TAB 21	HS1 for HB 288	Paid Time Off to Vote (Introduced 5/10/22)
TAB 22	SB 201	PERB Timing for Decisions (Introduced 12/16/21)
TAB 23	HS1 for HB 94	Tip Minimum Wage (Introduced 6/30/21) *substitute bill; still in committee since 6/30/21
TAB 24	DRAFT	Domestic Violence, Sexual Offense, Stalking
TAB 25	DRAFT	“Silenced No More Act”

TAB 1



SPONSOR: Sen. Walsh & Rep. Heffernan
Mantzavinos Bush
Pinkney Matthews
Poore Osienski
Richardson Gray
Wilson Smith

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 35
AS AMENDED BY
SENATE AMENDMENT NO. 2

AN ACT TO AMEND THE LAWS OF DELAWARE RELATING TO THE BOND AND CAPITAL IMPROVEMENTS ACT OF THE STATE OF DELAWARE AND CERTAIN OF ITS AUTHORITIES FOR THE FISCAL YEAR ENDING JUNE 30, 2023.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 340, Volume 83 of the Laws of Delaware by amending Section 171 by making
2 deletions as shown by strike through and insertions as shown by underline as follows:

3 **Section 171. School Safety and Security.** Section 1 Addendum of this Act makes an appropriation to the
4 Department of Education for School Safety and Security Fund. Of this amount, the Department shall provide a
5 minimum amount of \$1,000,000 to the Department of Safety and Homeland Security for school mapping, reporting
6 application, and threat assessment tools. Notwithstanding any provision or law to the contrary, school districts and
7 charter schools may use allocations from the School Safety and Security Fund for expenditures related to increased
8 safety and security personnel needs at school extracurricular events for the 2022-2023 school year.

9 Section 2. Amend Chapter 340, Volume 83 of the Laws of Delaware by amending Section 172 by making
10 deletions as shown by strike through and insertions as shown by underline as follows:

11 **Section 172. Enhanced Minor Capital Improvements.** (e) Notwithstanding any provision or law to the
12 contrary, effective July 1, 2022, reorganized school districts shall be authorized to assess a local match to provide up
13 to a 60/40 state/local share for the Enhanced Minor Capital Improvements state amounts appropriated in subsection
14 (a) of this section. This match is optional and must be used for the same purposes as state funds appropriated for

Enhanced Minor Capital Improvements. A partial local match is authorized provided the local share does not exceed 40 percent. A district may assess a match not to exceed a 60/40 state/local share all in one fiscal year or over multiple fiscal years. The match may only be provided through the original end date of the Enhanced Minor Capital Improvements appropriation and any continuations thereof.

(f) Notwithstanding any provision or law to the contrary, reorganized school districts and charter schools may utilize their respective Enhanced Minor Capital Improvements allocation for the purposes of remediating lead contaminated drinking water infrastructure without first obligating appropriations from Minor Capital Improvements funds for Fiscal 2023 and previous fiscal years. Should a district or charter school elect to utilize their Enhanced Minor Capital Improvements allocation for such remediation costs, said district or charter must submit a letter to the Secretary of Education, which shall be approved concurrently by the Director of the Office of Management and Budget and the Controller General, requesting a waiver from the provisions of subsection (c) of this section and identifying how the Enhanced Minor Capital Improvements funds will be utilized to address lead contaminated drinking water within said district or charter.

Section 3. Amend Chapter 340, Volume 83 of the Laws of Delaware by amending Section 30 by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 30. Procurement Thresholds. (a) Notwithstanding the provisions of 29 Del. C., § 6913 (e)-(4), effective ~~September 1, 2021~~ February 15, 2023, the thresholds for requiring the issuance of a formal bid or formal RFP shall be as follows: For a materiel/Non-professional Services procurement: ~~\$50,000~~ 100,000, for a Public Works procurement: ~~\$450,000~~ 250,000, and for a Professional Services procurement: ~~\$100,000~~ 150,000.

Section 4. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 178 by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 178. Community Transportation Funds. Notwithstanding any provision of Title 29 of the Delaware Code to the contrary, the Department of Transportation is hereby authorized to use Community Transportation Funds for a one-time reimbursement to each of the following:

- (1) Georgetown Police Department in an amount up to \$10,000 for the purchase of an unmanned aerial vehicle.
- (2) Kent County Regional Sports Complex in an amount up to \$123,195 for the purchase of a concrete pad, concrete apron, all-terrain vehicle, and grinder pumps at DE Turf Sports Complex.

(3) New Castle County in an amount up to \$8,000 for the purchase and installation of permanent wood barricades at Oakmont Drive and Kingston Road.

(4) Parkers Run Homeowners Association in an amount of up to \$865 for the reimbursement of street signage.

(5) Rehoboth Beach Volunteer Fire Company in an amount up to \$76,000 for the reimbursement of a fire service vehicle and associated equipment.

(6) Western Sussex Boys and Girls Club in an amount of up to \$40,000 for the repair and restoration of the loading dock apron and additional parking area.

Section 5. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 179 by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 179. Criminal Legal System Imposed Debt Study Group. Amend Chapter 441, Volume 83 of the Laws of Delaware by amending Section 14 (9) and (14) by making deletions as shown by strike through and insertions as shown by underline as follows:

(9) The Study Group shall hold its first meeting no later than three months after this Act is enacted and shall meet at least ~~once each month~~ six times thereafter until the Study Group submits its final report.

(14) The Co-Chairs shall compile an interim and final report containing a summary of the Study Group's work regarding the issues assigned to it under paragraph (7) of this Section, including any findings and recommendations adopted by the Study Group. The Co-Chairs shall submit all reports to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Director and the Librarian of the Division of Research of Legislative Council, and the Delaware Public Archives. The interim report is due ~~February 1, 2023~~ May 1, 2023, and the final report is due September 1, 2023.

Section 6. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 180 by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 180. Department of Transportation Reprogramming Transfer. Notwithstanding any state law to the contrary, the Office of Management and Budget is authorized to transfer appropriation balances not in excess of the amounts below from the projects in subsection (a) Road Systems and reauthorize the funds to subsection (b) Grants and Allocations.

(a)	Department, Agency Instrumentality	Appropriation Code	Amount
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71	<u>Department of Transportation</u>		
72	<u>Road Systems</u>	<u>2023-55-05-00-97701</u>	<u>\$350,000</u>
73			
74	<u>Total</u>		<u>\$350,000</u>
75	(b) <u>Department, Agency Instrumentality</u>		
76			
77	<u>Department of Transportation</u>		
78	<u>Grants and Allocations</u>	<u>2023-55-05-00-95601</u>	<u>\$350,000</u>
79			
80	<u>Total</u>		<u>\$350,000</u>

81 Section 7. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 181 by
82 making deletions as shown by strike through and insertions as shown by underline as follows:

83 **Section 181. Absalom Jones Performing Arts Center.** The Office of Management and Budget is
84 authorized to utilize Absalom Jones Performing Arts Center funding, appropriated under the Section 1 Addendum of
85 this Act, to complete the facility drainage project prior to the development of the Performing Arts Center.

86 Section 8. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 182 by
87 making deletions as shown by strike through and insertions as shown by underline as follows:

88 **Section 182. Division of Communications Shelter.** The Office of Management and Budget is hereby
89 authorized to donate to the University of Delaware, the Department of Safety and Homeland Security, Division of
90 Communications shelter no longer in use and located on the University's Christiana Towers property.

91 Section 9. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 183 by
92 making deletions as shown by strike through and insertions as shown by underline as follows:

93 **Section 183. Troop 6 Project.** In accordance with funding provided under 82 Del. Laws c. 86, 83 Del.
94 Laws c. 56 and the Section 1 Addendum of this Act, the Office of Management and Budget is authorized to utilize
95 funding for planning and design, architectural and engineering, demolition and construction, and associated costs to
96 relocate the Delaware State Police offices, including costs for leasing temporary locations for housing Troop 6
97 personnel until the new facility is completed and available for occupancy.

98 Section 10. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 184 by
99 making deletions as shown by strike through and insertions as shown by underline as follows:

100 **Section 184. New Castle County Vocational Technical School District Athletic Fields.** Notwithstanding
101 any provision to the contrary, New Castle County Vocational Technical School District is hereby authorized to
102 proceed with the construction of new athletic fields as part of the Paul M. Hodgson Replacement project (CN#

2338A) using available local funds. Upon receipt of the major capital funds associated with the aforementioned certificate of necessity, the district shall recode such construction costs to the appropriate state and local major capital fund.

Section 11. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 185 by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 185. Poultry House Demolition Assistance Program. Notwithstanding the provisions of any other state law to the contrary, the Department of Agriculture is hereby authorized to use the remaining funds appropriated in 82 Del. Laws c. 86 Section 1 for Irrigation System Conversion as reimbursement for a new poultry house demolition assistance program. The new program would provide qualifying applicants with a 50 percent reimbursement of demolition costs up to a maximum of \$10,000 per house.

Section 12. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 186 by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 186. Calculation of 3 Percent Limit to Advance Bond Proceeds. Amend 29 Del. c. § 7414(b) by making insertions as shown by underline and deletions as shown by strikethrough as follows:

§ 7414. Deposit of money; advances from funds.

(b)The State may advance money to a special fund of the State established to hold money raised or to be raised to finance costs of projects authorized to be financed with the proceeds of bonds or notes after the adoption of an authorization act but prior to the issuance of bonds or notes authorized to be issued by that authorization act. Money may be advanced, in an amount not exceeding the greater of 3 percent of ~~General Fund revenues for the coming current fiscal year, as determined by the Delaware Economic and Financial Advisory Council~~ the estimated net General Fund revenue for that fiscal year from all sources (not including unencumbered funds remaining at the end of the previous fiscal year) as determined by joint resolution approved by a majority of the members elected to each House of the General Assembly and signed by the Governor in connection with the adoption of the annual budget appropriation bill for that fiscal year, or \$60,000,000 150,000,000, from any other fund of the State unless prohibited by any other law. Any money advanced must be repaid at the time the money advanced is needed for the purposes for which the money was held before being advanced.

Section 13. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 187 by making deletions as shown by strike through and insertions as shown by underline as follows:

131 **Section 187. Redevelopment of Strategic Sites (Fort DuPont).** Notwithstanding the provisions of any
132 other state law to the contrary, the Fort DuPont Redevelopment and Preservation Corporation is authorized to utilize
133 funds appropriated under 83 Del. Laws c. 56 and the Section 1 Addendum of this Act for capital projects sitewide
134 which are ready to proceed.

135 Section 14. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 188 by
136 making deletions as shown by strike through and insertions as shown by underline as follows:

137 **Section 188. Municipal Infrastructure Funds – Bowers Beach.** Municipal Infrastructure Funds
138 appropriated in 82 Del. Laws c.86 to Bowers Beach for “Bowers Beach – Boatlift” may be utilized for the North
139 Bayshore Drainage Improvements project.

140 Section 15. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 189 by
141 making deletions as shown by strike through and insertions as shown by underline as follows:

142 **Section 189. Community Workforce Agreement – Office of Management and Budget.** The Office of
143 Management and Budget (OMB) is authorized to engage in a pilot program to include Community Workforce
144 Agreements as part of large public works projects. There will be two different approaches: 1) Community
145 Workforce projects and 2) Disadvantaged Business Enterprise (DBE). The pilot program shall include no more than
146 four projects.

147 For the four Community Workforce projects, the awarded contractors for the projects will be required to
148 enter into a Community Workforce Agreement with the agency. The Community Workforce Agreement shall
149 permit all contractors to subcontract project work or to retain a percentage of their current workforce in order to
150 meet the requirements of the pilot. OMB shall set the percentage of work for each project to be performed by local
151 labor organization(s) with whom the awarded contractors will either hold a separate contract containing a Collective
152 Bargaining Agreement, or the contractor may subcontract with a subcontractor that holds a Collective Bargaining
153 Agreement. In addition, the Community Workforce Agreement may include a minority workforce requirement.

154 For the Community Workforce projects, the contract award will be based on a form of best value, for
155 which, 29 Del. C. § 6962 (b) is waived. OMB will establish a best value process to include the price, schedule, and
156 method of complying with the specific requirements of the Community Workforce projects. All bids are subject to
157 an evaluation for responsiveness and responsibility.

For the purpose of this pilot, Disadvantaged Business Enterprise is defined as for-profit businesses in which at least 51 percent of the business is owned by one or more individuals who are both socially and economically disadvantaged; and whose daily operations are managed by one or more individuals who are both socially and economically disadvantaged. If the project involves a Vocational Technical school, there is a requirement to include a cooperative program in which students from Vocational Technical schools will work on the project for a set number of hours at a paid wage rate appropriate for the individual student's scope of work.

For projects that are part of the DBE pilot program, the contract award will be based on a form of best value, for which, 29 Del. C. § 6962 (d)(13)a.4. is waived. The agency will establish a best value process to include the price, schedule, and method of complying with the specific requirements of the pilot project whether it is for DBE. All bids are subject to an evaluation for responsiveness and responsibility.

To assist the agency in evaluating the success of these pilot programs, the agency shall establish reporting requirements for the contractors on each project to be included in the awarded contract.

The Office of Management and Budget shall report annually on or before January 1st to the Joint Committee on Capital Improvement their assessment of the pilot, including, but not limited to, employee hiring statistics, cost savings, project quality, worker safety, and the effectiveness of contracting disadvantaged businesses, including but not limited to, subcontractors.

Section 16. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 190 by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 190. Community Workforce Agreement – Department of Transportation. The Department of Transportation (the Department) is authorized to engage in a Community Workforce Agreement for no more than two large public works projects. The projects will be awarded in accordance with 29 Del. C. § 6962. The awarded contractor for the projects will be required to enter into the Community Workforce Agreement with the Department and a local labor organization(s). To assist the agency in evaluating the success of the pilot program, the agency shall establish reporting requirements for the contractor on the projects to be included in the awarded contract.

For Community Workforce Agreement projects, the Community Workforce Agreement shall require the prime contractor to become party to the Community Workforce Agreement and shall permit them to retain a percentage of their current workforce. In addition, the Community Workforce Agreement may include a minority workforce requirement.

The Department of Transportation shall report annually on or before January 1st to the Joint Committee on Capital Improvement their assessment of the pilot including, but not limited to, employee hiring statistics, cost savings, project quality, and worker safety.

Section 17. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 191 by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 191. State Facilities Market Pressure Contingency. Section 1 Addendum of this Act makes an appropriation to the Office of Management and Budget for State Facilities Market Pressure Contingency. The Director of the Office of Management and Budget shall provide a report on the projects funded, expenditure details, and balance remaining in this appropriation to the Joint Committee on Capital Improvement by May 15.

SYNOPSIS

This Act amends the Fiscal Year 2023 Bond and Capital Improvements Act to (1) authorize the use of School Safety and Security Funds for school extracurricular activities; (2) authorize local funding to support Enhanced Minor Capital Improvements and the remediation of lead contaminated drinking water infrastructures; (3) adjust the procurement thresholds for the issuance of formal bids or RFPs; (4) authorize the Department of Transportation to use Community Transportation Funds for one-time reimbursements for various projects; (5) make changes to the Criminal Legal System Imposed Debt Study Group; (6) authorize the Department of Transportation Reprogramming Transfer; (7) authorize funding to complete the facility drainage project of Absalom Jones Performing Arts Center; (8) authorize the donation of the Division of Communications Shelter to the University of Delaware; (9) authorize the use of funding until the new Troop 6 facility is complete and available for occupancy; (10) allow New Castle County Vocational School District to proceed with construction of new athletic fields; (11) authorize the use of Irrigation System Conversion funds to reimburse a new poultry house demolition assistance program; (12) clarify the calculation of 3% limit of GF net revenue estimate for finance capital projects is applied to revenues identified in the revenue resolution for the fiscal year of the budget being adopted; (13) authorize Fort DuPont Redevelopment and Preservation Corporation to use funds for capital projects; (14) authorize Municipal Infrastructure Funds to be used for the North Bayshore Drainage Improvements; (15) authorize the Office of Management and Budget to engage in a pilot program to include Community Workforce Agreements; (16) authorize the Department of Transportation to engage in a Community Workforce Agreement for no more than two large public works projects; and (17) require a report from the Office of Management and Budget regarding State Facilities Market Pressure.

AUTHOR: Joint Committee on Capital Improvement

TAB 2



SPONSOR: Rep. Morrison & Rep. Osienski & Sen. Sturgeon
Reps. Baumbach, Griffith, Kowalko, Wilson-Anton; Sens.
Hansen, S. McBride

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 354
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO DELAWARE'S WHISTLEBLOWERS PROTECTION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 17 of Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§1703. Protection.

An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of ~~employment~~: employment, including reporting or threatening to report an employee's suspected or actual citizenship or immigration status or the suspected or actual citizenship or immigration status of a family member of the employee to a federal, state, or local agency:

TAB 3



SPONSOR: Rep. Griffith & Rep. Heffernan & Rep. Longhurst &
Rep. Dorsey Walker & Sen. S. McBride & Sen. Gay
Reps. Bentz, Hensley, Kowalko, Lambert, Lynn,
Mitchell, Morrison, Osienski, Baumbach; Sens. Hansen,
Paradee, Pinkney, Townsend

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 311
AS AMENDED BY
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 6 AND TITLE 29 OF THE DELAWARE CODE RELATING TO EQUAL
ACCOMMODATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 4501, Title 6 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows and redesignating accordingly:

§ 4501. Purpose and construction.

This chapter is intended to prevent, in places of public accommodations, practices of discrimination against any
person because of race, age, marital status, creed, religion, color, sex, disability, sexual orientation, gender identity, or
national origin. This chapter shall be liberally construed to the end that the rights herein provided for all people, without
regard to race, age, marital status, creed, religion, color, sex, disability, sexual orientation, gender identity, or national
origin, may be effectively safeguarded. Furthermore, ~~in defining the scope or extent of any duty imposed by this chapter, it~~
is appropriate for the Commission to consult with, consider, and apply higher or more comprehensive obligations
established by otherwise applicable federal, state, or local ~~enactments may be considered. law in defining the scope or~~
extent of any duty imposed by this chapter.

Section 2. Amend § 4502, Title 6 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows and redesignating accordingly:

§ 4502. Definitions.

For purposes of this chapter:

(2) "Auxiliary aid or service" means a device or service that enables effective communication. Appropriate
auxiliary aids and services may include services and devices such as qualified interpreters, assistive listening devices,
notetakers, or written materials for individuals with hearing impairments; and qualified readers, taped texts, or brailled or
large print materials for individuals with vision impairments.

(7) "Disability" means any condition or characteristic that renders a person a person with a disability as defined in this section.

(17) "Person with a disability" means any person who satisfies any 1 of the following:

- a. Has a physical or mental impairment which substantially limits 1 or more major life activities.
- b. Has a record of such impairment.
- c. Is regarded as having such an impairment.

(18) "Place of public accommodation" means any establishment which caters to or offers ~~goods or services or facilities~~ goods, services, facilities, privileges, advantages, or accommodations to, or solicits patronage from, the general public. ~~This definition includes public, including~~ state agencies, local government agencies, ~~and~~ state-funded agencies performing public functions. This definition includes hotels and motels catering to the transient public, but it does not apply to the sale or rental of houses, housing units, apartments, rooming houses, or other dwellings, nor to tourist homes with less than 10 rental units catering to the transient public.

() "Readily achievable" means easily accomplishable without much difficulty or expense. "Readily achievable" means that an action is not an undue burden as defined in this section.

() "Reasonable modification" means a change in policies, practices, or procedures when the modification is necessary to avoid discrimination on the basis of disability, unless the covered entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

(23) "Service animal" means a dog individually trained to do work or perform tasks for the benefit of a person with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

() "Undue burden" means an action requiring significant difficulty or expense, when considered in light of all of the following factors:

- a. The nature and cost of the action needed under this chapter.
- b. The overall financial resources of the place of public accommodation involved in the action; the number of persons employed at the place of public accommodation; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the place of public accommodation.
- c. The geographic separateness, and the administrative or fiscal relationship of the place of public accommodation in question to any parent corporation or ownership entity.

d. If applicable, the overall financial resources of any parent corporation or ownership entity; the overall size of the parent corporation or ownership entity with respect to the number of its employees; the number, type, and location of its facilities.

e. If applicable, the type of operation or operations of any parent corporation or ownership entity, including the composition, structure, and functions of the workforce of the parent corporation or ownership entity.

Section 3. Amend § 4503, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4503. Persons entitled to protection.

All persons within the jurisdiction of this State are entitled to the full and equal accommodations, facilities, advantages and privileges of any place of public accommodation regardless of the race, age, marital status, creed, religion, color, sex, ~~handicap~~, disability, sexual orientation, gender identity, or national origin of such persons.

Section 4. Amend § 4504, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 4504. Unlawful practices.

(a)(1)a. No person being the owner, lessee, proprietor, manager, director, supervisor, superintendent, agent, or employee of any place of public accommodation, may directly or indirectly refuse, withhold from, or deny to any person, on account of race, age, marital status, creed, religion, color, sex, disability, sexual orientation, gender identity, or national origin, any of the accommodations, facilities, advantages, or privileges ~~thereof~~. of the public accommodation.

b. A person who does not allow parking by a holder of a special license plate or permit for persons with disabilities as allowed under § 2134 through § 2135 of Title 21 is engaged in an unlawful practice under this chapter.

(3) A place of public accommodation must permit service animals as follows:

a. An individual with a disability accompanied by a service animal in any place of public accommodation.

b. An individual training a service animal to be used by persons with disabilities accompanied by a service animal in any place of public accommodation.

(4) Except as provided under paragraph (a)(6) of this section, it is a violation of paragraph (a)(1)a. of this section for a person to do any of the following:

a. To impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services,

facilities, privileges, advantages, or accommodations of a place of public accommodation, unless the criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.

b. To fail to make reasonable modifications in policies, practices, or procedures to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the place of public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.

c. To fail to take measures that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the place of public accommodation can demonstrate that taking the steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden.

d.1. To fail to remove architectural barriers and communication barriers that are structural in nature, where such removal is readily achievable, in existing facilities.

2. Where a place of public accommodation can demonstrate that the removal of a barrier under paragraph (a)(4)d.1. of this section is not readily achievable, to fail to make goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

(5) Nothing in paragraph (a)(4) of this section may be construed to require either of the following:

a. An individual with a disability to accept an accommodation, modification, aid, service, opportunity, or benefit that the individual chooses not to accept.

b. A place of public accommodation to provide individuals with disabilities with personal devices, such as wheelchairs, eyeglasses, hearing aids, or readers for personal use or study, or personal services to assist with feeding, toileting, or dressing.

(6) Paragraph (a)(4) of this section does not apply to religious organizations or entities controlled by religious organizations, including places of worship.

(c) It shall be is unlawful to assist, induce, incite, or coerce another person to commit any discriminatory public accommodations practice prohibited by under subsection (a) or (b) of this section.

(e) Nothing in this section shall may be interpreted as an abrogation of any requirements otherwise imposed by applicable federal or state laws or regulations. If federal or state law provide additional rights to members of a protected

class or requirements for a place of public accommodation, this section must be interpreted as providing that right or requirement.

(f) A person, being the owner, lessee, proprietor, manager, director, supervisor, superintendent, agent, or employee of any place of public accommodation, may not engage in an act or practice that is unlawful under subsections (a) through (d) of this section or otherwise retaliate against an individual because the individual has done 1 of the following:

(1) Opposed an act or practice that is unlawful under subsections (a) through (d) of this section.

(2) Made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing to enforce subsections (a) through (d) of this section.

(g) A place of public accommodation may not deny a request by an individual with a disability for a reasonable modification or for auxiliary aids or services solely because the individual did not use the exact terms under this chapter when making the request, such as by requesting a "reasonable accommodation" or for the auxiliary aid or service.

Section 5. Amend § 4508, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 4508. Procedure on complaint.

(a) ~~A person believing himself or herself~~ An individual who believes they have been aggrieved by a discriminatory public accommodation practice ~~proscribed by~~ prohibited under § 4504 of this title ~~may, by himself or herself or by his or her attorney at law, file with the Division a complaint in writing stating:~~ may file a written complaint with the Division. A complaint under this chapter may be filed by the individual or by the individual's attorney and must include all of the following:

(1) ~~His or her~~ The individual's name and ~~address;~~ address.

(2) The name and location of the place of public accommodation at which the discriminatory public accommodation practice occurred, and the date, ~~time~~ time, and an explanation ~~thereof;~~ of the discriminatory practice.

(3) If known, the name and address of each respondent and, if different, the name of the owner, lessee, proprietor, ~~manager~~ manager, or superintendent of the place of public ~~accommodation;~~ and accommodation.

(4) ~~Such~~ All other information as the Division requires.

(b) ~~No~~ A complaint ~~shall~~ must be filed with the Division ~~no~~ no more than ~~90~~ 180 days after the occurrence of the alleged discriminatory public accommodation practice.

(c)(1) Within 120 days after the complaint is filed, the Division shall investigate the complaint and endeavor to eliminate any unlawful discriminatory practice discovered ~~through~~ during the investigation, using conciliation.

a. When investigating a complaint, the Division shall apply the requirements of this chapter in a manner consistent with equivalent requirements under federal laws.

b. Insofar as possible, conciliation meetings shall be held in the county where the alleged discriminatory public accommodations practice occurred.

(2) If the matter is resolved through conciliation, the parties shall enter a conciliation agreement stating the terms of the resolution of the matter.

(3) If the Division determines that the allegations in the complaint do not state a claim for which relief is available under this chapter or that the claim is not within the scope of the Division's jurisdiction, it may petition the Commission, with notice to the complainant, to dismiss the complaint. A notice under this paragraph (c)(3) must include, with specificity, the reasons for the Division's determination.

(d) Whenever the Division has reasonable cause to believe that a respondent has breached a conciliation agreement, the Division shall refer the matter to the Attorney General with a recommendation that a civil action be filed under § 4512 of this title for the enforcement of such agreement.

(e) If a complaint cannot be resolved through conciliation ~~as provided in~~ under subsection (c) of this section, the Commission shall appoint a panel to hold a public hearing within 60 days after the expiration of 120-day period for investigation and conciliation. The deadlines provided ~~in~~ under subsection (c) of this section and this subsection may be extended by the Chairperson or the Panel Chair at the request of any party or an employee of the Commission of Human Relations upon a showing of good cause.

(f)(1) Public hearings ~~shall~~ must be conducted in accordance with rules prescribed by the Commission. Each party may appear in person, be represented by counsel, present evidence, cross-examine ~~witnesses~~ witnesses, and obtain the issuance of subpoenas under § 4510 of this title. The Delaware Rules of Evidence ~~shall~~ apply to the presentation of evidence in a public hearing as they would in an administrative hearing conducted in accordance with subchapter III of the Administrative Procedures Act in Title 29 [subchapter III of Chapter 101 of Title 29]. ~~A record shall be kept~~

(2)a. The Commission shall keep a record of all public hearings, hearings and shall provide a transcript of which shall be provided a hearing, at cost upon request of a party.

b. A party may apply to the Commission to waive the cost of a transcript. The Commission may waive all or part of the cost of the transcript if the party meets the criteria to proceed in forma pauperis in the Superior Court.

(3) Decisions of the panel shall must be made by a majority of the members of the panel.

(g) If the panel determines that a violation of § 4504 of this title has not occurred, it shall issue an order dismissing the complaint. The panel may award reasonable attorneys' fees, ~~costs~~ costs, and expenses to the respondent ~~pursuant to~~ under this subsection if ~~it~~ the panel determines that the complaint was brought for an improper purpose, such as to harass or embarrass the respondent.

(h) If the panel determines that a violation of § 4504 of this title has occurred, it shall issue an order stating its findings of fact and conclusions of law and containing such relief as may be appropriate, including ~~actual~~ any of the following:

(1) Actual damages suffered by the aggrieved ~~person~~ person, including damages caused by humiliation and embarrassment, ~~costs~~ embarrassment.

(2) Costs, expenses, reasonable attorneys' ~~fees and injunctive fees.~~

(3) Injunctive or other equitable relief.

(4) To vindicate the public interest, the panel may assess a civil penalty against the respondent or respondents, to be paid to the Special Administration ~~Fund~~ Fund, as follows:

(1) a. In an amount not exceeding \$5,000 for each discriminatory public accommodations practice if the respondent has not been adjudged to have committed any prior discriminatory public accommodations ~~practice~~ practice.

(2) b. In an amount not exceeding \$15,000 for each discriminatory public accommodations practice if the respondent has been adjudged to have committed 1 other discriminatory public accommodations practice during the 5-year period ending on the date of the ~~complaint~~ and complaint.

(3) c. In an amount not exceeding \$25,000 for each discriminatory public accommodations practice if the respondent has been adjudged to have committed 2 or more discriminatory public accommodations practices during the 7-year period ending on the date of the complaint.

(i) ~~Copies~~ The Commission shall serve copies of orders entered ~~pursuant to~~ under subsections (g) and (h) of this section ~~shall be served~~ personally or by registered or certified mail to each party or their counsel.

Section 6. Amend § 10006A, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 10006A. Open meetings; virtual meetings; reasonable accommodations for members with a disability.

(a) A public body shall allow a member of the public body with a disability to attend a meeting of the public body through the use of an electronic means of communication, instead of being required to attend in-person at a physical location, as a reasonable ~~accommodation~~ modification under § 4504 of Title 6, ~~6~~ or a reasonable accommodation under §

723 of Title 19, unless it imposes an undue burden. A member attending a meeting through the use of an electronic means of communication as a reasonable modification or reasonable accommodation is considered present for all purposes as if the member is physically attending, including for quorum and voting.

TAB 4



SPONSOR: Sen. Walsh & Rep. Osienski
Sens. Ennis, Mantzavinos, Sokola, Townsend; Reps.
Cooke, Griffith, Longhurst, Matthews, Mitchell,
Morrison, K. Williams

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 35
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 AND TITLE 19 OF THE DELAWARE CODE RELATING TO LABOR.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Part D, Subchapter III, Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 841D. Wage theft.

(a) A person is guilty of wage theft when the person violates paragraphs (a)(1), (a)(4), (a)(5), or (a)(6) of § 1102A of Title 19.

(b) For purposes of this section, a series of wage thefts committed by a person or group of persons may be aggregated into 1 count or charge, with the sum of the aggregate loss to employees and this State being the value considered in determining the degree of wage theft.

(c) Wage theft is punishable under subsections (c) and (d) of § 841 of this title, except that if the person has 2 or more convictions for wage theft, wage theft is a class E felony.

Section 2. Amend § 1101, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 1101. Definition of terms.

(a) ~~As used in~~ For purposes of this chapter:

(1) "Check" means a draft drawn on a bank and payable on demand.

(2) "Department" means the Department of ~~Labor or its authorized representatives.~~ Labor.

(3) "Employ" means to suffer or permit to work.

(3) (4) "Employee" means ~~any a person suffered or permitted to work by an employer under a contract of employment either made in Delaware or to be performed wholly or partly therein: in this State.~~ This chapter does not apply to employees any of the following:

a. Employees of the United States government, the government.

b. Employees of the State of Delaware or any political subdivision thereof: of this State.

c. Independent contractors.

(4) (5) "Employer" means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased ~~individual individual~~, or the receiver, ~~trustee trustee~~, or successor of any of the same employing ~~any a person~~. This chapter does not apply to employees of the United States government, the State of Delaware or any political subdivision ~~thereof: of this State.~~

(6) "Independent contractor" means as defined in § 3501 of this title. "Independent contractor" includes any of the following:

a. A person licensed by the Department of Insurance under Title 18.

b. A person registered under Chapter 73 of Title 6 as any of the following:

1. A broker-dealer.

2. An agent.

3. An investment adviser.

4. An investment adviser representative.

c. A person designated as an "independent contractor" by the Department through regulations.

(7) "Secretary" or "Secretary of Labor" means the Secretary of the Department of Labor or the Secretary's authorized designee.

(5) "Wages" means ~~compensation for labor or services rendered by an employee, whether the amount is fixed or determined on a time, task, piece, commission or other basis of calculation.~~

(8) "Wage" means compensation due to an employee by reason of the employee's employment, payable in legal tender of the United States or check or bank draft convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by the regulations of the Department under this title.

(b) For the ~~purpose purposes~~ of this ~~chapter chapter~~, the officers of a corporation and any agents having the management ~~thereof thereof~~, who knowingly ~~permit the permit~~ a corporation to violate this chapter ~~shall be~~ are deemed to be the ~~employers employer~~ of the employees of the corporation.

Section 3. Amend Chapter 11, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1102A. Wage theft.

(a) An employer may not do any of the following:

(1) Employ an individual without reporting the individual's employment to all appropriate government agencies and paying all applicable taxes and fees for the individual.

(2) Fail to properly withhold state and federal taxes from an employee.

(3) Fail to forward money withheld from an employee's wages to the appropriate state or federal agency within 7 days of the applicable pay period.

(4) Pay an employee wages that are less than the minimum wage established under state and federal law for the work performed.

(5) Misclassify a worker as an independent contractor for purposes of avoiding wage, tax, or workers' compensation obligations under this title.

(6) Knowingly conspire to assist, advise, or facilitate a violation of this section.

(b) Following an investigation in which the Department makes an initial determination that an employer has violated 1 or more provisions of subsection (a) of this section, the Department may make a decision to impose a civil penalty.

(c) The Department shall notify the employer, in writing, of a decision to impose a civil penalty under subsection (b) of this section which must comply with § 10122 of Title 29 and include all of the following:

(1) The action to be taken.

(2) The grounds upon which the determination was made to take the action.

(3) Instructions to request a hearing.

(d)(1) A request for a hearing must be made in writing, addressed to the Director of Industrial Affairs or the Secretary, and made within 10 business days from the date of receipt of the notice under subsection (c) of this section.

(2) If a hearing is not requested under paragraph (d)(1) of this section, the determination made by the Department under subsection (b) of this section is final.

(e) The Director of Industrial Affairs shall review a request for a hearing under paragraph (d)(1) of this section and may schedule an informal settlement conference. The Director of Industrial Affairs shall forward the hearing request to the Secretary to schedule a hearing if no settlement is reached at the informal settlement conference or an informal settlement conference is not held.

(f) The Secretary shall issue a final case decision at the conclusion of a hearing held under this section as required under Chapter 101 of Title 29.

(g) An employer may seek judicial review of the Secretary's final case decision by commencing an action in Superior Court, within 30 days of the date of the final decision under subsection (f) of this section.

(h) Any final decision by a court or administrative agency that contains a finding of fact or conclusion of law that a violation of this section occurred, is conclusive on all parties to an action under this section. For purposes of this subsection, a decision is final if it has been fully determined on appeal to the appropriate court, if all time for filing an appeal of the decision has expired, or if the decision is not subject to judicial review.

(i) An employer who violates subsection (a) of this section shall do all of the following within 30 days of a final decision under subsection (h) of this section:

(1) Pay restitution to or on behalf of the employee.

(2) Come into compliance with all applicable labor laws, including laws governing income tax withholding, unemployment insurance, wage laws, and workers' compensation.

(j) The following penalties apply in addition to restitution required under paragraph (i)(1) of this section:

(1)a. An employer who violates subsection (a) of this section is subject to a civil penalty of not less than \$2,000 and not more than \$20,000 for each violation.

b. Each instance of a violation of subsection (a) of this section per employee is a separate violation.

(2) An employer is subject to a civil penalty of not less than \$20,000 and not more than \$50,000 for each violation if the employer discharges or in any manner retaliates or discriminates against an individual because that individual does any of the following under this section:

a. Made a complaint or provided information to the Department.

b. Caused, or is going to cause, an investigation to be instituted.

c. Testified, or is going to testify, in a hearing.

(k) All civil penalties collected under this section are payable to the Department of Labor and must be used for the administration and enforcement of this chapter, which may include expenses incurred by the Department of Justice in connection with activities under this chapter, including prosecutions under § 841D of Title 11.

(l) In addition to pursuing penalties under this section, the Department may provide findings, and supporting evidence, from a completed investigation under this section to the Department of Justice for consideration of prosecution under § 841D of Title 11.

(m) Nothing in this section precludes any of the following:

- (1) A state or federal agency from pursuing a remedy against an employer for a violation of a different law.
- (2) An employee or the Department from pursuing a remedy against an employer under § 1113 of this title.

TAB 5



LAWS OF DELAWARE
VOLUME 83
CHAPTER 444
151st GENERAL ASSEMBLY
FORMERLY
SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 208

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO AN EMPLOYER'S FAILURE TO PAY WAGES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1103, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1103. Employees separated from the payroll before regular ~~paydays~~; payday; damages for failure to pay wages.

(a)(1) Whenever an employee quits, resigns, is discharged, ~~suspended~~ suspended, or laid off, the wages earned by the employee ~~shall~~ become due and payable by the employer on the ~~next regularly scheduled payday(s) either through the~~ later of the following:

a. The next date the wages would be paid through the last day worked under the employer's regular pay cycle as if the employment had not stopped.

b. Three business days after the last day worked.

(2) The employer must make the payment due under paragraph (a)(1) of this section using either of the following methods:

a. The usual pay channels ~~or by mail, if requested by the employee,~~ as if the employment had not been suspended or terminated.

b. If requested by the employee, by mail to the address provided in the employee's request or if no address is provided, the most recent address provided to the employer.

(b)(1) Wages paid under subsection (a) of this section must be paid in compliance with the requirements under §§ 1104 and 1107 of this title.

(2) If an employer, without any reasonable grounds for ~~dispute~~, dispute under § 1104 or § 1107 of this title, fails to pay an employee ~~wages~~, wages as required under this chapter, the employer ~~shall, in addition, be~~ is also liable to the employee for liquidated damages in the amount of ~~10~~ the lower of the following:

a. Ten percent of the unpaid wages for each day, except Sunday and legal holidays, upon which such the failure continues after the day upon which payment is ~~required or in an~~ required.

b. An amount equal to the unpaid wages, whichever is smaller, except that, for the purpose of such liquidated damages, such wages.

(3) For purposes of liquidated damages under paragraph (b)(2) of this section, the failure to pay shall is not be deemed to continue after the date of the filing of a petition of bankruptcy with respect to the employer if the employer is adjudicated ~~bankrupt thereupon~~; bankrupt.

(c) An employer who is unable to prepare the payroll due to a labor dispute, power failure, ~~blizzard~~ blizzard, or like weather catastrophe, epidemic, ~~fire~~ fire, or explosion ~~shall not be deemed to have violated~~ is not in violation of this chapter.



SPONSOR: Rep. Griffith & Rep. Heffernan & Rep. Longhurst &
Rep. Dorsey Walker & Sen. S. McBride & Sen. Gay
Reps. Bentz, Hensley, Kowalko, Lambert, Lynn,
Mitchell, Morrison, Osienski, Baumbach; Sens. Hansen,
Paradee, Pinkney, Townsend

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 311
AS AMENDED BY
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 6 AND TITLE 29 OF THE DELAWARE CODE RELATING TO EQUAL
ACCOMMODATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 4501, Title 6 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows and redesignating accordingly:

§ 4501. Purpose and construction.

This chapter is intended to prevent, in places of public accommodations, practices of discrimination against any
person because of race, age, marital status, creed, religion, color, sex, disability, sexual orientation, gender identity, or
national origin. This chapter shall be liberally construed to the end that the rights herein provided for all people, without
regard to race, age, marital status, creed, religion, color, sex, disability, sexual orientation, gender identity, or national
origin, may be effectively safeguarded. Furthermore, ~~in defining the scope or extent of any duty imposed by this chapter, it~~
is appropriate for the Commission to consult with, consider, and apply higher or more comprehensive obligations
established by otherwise applicable federal, state, or local ~~enactments may be considered. law in defining the scope or~~
extent of any duty imposed by this chapter.

Section 2. Amend § 4502, Title 6 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows and redesignating accordingly:

§ 4502. Definitions.

For purposes of this chapter:

(2) "Auxiliary aid or service" means a device or service that enables effective communication. Appropriate
auxiliary aids and services may include services and devices such as qualified interpreters, assistive listening devices,
notetakers, or written materials for individuals with hearing impairments; and qualified readers, taped texts, or brailled or
large print materials for individuals with vision impairments.

(7) "Disability" means any condition or characteristic that renders a person a person with a disability as defined in this section.

(17) "Person with a disability" means any person who satisfies any 1 of the following:

- a. Has a physical or mental impairment which substantially limits 1 or more major life activities.
- b. Has a record of such impairment.
- c. Is regarded as having such an impairment.

(18) "Place of public accommodation" means any establishment which caters to or offers ~~goods or services or facilities~~ goods, services, facilities, privileges, advantages, or accommodations to, or solicits patronage from, the general public. ~~This definition includes public, including~~ state agencies, local government agencies, and state-funded agencies performing public functions. This definition includes hotels and motels catering to the transient public, but it does not apply to the sale or rental of houses, housing units, apartments, rooming houses, or other dwellings, nor to tourist homes with less than 10 rental units catering to the transient public.

() "Readily achievable" means easily accomplishable without much difficulty or expense. "Readily achievable" means that an action is not an undue burden as defined in this section.

() "Reasonable modification" means a change in policies, practices, or procedures when the modification is necessary to avoid discrimination on the basis of disability, unless the covered entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

(23) "Service animal" means a dog individually trained to do work or perform tasks for the benefit of a person with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

() "Undue burden" means an action requiring significant difficulty or expense, when considered in light of all of the following factors:

- a. The nature and cost of the action needed under this chapter.
- b. The overall financial resources of the place of public accommodation involved in the action; the number of persons employed at the place of public accommodation; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the place of public accommodation.
- c. The geographic separateness, and the administrative or fiscal relationship of the place of public accommodation in question to any parent corporation or ownership entity.

d. If applicable, the overall financial resources of any parent corporation or ownership entity; the overall size of the parent corporation or ownership entity with respect to the number of its employees; the number, type, and location of its facilities.

e. If applicable, the type of operation or operations of any parent corporation or ownership entity, including the composition, structure, and functions of the workforce of the parent corporation or ownership entity.

Section 3. Amend § 4503, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4503. Persons entitled to protection.

All persons within the jurisdiction of this State are entitled to the full and equal accommodations, facilities, advantages and privileges of any place of public accommodation regardless of the race, age, marital status, creed, religion, color, sex, ~~handicap~~, disability, sexual orientation, gender identity, or national origin of such persons.

Section 4. Amend § 4504, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 4504. Unlawful practices.

(a)(1)a. No person being the owner, lessee, proprietor, manager, director, supervisor, superintendent, agent, or employee of any place of public accommodation, may directly or indirectly refuse, withhold from, or deny to any person, on account of race, age, marital status, creed, religion, color, sex, disability, sexual orientation, gender identity, or national origin, any of the accommodations, facilities, advantages, or privileges ~~thereof~~. of the public accommodation.

b. A person who does not allow parking by a holder of a special license plate or permit for persons with disabilities as allowed under § 2134 through § 2135 of Title 21 is engaged in an unlawful practice under this chapter.

(3) A place of public accommodation must permit service animals as follows:

a. An individual with a disability accompanied by a service animal in any place of public accommodation.

b. An individual training a service animal to be used by persons with disabilities accompanied by a service animal in any place of public accommodation.

(4) Except as provided under paragraph (a)(6) of this section, it is a violation of paragraph (a)(1)a. of this section for a person to do any of the following:

a. To impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services,

facilities, privileges, advantages, or accommodations of a place of public accommodation, unless the criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.

b. To fail to make reasonable modifications in policies, practices, or procedures to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the place of public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.

c. To fail to take measures that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the place of public accommodation can demonstrate that taking the steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden.

d.1. To fail to remove architectural barriers and communication barriers that are structural in nature, where such removal is readily achievable, in existing facilities.

2. Where a place of public accommodation can demonstrate that the removal of a barrier under paragraph (a)(4)d.1. of this section is not readily achievable, to fail to make goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

(5) Nothing in paragraph (a)(4) of this section may be construed to require either of the following:

a. An individual with a disability to accept an accommodation, modification, aid, service, opportunity, or benefit that the individual chooses not to accept.

b. A place of public accommodation to provide individuals with disabilities with personal devices, such as wheelchairs, eyeglasses, hearing aids, or readers for personal use or study, or personal services to assist with feeding, toileting, or dressing.

(6) Paragraph (a)(4) of this section does not apply to religious organizations or entities controlled by religious organizations, including places of worship.

(c) It shall be unlawful to assist, induce, incite, or coerce another person to commit any discriminatory public accommodations practice prohibited by under subsection (a) or (b) of this section.

(e) Nothing in this section shall may be interpreted as an abrogation of any requirements otherwise imposed by applicable federal or state laws or regulations. If federal or state law provide additional rights to members of a protected

class or requirements for a place of public accommodation, this section must be interpreted as providing that right or requirement.

(f) A person, being the owner, lessee, proprietor, manager, director, supervisor, superintendent, agent, or employee of any place of public accommodation, may not engage in an act or practice that is unlawful under subsections (a) through (d) of this section or otherwise retaliate against an individual because the individual has done 1 of the following:

(1) Opposed an act or practice that is unlawful under subsections (a) through (d) of this section.

(2) Made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing to enforce subsections (a) through (d) of this section.

(g) A place of public accommodation may not deny a request by an individual with a disability for a reasonable modification or for auxiliary aids or services solely because the individual did not use the exact terms under this chapter when making the request, such as by requesting a "reasonable accommodation" or for the auxiliary aid or service.

Section 5. Amend § 4508, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 4508. Procedure on complaint.

(a) ~~A person believing himself or herself~~ An individual who believes they have been aggrieved by a discriminatory public accommodation practice ~~proscribed by~~ prohibited under § 4504 of this title ~~may, by himself or herself or by his or her attorney at law, file with the Division a complaint in writing stating:~~ may file a written complaint with the Division. A complaint under this chapter may be filed by the individual or by the individual's attorney and must include all of the following:

(1) ~~His or her~~ The individual's name and ~~address;~~ address.

(2) The name and location of the place of public accommodation at which the discriminatory public accommodation practice occurred, and the date, ~~time~~ time, and an explanation ~~thereof;~~ of the discriminatory practice.

(3) If known, the name and address of each respondent and, if different, the name of the owner, lessee, proprietor, ~~manager~~ manager, or superintendent of the place of public ~~accommodation;~~ and accommodation.

(4) ~~Such~~ All other information as the Division requires.

(b) ~~No~~ A complaint ~~shall~~ must be filed with the Division ~~no~~ no more than ~~90~~ 180 days after the occurrence of the alleged discriminatory public accommodation practice.

(c)(1) Within 120 days after the complaint is filed, the Division shall investigate the complaint and endeavor to eliminate any unlawful discriminatory practice discovered ~~through~~ during the investigation, using conciliation.

a. When investigating a complaint, the Division shall apply the requirements of this chapter in a manner consistent with equivalent requirements under federal laws.

b. Insofar as possible, conciliation meetings shall be held in the county where the alleged discriminatory public accommodations practice occurred.

(2) If the matter is resolved through conciliation, the parties shall enter a conciliation agreement stating the terms of the resolution of the matter.

(3) If the Division determines that the allegations in the complaint do not state a claim for which relief is available under this chapter or that the claim is not within the scope of the Division's jurisdiction, it may petition the Commission, with notice to the complainant, to dismiss the complaint. A notice under this paragraph (c)(3) must include, with specificity, the reasons for the Division's determination.

(d) Whenever the Division has reasonable cause to believe that a respondent has breached a conciliation agreement, the Division shall refer the matter to the Attorney General with a recommendation that a civil action be filed under § 4512 of this title for the enforcement of such agreement.

(e) If a complaint cannot be resolved through conciliation ~~as provided in~~ under subsection (c) of this section, the Commission shall appoint a panel to hold a public hearing within 60 days after the expiration of 120-day period for investigation and conciliation. The deadlines provided ~~in~~ under subsection (c) of this section and this subsection may be extended by the Chairperson or the Panel Chair at the request of any party or an employee of the Commission of Human Relations upon a showing of good cause.

(f)(1) Public hearings ~~shall~~ must be conducted in accordance with rules prescribed by the Commission. Each party may appear in person, be represented by counsel, present evidence, cross-examine ~~witnesses~~ witnesses, and obtain the issuance of subpoenas under § 4510 of this title. The Delaware Rules of Evidence ~~shall~~ apply to the presentation of evidence in a public hearing as they would in an administrative hearing conducted in accordance with subchapter III of the Administrative Procedures Act in Title 29 [subchapter III of Chapter 101 of Title 29]. ~~A record shall be kept~~

(2)a. The Commission shall keep a record of all public hearings, hearings and shall provide a transcript of which shall be provided a hearing, at cost upon request of a party.

b. A party may apply to the Commission to waive the cost of a transcript. The Commission may waive all or part of the cost of the transcript if the party meets the criteria to proceed in forma pauperis in the Superior Court.

(3) Decisions of the panel shall must be made by a majority of the members of the panel.

(g) If the panel determines that a violation of § 4504 of this title has not occurred, it shall issue an order dismissing the complaint. The panel may award reasonable attorneys' fees, ~~costs~~ costs, and expenses to the respondent ~~pursuant to~~ under this subsection if ~~it~~ the panel determines that the complaint was brought for an improper purpose, such as to harass or embarrass the respondent.

(h) If the panel determines that a violation of § 4504 of this title has occurred, it shall issue an order stating its findings of fact and conclusions of law and containing such relief as may be appropriate, including ~~actual~~ any of the following:

(1) Actual damages suffered by the aggrieved ~~person "including person, including~~ damages caused by humiliation and ~~embarrassment," costs~~ embarrassment.

(2) Costs, expenses, reasonable attorneys' ~~fees and injunctive fees~~.

(3) Injunctive or other equitable relief.

(4) To vindicate the public interest, the panel may assess a civil penalty against the respondent or respondents, to be paid to the Special Administration ~~Fund~~: Fund, as follows:

(1) a. In an amount not exceeding \$5,000 for each discriminatory public accommodations practice if the respondent has not been adjudged to have committed any prior discriminatory public accommodations ~~practice~~; practice.

(2) b. In an amount not exceeding \$15,000 for each discriminatory public accommodations practice if the respondent has been adjudged to have committed 1 other discriminatory public accommodations practice during the 5-year period ending on the date of the ~~complaint; and~~ complaint.

(3) c. In an amount not exceeding \$25,000 for each discriminatory public accommodations practice if the respondent has been adjudged to have committed 2 or more discriminatory public accommodations practices during the 7-year period ending on the date of the complaint.

(i) ~~Copies~~ The Commission shall serve copies of orders entered ~~pursuant to~~ under subsections (g) and (h) of this section ~~shall be served~~ personally or by registered or certified mail to each party or their counsel.

Section 6. Amend § 10006A, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 10006A. Open meetings; virtual meetings; reasonable accommodations for members with a disability.

(a) A public body shall allow a member of the public body with a disability to attend a meeting of the public body through the use of an electronic means of communication, instead of being required to attend in-person at a physical location, as a reasonable ~~accommodation~~ modification under § 4504 of Title 6, ~~6~~ or a reasonable accommodation under §

723 of Title 19, unless it imposes an undue burden. A member attending a meeting through the use of an electronic means of communication as a reasonable modification or reasonable accommodation is considered present for all purposes as if the member is physically attending, including for quorum and voting.

TAB 6



SPONSOR: Sen. Mantzavinos & Sen. Brown & Rep. Griffith
Sens. Bonini, Gay, Hansen, Lockman, S. McBride,
Pinkney, Sokola, Sturgeon, Townsend; Reps. Baumbach,
Heffernan, Longhurst, K. Williams

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 211
AS AMENDED BY
SENATE AMENDMENT NO. 1
AND
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO EMPLOYMENT PRACTICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 7, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 711. Unlawful employment practices, employer practices.

(a) Definitions. — As used in this section:

(1) “Certifying body or organization” means an independent body or entity duly accredited to issue a formal certification that an applicant meets specific local, state, or national standards or requirements.

(2) “Licensing body or organization” means an agency, board, association, or other entity that authorizes individuals to practice a profession in the state and issues a license, certificate, permit, or other authorization to the individual which is required to legally conduct business in the state.

(3) “Regulatory body or organization” means a government agency or entity established by legislation to enforce that legislation and to set and enforce standards implementing the legislation.

(m) It shall be an unlawful employment practice for an employer to request or require a prospective employee’s age, date of birth, dates of attendance at or date of graduation from an educational institution on an initial employment application, provided that the provisions of this subsection shall not apply to any employer requesting or requiring such information (1) based on a bona fide occupational qualification or need, or (2) when such information is required to comply with any provision of state or federal law, or the requirements of any regulatory, licensing, or certifying body or organization.

For age to constitute “a bona fide occupational qualification or need” under this section, an employer must establish that age is an essential component of one’s ability to successfully perform a particular job and is necessary to the normal operation of the business.

(~~h~~) (n) Notwithstanding any other provision of this subchapter:

(1) It shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program on the basis of religion, genetic information, age, sex (including pregnancy), sexual orientation, gender identity, or national origin in those certain instances where religion, genetic information, age, sex (including pregnancy), sexual orientation, gender identity, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and

(2) It shall not be an unlawful employment practice for a school, college, university or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association or society or if the curriculum of such school, college, university or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(~~m~~) (o) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, marital status, genetic information, color, religion, age, sex (including pregnancy), sexual orientation, gender identity, or national origin.

(~~n~~) (p) Nothing contained in this subchapter as it applies to discrimination because of age or sex shall be interpreted to affect or interfere with the retirement policy or system of any employer or the underwriting or administration of a bona fide employee welfare or benefit plan, provided that such policy, system or plan is not merely a subterfuge to evade the purpose of this subchapter.

~~(e)~~ (q) (1) Nothing in this subchapter shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age, and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan, or any combination of such plans, of the employer of such an employee, which equals, in the aggregate, at least \$44,000.

(2) In applying the retirement benefit test of paragraph (o)(1) of this section, if any such retirement benefit is in a form other than a straight life annuity (with no ancillary benefits), or if employees contribute to any such plan or make rollover contributions, such benefit shall be adjusted in accordance with regulations prescribed by the Secretary, United States Department of Labor, pursuant to 29 U.S.C. § 631(c)(2), so that the benefit is the equivalent of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions are made.

~~(p)~~ (r) Nothing in this subchapter shall be interpreted to require employers to offer health, welfare, pension or other benefits to persons associated with employees on the basis as such benefits are afforded to the spouses of married employees.

~~(q)~~ (s) Nothing in this subchapter shall affect the ability of an employer to require employees to adhere to reasonable workplace appearance, grooming and dress standards not precluded by other provisions of state or federal law, except that an employer shall allow an employee to appear, groom and dress consistent with the employee's gender identity.

TAB 7



SPONSOR: Rep. Lynn & Rep. Longhurst & Rep. Dorsey Walker &
Rep. Dukes & Rep. Minor-Brown & Sen. Poore &
Sen. Pettyjohn
Reps. Bennett, Griffith, Heffernan, S. Moore; Sens.
Bonini, Brown, Ennis, Gay, Hansen, Hocker, Lawson,
Lockman, Lopez, Mantzavinos, S. McBride, Paradee,
Pinkney, Richardson, Sokola, Sturgeon, Townsend,
Walsh, Wilson

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 277
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO LIABILITY FOR SEXUAL ABUSE OF
A CHILD BY AN ADULT EMPLOYEE OF A SCHOOL, ORGANIZATION, OR BUSINESS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subchapter I, Chapter 40, Title 10 of the Delaware Code by making deletions as shown by
strike through and insertions as shown by underline as follows:

§ 4006. Exclusion on civil liability limits for claims against public schools involving sexual abuse of a child.

(a) The privileges and immunities from liability under §§ 4001 and 4003 of this title do not apply to a public
school, or an officer or employee of the public school, in a civil lawsuit for damages based on sexual abuse of a child by an
adult employee or agent of the public school.

(b) A civil cause of action for sexual abuse of a child under this section must be based on sexual acts that would
constitute a criminal offense under the Delaware Code.

Section 2. This Act takes effect 90 days after its enactment into law.

TAB 8



SPONSOR: Rep. Lambert & Rep. Baumbach & Rep. Bennett &
Rep. Bentz & Rep. Bolden & Rep. Heffernan &
Rep. Longhurst & Rep. Minor-Brown &
Rep. K. Williams & Sen. Poore & Sen. S. McBride &
Sen. Pinkney
Reps. Brady, Briggs King, Carson, Chukwuocha,
Dorsey Walker, Gray, Griffith, Hensley, Kowalko,
Matthews, S. Moore, Morrison, Osienski, Ramone,
Schwartzkopf, Shupe, Wilson-Anton; Sens. Bonini,
Ennis, Gay, Hansen, Hocker, Lawson, Lockman, Lopez,
Mantzavinos, Pettyjohn, Richardson, Sokola, Sturgeon,
Townsend, Walsh

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 205
AS AMENDED BY
HOUSE AMENDMENT NO. 3

AN ACT TO AMEND TITLES 19 AND 29 OF THE DELAWARE CODE RELATING TO ESTABLISHMENT AND
MANAGEMENT OF THE EXPANDING ACCESS FOR RETIREMENT AND NECESSARY SAVING PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

WHEREAS, workplace retirement saving plans provide millions of U.S. workers with an effective and convenient way to save for retirement, yet one third of U.S. workers lack access to such plans; and

WHEREAS, according to research from the National Institute on Retirement Security, 75% of U.S. residents agree that the country is facing a retirement crisis; and

WHEREAS, an increasing number of states are offering or planning to offer workers whose employers do not sponsor a retirement plan an option to be automatically enrolled in private-sector payroll deduction IRAs, and many other states are considering such programs; and

WHEREAS, according to the National Compensation and Benefits Survey, which surveyed Delaware workplaces and their employees, 54% of employers within the State do not offer retirement plans; and

WHEREAS, according to research from the Georgetown University Center for Retirement Initiatives, approximately 38% of the State's workforce – more than 145,000 workers, many of whom are lower- to moderate-income women and minority workers – do not have access to employer-sponsored retirement plans; and

WHEREAS, despite the economic downturn caused by the COVID-19 pandemic, state-sponsored retirement plans that support small business employees have remained resilient with employee contributions holding steady, withdrawals under control, and employer registrations increasing; and

WHEREAS, in the three states with the longest-running state-sponsored retirement programs, employee contributions held steady or increased during the COVID-19 pandemic; and

WHEREAS, according to a March 2020 survey by MoneyRates, 36% of employees who are within 20 years of retirement expect the COVID-19 pandemic to delay their retirement; and

WHEREAS, according to an April 2021 Congressional Research Service report, the number of citizens over the age of 65 living in poverty in the State is projected to increase substantially over the next 20 years, with a commensurate increase in demand for public assistance benefits; and

WHEREAS, through the Delaware EARNs Program, the State will facilitate increased retirement saving among the State's working population and reduce the need for additional taxes or fees to fund public assistance programs; and

WHEREAS, the Delaware EARNs Program will provide a convenient, low-cost, portable, and tax-favored means of saving for workers whose employers do not offer a private-sector 401(k) or other employer-sponsored retirement plan.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 19 of the Delaware Code by inserting a new "Part V" as Chapter 37 by making insertions as shown by underline as follows:

Chapter 37. Delaware Expanding Access for Retirement and Necessary Saving Program.

§ 3701. Establishment; purposes.

There is hereby established the Expanding Access for Retirement and Necessary Saving ("EARNs") Program to serve as a vehicle through which covered employees may, on a voluntary basis, provide for additional retirement security through a State-facilitated retirement saving program in a convenient, cost effective, and portable manner. The Program is designed as a public-private partnership that will encourage, not replace or compete with, employer-sponsored retirement plans.

§ 3702. Definitions.

For purposes of this chapter:

(1) "Board" means the Delaware EARNs Program Board established under § 3703 of this title.

(2) "Covered employee" means an individual who is employed by a covered employer, and who has wages or other compensation allocable to the State. The Board may limit through regulation eligibility for specific categories of employees in order to avoid creating accounts that could increase administrative or management fees associated with available investment options. Covered employee does not include:

a. Any individual who is an employee of the federal government, the State or any other state, any county or municipal corporation, or any of the State's or any other state's agencies or instrumentalities.

b. Any employee covered under the federal Railway Labor Act.

c. Any employee on whose behalf an employer makes contributions to a Taft-Hartley multiemployer pension

plan.

d. Any employee who is ineligible for covered employee status under regulations promulgated by the Board.

e. Any employee under the age of 18.

(3) "Covered employer" means any person, partnership, limited liability company, corporation, or other entity engaged in a business, industry, profession, trade, or other enterprise in the State, including a nonprofit entity, that employs, and during the previous calendar year employed, at least 5 covered employees, and that has been in business in this State for at least 6 months in the immediately preceding calendar year. Covered employer does not include:

a. The federal government, the State, any other state, any county, any municipal corporation, or any of the State's or another state's agencies or instrumentalities.

b. Any employer that maintains a specified tax-favored retirement plan.

(4) "ERISA" means the federal Employee Retirement Income Security Act of 1974, as amended.

(5) "Internal Revenue Code" means the federal Internal Revenue Code of 1986, as amended, or any successor law, in effect for the calendar year.

(6) "IRA" means a traditional or Roth individual retirement account or individual retirement annuity described in §408(a), 408(b), or 408A of the Internal Revenue Code.

(7) "Participant" means any individual who is contributing to, or has a balance credited to, an IRA under the Program.

(8) "Participating employer" means a covered employer that makes the Program available to its employees through payroll deduction IRA arrangements under this chapter.

(9) "Payroll deduction IRA arrangement" means an arrangement by which a participating employer makes payroll deductions authorized by this chapter and remits the amounts deducted as contributions to IRAs on behalf of participants.

(10) "Plans Management Board" means the Board established by § 2722 of Title 29 to manage specified plans and programs created under the laws of this State.

(11) "Program" means the EARNs Program established by this chapter. Except as otherwise specified, references to the Program throughout this chapter also means the trust, including trust assets, facilities, costs and expenses, receipts, expenditures, activities, operations, administration, and management.

(12) "Program expenses" means all fees, costs, and expenses of the State related to the Program, including administrative expenses, investment expenses, consulting fees, accounting costs, auditing costs, legal fees and costs, marketing expenses, education expenses, and other miscellaneous costs incurred in the implementation and continuation of the Program.

(13) "Roth IRA" means an IRA described in §408A of the Internal Revenue Code.

(14) "Specified tax-favored retirement plan" means a retirement plan that is an automatic enrollment payroll deduction IRA applicable to all covered employees and meeting all other qualifications that may be established by the

Board, or a retirement plan qualified under, or described in, and in compliance with §§ 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code.

(15) "Traditional IRA" means an IRA described in §408(a) or (b) of the Internal Revenue Code.

(16) "Trust" means the trust in which assets of the Program are to be held, including contributions and investment earnings.

(17) "Wages" means any commission, compensation, salary or other remuneration, as defined by §219(f)(1) of the Internal Revenue Code received by a participant from a participating employer.

§ 3703. The Delaware EARNs Program Board; establishment; purpose.

(a) The Delaware EARNs Program Board is hereby established. The Board shall oversee the design, implementation and initial administration of the Program in accordance with this chapter.

(b) The Board shall consist of 7 members comprised of the following:

(1) 4 members shall serve by virtue of their office, each of whom may designate a person to serve in their stead and at their pleasure:

a. The State Treasurer.

b. The Secretary of Finance.

c. The Insurance Commissioner.

d. The Secretary of Labor.

(2) 1 member who is the chairperson of the Plans Management Board, who may designate a member of the Plans Management Board or one of its committees to serve in the chairperson's stead and at the pleasure of the chairperson.

(3) 2 public members appointed by the Governor who, by reason of education or experience, are qualified to serve. One public member must be an owner of a small business in the State. The other public member must have experience in providing financial advice or assistance to lower- to moderate-income workers or retirees. Public members' initial term shall be for 2 years, subject to earlier termination upon dissolution of the Board as provided in this chapter.

(c) Board voting, governance and meetings.

(1) Each Board member shall have 1 vote. The powers of the Board shall be exercised by a majority of all members present at a meeting of the Board, whether in person or remotely. Four members shall constitute the necessary quorum to convene a meeting of the Board and to act on any measure before it.

(2) The Governor shall appoint a Board chairperson from between the public members. The chairperson as such shall serve at the pleasure of the Governor.

(3) The Board shall meet at a minimum of 4 times annually. The Board Chairperson and the State Treasurer are authorized to call and set the agenda for special meetings of the Board.

(4) The Board and its committees may conduct meetings remotely by teleconference or videoconference, including in order to obtain a quorum and to take votes on any measure.

(5) Meetings and documents relating to investment strategy or negotiations concerning investment of Program money shall be exempt from Chapter 100 of Title 29.

(d) Standard of care.

(1) The Board, its committees, and each of their members shall discharge their duties with respect to the Program solely in the interest of the participants and beneficiaries of the Program and for the exclusive purpose of providing Program benefits to participants and their beneficiaries, including defraying reasonable expenses in administering the Program and in accordance with the trust and other program documents and applicable law.

(2) When investing, managing, or using trust assets, the Board, its committees, and each of the members shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the Program.

(e) Powers and duties.

(1) The Board shall establish, design, develop, implement, maintain, and oversee the Program in accordance with best practices for retirement saving vehicles.

(2) The Board shall, through employer and employee outreach, marketing or education initiatives, or publication of online resources, encourage participation, retirement saving and sound investment practices. The Board shall provide or make available information regarding the Program, including its applicability and registration requirements, with special emphasis on participation eligibility and the ability of employers at any time to sponsor a specified tax-favored retirement plan that would exempt them from covered employer status.

(3) The Board shall adopt rules or regulations to govern the Program, including rules or regulations governing the following:

a. Employee eligibility and covered employer status.

b. Enrollment and re-enrollment processes.

c. The methods by which covered employees or participants may make and change elections.

d. The means by which covered employees or participants may opt out of participation.

e. Contribution limits, the initial automatic default contribution rate, the automatic annual default escalation rate and the maximum default contribution rate.

The Board may adopt rules or regulations allowing employers that are exempt under this chapter to voluntarily participate in the Program and extending eligibility to participate in the Program to individuals who are not employees, including unemployed individuals, self-employed individuals and other independent contractors.

(4) The Board is authorized to charge and collect reasonable administrative fees from participants and use such fees, as well as appropriations and other funds dedicated to supporting the Program, to defray reasonable program expenses.

(5) The Board may establish committees. Committee membership may include persons who are not members of the full board.

(6) Subject to applicable procurement requirements, the Board may enter into contracts, agreements, or arrangements for goods and services necessary or desirable for carrying out the purposes of this chapter, including recordkeeping, administrative, consulting, accounting, legal, asset management, and investment advisory services to assist in establishing, maintaining, administering, operating, and implementing the Program. The Board may discuss the opportunity for qualified minority-, woman-, veteran-, and disabled-owned financial firms, or firms with a record of equity, diversity and inclusion within the firm, as a provider of investment advisory services.

(7) The Board may effect this chapter's purpose by creating or entering into, on behalf of the Program, a consortium, alliance, joint venture, partnership, compact, or contract with another state or states or their programs or boards, which may modify the Board's duties under this chapter.

(8) The Board shall establish the trust. The trust shall include a participant fund that shall hold all participant IRA asserts and earnings and an administrative fund that shall hold all fees collected from participants, all administrative penalties recovered under this chapter, and other amounts received from other funding sources, other than appropriations and earnings thereon. Participant contributions shall be allocated to the participant fund and combined solely for investment purposes. Each participant shall own the contributions to and earnings on the participant's account. Program expenses shall be paid from the administrative fund or appropriations. Trust assets shall not be transferred or used by the Board for any purpose not expressly authorized by this chapter and shall not be commingled with State or non-program funds.

(9) The Board shall adopt an investment policy statement and select investment options, including default investment options, consistent with the objectives of the Program. The menu of investment options may encompass a range of risk and return opportunities and shall be determined taking into account the following:

- a. The nature and objectives of the Program.
- b. The diverse needs of participants.
- c. The desirability of limiting investment choices under the Program to a reasonable number.
- d. The extensive investment choices available to participants if program accounts roll over to an IRA outside of the Program.

(10) The Board shall ensure that the Program is designed and operated in a manner that will not cause it to be subject to or preempted by ERISA.

(11) The Board shall ensure that the Program is designed and operated to:

- a. Minimize costs to participants, employers and the Program.
- b. Minimize the risk that covered employees will exceed applicable annual contribution limits.
- c. Minimize any need for employers that are not covered employers to register with the Program.
- d. Facilitate and encourage employer and employee participation in the Program and participant saving.
- e. Provide resources to any employer that, as an alternative to the Program, may be interested in adopting a privately offered tax-favored retirement plan for its employees.
- f. Maximize simplicity, including ease of administration for participating employers and ease of use for participants.
- g. Maximize portability of participant accounts.
- h. Maximize financial security in retirement.

(12) The Board may arrange for collective, common, and pooled investment of assets of the Program, including investments in conjunction with other funds with which Program assets are permitted to be collectively invested, with a view to saving costs through efficiencies and economies of scale.

(13) The Board shall arrange for and facilitate compliance with all requirements applicable to the Program under the Internal Revenue Code, including requirements for favorable tax treatment of IRAs, and any other applicable law or regulation.

(14) The Board may accept on behalf of the Program any grants, gifts, appropriation, and other money from any person, governmental, or other entity to defray the costs of administering and operating the Program.

(15) The Board may implement the Program in stages, which may include phasing in the Program based on the size of employers, or other factors. To the extent practicable, the Board shall implement the Program so that covered employees can begin to participate and make contributions by January 1, 2025.

(16) The Board shall approve the annual administrative budget for the Program and oversee the collection and disbursement of money in the administrative fund.

(17) The Board, in the exercise of its sole discretion, and without liability, may remove program funds from any financial institution or investment vehicle at any time, provided that such funds shall at all times remain in the trust and be transferred promptly to an alternative financial institution or investment vehicle under the Program.

(18) The Board shall arrange for an annual financial audit of the Program by an outside auditor which shall be provided to the General Assembly. Notwithstanding § 2906(c) of Title 29, the Board shall have exclusive authority to select and contract with a certified public accounting firm to conduct the audits. Payment for any audit must be approved by the Board.

(19) The Board may enter into intergovernmental agreements or memoranda of understanding with the State and any agency or instrumentality of the State in order to further the successful implementation and operation of the Program through the provision, receipt, or other sharing of data, technical assistance, enforcement, compliance, collection, and other services or assistance to the Program, and all such agencies and instrumentalities shall cooperate with the Board in achieving those ends.

(20) The Board may establish a needs-based small business support grant program for covered employers who require payroll software or similar products or support to implement the Program. The grant program may be funded by appropriations or administrative fees. The grant program shall be subject to the annual administrative budget process. The Board shall prescribe rules and promulgate regulations governing eligibility for grant recipients, the grant application process, and terms and conditions for any award. The Board shall be responsible for providing oversight for the grant program. The Office of the State Treasurer shall administer the grant program and shall report to the Board regarding grant program operations when requested to do so by the Board.

(f) Compensation; exculpation; indemnification.

(1) Members may not receive compensation for serving on the board or its committees. Except for ex officio members, all members are entitled to reimbursement by the State for travel and other expenses incurred in attending meetings of the Board or a committee. A State employee appointed to the Board is permitted to count the time spent attending or traveling to and from Board meetings or Board committees, as part of the employee's regular work day and shall not be required to use leave time.

(2) Each Board and committee member is entitled to immunity under the provisions of Chapter 40 of Title 10 for civil liability resulting from acts or omissions arising out of and in connection with discretionary actions undertaken as a function of a member's responsibilities under this chapter if that member acted in good faith and in a manner the member reasonably believed to be in the best interest of the State, and without gross or wanton negligence.

a. A Board or a committee member is not personally liable for any act or omission made during the member's tenure, or for any loss incurred by any person as a result of participation in the Program.

b. The State shall indemnify each Board or committee member who is a party to or is threatened to be made a party to any potential, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, arising by reason of such member's participation on the Board or a committee, for any expenses, judgments, fines, costs, and amounts paid in settlement if actually and reasonably incurred in defending against the action, suit or proceeding. Indemnification is conditioned on the member having acted in good faith and in a manner the member reasonably believed to be in the best interest of the State. With respect to indemnification for a criminal matter, the member must also have had no reasonable cause to believe the member's conduct was unlawful.

c. In the event that the Attorney General is precluded from providing legal representation to a member under § 2504(3) of Title 29, the State shall indemnify a member for reasonable and actual attorney fees and disbursements a member incurs in defending against the action, suit or proceeding.

d. Any expenses incurred by a Board or committee member in defending a civil, administrative, or investigative action, suit, or proceeding arising as a result of the member's activities as a member of the Board may be paid by the State in advance of the final disposition of the action, suit, or proceeding on authorization by a majority of the members of the Board and by the Governor.

(g) The Board and its committees shall receive administrative support from the Office of the State Treasurer. The Office of the State Treasurer is authorized to and shall initiate and manage all procurement and regulatory processes related to the Program and carry out such other program-related functions as may be delegated by the Board.

(h) Unless terminated earlier as provided in this subsection, the Board shall disband and cease to exist, effective as of December 31, 2025, at which point all duties and functions of the Board under this chapter shall be transferred to and assumed by the Plans Management Board. At any time after full implementation of the Program, the Board, by majority vote, may disband and transfer no less than all of its duties and authority under this chapter to the Plans Management Board provided that the Plans Management Board, by majority vote, agrees to assume all such duties and authority prior to December 31, 2025.

§ 3704. The Program.

The Program shall have such features as the Board in its discretion may adopt, subject to applicable federal law, and the following mandatory provisions:

(1) Each participant may have only 1 account with the Program, and all participating employers shall promptly remit the participant's contributions under the Program to that account.

(2) Employers and non-participants may not contribute funds to Program accounts.

(3) Employers shall not be fiduciaries with respect to, or be liable for, program design, program-related information, educational materials, or forms or disclosures approved by the Board, or the selection or performance of vendors selected by the Board. No employer, the State or any agency or instrumentality of the State, the Program, its administrator or personnel, shall be responsible for, or obligated to monitor a covered employee's or participant's decision to participate in or opt out of the Program, or for contribution decisions, investment decisions, or failure to comply with the statutory eligibility conditions or limits on IRA contributions. No employer shall guarantee any investment, rate of return, or interest on assets in any participant account or the administrative fund or be liable for any market losses, failure to realize gains, or any other adverse consequences, including the loss of favorable tax treatment or public assistance benefits, incurred by any person as a result of participating in the Program. Nothing in this

subsection shall relieve an employer from liability for criminal, fraudulent, tortious or otherwise actionable conduct, including liability related to the failure to remit employee contributions.

(4) When and as required by the Board, covered employers shall:

a. Register with the Program and provide the Program administrator relevant information about the employer's employees.

b. Offer or assist the Program in offering all covered employees the choice to either participate in the Program by voluntarily contributing to an IRA under the Program or opt out of the Program.

c. Provide or assist the Program administrator in providing program-related information, educational materials, and disclosures to covered employees and participants.

d. Timely remit participant contributions.

e. Perform any other duties or functions the Board may require to facilitate enrollment and administration of the Program.

(5) Covered employees who do not opt out shall be automatically enrolled in the Program at the default rate specified by the Board or at the rate or amount expressly specified by an employee in connection with the payroll deduction IRA arrangements. Participants shall have the right to modify their contribution rates or amounts, or terminate their participation in the Program at any time, subject to such rules as may be adopted by the Board.

(6) The initial automatic default contribution rate shall be established by the Board in its discretion.

a. The automatic default contribution rate may be changed by the Board from time to time. It shall not be less than 3% or more than 6% of compensation.

b. The Board may determine in its discretion to increase the automatic default contribution rate for all participants based on their years of participation, provided that such increases shall be either 1% or 2% of compensation and shall not occur more frequently than annually.

c. The maximum default contribution rate established by the Board shall not exceed 15%.

d. The initial or subsequent default contribution rates shall apply to all participants who do not affirmatively select a different initial or subsequent contribution rate, or who do not affirmatively opt out of automatic contribution rate increases.

e. All contribution rates are subject to the dollar limits on contributions provided by law.

(7) Except as otherwise provided in this chapter, all IRAs established under the Program shall be Roth IRAs. The Board may authorize participants to utilize traditional IRAs in connection with the Program and allocate contributions between Roth and traditional IRAs, subject in all cases to the IRA contribution and income eligibility limits applicable under the Internal Revenue Code. If the Board authorizes participants to maintain both Roth and

traditional IRAs, each shall be deemed to be a sub-account of the participant's single account under the Program consistent with § 3704(1) of this title.

(8) Contributions shall be invested in the default investment option unless the participant affirmatively elects to invest some or all balances in one or more approved investment options offered by the Program. A participant shall have the opportunity to change investments for future contributions or existing balances or both, subject to rules adopted by the Board.

(9) A participant's total annual contributions under the Program shall be subject to the limits established under federal law.

(10) A participant's contributions and earnings thereon shall be held in the trust and combined for investment purposes only. Separate records and accounting shall be required for each account. Reports on the status of each participant's account must be provided to each participant at least annually. Participants must have online access to their accounts.

(11) A participant's account shall be portable with respect to any covered or participating employer. A former participant who is either unemployed, or who is employed by a non-covered employer, shall be permitted to contribute to accounts outside of the Program. A participant shall be entitled to maintain an account within the Program regardless of place of employment or to roll over or transfer balances into other IRAs or other retirement plans or accounts that accept such rollovers or transfers.

(12) A participant's and former participant's ability to withdraw or roll over or transfer account balances is subject to all fees, penalties, and taxes under applicable law.

(13) A participant's and former participant's ability to receive distributions of contributions and earnings is subject to applicable law.

(14) Information relating to accounts under the Program, including personally identifiable information, is confidential and shall be maintained as confidential except to the extent disclosure is necessary to administer the Program, authorized by the participant in writing, or permissible or required under other applicable law, regulation, or order.

§ 3705. Compliance.

(a) The Board shall have exclusive authority to ensure compliance with and enforce this chapter or any regulation promulgated under this chapter.

(b) The Board shall establish a process for the submission of employee complaints concerning a covered employer's alleged failure to comply with this chapter. All complaints concerning a covered employer's compliance with this chapter received by any other State agency shall be referred to the Board. The Board may, with or without a complaint,

monitor the status of covered employers' compliance with this chapter, including through review of available data and documents.

(c) If the Board determines that a covered employer is not in compliance with this chapter or regulations issued hereunder, the Board shall issue a notice to the employer outlining the nature and extent of the alleged noncompliance, providing instructions for compliance, and specifying the potential administrative penalties for noncompliance.

(d) If the employer does not come into compliance within 90 days of the date the notice was issued, the Board, in its discretion, may initiate enforcement proceedings under Subchapter III, Chapter 101 of Title 29. The Board shall not initiate enforcement proceedings against a covered employer until one year after the date on which the employer is required to comply with this chapter for the first time.

(e) The Board may, in a final order, impose administrative penalties against a covered employer who fails to comply with this chapter or any regulation promulgated under this chapter, which penalties shall not exceed \$250 per employee per year, up to a maximum total penalty of \$5,000 per year.

Section 2. Amend § 2722 of Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2722. Plans Management Board.

(a) Establishment; purposes. — ~~There is hereby established the Plans Management Board (the "Board").~~ The Plans Management Board is established. The Board's purpose ~~shall be~~ is to administer the Delaware College Investment Plan established pursuant to subchapter XII, Chapter 34 of Title 14, the Delaware Achieving a Better Life Experience Program established pursuant to Chapter 96A of Title 16, ~~and the Deferred Compensation Program established pursuant to Chapter 60A of this title~~ and the Expanding Access for Retirement and Necessary Saving Program (EARNs) established pursuant to Chapter 37 of Title 19 (collectively, "the Plans"), in each case, in accordance with the individual purposes of each of the Plans.

(d) Standard of care. — (1) With respect to the Deferred Compensation Program, ~~and the EARNs Program.~~ (Program)-(Programs) the Board, its subcommittees, and each of their members shall discharge their duties with respect to the ~~Program-Programs~~ solely in the interest of the participants and beneficiaries of the ~~Program-Programs~~ and for the exclusive purpose of providing ~~Program-Programs~~ benefits to the participants and their beneficiaries, including defraying reasonable expenses of administering the ~~Program-Programs~~, with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the ~~Program-Programs~~.

(e) Powers and Duties of Board. —

(9) Assume the powers and duties of the Delaware EARNs Program Board established under Chapter 37 of Title 19.

Section 3, Section 1 of this Act takes effect following the date of publication in the Register of Regulations of a notice submitted by the State Treasurer that funding necessary to implement the Program, as reflected in the fiscal note, has been received from the General Assembly or other sources.

Section 4. Sections 2 of this Act takes effect on December 31, 2025 or upon the date the EARNNS Program Board disbands and transfers all of its duties and authorities to the Plans Management Board, whichever is first to occur. In the event that the Plans Management Board, by majority vote, agrees to assume all the duties and authority granted to the EARNNS Program Board, it shall publish notice to that effect in the Register of Regulations.

TAB 9



SPONSOR: Sen. S. McBride & Sen. Townsend & Sen. Brown & Sen. Gay & Sen. Mantzavinos & Sen. Pinkney & Rep. Heffernan & Rep. Longhurst & Rep. Baumbach & Rep. Dorsey Walker & Rep. Morrison & Rep. Osienski
Sens. Ennis, Hansen, Lockman, Paradee, Poore, Sokola, Sturgeon, Walsh; Reps. Bentz, Bolden, Chukwuocha, Cooke, Freel, Griffith, K. Johnson, Kowalko, Lambert, Lynn, Matthews, Minor-Brown, Mitchell, S. Moore, K. Williams, Wilson-Anton

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 2
FOR
SENATE BILL NO. 1
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Part V. Family and Medical Leave Insurance Program.

Chapter 37. Family and Medical Leave Insurance Program.

§ 3701. Definitions.

For purposes of this chapter:

- (1) "Application year" means the 12-month period as defined in the FMLA.
- (2) "Child" means "son or daughter" as defined in the FMLA.
- (3) "Covered individual" means an individual who meets all of the following:
 - a. Has been employed for at least 12 months by the employer with respect to whom leave is requested.
 - b. Has been employed for at least 1,250 hours of service with the employer during the previous 12-month period. For purposes of determining whether an individual meets the service hours requirement under this paragraph (3)b., the legal standards established under the FMLA apply.
 - c. The administrative requirements under this chapter.
 - d. Has submitted an application under this chapter.
- (4) "Covered leave" means leave provided under this chapter.

(5) "Department" means the Department of Labor.

(6)a. "Employee" means an individual employed by an employer. For the purposes of this chapter, individuals primarily reporting for work at a worksite in this State are employees unless otherwise excluded. Individuals primarily reporting for work at a worksite outside of this State are not considered employees under this chapter unless the employer elects to classify them as such. Employers may reclassify an employee as primarily reporting for work at a worksite in another state for the purposes of this chapter through the duration of that individual's tenure at the out-of-state worksite.

b. "Employee" does not include an individual covered under § 5903(17)a. of Title 29, an individual employed by entities in Title 14 in a position that would be covered under § 5903(17)a. of Title 29, or an individual in an equivalent position with an entity covered by State employee benefits.

(7)a. "Employer" means all those who employ employees working anywhere in this State.

1. Employers with 10 to 24 employees during the previous 12 months shall be subject to only the parental leave provisions of this chapter. For purposes of this paragraph (7)a.1., "employees" includes those who meet the requirements of a covered individual under § 3701(3)a. and (3)b. of this title or are reasonably expected to meet the requirements of a covered individual under § 3701(3)a. and b. of this title during the previous 12 months.

2. Employers with 25 or more employees during the previous 12 months shall be subject to all parental, family caregiving, and medical leave provisions of this chapter. For purposes of this paragraph (7)a.2., "employees" includes those who meet the requirements of a covered individual under § 3701(3)a. and (3)b. of this title or are reasonably expected to meet the requirements of a covered individual under § 3701(3)a. and b. of this title during the previous 12 months.

b. "Employer" does not include any of the following:

1. Anyone who employs less than 10 employees in this State during the previous 12 months.

2. The federal government.

3. Any business that is closed in its entirety for 30 consecutive days or more per year.

(8) "Family and medical leave benefits" means benefits provided under this chapter.

(9) "Family caregiving leave" includes leave under § 3702(a)(2) and (a)(4) of this title.

(10) "Family caregiving leave benefits" means benefits paid under § 3704 of this title and provided under § 3702(a) of this title to a covered individual while the covered individual is on family leave.

(11) "Family member" means all of the following:

a. A parent, as defined under the FMLA.

b. A child.

c. A spouse, as defined under the FMLA.

(12) "FMLA" means the Family and Medical Leave Act, 29 U.S.C. Chapter 28.

(13) "Fund" means the Family and Medical Leave Insurance Account Fund created under this chapter.

(14) "Health care provider" means as defined under the FMLA.

(15) "Medical leave" includes leave under § 3702(a)(3) of this title.

(16) "Medical leave benefits" means benefits paid under § 3704 of this title and provided under § 3702(a) of this title to a covered individual while the covered individual is on medical leave.

(17) "Parental leave" includes leave under § 3702(a)(1) of this title.

(18) "Parental leave benefits" means benefits paid under § 3704 of this title and provided under § 3702(a) of this title to a covered individual while the covered individual is on parental leave.

(19) "Qualifying exigency" means as defined under the FMLA.

(20)a. "Retaliatory personnel action" means an adverse action against an employee for the exercise of, or good faith attempt to exercise, a right guaranteed under this chapter, including any threat, discharge, suspension, demotion, or reduction of hours, or report or threat to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of a family member of the employee to a federal, state, or local agency.

b. "Retaliatory personnel action" includes interference with or punishment for participating or assisting, in any manner, in an investigation, proceeding, or hearing under this chapter.

(21) "Secretary" means the Secretary of the Department.

(22) "Serious health condition" means as defined under the FMLA.

(23) "Small business" means all of the following:

a. For purposes of parental leave, all those that employ 9 or less employees working anywhere in this State.

b. For purposes of family caregiving leave and medical leave, all those that employ 24 or less employees working anywhere in this State.

(24) "Wages" means remuneration for employment as determined for purposes of old-age, survivors, and disability insurance for employees and employers under the Federal Insurance Contribution Act, 26 U.S.C. Chapter 21.

§ 3702. Eligibility for benefits; serious health condition; certification or documentation of leave.

(a) Beginning 1 year after the start of contributions under § 3705 of this title, and subject to subsection (c) of this section, family and medical leave benefits are payable to a covered individual who meets one of the following:

(1) Because of a birth, adoption, or placement through foster care of a child, is caring for the child during the first year after the birth, adoption, or placement of the child.

(2) Is caring for a family member with a serious health condition.

(3) Has a serious health condition that makes the covered individual unable to perform the functions of the covered individual's position.

(4) Has a qualifying exigency.

(b) In applying and construing serious health condition, consideration must be given to the application and construction given to serious health condition under the FMLA.

(c)(1) An employer or an approved private plan under § 3716 of this title shall collect and retain information from covered individuals verifying parental leave status, serious health condition, or qualifying exigency when a covered individual submits an application under this chapter. An employer shall require that a request for leave based on a serious health condition under paragraph (a)(2) or (a)(3) of this section be supported by a certification issued by the health care provider of the covered individual or of the family member of the covered individual, as appropriate. The covered individual shall provide, in a timely manner, a copy of the certification to the employer or an approved private plan under § 3716 of this title.

(2) A certification required under paragraph (c)(1) of this section is sufficient if it includes all of the following:

a. The date on which the serious health condition commenced.

b. The probable duration of the condition.

c. The appropriate medical facts within the knowledge of the health care provider regarding the condition.

d. A statement of the following, as appropriate:

1. For purposes of leave under paragraph (a)(2) of this section, a statement that the covered individual is needed to care for the family member who has a serious health condition and an estimate of the time that the covered individual needs to care for the family member.

2. For purposes of leave under paragraph (a)(3) of this section, a statement that the covered individual is unable to perform the functions of the covered individual's position.

e. If the leave is to be taken intermittently or on a reduced leave schedule under § 3706 of this title for planned medical treatment, the dates on which the medical treatment is expected to be given and the duration of the medical treatment.

f. If the leave is to be taken intermittently or on a reduced leave schedule under § 3706 of this title for purposes of leave under paragraph (a)(2) of this section, a statement that the covered individual's intermittent leave or leave on a reduced leave schedule is necessary for the care of the family member who has the serious health condition, or will assist in the family member's recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.

g. If the leave is to be taken intermittently or on a reduced leave schedule under § 3706 of this title for purposes of leave under paragraph (a)(3) of this section, a statement of the medical necessity of the intermittent leave or leave on a reduced leave schedule and the expected duration of the intermittent leave or reduced leave schedule.

(3)a. If the employer or an approved private plan under § 3716 of this title has reason to doubt the validity of a certification provided under this subsection, the employer or private plan may require, at the expense of the employer or private plan, that the covered individual obtain the opinion of a second health care provider designated or approved by the employer or private plan concerning any information certified under this subsection. A health care provider designated under this paragraph (c)(3)a. may not be employed on a regular basis by the employer, Department or private plan.

b. If the second opinion under paragraph (c)(3)a. of this section differs from the opinion in the original certification provided by the covered individual under this subsection, the employer or private plan may require, at the expense of the employer or private plan, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer or private plan and the covered individual concerning any information certified under this subsection. The third opinion is final and binding on the employer or private plan and the covered individual.

(4)a. The employer or an approved private plan under § 3716 of this title may require that the covered individual obtain subsequent recertifications on a reasonable basis.

b. The standards for determining what constitutes a reasonable basis for recertification may be governed by a collective bargaining agreement between the employer or private plan and a labor organization which is the collective bargaining representative of the unit of which the covered individual is a part if such a collective bargaining agreement is in effect.

c. Unless otherwise required by the covered individual's health care provider, the employer or private plan may not require recertification more than once during a 30-day period and, in any case, may not unreasonably require recertification.

d. The employer or an approved private plan under § 3716 of this title shall pay for any recertification that is not covered by the covered individual's health insurance.

(d) The employer or an approved private plan under § 3716 of this title shall require that a request for leave based on a serious health condition under paragraph (a)(2) of this section of a family member be supported by documentation demonstrating the nature and extent of the relationship.

§ 3703. Duration of benefits.

(a) A covered individual is eligible for a maximum of 12 weeks of family and medical leave benefits in an application year.

(1) The maximum number of weeks during which parental leave benefits are payable under § 3702(a)(1) of this title in an application year is 12 weeks.

(2) The maximum aggregate number of weeks during which medical leave and family caregiving leave benefits are payable under § 3702(a)(2), (a)(3), and (a)(4) of this title in an application year is 6 weeks in any 24-month period.

(b) If 2 parents are entitled to leave under § 3702(a)(1), (a)(2), or (a)(4) of this title and are employed by the same employer, the aggregate number of weeks of leave to which both may be entitled may be limited by the employer to 12 weeks during any 12-month period. The Department may adopt regulations limiting aggregate family caregiving leave claimed by multiple family members for the same qualifying event under § 3702(a) of this title.

(c) Except for parental leave benefits, and as permitted under § 3706 of this title, a covered individual is eligible for benefits under this chapter not more than once in a 24-month period.

(d) An employer must approve or deny an application for benefits under this section within 5 business days of receipt of a completed application that includes documentation necessary to review the claim. If the claim is denied, the employer shall notify the covered individual of the reason for the denial.

(e) The employer must notify the Department, in a manner determined by the Department, within 3 business days of a claim being approved under this chapter. The first payment of benefits to a covered individual must be made within 30 days after the employer has notified the Department of the approved claim. Subsequent payments must be made every 2 weeks.

(d) An employer with less than 25 employees may elect, with notice to the Department and employees, for each employee to exercise not less than half of the employee's parental leave for 5 years from the start of benefits under § 3702 of this title.

§ 3704. Amount of benefits.

(a) The amount of family and medical leave benefits is to be determined as follows:

(1) The weekly benefit must be 80% of the covered individual's average weekly wages rounded up to the nearest even \$1.00 increment during the 12 months preceding submission of the application.

(2) The minimum weekly benefit may not be less than \$100 a week, except that if the covered individual's average weekly wage is less than \$100 a week, the weekly benefit must be the covered individual's full wage.

(3) The maximum weekly benefit in 2026 and 2027 must be \$900. In each year after 2027, the maximum weekly benefit must increase in proportion to the annual average increase, if any, in the Consumer Price Index for All Urban Consumers, Philadelphia-Camden-Wilmington Metropolitan area that is published by the Bureau of Labor Statistics of the United States Department of Labor. In each year after 2027, the period of change must be calculated from October 2026 to the October before the start of the calendar year. When the Department determines a maximum weekly benefit amount using the Consumer Price Index under this paragraph (a)(3), the amount must be rounded to the nearest even \$5.00 increment as determined in the discretion of the Secretary.

(b) Family and medical leave benefits are not payable for less than 1 work day of covered leave taken in 1 work week.

(c) The Department shall determine, by regulation, how benefits are to be calculated for covered individuals with more than 1 source of wages and when 12 months of wages preceding the submission of application for benefits are not available to the Department.

§ 3705. Contributions.

(a) Payroll contributions are authorized to finance the payment of benefits under this chapter. The Department shall regulate the deduction, withholding, and payment of the contribution.

(b) Beginning on January 1, 2025, for each employee, an employer shall quarterly, or more frequently as regulated by the Department, remit to the Fund contributions in the form and manner determined by the Department.

(1) The contribution rate for medical leave benefits is as follows:

a. For 2025 and 2026, the contribution rate for medical leave benefits as a percentage of wages is 0.4%.

b. For 2027, and each calendar year after 2027, the Department shall set the contribution rate for medical leave benefits as a percentage of wages based on sound actuarial principles. The Department may not set the

contribution rate higher than the rate necessary to obtain a total amount of contributions equal to 125% of the medical leave benefits paid during the immediately preceding calendar year plus an amount equal to 125% of the cost of administration of the payment of those benefits during the immediately preceding calendar year, less the amount of net assets remaining in the Fund as of December 31 of the immediately preceding calendar year.

(2) The contribution rate for family caregiving leave benefits is as follows:

a. For 2025 and 2026, the contribution rate for family caregiving leave benefits as a percentage of wages is 0.08%.

b. For 2027, and each calendar year after 2027, the Department shall set the contribution rate for family caregiving leave benefits based as a percentage of wages on sound actuarial principles. The Department may not set the contribution rate higher than the rate necessary to obtain a total amount of contributions equal to 125% of the family caregiving leave benefits paid during the immediately preceding calendar year plus an amount equal to 125% of the cost of administration of the payment of those benefits during the immediately preceding calendar year, less the amount of net assets remaining in the Fund as of December 31 of the immediately preceding calendar year.

(3) The contribution rate for parental leave benefits is as follows:

a. For 2025 and 2026, the contribution rate for parental leave benefits as a percentage of wages is 0.32%.

b. For 2027, and each calendar year after 2027, the Department shall set the contribution rate for parental leave benefits as a percentage of wages based on sound actuarial principles. The Department may not set the contribution rate higher than the rate necessary to obtain a total amount of contributions equal to 125% of the parental leave benefits paid during the immediately preceding calendar year plus an amount equal to 125% of the cost of administration of the payment of those benefits during the immediately preceding calendar year, less the amount of net assets remaining in the Fund as of December 31 of the immediately preceding calendar year.

(c) Limitation on benefits and contribution rates; evidentiary standard.

(1) General. Notwithstanding a provision of this chapter to the contrary, this subsection controls with respect to benefits available under, and contributions required by, this chapter.

(2) Contribution rate; limitation.

a. For purposes of this subsection, "contribution rate" means the sum of the contribution rate for medical, family caregiving, and parental leave benefits.

b. If, after using the actuarial principles under § 3705(b) of this title, the Department determines that the contribution rate would exceed 1.00%, paragraph (c)(3) of this section applies.

(3) Contribution redetermination; benefits reduction. If, under paragraph (c)(2)b. of this section, the Department determines that the contribution rate effective as of the first day beginning on the next calendar year would exceed 1.00%, effective as of and for such calendar year the Department shall reduce the percentage of average weekly wages for employees from 80% to the lowest percentage of average weekly wages for employees as necessary to compute a contribution rate that does not exceed 1.00%.

(4) Preservation of Fund balance. Notwithstanding anything in this chapter to the contrary, after using the actuarial principles under § 3705(b) of this title and considering other information deemed appropriate under the circumstances by the Secretary, the Secretary may at any time reduce the percentage of average weekly wages for employees to the lowest percentage of average weekly wages for employees as necessary to attempt to prevent the projected balance of the Fund during the ensuing 12 month period from falling below a specific balance or other actuarially sound measure adopted by the Department.

(5) Evidentiary standard. An allegation of abuse in the exercise of the discretion authorized by this section must be established by clear and convincing evidence of actual abuse of discretion in the court then having primary jurisdiction.

(d) From the wages of an employee for whom a contribution is required under subsection (b)(1) of this section, an employer shall deduct not greater than 50% of the contribution required for the employee. However, an employer may elect to pay all or any portion of the employee's share of the contribution listed in subsection (b)(1) of this section.

(e) From the wages of an employee for whom a contribution is required under subsection (b)(2) of this section, an employer shall deduct not greater than 50% of the contribution required for the employee. However, an employer may elect to pay all or any portion of the employee's share of the contribution listed in subsection (b)(2) of this section.

(f) From the wages of an employee for whom a contribution is required under subsection (b)(3) of this section, an employer shall deduct not greater than 50% of the contribution required for the employee. However, an employer may elect to pay all or any portion of the employee's share of the contribution listed in subsection (b)(3) of this section.

(g) An employer's deduction from an employee's wages under this section may only be made concurrent with, and proportionate to, the liability incurred by the employer and the payment of wages to the employee. The employer is liable for the contribution at the time that wages are paid and shall remit the total contribution required under subsection (b) of this section to the Fund. If the employer fails to deduct wages of an employee when the wages are paid, the employer remains liable for the full amount of the contribution, including that amount not deducted from an employee's wages.

(h) A contribution that remains unpaid on the date it is due and payable, as determined by the Department, accrues interest, at a rate determined by the Department by regulation, from and after the due date until payment plus the accrued interest is received by the Fund. Interest collected under this section must be paid into the Fund.

(i)(1) An employer with an approved private plan under § 3716 of this title for medical leave benefits may not be required to remit the contributions required under subsection (b)(1) of this section.

(2) An employer with an approved private plan under § 3716 of this title for family caregiving leave benefits may not be required to remit the contributions required under subsection (b)(2) of this section.

(3) An employer with an approved private plan under § 3716 of this title for parental leave benefits may not be required to remit the contributions required under subsection (b)(3) of this section.

(j) The Department may require from an employer a sworn or unsworn report with respect to employees of the employer which the Department deems necessary for the effective administration of this chapter. Information provided to the Department in the report must be held confidential and must not be published or be open to public inspection, other than to employees of the Department, in a manner that reveals an employee's or employer's identity. However, an employer or employer's legal representative must be supplied with information from the report for purposes related to this chapter, and an employee or employee's legal representative must be supplied with information from the report that relates only to the employee for purposes related to this chapter.

(k) An employee and employer may opt to file a waiver of the payroll contributions required under this section when an employee's work schedule or length of employment with the employer is not expected to meet the requirements for eligibility for family and medical leave benefits.

(1) The employer shall provide notice to the employee that employee's work schedule or length of employment with the employer is not expected to meet the requirements for eligibility for family and medical leave benefits.

(2) The employee shall sign, and the employer shall submit to the Department, a form waiving the payroll contributions required under this section because employee's work schedule or length of employment with the employer is not expected to meet the requirements for eligibility for family and medical leave benefits.

(3) If, after an employee signs a waiver under paragraph (k)(2) of this section, the employee becomes eligible for family and medical leave benefits, the employee shall sign, and the employer shall submit to the Department, a form revoking the waiver under paragraph (k)(2) of this section. Deductions from wages may not begin until a waiver is revoked.

(4) The Department shall adopt a form for the waiver under paragraph (k)(2) of this section and the revocation of the waiver under paragraph (k)(3) of this section.

§ 3706. Reduced leave schedule.

(a) A covered individual may take covered leave on an intermittent or reduced leave schedule in which all of the leave authorized under this chapter is not taken sequentially. Intermittent or reduced leave may be taken only when medically necessary and supported by documentation as required by the certification requirements under § 3702 of this title. Family and medical leave benefits for intermittent or reduced leave schedules must be prorated.

(b) The covered individual shall provide the employer with prior notice of the schedule on which the covered individual will take the covered leave, to the extent practicable. Covered leave taken under this section may not result in a reduction of the total amount of leave to which an employee is entitled beyond the amount of leave actually taken.

(c) Nothing in this section is to be construed to entitle a covered individual to more leave than required under § 3703 of this title.

§ 3707. Leave and employment protection.

(a) A covered individual who exercises the covered individual's right to family and medical leave benefits shall, on the expiration of the covered leave, be entitled to be restored by the employer to the position held by the covered individual when the covered leave commenced, or to a position with equivalent seniority, status, employment benefits, pay, and other terms and conditions of employment, including fringe benefits and service credits, which the covered individual had been entitled to at the commencement of the covered leave.

(b) During covered leave, the employer shall maintain any health care benefits the covered individual had before taking the leave for the duration of the leave as if the covered individual had continued in employment continuously from the date the covered individual commenced the leave until the date the family and medical leave benefits terminate. The covered individual shall continue to pay the covered individual's share of the cost of health care benefits as required before the commencement of the leave.

(c) An employer who violates this section or § 3708 of this title is liable to an employee affected for all of the following:

(1) Damages equal to all of the following:

a. The amount of any of the following:

1. Any wages or employment benefits denied or lost to the employee by reason of the violation.

2. In an action in which wages or employment benefits have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 12 weeks of wages or employment benefits for the employee.

b. Interest on the amount under paragraph (c)(1)a. of this section, calculated at the legal rate.

c. An additional amount as liquidated damages equal to the sum of the amount described in paragraph (c)(1)a. of this section and the interest under paragraph (c)(1)b. of this section. If an employer who has violated this section or § 3708 of this title proves to the satisfaction of the court that the act or omission that violated this section or § 3708 of this title was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this section or § 3708 of this title, the court may reduce the amount of the liability to the amount and interest determined under paragraph(c)(1)a. and (c)(1)b. of this section, respectively.

(2) For equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(d) An action under subsection (c) of this section may be maintained against an employer in a court of competent jurisdiction in this State by any 1 or more employees for and on behalf of the employees or the employees and other employees similarly situated.

(e)(1) The court in an action under subsection (c) of this section may, in addition to any judgment awarded to the plaintiff, award reasonable attorney fees, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(2) The court in an action under subsection (c) of this section shall award reasonable attorney fees to a defendant if the court finds the action was brought in bad faith.

(f) Except as provided under subsection (g) of this section, an action may be brought for a violation of this section or § 3708 of this title not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought.

(g) In an action brought for a wilful violation of this section or § 3708 of this title, the action may be brought not later than 3 years after the date of the last event constituting the alleged violation for which the action is brought.

§ 3708. Retaliatory personnel actions prohibited.

(a) It is unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this chapter.

(b) An employer, temporary help company, employment agency, employee organization, or other person may not take a retaliatory personnel action or otherwise discriminate against an individual because the individual exercised rights protected under this chapter.

(c) Rights protected under this chapter include the following:

(1) The right to request, file for, apply for, or use family and medical leave benefits or covered leave.

(2) The right to communicate to the employer or any other person or entity an intent to file a claim, a complaint with the Department or courts, or an appeal, or testify or prepare to testify or assist in any investigation, hearing, or proceeding under this chapter, at any time, including during the period in which the individual receives family and medical leave benefits under this chapter.

(3) The right to inform a person about an employer's alleged violation of this chapter.

(4) The right to inform an individual of the individual's rights under this chapter.

(d) It is unlawful for an employer's absence control policy to count covered leave taken under this chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

(e) Protections of this section apply to an individual who mistakenly but in good faith alleges violations of this chapter.

(f) This section is to be enforced as provided in § 3707(c) through (g) of this title.

(g) This section applies only to an employee who has been employed by the employer for at least 90 days.

§ 3709. Coordination of benefits.

(a)(1) Covered leave that also qualifies as leave under the FMLA runs concurrently with leave taken under the FMLA and may not be taken in addition to leave under the FMLA.

(2) An employer may require that payment made under this chapter be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy. The employer shall give employees written notice of this requirement.

(3) An employer may require the use of unused accrued paid time off before accessing family and medical leave benefits, and the use of accrued paid time off may count toward the total length of leave provided under this chapter, if the employee is not required to exhaust all paid time off. For purposes of this paragraph (a)(3) of this section, "paid time off" includes an employer's provision of vacation and sick leave.

(4) A covered individual may not access family and medical leave benefits if the use of family and medical leave benefits results in the covered individual receiving more than 100% of the covered individual's weekly wages.

(b)(1) This chapter does not diminish an employer's obligation to comply with any of the following that provide more generous leave:

a. A collective bargaining agreement.

b. An employer policy.

c. Any other law.

(2) An individual's right to covered leave may not be diminished by a collective bargaining agreement entered into or renewed, or an employer policy adopted or retained, after [the effective date of this Act].

(3) An agreement by an individual to waive the individual's rights under this chapter is void as against public policy.

§ 3710. Notice.

(a) An employer shall provide written notice to each employee that includes all of the following:

(1) The employee's right to family and medical leave benefits under this chapter and the terms under which it may be used.

(2) The amount of family and medical leave benefits.

(3) The procedure for filing a claim for family and medical leave benefits.

(4) The right to job protection and benefits continuation under § 3707 of this title.

(5) That discrimination and retaliatory personnel actions against the employee for requesting, applying for, or using family and medical leave benefits is prohibited under § 3708 of this title.

(6) That the employee has a right to file a complaint for violations of this chapter.

(7) Whether family and medical leave benefits are available to the employee through the State or an approved private plan under § 3716 of this title.

(b) An employer shall provide the notice required under subsection (a) of this section as follows:

(1) On hiring of the employee.

(2) When the employee requests covered leave or when the employer acquires knowledge that an employee's leave may be for a qualifying event under § 3702(a) of this title.

(c) An employer shall display and maintain a poster in a conspicuous place accessible to employees at the employer's place of business that contains the information required under subsection (a) of this section in English, Spanish, and any language that is the first language spoken by at least 5% of the employer's workforce, if the poster has been provided by the Department.

(d) The Department may adopt regulations to establish additional requirements concerning the means by which employers shall provide notice of this chapter.

(e) An employee shall provide notice of the employee's intention to take covered leave to the employee's employer 30 days in advance, if known, or as soon as practicable.

§ 3711. Appeal.

(a) The process for review of a denial of family and medical leave benefits is as follows:

(1) On a determination of an individual's claim for family and medical leave benefits under this chapter by the employer, the individual may request review of the determination by the Department within 60 days of the issuance of the determination. The Department shall review the denial and issue a determination to the individual in a time and manner determined by the Department.

(2) On determination by the Department under paragraph (a)(1) of this subsection or final determination by a private plan under § 3716 of this title, an individual may appeal the determination to the Family and Medical Leave Insurance Appeal Board established under subsection (b) of this section within 30 days of the issuance of the determination.

(b)(1) There is established a Family and Medical Leave Insurance Appeal Board ("Board").

(2) The Board consists of 3 members, appointed by the Governor for a term of 6 years.

(3) The Governor shall fill a vacancy on the Board during a member's term for the unexpired portion of the term.

(4) The Governor may, at any time, after notice and hearing, remove any Board member for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. For purposes of this section, a member who is absent without adequate reason for 3 consecutive meetings or fails to attend at least half of all regular meetings during any calendar year is deemed to be in neglect of duty.

(5) Two members of the Board constitute a quorum. A vacancy does not impair the right of the remaining Board members to exercise all of the powers of the Board.

(6) The Governor shall designate 1 member of the Board as the Chair. If the term of the Chair expires or if the Chair becomes vacant for any cause, the Governor shall designate another member as Chair.

(7)a. The Chair of the Board must be paid \$225 for each meeting attended, not to exceed 80 meetings each year.

b. Each of the other members of the Board is to be paid \$175 for each meeting attended, not to exceed 80 meetings each year.

c. The members of the Board shall devote to the duties of the members' office the time necessary for the satisfactory execution of the office.

(c) The decision of the Board with respect to an individual's claim for family and medical leave benefits is final and binding on the parties.

(d) The Department shall implement procedures to ensure confidentiality of all information related to a claim filed or an appeal taken, to the maximum extent permitted by applicable laws.

(e) The Board shall conduct hearings under the Administrative Procedures Act, Chapter 101 of Title 29, except that the Board's hearings are exempt from the public meeting requirements of Chapter 100 of Title 29 to protect confidential health and privacy information.

(f) The Board may adopt regulations to implement this section.

§ 3712. Erroneous payments; disqualification for benefits.

(a) A covered individual is disqualified from family and medical leave benefits for 3 years if the covered individual is determined by the Department to have wilfully made a false statement or misrepresentation regarding a material fact, or wilfully failed to report a material fact, to obtain benefits under this chapter.

(b) If family and medical leave benefits are paid erroneously or as a result of wilful misrepresentation, or if a claim for family and medical leave benefits is rejected after benefits are paid, the Department may seek repayment from the recipient of benefits, with interest in an amount to be determined by the Department, consistent with § 3718 of this title. If benefits are paid due to wilful misrepresentation, the Department may seek an additional penalty of up to 50% of the overpayment and a penalty as permitted by § 3719 of this title.

(c) When the Department determines that an individual obtained an overpayment by fraud, in addition to any disqualification under subsection (a) of this section, the individual is disqualified from receiving family and medical leave benefits until the Department determines that all of the following have occurred:

(1) The total amount of the fraud overpayment, with interest, has been repaid in full.

(2) Any monetary penalty under this section has been paid in full.

§ 3713. Family and Medical Leave Insurance Program.

(a)(1) By January 1, 2025, the Department shall establish and administer a family and medical leave insurance program.

(2) By not later than the date specified in § 3702(a) of this title, the Department shall pay family and medical leave benefits as specified under this chapter.

(b) The Department shall establish, and make available to employers, reasonable procedures and forms for filing claims for benefits under this chapter and shall specify the supporting documentation necessary to support a claim for benefits, including any documentation required from a health care provider for proof of a serious health condition.

(c) The Department shall use information sharing and integration technology to facilitate the disclosure of relevant information or records so long as a covered individual consents to the disclosure as required under state law.

(d) Information contained in the files and records pertaining to a covered individual under this chapter is confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, the covered individual, or an authorized representative of the covered individual, may review the records or receive specific information from the records on the presentation of the covered individual's signed authorization.

§ 3714. Federal and state income tax.

The employer or an approved private plan under § 3716 of this title shall advise a covered individual filing a new claim for family and medical leave benefits, at the time of filing the claim, of all of the following:

- (1) Family and medical leave benefits may be subject to federal and state income taxes.
- (2) Requirements exist pertaining to federal and state estimated tax payments on family and medical leave benefits.
- (3) Under regulations established by the Secretary, applicable taxes will be deducted and withheld from the covered individual's payment of family and medical leave benefits.

§ 3715. Family and Medical Leave Insurance Account Fund: establishment and investment.

(a) A special fund designated as the Family and Medical Leave Insurance Fund is created. The Fund holds all revenues collected under this chapter. All moneys credited to the Fund are continuously available for expenditure in accordance with this chapter.

(b) The State Treasurer shall invest the Fund consistent with the investment policies established by the Cash Management Policy Board. The State Treasurer shall credit interest to the Fund on a monthly basis consistent with the rate established by the Cash Management Policy Board. Expenditures from the Fund may be used only for the purposes of the family and medical leave benefits program under this chapter. Only the Secretary or the Secretary's designee may authorize expenditures from the Fund.

(c) The Department may use expenditures from the Fund to pay for the costs associated with administering the provisions of this chapter.

§ 3716. Private plans.

(a)(1) Except as provided under subsection (e) of this section, an employer may apply to the Department for approval to meet the employer's obligations under this chapter through a private plan. To be approved as meeting an employer's obligations under this chapter, a private plan must do all of the following:

a. Provide one or more of the following:

1. Family caregiving leave to a covered individual for the reasons under § 3702(a)(2) and (a)(4) of this title for the maximum number of weeks in a benefit year required under § 3703(a)(2) of this title.

2. Medical leave to a covered individual for the reasons under § 3702(a)(3) of this title for the maximum number of weeks in a benefit year required under § 3703(a)(2) of this title.

3. Parental leave to a covered individual for the reasons under § 3702(a)(1) of this title for the maximum number of weeks in a benefit year required under § 3703(a)(1) of this title.

b. Allow a covered individual to take, in the aggregate, the maximum number of weeks of covered leave in a benefit year or 24-month period as required under § 3703(a) and (d) of this title.

c. If family caregiving leave is provided, allow family caregiving leave to be taken for all purposes specified under § 3702(a)(2) and (a)(4) of this title.

d. If family caregiving leave is provided, allow family caregiving leave under § 3702(a)(2) and (a)(4) of this title to be taken to care for any family member.

e. If medical leave is provided, allow medical leave under § 3702(a)(3) of this title to be taken by a covered individual with any serious health condition.

f. Provide a wage replacement rate during all covered leave of at least the amount required under § 3704(a)(1) of this title.

g. Provide a maximum weekly benefit during all covered leave of at least the amount specified under § 3704(a)(3) of this title.

h. Provide a minimum weekly benefit during all covered leave of at least the amount specified under § 3704(a)(2) of this title.

i. Allow covered leave to be taken intermittently or on a reduced schedule as authorized under § 3706 of this title.

j. Impose no additional conditions or restrictions on the use of covered leave beyond those explicitly authorized by this chapter or regulations issued under this chapter.

k. Allow an employee covered under the private plan who is eligible to take covered leave under this chapter to take covered leave under the private plan.

l. Providing that the cost to employees covered by a private plan is not greater than the cost charged to employees under the State program.

m. Provide an internal administrative review process and notice to employees of the option to appeal a final determination of the private plan to the Family and Medical Leave Insurance Appeal, consistent with § 3711 of this title.

(2) For a private plan to be approved as meeting an employer's obligations under this chapter, the private plan must also comply with all of the following:

a. If the private plan is in the form of self-insurance, the employer must furnish a bond running to the State, with a surety company authorized to transact business in this State as surety, in a form as may be approved by the Department and in an amount as may be required by the Department. This paragraph (a)(2)a. does not apply to public employers.

b. Provide for all eligible employees throughout their period of employment.

c. If the private plan provides for insurance, the policy must be issued by an admitted insurer, as defined under § 1904 of Title 18.

d. Submit a certification to the Department, in a form regulated by the Department, certifying that the plan meets the obligations of this chapter

(b) An employer may provide all family and medical leave coverage through an approved private plan or may provide 1 or more of medical leave coverage, family caregiving leave coverage, or parental leave coverage using an approved private plan and provide the remaining coverage not provided through an approved private plan using the State program.

(c) The Department may withdraw approval for an employer's use of a private plan granted under subsection (a) of this section when terms or conditions of the plan have been violated. The Department may withdraw approval for an employer's use of a private plan for any of the following:

(1) Failure to pay approved benefits.

(2) Failure to pay benefits timely and in a manner consistent with the State program.

(3) Failure to maintain an adequate security deposit.

(4) Misuse of private plan trust funds.

(5) Failure to submit reports to the Department as required by regulations adopted by the Department.

(6) Failure to comply with this chapter or the regulations adopted under this chapter.

(d) An employee covered by a private plan approved under this section retains all applicable rights under §§ 3707 and 3708 of this title.

(e)(1) Private benefits in existence on [the enactment date of this Act] that the Department deems to be comparable to the Family and Medical Leave Program under § 3713 of this title qualify as a private plan under this chapter for a period of 5 years from the start of contribution payments under § 3705 of this title if the Department's approval of private plans under this subsection would not adversely impact the solvency of the Fund.

(2) The Department may determine comparable value through consideration of factors including wage replacement, length of leave, interrelated benefits, eligibility criteria, or frequency of allowed leave.

(3) An employer seeking to qualify as a private plan under this subsection must notify the Department before January 1, 2024.

(f) The Department's denial of an employer's application under subsection (a) of this section, withdrawal of approval for an employer's use of a private plan under subsection (c) of this section, and decision under subsection (e) of this section are subject to the appeal process under § 3711 of this title.

(g) An employer that meets the employer's obligations under this chapter through a private plan may provide benefits greater than those required under paragraph (a)(1) of this section.

§ 3717. Small business opt-in.

(a) A small business may opt-in to provide parental leave benefits to its employees who are covered individuals. The small business may opt-in by providing notice to the Department in a manner determined by the Department. After the small business opts-in, the small business must remain opted-in for a period of at least 3 years and may opt-out of coverage for parental leave benefits with 12 months' notice to its employees and the Department, to take effect not sooner than the end of the 3-year period.

(b) A small business may opt-in to provide medical leave benefits to its employees who are covered individuals. The small business may opt-in by providing notice to the Department in a manner determined by the Department. After the small business opts-in, the small business must remain opted-in for a period of at least 3 years and may opt-out of coverage for medical leave benefits with 12 months' notice to its employees and the Department, to take effect not sooner than the end of the 3-year period.

(c) A small business may opt-in to provide family caregiving leave benefits to its employees who are covered individuals. The small business may opt-in by providing notice to the Department in a manner determined by the Department. After the small business opts-in, the small business must remain opted-in for a period of at least 3 years and may opt-out of coverage for family caregiving leave benefits with 12 months' notice to its employees and the Department, to take effect not sooner than the end of the 3-year period.

§ 3718. Powers of the Department.

(a) The Department shall administer and enforce this chapter.

(b) A complaint, on a form created by the Department, may be filed with the Department for noncompliance with this chapter.

(c)(1) The Department may audit employers for compliance with this chapter, as determined by the Department.

(2) Nothing in this chapter limits the Department of Insurance's jurisdiction over an insurer issuing an approved private plan.

(d) The Department may do all of the following under the Department's audit and investigative authority to determine noncompliance with this chapter:

(1) Enter and inspect, after 1 day's notice to the employer, the premises or place of business or employment and, on demand, examine and copy, wholly or partly, any or all books, registers, payrolls, and other records, including those required to be made, kept, and preserved under this chapter.

(2) Question any employer, employee, or other person in the premises or place of business or employment.

(3) Require from an employer full and correct statements in writing, including sworn statements, on forms prescribed or approved by the Department, with respect to the compliance with this chapter, as the Department may deem necessary or appropriate.

(4) Investigate such facts, conditions, or matters as the Department may deem necessary or appropriate to determine whether this chapter has been or is being violated.

(5) Hold hearings, administer oaths, and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony, and take depositions and affidavits in any proceeding before the Department. If a person fails to comply with a subpoena lawfully issued or a witness refuses to testify to a matter that the witness may be lawfully interrogated, the Superior Court, on application by the Department, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued from the Court or a refusal to testify to the Court.

(e)(1) Following an investigation in which the Department makes an initial determination that an employer has violated 1 or more provisions of this chapter, or an initial determination that a covered individual received an overpayment or violated § 3712 of this title, the Department shall notify the employer or covered individual of the initial determination and of any amounts owed and shall provide the employer or covered individual with an opportunity to appeal the Department's determination to the Family and Medical Leave Insurance Appeal Board ("Board"). If the Department finds a violation of this chapter, the Department may issue civil penalties under § 3719 of this title.

(2) An initial determination that is not appealed within 15 days of the date of the notice is deemed a final determination, and the employer or covered individual shall pay any payments or penalties included in the initial determination to the Fund.

(3) If the initial determination is appealed within 15 days from the date of the notice, the Board shall hear the appeal within a reasonable time.

(4) The Board shall conduct a hearing on appeal under the Administrative Procedures Act, Chapter 101 of Title 29, and the regulations adopted by the Board. The decision of the Board is final unless appealed to the Superior Court within 30 days.

(f) The Department may institute an action in a court of competent jurisdiction for overpayments, penalties, unpaid contributions, or violations of this chapter. In an action brought by the Department under this subsection where judgment is entered for the Department, a court may award costs and, when so awarded, the same amount of costs must be allowed, taxed, and collected as are allowed, taxed, and collected for like services in the court.

(g) The Department has exclusive authority to settle any claim related to noncompliance with this.

(h) Nothing in this chapter limits the Department's power or authority under other law of this State which may be otherwise applicable to administer or enforce this chapter.

(i) The Department may not be required to pay the filing fee or other costs of the action or fees of any nature or to file bond or other security of any nature in connection with an action under this chapter or with supplementary proceedings as a condition precedent to the availability of any process in aid of the action or proceedings. The Department may join various claimants in 1 cause of action.

(j) Nothing in this chapter prevents a person from pursuing an action at law or in equity against an employer arising under other applicable law.

(k) In addition to the methods of collection authorized by this chapter, the Department may collect a final determination of liability of an employer or covered individual to the Fund by any manner available under other law of this State, including by any manner that unemployment tax assessments may be collected under Chapter 33 of this title, including §§ 3358, 3360, 3361, 3363, 3368, and 3369 of this title.

§ 3719. Penalties.

(a) An employer who violates or fails to comply with any requirement of this chapter, including failing to file reports as prescribed by the Department, failing to make contributions as required by this chapter, and failing to properly handle and remit wage deductions from employees to the Department, is deemed in violation of this chapter and is subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

(b) An employer who discharges or in any manner discriminates against an employee because that employee has made a complaint or has given information to the Department under this chapter, or because the employee has caused to be instituted or is about to cause to be instituted any proceedings under this chapter, or has testified or is about to testify in any proceedings is deemed in violation of this chapter and is subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

(c) A civil penalty claim may be filed in any court of competent jurisdiction.

(d) Funds from any civil penalty under this chapter, including an overpayment penalty as authorized by § 3712 of this title, must be deposited in the Fund.

§ 3720. Regulations.

(a) The Department may adopt regulations as the Department deems necessary or appropriate to administer or enforce this chapter. Except as may be otherwise provided by the Department, a regulation adopted under this section takes effect on publication.

(b) The Department of Insurance may adopt regulations with respect to private plans under § 3716 of this title.

§ 3721. Reports.

Beginning in 2027, the Department shall report to the General Assembly by April 1 of each year on projected and actual program participation by purpose under § 3702(a) of this title, gender of beneficiary, Fund balances, outreach efforts, and total utilization and amounts paid out of the Fund by category.

§ 3722. Public education.

(a) The Department shall conduct a public education campaign to inform employees and employers regarding the availability of family and medical leave benefits.

(b) The Department may use a portion of the funds collected for the family and medical leave benefits program in a given year to pay for the public education program.

(c) Outreach information provided under this section must be available in English, Spanish, and other languages spoken by more than 5% of the state's population.

§ 3723. Sharing technology.

The Department is encouraged to use State data collection and technology to the extent possible and to integrate the family and medical leave benefits program with existing state policies.

§ 3724. Departmental Report.

The Department shall, before July 1, 2029, submit a report to the General Assembly and the Governor on the family and medical leave insurance program. The report shall include information and data on program usage, program efficiency, finances, employee and employer program experience and feedback, program impact on recruitment, retention, cost, operations, worker morale, and productivity, and recommendations for program improvements.

Section 2. If any provision of this Act or the application of this Act to any person or circumstance is held invalid, the remainder of this Act or the application of the provision to other persons or circumstances is not affected.

Section 3. This Act takes effect on July 1, 2022.

Section 4. This Act is known as the “Healthy Delaware Families Act”.

TAB 10



LAWS OF DELAWARE
VOLUME 83
CHAPTER 230
151st GENERAL ASSEMBLY
FORMERLY
SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 48

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO DISCIPLINARY SANCTIONS
BY THE BOARD OF ELECTRICAL EXAMINERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1414, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows

§ 1414. Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that 1 of the conditions or violations set forth in § 1412 of this title applies to a practitioner or licensee regulated by this chapter:

(1) Issue a letter of ~~reprimand~~; reprimand.

(2) Censure a ~~practitioner~~; practitioner.

(3) Place a practitioner on probationary status, and require the practitioner ~~to~~ to do 1 or more of the following:

a. Report regularly to the Board upon the matters, which are the basis of the ~~probation~~; probation.

b. Limit all practice and professional activities to those areas prescribed by the ~~Board~~; Board.

(4) Suspend any practitioner's ~~license~~; license.

(5) Revoke any practitioner's ~~license~~; license.

(6) Impose a monetary penalty ~~not to exceed \$1,500 for each violation:~~

a) Not to exceed \$1,500 for each violation of § 1412 (a) 2 and (a) 4 through 9; and

b) No less than \$4,500 for violations of § 1412 (a) 1 and (a) 3.

Approved September 30, 2021

TAB 11



Legislative Council,
General Assembly
State of Delaware

LAWS OF DELAWARE
VOLUME 83
CHAPTER 215
151st GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 88

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO MINIMUM WAGE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 902, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 902 Minimum wage rate [For current federal minimum wage, see 29 U.S.C. § 206(a)(1)(A)]

~~(e)(1) Training Wage — in lieu of the minimum wage otherwise required under this section, an employer may pay an employee who is 18 years of age or older, during the first 90 consecutive calendar days after the employee is initially employed by the employer, a wage rate that is not more than \$.50 less than the wage rate prescribed in subsection (a) of this section.~~

Section 2. Amend § 902, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~(e)(2) Youth Wage — in lieu of the minimum wage otherwise required by this section, an employer may pay an employee who is under 18 years of age a wage rate that is not more than \$.50 less than the wage rate prescribed in subsection (a) of this section.~~

Section 3. Sections 1 and 2 take effect 90 days after its enactment into law.

Approved September 30, 2021

TAB 12



LAWS OF DELAWARE
VOLUME 83
CHAPTER 231
151st GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 51

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO DISCIPLINARY SANCTIONS BY THE BOARD OF PLUMBING, HEATING, VENTILATION, AIR CONDITIONING, AND REFRIGERATION EXAMINERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 18 of Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1807 License required; exemptions.

(a) A person shall not provide plumbing services in this State nor hold himself or herself out to the public as being a licensed master plumber, nor use "licensed plumber," "master plumber," or "licensed master plumber" in connection with that person's name, nor otherwise assume or use any title or description conveying or tending to convey the impression that the person is qualified to provide plumbing services, unless the person has been licensed as a master plumber under this chapter, or exempted from the provisions of this chapter pursuant to subsection (c) of this section.

(b) If the license of a master plumber has expired or been suspended or revoked, it is unlawful for the holder of the expired, suspended, or revoked license to perform plumbing services in this State.

(c) An individual may provide plumbing services without being licensed under this chapter if:

(1) The individual is an apprentice, journeyman, mechanic, or other person providing such services under the supervision of a master plumber who is the individual's employer or who is employed full time by the same business entity as the individual;

(2) The individual is a homeowner who is performing plumbing services other than gas piping in or about that individual's own home that is not for sale or any part for rent or lease, provided that the individual has filed an application for a permit with the authorized inspection authority;

(3) The individual is providing such services on property used exclusively for agricultural purposes and the individual has filed an application for a permit with the authorized inspection authority; or

(4) The individual is providing such services pursuant to the provisions in § 1832 of this title.

(5) The individual is providing services authorized under subchapter III of this chapter.

(d) The penalty for a violation of this section is, for a first offense, a fine of not less than ~~\$500~~ \$1,500 nor more than ~~\$1000~~ \$3,000, and, for a second or subsequent offense, a fine of not less than ~~\$1000~~ \$3,000 nor more than ~~\$2000~~ \$6,000. Justice of the Peace Courts shall have jurisdiction over violations of this section.

§ 1820 License required; exemptions.

(a) A person shall not provide HVACR or HVACR restricted services in this State nor hold himself or herself out to the public as being a master HVACR licensee or master HVACR restricted licensee, nor use "master HVACR licensee", "master HVACR restricted licensee" in connection with that person's name nor otherwise assume or use any title or description conveying or tending to convey the impression that that person is qualified to provide HVACR or HVACR restricted services, unless that person has been licensed as a master HVACR licensee or a master HVACR restricted licensee under this chapter or exempted from the provisions of this chapter pursuant to subsection (c) of this section.

(b) If the license of a master HVACR licensee or master HVACR restricted licensee has expired or been suspended or revoked, it is unlawful for the holder of the expired, suspended, or revoked license to act as a master HVACR licensee or

(4) The individual is providing such services pursuant to the provisions in § 1831 of this title.

(d) The penalty for a violation of this section is, for a first offense, a fine of not less than ~~\$500~~ \$1,500 nor more than ~~\$1000~~ \$3,000, and, for a second or subsequent offense, a fine of not less than ~~\$1000~~ \$3,000 nor more than ~~\$2000~~ \$6,000.

Justice of the Peace Courts have jurisdiction over violations of this section.

Approved September 30, 2021

TAB 13



SPONSOR: Sen. Walsh & Sen. Brown & Sen. Pinkney &
Sen. Townsend & Rep. Brady & Rep. Dorsey Walker &
Rep. Kowalko & Rep. Lambert & Rep. Longhurst &
Rep. Osienski & Rep. K. Williams
Sens. Ennis, Gay, Lockman, Hansen, Mantzavinos,
S. McBride, Paradee, Poore, Sturgeon, Sokola; Reps.
Baumbach, Bolden, Bentz, Cooke, Chukwuocha,
Heffernan, Lynn, Minor-Brown, Morrison, Mitchell,
Wilson-Anton, Griffith

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 15
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO MINIMUM WAGE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 902, Title 19 of the Delaware Code by making deletions as shown by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 902. Minimum wage rate (For current federal minimum wage, see 29 U.S.C. § 206(a)(1)(A)).

(a) Except as may otherwise be provided under this chapter, every employer shall pay to every employee in any occupation wages of a rate:

- (1) Not less than ~~\$7.75~~ \$10.50 per hour effective ~~June 1, 2014~~ January 1, 2022;
- (2) Not less than ~~\$8.25~~ \$11.75 per hour effective ~~June 1, 2015~~ January 1, 2023;
- (3) Not less than ~~\$8.75~~ \$13.25 per hour effective ~~January 1, 2019~~ January 1, 2024;
- (4) Not less than ~~\$9.25~~ \$15.00 per hour effective ~~October 1, 2019~~ January 1, 2025;
- ~~(5) Not less than \$9.25 per hour until January 1, 2022.~~

Upon the establishment of a federal minimum wage in excess of the state minimum wage, the minimum wage in this State shall be equal in amount to the federal minimum wage, except as may otherwise be provided under this chapter.

TAB 14



LAWS OF DELAWARE
VOLUME 83
CHAPTER 13
151st GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 32

AN ACT TO AMEND THE DELAWARE CODE RELATING TO DISCRIMINATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1901, Title 2 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 1901. Definitions.

As used in this chapter:

(4) "Protective hairstyle" includes braids, locks, and twists.

(5) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

Section 2. Amend § 4502, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 4502. Definitions.

As used in this chapter:

(15) "Protective hairstyle" includes braids, locks, and twists.

(16) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

Section 3. Amend § 4602, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 4602. Definitions.

As used in this chapter:

(22) "Protective hairstyle" includes braids, locks, and twists.

(23) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

Section 4. Amend § 1183, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1183. Prohibitions and penalties.

(a) The following prohibitions ~~shall be applicable:~~ apply:

(1) ~~No person shall~~ A person may not be appointed to, or removed from, or in any way favored or discriminated against with respect to, any county position, or appointive county administrative office, because of race, or color, or national origin, ~~or political,~~ political or religious opinions or affiliations, ~~or sex, or sexual orientation, or gender identity,~~ identity. For purposes of this subsection:

a. "Protective hairstyle" includes braids, locks, and twists.

b. "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

(2) ~~No person shall.~~ A person may not, wilfully or corruptly, make any false statement, certificate, mark, ~~rating- rating,~~ or report in regard to any test, certification or appointment under the personnel provisions of this chapter, or in any manner commit or attempt to commit any fraud preventing the impartial execution of the personnel provisions or of the rules and regulations made under this ~~chapter;~~ chapter.

(3) ~~No person~~ A person who seeks appointment or promotion with respect to any county position or appointive county administrative office ~~shall, may not,~~ directly or indirectly, give, ~~render- render,~~ or pay any money, ~~service- service,~~ or other valuable thing to any person for, or in connection with, that person's test, appointment, proposed appointment, ~~promotion~~ promotion, or proposed promotion.

Section 5. Amend § 9605, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9605. Recordation of instruments.

(b)(1) A recorder may not knowingly record or receive for filing any contract, mortgage, lease, deed or conveyance, or any other indenture or agreement affecting real property that contains any promise, covenant, or restriction that limits, restrains, prohibits, or otherwise provides against the sale, gift, transfer, assignment, conveyance, ownership, lease, rental, use, or occupancy of real property to or by any person because of race, color, creed, religion, sex, sexual orientation, gender identity, disability, age, marital status, familial status, source of income, national origin, or ancestry. For purposes of this paragraph (b)(1):

a. "Protective hairstyle" includes braids, locks, and twists.

b. "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

(2) Paragraph (b)(1) of this section does not prohibit a recorder from recording or receiving for filing any contract, mortgage, lease, deed or conveyance, or any other indenture or agreement affecting real property that contains a provision that is permitted by the exceptions to the Delaware Fair Housing Act under §§ 4603A and 4607 of Title 6.

Section 6. Amend § 4503, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4503. Definitions.

As used in this chapter:

(1) "Clerk" means the prothonotary of each county, and includes any deputy or clerk in the office of the ~~prothonotary;~~ prothonotary.

(2) "Court" means the Superior Court of the State, and includes any Judge of the ~~Court;~~ Court.

(3) "Juror qualification form" means a form approved by the Court which shall elicit information relevant to the selection of jurors in accordance with this ~~chapter;~~ and chapter.

(4) "Jury selection plan" means a written plan designed to carry out the policy and the provisions of this ~~chapter, chapter.~~

(5) "Master list" means a list or an electronic system for the storage of the names of prospective jurors selected randomly from the source ~~list, list.~~

(6) "Protective hairstyle" includes braids, locks, and twists.

~~(6) (7)~~ "Qualified jury wheel" means a device or an electronic system for the storage of the names of prospective jurors on a master list who are not disqualified from jury service.

(8) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

~~(7) (9)~~ "Source list" means a list or an electronic system for the storage of the names on the voter registration list which may be supplemented with names from other sources to foster the policy of this ~~chapter, chapter.~~

~~(8) (10)~~ "Voter registration list" means the current official record of persons registered to vote in a general ~~election, election.~~

Section 7. Amend § 1213, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1213. Definitions relating to abuse of office.

(a) In §§ 1211 and 1212 of this title, the ~~The~~ definitions given in under § 1209 of this title ~~apply, apply to §§ 1211 and 1212 of this title.~~

(b) As used in § 1211 of this title:

(1) "Protective hairstyle" includes braids, locks, and twists.

(2) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

Section 8. Amend § 1304, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1304. Hate crimes; class A misdemeanor, class G felony, class F felony, class E felony, class D felony, class C felony, class B felony, class A felony.

(a) Any person who commits, or attempts to commit, any crime as defined by the laws of this State, and who intentionally:

(1) Commits said crime for the purpose of interfering with the victim's free exercise or enjoyment of any right, privilege or immunity protected by the First Amendment to the United States Constitution, or commits said crime because the victim has exercised or enjoyed said rights; or

(2) Selects the victim because of the victim's race, religion, color, disability, sexual orientation, gender identity, national origin or ancestry, shall be guilty of a hate crime. For purposes of this ~~section, section:~~

a. ~~the term "sexual orientation" means heterosexuality, bisexuality, or homosexuality, and the term "gender."~~ "Gender identity" means a gender-related identity, appearance, ~~expression~~ expression, or behavior of a person, regardless of the person's assigned sex at birth.

b. "Protective hairstyle" includes braids, locks, and twists.

c. "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

d. "Sexual orientation" means heterosexuality, bisexuality, or homosexuality.

Section 9. Amend § 506, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 506. Restrictions.

(a) A charter school ~~shall not~~ may not do any of the following:

(1) Charge tuition, except in accordance with Chapter 6 of this title, or collect fees not permitted to be assessed by other school ~~districts;~~ districts.

(2) Be home-based nor engage in any sectarian or religious practices in its educational program, admissions policies, employment policies ~~or operations;~~ operations.

(3) Restrict student admissions except:

a. By age and grade;

b. By lottery in the case of over-enrollment;

c. By gender in the case of a same-gender school, except that there may not be more than 1 same-gender school for each gender operating simultaneously, and any same-gender charter school authorized prior to June 30, 2014, may have their charter renewed and continue to operate. Any subsequent same-gender charter school that seeks to operate in the State shall make its application to the Department of Education and the State Board of Education.

d.-g. [Repealed.]

(4) Discriminate against any student in the admissions process because of race, creed, color, sex (except in the case of a same-gender school), handicap, or national origin, or because the student's school district of residence has a per student local expenditure lower than another student seeking ~~admission; or~~ admission. For the purposes of this subsection:

a. "Protective hairstyle" includes braids, locks, and twists.

b. "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

(5) Be formed to circumvent a court-ordered desegregation plan.

Section 10. Amend § 4161, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 4161. Definitions.

For purposes of this subchapter:

(9) "Protective hairstyle" includes braids, locks, and twists.

(10) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

Section 11. Amend § 8501, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 8501. Definitions.

As used in this chapter, unless the context otherwise requires:

(4) "Protective hairstyle" includes braids, locks, and twists.

(5) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

Section 12. Amend § 2304, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2304. Unfair methods of competition and unfair or deceptive acts or practices defined.

The following are ~~hereby~~ defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(22) Unfair discrimination in the value of insurance policies and premiums based on race, color, religion, sexual orientation, gender identity or national origin; penalty. —

a. ~~It shall be~~ is an unlawful practice for any insurance company licensed to do business in this State to discriminate in any way because of the insured's race, color, religion, sexual orientation, gender ~~identity~~ identity, or national origin, or to make, publish, disseminate, ~~circulate~~ circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, ~~circulated~~ circulated, or placed before the public, in a newspaper, ~~magazine~~ magazine, or other publication, or in the form of a notice, circular, pamphlet, ~~letter~~ letter, or poster, or over any radio or television station, or in any other way, to include the writing of any policy or the application therefor, an advertisement, ~~announcement~~ announcement, or statement containing any assertion, ~~representation~~ representation, or statement with respect to the business of insurance or with respect to any person in the conduct of the insurance business, which discriminates in any way because of the insured's race, color, religion, sexual orientation, gender ~~identity~~ identity, or national origin or to classify or refer to any individual on the basis of race, color, religion, sexual orientation, gender ~~identity~~ identity, or national origin.

b. For purposes of this paragraph (22):

1. "Gender identity" means a gender-related identity, appearance, expression, or behavior of a person, regardless of the person's assigned sex at birth. Gender identity may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is sincerely held as part of a person's core identity; provided, however, that gender identity shall not be asserted for any improper purpose.

2. "Protective hairstyle" includes braids, locks, and twists.

3. "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

4. "Sexual orientation" exclusively means heterosexuality, homosexuality, or bisexuality.

c. ~~"Gender identity" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth. Gender identity may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is sincerely held as part of a person's core identity; provided, however, that gender identity shall not be asserted for any improper purpose. [Transferred to paragraph (22)b. of this section.]~~

Section 13. Amend § 204, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 204. Training and apprenticeship programs.

(g) The recruitment, ~~selection~~ selection, and training of apprentice trainees during their apprenticeship shall be without discrimination because of race, color, religion, ~~national origin~~ national origin, or sex. The State will take affirmative action to provide equal opportunity in apprenticeship programs and will operate the training program as required under the State plan for equal employment in apprenticeship and training. For purposes of this subsection:

(1) "Protective hairstyle" includes braids, locks, and twists.

(2) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

Section 14. Amend § 710, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 710. Definitions.

For the purposes of this subchapter:

(18) "Protective hairstyle" includes braids, locks, and twists.

(20) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

Section 15. Amend § 502, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 502. Definitions [Effective Jan. 1, 2021; Effective until July 1, 2021].

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them under this section, except where the context clearly indicates a different meaning:

(14) "Protective hairstyle" includes braids, locks, and twists.

(15) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

Section 16. Amend § 502, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 502. Definitions [Effective July 1, 2021].

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them under this section, except where the context clearly indicates a different meaning:

(14) "Protective hairstyle" includes braids, locks, and twists.

(15) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

Section 17. Amend § 701, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 701. Chiropractic defined; limitation of chiropractic license [Effective until July 1, 2021].

(a) As used in this chapter:

(1) "Chiropractic" means a drugless system of health care based on the principle that interference with the transmission of nerve impulses may cause disease.

(4) "Protective hairstyle" includes braids, locks, and twists.

(5) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

Section 18. Amend § 701, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 701. Chiropractic defined; limitation of chiropractic license [Effective July 1, 2021].

(a) As used in this chapter:

(1) "Chiropractic" means a drugless system of health care based on the principle that interference with the transmission of nerve impulses may cause disease.

(4) "Protective hairstyle" includes braids, locks, and twists.

(5) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

Section 19. Amend § 1702, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 1702. Definitions [Effective Jan. 1, 2021; Effective until July 1, 2021].

The following definitions apply to this chapter unless otherwise expressly stated or implied by the context:

(14) "Protective hairstyle" includes braids, locks, and twists.

(15) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

Section 20. Amend § 1702, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 1702. Definitions [Effective July 1, 2021].

The following definitions apply to this chapter unless otherwise expressly stated or implied by the context:

(14) "Protective hairstyle" includes braids, locks, and twists.

(15) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

Section 21. Amend § 3101, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 3101. Definitions.

The following words, terms and phrases, when used in this chapter shall have the meanings ascribed to them under this section, except where the context clearly indicates a different meaning:

(14) "Protective hairstyle" includes braids, locks, and twists.

(15) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

Section 22. Amend § 5141, Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 5141. Definitions.

The following words, terms and phrases, when used in this part, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(24) "Protective hairstyle" includes braids, locks, and twists.

(25) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

Section 23. Amend § 5953, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5953. Discrimination prohibited.

(a) For purposes of this section:

(1) "Protective hairstyle" includes braids, locks, and twists.

(2) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

(b) No person shall A person may not be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or be in any way favored or discriminated against with respect to employment in the classified ~~service~~ service, because of political or religious opinions or affiliations, sexual orientation, gender identity, ~~sex~~ sex, or race.

Section 24. Amend § 6962, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6962. Large public works contract procedures.

(d) Bid specifications and plans requirements. —

(7) Equality of employment opportunity and equal pay on public works. —

a. As a condition of the awarding of any contract for public works financed in whole or in part by state appropriation, such contracts shall include the following provisions:

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity or national origin. The contractor will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, sexual orientation, gender identity or national origin.

3. The contractor will ensure employees receive equal pay for equal work, without regard to sex. Employee pay differential is acceptable if pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or if the differential is based on any other factor other than sex.

b. The Secretary of the Department of Labor shall be responsible for the administration of this provision and shall adopt such rules and regulations and issue such orders as deemed necessary to achieve the purposes thereof; provided, that no requirement established hereby shall be in conflict with § 6904 of this title.

c. For the purposes of this section:

1. "Protective hairstyle" includes braids, locks, and twists.

2. "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

Approved April 13, 2021

TAB 15



Legislative Council,
General Assembly
State of Delaware

LAWS OF DELAWARE
VOLUME 83
CHAPTER 2
151st GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 65

AN ACT TO AMEND TITLES 19, 29 AND 30 OF THE DELAWARE CODE RELATING TO COVID-19 RELATED UNEMPLOYMENT BENEFITS, ASSESSMENTS AND RULEMAKING AUTHORITY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3326, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3326 Extended Benefits.

(n) With respect to determining whether the State is in an extended benefit period beginning on November 1, 2020, through December 31, 2021, the State shall disregard the requirement in subsection (a)(1) of this section that no extended benefit period may begin before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this State.

Section 2. Amend § 3348, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3348 Average employer assessment rate; average industry assessment rate; average construction industry assessment rate; new employer rate; standard rate of assessment.

(j) Notwithstanding the required computation of the average employer assessment rate, the average industry assessment rate or the average construction industry assessment rate to be established by the Secretary of Labor on or before December 31, 2020 for the next succeeding calendar year pursuant to subsections (a) through (c) of this section, for calendar year 2021, all employers assigned an assessment rate under subsections (d) or (e) of this section shall have the same rate as established by the Secretary of Labor for the calendar year 2020.

Section 3. Amend Title 29, Chapter 85 of the Delaware Code by making deletions as shown by strike through and additions as shown by underline as follows:

Departments of Government

Chapter 85. Department of Labor

§ 8503 Powers, duties and functions of the Secretary.

(7) To establish and to promulgate such rules and regulations governing the operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State. The Secretary is authorized to develop emergency rules amending the Delaware Unemployment Insurance Code which enhance the flexibility of the unemployment insurance program in response to COVID-19 and alleviate some of the burden of temporary layoffs, isolation and quarantine by ensuring unemployment benefits are available to individuals whose employment has been impacted directly by COVID-19.

Section 4. Amend § 1106(b), Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1106 Modifications.

(b) *Subtractions.* – There shall be subtracted from federal adjusted gross income:

(10) The amount of any unemployment benefits received in calendar year 2020, to the extent included in federal adjusted gross income.

Section 5. Section 3 of this Act expires on March 31, 2022.

Approved February 8, 2021

TAB 16



Legislative Council,
General Assembly
State of Delaware

LAWS OF DELAWARE
VOLUME 83
CHAPTER 1
151st GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 31

AN ACT CONCURRING IN A PROPOSED AMENDMENT TO ARTICLE I OF THE DELAWARE
CONSTITUTION RELATING TO EQUAL RIGHTS.

WHEREAS, an amendment to the Delaware Constitution was proposed in the 150th General Assembly, being Chapter 287 of Volume 82 of the Laws of Delaware; and

WHEREAS, the proposed amendment was adopted by two-thirds of all members elected to each house of the 150th General Assembly; and

WHEREAS, following adoption by the General Assembly, the proposed amendment was publicized in accordance with the Delaware Constitution; and

WHEREAS, when the 151st General Assembly concurs in the proposed amendment, the amendment will become part of the Delaware Constitution.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 21, Article I of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 21.

Equality of rights under the law shall not be denied or abridged on account of race, color, national origin, or
sex.

Approved January 28, 2021

TAB 17



SPONSOR: Rep. Osienski & Rep. Longhurst & Rep. Baumbach & Rep. Dorsey Walker & Rep. Heffernan & Rep. Lynn & Rep. Minor-Brown & Rep. Morrison & Sen. Paradee & Sen. Hoffner & Sen. Lockman & Sen. S. McBride & Sen. Pinkney & Sen. Sturgeon & Sen. Townsend
Reps. Chukwuocha, Griffith, K. Johnson, Lambert, S. Moore, Neal, Phillips, Romer, K. Williams, Wilson-Anton; Sens. Gay, Huxtable, Poore, Sokola, Walsh

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 2

AN ACT TO AMEND TITLES 4, 11, 16, AND 30 OF THE DELAWARE CODE RELATING TO CREATION OF THE DELAWARE MARIJUANA CONTROL ACT.

1 WHEREAS, the creation of a legal, regulated marijuana industry would effectively eliminate the illegal market for
2 marijuana in Delaware by diverting demand away from illicit cartels and enterprises, and provide law enforcement officials
3 the legal means necessary to ensure the safe legal use of marijuana in Delaware; and

4 WHEREAS, the legalization and regulation of marijuana would address criminal justice concerns related to
5 criminalization and prohibitions on the production, possession, and transportation of the substance, recognizing a Black
6 individual is 4 times more likely to be arrested for marijuana possession than a white individual despite equal rates of use;
7 and

8 WHEREAS, it is the responsibility of the General Assembly to ensure that Delawareans most impacted by
9 prohibition are guaranteed access to the legal marijuana market; and

10 WHEREAS, the creation of a legal framework to regulate the production and sale of marijuana in the State of
11 Colorado and the State of Washington has generated a multi-billion dollar industry and yielded more than 38,000 well-
12 paying jobs in Colorado and 22,000 jobs in Washington; and

13 WHEREAS, the adult recreational use of marijuana has been legalized in neighboring states including New York,
14 New Jersey, and Maryland; and

15 WHEREAS, Delaware recognizes the economic benefits of a legal marijuana market as well as the importance of
16 regulating the substance in a manner similar to alcohol and restricting its use to persons over 21 years old.

17 NOW, THEREFORE:

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all
19 members elected to each house thereof concurring therein):

(c) The General Assembly further finds and declares that it is necessary to ensure consistency and fairness throughout this State, and therefore, that the matters addressed by this chapter are of statewide concern, except as specified in this chapter.

§ 1302. Definitions.

As used in this chapter:

(1) "Appeals Commission" means 3 persons, 1 from each County, appointed by the Governor with the advice and consent of the majority of the Senate.

(2) "Commissioner" means the person appointed by the Governor and confirmed by the Senate who serves as the Marijuana Commissioner for the State.

(3) "Compassion center" means an entity registered as a compassion center under § 4914A of Title 16.

(4) "Consumer" means an individual 21 years of age or older who purchases marijuana, marijuana products, or marijuana accessories for personal use by the individual or other individuals 21 years of age or older, but not for resale to others.

(5) "Department" means the Department of Safety and Homeland Security.

(6) "Disproportionately impacted area" means census tracts identified by the Commissioner in collaboration with state and local agencies that have high rates of arrest, conviction, and incarceration relating to the sale, possession, use, cultivation, manufacture, or transport of marijuana.

(7) "Division" means the Division of Alcohol and Tobacco Enforcement.

(8) "Immature plant" means a nonflowering marijuana plant, no taller than 8 inches and no wider than 8 inches; that is produced from a cutting, clipping, or seedling; is in a cultivating container; and which does not have buds that may be observed by visual examination.

(9) "Labor peace agreement" means an agreement between a licensee and any bona fide labor organization that prohibits labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the licensee's business. This agreement means that the licensee has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the licensee's employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the licensee's employees work, for the purpose of meeting with employees to discuss the employees' right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

§§ 1328-1330. Reserved.

Subchapter III. Regulation and Licensure.

§ 1331. Regulations.

(a) The Commissioner shall adopt regulations necessary for implementation of this chapter. The regulations may not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. Regulations and fees for marijuana cultivation facilities may be varied based on the size of the facility to ensure that the operation of smaller facilities is not made unreasonably impracticable. The Commissioner shall include all of the following in the regulations:

(1) Procedures for the issuance, renewal, suspension, transfer, and revocation of a license to operate a marijuana establishment with all procedures subject to the Administrative Procedures Act, Chapter 101 of Title 29.

(2) A competitive scoring process to determine which applicants may obtain licenses to operate each type of marijuana establishment if more qualified applicants apply than the Commissioner may license under this subchapter and that ensures applicants will follow best practices for community engagement, consumer protection, food safety, worker safety, family support jobs, diversity, public safety, and environmental stewardship. The competitive scoring process for retail marijuana stores must be varied to account for geographic distribution or population density, or both.

(3) The criteria for the competitive scoring process for all license types must include the following:

a. The applicants comprehensive business plan, including an annual budget and pro forma financial statements.

b. The experience, training, and expertise of the applicant and managing officers.

c. The applicant's plans for safety, security, and the prevention of diversion.

d. The applicant's plans for operations, training, and staffing, including all of the following:

1. A social responsibility plan outlining diversity goals, including plans to recruit and hire people of color, women, and veterans and to support their ownership and promotion within the organization, as well as the percent of employees it plans to hire from within the respective city or region of the State.

2. A plan to provide a safe, healthy, and economically beneficial working environment with fair scheduling practices, family-supporting wages, and benefits for its employees.

3. Any criminal, civil, or regulatory history encountered by other entities the applicant and managing officers have previously controlled or managed.

4. The suitability of the proposed location for the facilities.

5. Any other criteria deemed appropriate by the Commissioner.



SPONSOR: Rep. Osienski

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 1
TO
HOUSE BILL NO. 2

AMEND House Bill No. 2 by deleting lines 49 through 53 in their entirety.

FURTHER AMEND House Bill No. 2 on line 73 by inserting "to" after "marijuana" and before "individuals".

FURTHER AMEND House Bill No. 2 by deleting line 166 in its entirety and inserting in lieu thereof the following:

"§ 1305. Places of employment.

Nothing in this chapter is intended to impact or impose any requirement or restriction on employers with respect to terms and conditions of employment including but not limited to accommodation, policies, or discipline."

FURTHER AMEND House Bill No. 2 by deleting lines 681 through 689 in their entirety and substituting in lieu thereof the following:

"(3) a. For an indoor facility with a cannabis plant grow canopy area less than or equal to 2,500 square feet or for an outdoor facility with a cannabis plant grow canopy area less than or equal to 1 acre, the fee is \$2,500.

b. For an indoor facility with a cannabis plant grow canopy area equal to or between 2,501 and 7,500 square feet or for an outdoor facility with a cannabis plant grow canopy area equal to or between 1.1 and 2.5 acres, the fee is \$5,000.

c. For an indoor facility with a cannabis plant grow canopy area between 7,501 and 10,000 square feet or for an outdoor facility with a cannabis plant grow canopy area equal to or between 2.6 and 5 acres, the fee is \$7,500.

d. For an indoor facility with a cannabis plant grow canopy area equal to or greater than 10,001 square feet or for an outdoor facility with a cannabis plant grow canopy area equal to or greater than 5.1 acres, the fee is \$10,000."

FURTHER AMEND House Bill No. 2 by deleting lines 697 through 699 in their entirety and substituting in lieu thereof the following:

"(f) No marijuana cultivation facility license may be issued for an indoor facility with a cannabis plant grow canopy area exceeding 12,500 square feet or for an outdoor facility with a cannabis plant grow canopy area exceeding 7.5 acres unless additional tiers are created by the Commissioner under subsection (h) of this section."

FURTHER AMEND House Bill No. 2 by deleting line 798 and substituting in lieu thereof the following:

“(3) Will not operate a facility with a cannabis plant grow canopy area greater than 2500 square feet.”.

FURTHER AMEND House Bill No. 2 by striking line 826 in its entirety and substituting in lieu thereof the following:

“(1) Indoor facility with a cannabis plant grow canopy area less than or equal to 2500 square feet or an outdoor facility with a cannabis plant grow canopy area less than or equal to 1 acre:”.

FURTHER AMEND House Bill No. 2 by striking line 829 in its entirety and substituting in lieu thereof:

“(2) Indoor facility with a cannabis plant grow canopy area greater than 2500 square feet or an outdoor facility with a cannabis plant grow canopy area greater than 1 acre:”.

FURTHER AMEND House Bill No. 2 by deleting lines 1146 through 1148 in their entirety and substituting in lieu thereof:

“(d) The amount of tax shall be separately stated on an invoice, receipt, or other similar document, in the manner directed by the Director of Revenue, that the marijuana retailer provides to the consumer at the time the retail sale occurs.”.

FURTHER AMEND House Bill No. 2 on line 1163 by deleting “Commissioner” and substituting in lieu thereof “Director of Revenue”.

FURTHER AMEND House Bill No. 2 by inserting after line 1169 and before line 1170 the following:

“(f) Any information set forth or disclosed in any report or return required under or as a result of this section, including any information which is required to be attached or included on any report or return required under or as a result of this section, is subject to the provisions of § 368 of Title 30.”

FURTHER AMEND House Bill No. 2 on line 1202 by deleting “Department of Justice” and substituting in lieu thereof “Criminal Justice Council”.

FURTHER AMEND House Bill No. 2 on lines 1207 and 1208 by deleting “Department of Justice” and substituting in lieu thereof “Criminal Justice Council”.

FURTHER AMEND House Bill No. 2 by inserting after line 1280 and before line 1281 the following and redesignating the remaining bills sections accordingly:

“Section 10. Amend § 501, Title 30 by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 501. Application of this chapter.

For tax periods beginning on or after January 1, 1992, except where in conflict with a specific provision within another chapter of this title or, where applicable, a specific provision of Title 4 or Title 16 or a rule of the Delaware Alcoholic Beverage Control ~~Commission~~, Commission or the Marijuana Commissioner, this chapter shall govern the administration, procedures and enforcement of the State revenue laws provided for under Parts II, III, IV (except Chapters

58 51 and 52), V, and VI of this title; subchapter VII of Chapter 5 and subchapter VII of Chapter 13 of Title 4; and Chapter
59 101 of Title 16.

60 Section 11. The Commissioner, in consultation with the Oversight Committee shall provide the Chairs of the Joint
61 Finance Committee of the General Assembly with a quarterly report, beginning January 1 after the enactment date of this
62 Act and continuing for 2 years, regarding the progress towards implementation and any potential barriers towards timely
63 issuance of licenses and commencement of retail sales.”.

SYNOPSIS

This amendment does all of the following:

- (1) Removes language relating to alcoholic liquor testing.
- (2) Corrects a typographical error.
- (3) Reinserts language relating to terms and conditions of employment with respect to marijuana that was present in previous versions of this bill.
- (4) Makes technical corrections relating to canopy grow area and licensing.
- (5) Gives the Division of Revenue power to set the form and manner of marijuana tax payments and the manner the tax appears on a consumer’s receipt at the time of sale.
- (6) Extends the privacy protections given to other tax returns and reports to the marijuana tax.
- (7) Replaces the Department of Justice with the Criminal Justice Council as the administrator of the Justice Reinvestment Fund.
- (8) Adds cross-references to Chapter 30 relating to the hierarchy of rules for tax administration, procedures and enforcement.
- (9) Adds a quarterly report from the Commissioner to the General Assembly regarding progress towards timely implementation of the Act.



SPONSOR: Rep. Osienski

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 1
TO
HOUSE BILL NO. 2

1 AMEND House Bill No. 2 by deleting lines 49 through 53 in their entirety.
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8 FURTHER AMEND House Bill No. 2 by deleting lines 681 through 689 in their entirety and substituting in lieu
9 thereof the following:

10 "(3) a. For an indoor facility with a cannabis plant grow canopy area less than or equal to 2,500 square feet or
11 for an outdoor facility with a cannabis plant grow canopy area less than or equal to 1 acre, the fee is \$2,500.

12 b. For an indoor facility with a cannabis plant grow canopy area equal to or between 2,501 and 7,500
13 square feet or for an outdoor facility with a cannabis plant grow canopy area equal to or between 1.1 and 2.5 acres,
14 the fee is \$5,000.

15 c. For an indoor facility with a cannabis plant grow canopy area between 7,501 and 10,000 square feet or
16 for an outdoor facility with a cannabis plant grow canopy area equal to or between 2.6 and 5 acres, the fee is
17 \$7,500.

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19 feet or for an outdoor facility with a cannabis plant grow canopy area equal to or greater than 5.1 acres, the fee is
20 \$10,000."

21 FURTHER AMEND House Bill No. 2 by deleting lines 697 through 699 in their entirety and substituting in lieu
22 thereof the following:

23 "(f) No marijuana cultivation facility license may be issued for an indoor facility with a cannabis plant grow
24 canopy area exceeding 12,500 square feet or for an outdoor facility with a cannabis plant grow canopy area exceeding 7.5
25 acres unless additional tiers are created by the Commissioner under subsection (h) of this section."

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FURTHER AMEND House Bill No. 2 by striking line 829 in its entirety and substituting in lieu thereof:

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FURTHER AMEND House Bill No. 2 by deleting lines 1146 through 1148 in their entirety and substituting in lieu thereof:

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FURTHER AMEND House Bill No. 2 on line 1163 by deleting “Commissioner” and substituting in lieu thereof “Director of Revenue”.

FURTHER AMEND House Bill No. 2 by inserting after line 1169 and before line 1170 the following:

“(f) Any information set forth or disclosed in any report or return required under or as a result of this section, including any information which is required to be attached or included on any report or return required under or as a result of this section, is subject to the provisions of § 368 of Title 30.”

FURTHER AMEND House Bill No. 2 on line 1202 by deleting “Department of Justice” and substituting in lieu thereof “Criminal Justice Council”.

FURTHER AMEND House Bill No. 2 on lines 1207 and 1208 by deleting “Department of Justice” and substituting in lieu thereof “Criminal Justice Council”.

FURTHER AMEND House Bill No. 2 by inserting after line 1280 and before line 1281 the following and redesignating the remaining bills sections accordingly:

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§ 501. Application of this chapter.

For tax periods beginning on or after January 1, 1992, except where in conflict with a specific provision within another chapter of this title or, where applicable, a specific provision of Title 4 or Title 16 or a rule of the Delaware Alcoholic Beverage Control ~~Commission~~, Commission or the Marijuana Commissioner, this chapter shall govern the administration, procedures and enforcement of the State revenue laws provided for under Parts II, III, IV (except Chapters

58 51 and 52), V, and VI of this title; subchapter VII of Chapter 5 and subchapter VII of Chapter 13 of Title 4; and Chapter
59 101 of Title 16.

60 Section 11. The Commissioner, in consultation with the Oversight Committee shall provide the Chairs of the Joint
61 Finance Committee of the General Assembly with a quarterly report, beginning January 1 after the enactment date of this
62 Act and continuing for 2 years, regarding the progress towards implementation and any potential barriers towards timely
63 issuance of licenses and commencement of retail sales.”.

SYNOPSIS

This amendment does all of the following:

- (1) Removes language relating to alcoholic liquor testing.
- (2) Corrects a typographical error.
- (3) Reinserts language relating to terms and conditions of employment with respect to marijuana that was present in previous versions of this bill.
- (4) Makes technical corrections relating to canopy grow area and licensing.
- (5) Gives the Division of Revenue power to set the form and manner of marijuana tax payments and the manner the tax appears on a consumer’s receipt at the time of sale.
- (6) Extends the privacy protections given to other tax returns and reports to the marijuana tax.
- (7) Replaces the Department of Justice with the Criminal Justice Council as the administrator of the Justice Reinvestment Fund.
- (8) Adds cross-references to Chapter 30 relating to the hierarchy of rules for tax administration, procedures and enforcement.
- (9) Adds a quarterly report from the Commissioner to the General Assembly regarding progress towards timely implementation of the Act.

TAB 18



SPONSOR: Sen. Sturgeon & Sen. Walsh & Rep. Osienski &
Rep. Chukwuocha & Rep. Heffernan & Rep. Morrison &
Rep. K. Williams
Sens. Hansen, Hoffner, Lockman, S. McBride, Paradee,
Poore, Townsend; Reps. Griffith, Lambert, Wilson-Anton

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 27

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO LIMITATION OF ACTIONS FOR
WORK, LABOR, OR PERSONAL SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 8111, Title 10 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 8111. Work, labor or personal services.

4 No action for recovery upon a claim for wages, salary, or overtime for work, ~~labor~~ labor, or personal services
5 performed, or for damages (actual, ~~compensatory~~ compensatory, or punitive, liquidated or otherwise), or for interest or
6 penalties resulting from the failure to pay any such claim, or for any other benefits arising from such work, ~~labor~~ labor, or
7 personal services performed or in connection with any such action, shall be brought after the expiration of ~~1 year~~ 2 years
8 from the accruing of the cause of action on which such action is based.

9 Section 2. This Act applies to claims when the date of the accruing of the cause of action on which the action is
10 based is on or after [the effective date of this Act].

SYNOPSIS

This Act increases the statute of limitations for filing an action for recovery upon a claim for unpaid wages from 1 year to 2 years, making it consistent with the statute of limitations under the federal Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. Many employees who are terminated spend the first period of unemployment attempting to secure other employment. After this focus on finding employment ends, 1 year may have passed or be about to pass, preventing employees who are owed wages from a previous employer from seeking legal redress.

This Act applies to claims when the date of the accruing of the cause of action on which the action is based is on or after the effective date of this Act.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Sturgeon

TAB 19



SPONSOR: Rep. Heffernan & Rep. Longhurst & Rep. Minor-Brown
& Rep. Baumbach & Sen. Poore
Reps. Bolden, Carson, Griffith, K. Johnson, Lambert,
Morrison, Romer, Michael Smith, K. Williams; Sens.
Gay, Hoffner, S. McBride, Pinkney, Sokola

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 65

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO BEREAVEMENT LEAVE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 51, Title 29 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 5125. Bereavement leave.

(a) Definitions.

(1) "Miscarriage" means a loss of pregnancy prior to 20 weeks gestation.

(2) "Other loss" includes a diagnosis that negatively impacts pregnancy and loss of pregnancy including
termination regardless if medically necessary.

(3) "Stillbirth" is a loss of pregnancy from 20 weeks gestation or more.

(4) "State employee" means any full-time or part-time employee of the State.

(b) Any state employee shall be entitled to a maximum of 5 days of paid bereavement leave for the miscarriage,
stillbirth, or other loss suffered by the employee.

Section 2. This Act shall be known as the "Sloane Hajek Act of 2023".

SYNOPSIS

According to the Mayo Clinic, miscarriages occur in about 20% of all pregnancies, and generally, in the first 12 weeks. According to the Centers for Disease Control, 1 out of every 100 American pregnancies ends in stillbirth. Black women have a significantly higher risk of miscarrying— 43% higher when compared to white women. Black mothers are also more than twice as likely to experience stillbirth compared to Hispanic and white mothers.

This bill provides State employees who suffer a miscarriage, stillbirth or other loss, a maximum of 5 days of paid bereavement leave.

This Act shall be known as the "Sloane Hajek Act of 2023".

TAB 20



SPONSOR: Rep. Bennett & Rep. Bush & Rep. Dorsey Walker &
Sen. Paradee
Reps. Baumbach, Carson, Collins, Heffernan, Minor-
Brown, S. Moore, Ramone, Michael Smith, K. Williams;
Sens. Ennis, Hocker, Lawson, Lockman, Sokola, Wilson

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 331

AN ACT TO AMEND THE DELAWARE CODE RELATING TO STANDS OPERATED BY A CHILD.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Subchapter I, Chapter 3, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 321. Authority to prohibit or regulate a stand operated by a child.

(a) For purposes of this section:

(1) "Food establishment" means as defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the Delaware Administrative Code.

(2) "Stand operated by a child" means a location operated by a child that meets all of the following:

a. Operates on a temporary, occasional basis.

b. Serves or sells to an individual a food or beverage that is not a time or temperature control for safety food, including lemonade, or resells a prepackaged product to an individual.

c. Is located on private property with the permission of the private property owner.

d. Does not operate in a facility that is a food establishment.

(3) "Time or temperature control for safety food" means as "time/temperature control for safety food" is defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the Delaware Administrative Code.

(b) A county may not do the following:

(1) Enact a law, ordinance, or regulation that prohibits or regulates a stand operated by a child.

(2) Require a license or permit for, or impose a fee, charge, or surcharge on, a stand operated by a child.

(c) If, on or before [the effective date of this Act], a county has enacted a law, ordinance, or regulation prohibited under subsection (b) of this section, the law, ordinance, or regulation is invalid to the extent the law, ordinance, or regulation applies to a stand operated by a child.

Section 2. Amend § 122, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 122. Powers and duties of the Department of Health and Social Services.

The Department shall have the following general powers and duties:

(3) Adopt, promulgate, amend, and repeal regulations consistent with law, which regulations shall not extend, modify or conflict with any law of this State or the reasonable implications thereof, and which shall be enforced by all state and local public health officials, to do all of the following:

u.1. Promulgate and enforce standards to regulate food establishments, including restaurants, caterers, temporary food vendors, grocery stores, food vending machines, ice manufacturers and cottage industries that prepare or handle food for human consumption whenever it is determined that said food represents a hazard to the public health.

2. To perform these functions, the Division of Public Health shall have the authority to collect reasonable fees necessary to defray costs of functions identified in paragraph (3)u.1. of this section.

3. For each facility required by regulations to hold a permit, the following fee shall be assessed:

FOOD ESTABLISHMENT PERMIT

Type of Establishment	Fee
Public Eating Place	\$100
Retail Food Store	\$100
Ice Manufacturers	\$30
Commercial Food Processors	\$30
Vending Machine Location	\$25

4. For each facility required by regulation to have a plan review, the following fee shall be assessed:

FOOD ESTABLISHMENT PLAN REVIEW

Square Footage	Fee
1000 or less	\$50
1001-5000	\$100
5001-10000	\$150
10001-15000	\$200
15001-above	\$250

5. Churches, schools, fire companies and other nonprofit organizations are exempt from these fees.

6.A. For purposes of paragraph (3)u. of this section:

I. "Food establishment" means as defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the Delaware Administrative Code.

II. "Stand operated by a child" means a location operated by a child that meets all of the following:

(A) Operates on a temporary, occasional basis.

(B) Serves or sells to an individual a food or beverage that is not a time or temperature control for safety food, including lemonade, or resells a prepackaged product to an individual.

(C) Is located on private property with the permission of the private property owner.

(D) Does not operate in a facility that is a food establishment.

III. "Time or temperature control for safety food" means as "time/temperature control for safety food" is defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the Delaware Administrative Code.

B. Paragraph (3)u. of this section does not apply to a stand operated by a child.

Section 3. Amend § 501, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 501. Applicability of chapter.

(a) For purposes of this section:

(1) "Food establishment" means as defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the Delaware Administrative Code.

(2) "Stand operated by a child" means a location operated by a child that meets all of the following:

a. Operates on a temporary, occasional basis.

b. Serves or sells to an individual a food or beverage that is not a time or temperature control for safety food, including lemonade, or resells a prepackaged product to an individual.

c. Is located on private property with the permission of the private property owner.

d. Does not operate in a facility that is a food establishment.

(3) "Time or temperature control for safety food" means as "time/temperature control for safety food" is defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the Delaware Administrative Code.

(b) This chapter shall apply ~~applies~~ to any place, ~~establishment~~ establishment, or occupation within this State where work is done for compensation of any kind, to whomever payable, except as otherwise specified in this chapter.

81 ~~(c) Nothing in this chapter shall prevent~~ This chapter does not apply to any of the following:

82 (1) ~~children of any age from receiving~~ A child who receives industrial education furnished by the United
83 States, the ~~State State~~, or any city or town in the State, which is duly approved by a school board or committee or other duly
84 constituted public authority.

85 (2) ~~Nothing in this chapter shall prevent children of any age from performing~~ A child who performs
86 nonhazardous work as ordered by the Family Court as a condition of probation.

87 (3) A stand operated by a child.

88 Section 4. Amend Chapter 1, Title 22 of the Delaware Code by making deletions as shown by strike through and
89 insertions as shown by underline as follows:

90 § 119. Authority to prohibit or regulate a stand operated by a child.

91 (a) For purposes of this section:

92 (1) "Food establishment" means as defined under the State of Delaware Food Code, Regulation 4458 of Title
93 16 of the Delaware Administrative Code.

94 (2) "Stand operated by a child" means a location operated by a child that meets all of the following:

95 a. Operates on a temporary, occasional basis.

96 b. Serves or sells to an individual a food or beverage that is not a time or temperature control for safety
97 food, including lemonade, or resells a prepackaged product to an individual.

98 c. Is located on private property with the permission of the private property owner.

99 d. Does not operate in a facility that is a food establishment.

100 (3) "Time or temperature control for safety food" means as "time/temperature control for safety food" is
101 defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the Delaware Administrative Code.

102 (b) A municipality may not do the following:

103 (1) Enact a law, ordinance, or regulation that prohibits or regulates a stand operated by a child.

104 (2) Require a license or permit for, or impose a fee, charge, or surcharge on, a stand operated by a child.

105 (c) If, on or before [the effective date of this Act], a municipality has enacted a law, ordinance, or regulation
106 prohibited under subsection (b) of this section, the law, ordinance, or regulation is invalid to the extent the law, ordinance,
107 or regulation applies to a stand operated by a child.

108 Section 5. Amend § 2909, Title 30 of the Delaware Code by making deletions as shown by strike through and
109 insertions as shown by underline as follows:

110 § 2909. Exemptions.

111 (h)(1) [Repealed.] For purposes of this section:

112 a. "Food establishment" means as defined under the State of Delaware Food Code, Regulation 4458 of
113 Title 16 of the Delaware Administrative Code.

114 b. "Stand operated by a child" means a location operated by a child that meets all of the following:

115 1. Operates on a temporary, occasional basis.

116 2. Serves or sells to an individual a food or beverage that is not a time or temperature control for
117 safety food, including lemonade, or resells a prepackaged product to an individual.

118 3. Is located on private property with the permission of the private property owner.

119 4. Does not operate in a facility that is a food establishment.

120 c. "Time or temperature control for safety food" means as "time/temperature control for safety food" is
121 defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the Delaware Administrative
122 Code.

123 (2) This chapter does not apply to a stand operated by a child.

SYNOPSIS

Stands operated by children that serve or sell lemonade or other beverages on a temporary, occasional basis are a summertime tradition for many children. This Act exempts a stand operated by a child from State, county, and municipal regulations and licensing fees that might otherwise apply.

Specifically, this Act defines a "stand operated by a child" as one that operates on a temporary, occasional basis, serves or sells lemonade or other beverages to others, and is located on private property with the permission of the private property owner. In Sections 2, 3, 4, and 6, this Act exempts a stand operated by a child from State regulations on food establishments and soft drinks and other beverages, requirements related to child labor laws, and retail license requirements. Additionally, Sections 1 and 5 of this Act broadly prohibit a county or municipality from enacting a law, ordinance, or regulation that prohibits, regulates, requires a license or permit for, or imposes a fee, charge, or surcharge on, a stand operated by a child.

Finally, this Act requires a greater than majority vote for passage because § 1 of Article IX of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to amend a municipal charter, whether directly, by amendment to a specific municipality's charter, or, as in this Act, indirectly, by a general law.

TAB 21



SPONSOR: Rep. Morrison & Rep. Bentz & Rep. Dorsey Walker &
Rep. Minor-Brown & Rep. S. Moore & Sen. Gay &
Sen. Lockman
Reps. Baumbach, Heffernan, Kowalko, Lambert,
Osienski, Wilson-Anton; Sens. Pinkney, Sturgeon,
Townsend

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 288

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO EMPLOYER PAID TIME OFF TO VOTE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as
2 shown by underline as follows:

3 CHAPTER 12. EMPLOYER PAID LEAVE.

4 SUBCHAPTER I. EMPLOYER PAID TIME OFF TO VOTE

5 § 1201. Purpose.

6 The Constitution of the State provides that all elections shall be free and equal. To that end, the full exercise of the
7 right to vote requires that residents be afforded the opportunity to do so without losing pay. It is the purpose of this chapter
8 to ensure that residents employed in Delaware be given time off with pay to exercise their right to vote.

9 § 1202. Definitions.

10 As used in this subchapter:

11 (1) "Department" means the Department of Labor or its authorized representatives.

12 (2) "Election" means any municipal, county, state, federal, general, or special election, political primary
13 election, or public school election as defined by Title 14, held in this State.

14 (3) "Employ" means to suffer or permit to work by an employer under a contract of employment either made
15 in this State or to be performed wholly or partly in this State.

16 (4) "Employee" means an individual who resides in this State, and is employed by an employer, but shall not
17 include:

18 a. An individual employed by the federal government.

19 b. An individual engaged in the activities of an educational, charitable, religious or nonprofit
20 organization where the employment relationship does not in fact exist or where the services are rendered to such
21 organization gratuitously.

22 c. An individual who is covered by a valid collective bargaining agreement with an employer to the
23 extent that paid time off to vote is expressly waived in the collective bargaining agreement in clear and
24 unambiguous terms.

25 (5) "Employer" means any individual, partnership, association, corporation, statutory trust, business trust,
26 entity, administrator or executor of the estate of a deceased individual, or the receiver, trustee or successor of any
27 person or entity, or any person or group of persons acting directly or indirectly in the interest of an employer in relation
28 to an employee.

29 (6) "Wage" means compensation due to an employee by reason of the employee's employment, payable in
30 legal tender of the United States or check or bank convertible into cash on demand at full face value, subject to such
31 deductions, charges or allowances as may be permitted by the regulations of the Department under Chapter 11 of this
32 title.

33 (7) "Retaliation" includes any threat, discharge, discipline, suspension, demotion, non-promotion, less
34 favorable scheduling, reduction of hours or application of absence control policies that count an employee's use of paid
35 time off to vote as absence that may lead to adverse action, or other adverse action against employees for the exercise
36 of a right guaranteed pursuant to this chapter, including sanctions against an employee who is a recipient of benefits or
37 rights pursuant to this subchapter. "Retaliation" also includes interference with or punishment for participating in an
38 investigation, proceeding or hearing pursuant to this subchapter.

39 § 1203. Paid time off to vote.

40 (a) An employer must provide 2 hours of paid time off to an employee for the purpose of voting, in person, in an
41 election in the State, on the day of the election, if the employee is scheduled to work at least 7.5 hours that day. An
42 employer may not require an employee to provide proof of being registered or qualified to vote. Pay for leave to vote shall
43 be at the employee's regular wage rate or the full state minimum wage if higher, and with the same benefits, including
44 healthcare benefits, as the employee normally earns during hours worked on the day of the election. An employer shall not
45 require an employee to exhaust any other paid leave before the employee uses 2 hours of paid time off to vote.

46 (b) The employer may specify the hours on the day of the election during which the employee may take paid time
47 off for voting, as long as the specified time falls within the time the employee is scheduled to work. The employer may

specify the employee take time off to vote at the beginning or at the end of the employee's shift but may not designate a lunch or other break as the specified time off for the employee to exercise the right to vote.

(c) An employee who has a request for time off to vote shall notify the employer not less than 2 working days before the day of an election of the request for paid time off. If the employer does not specify the hours the employee will be given for paid time to vote, the employee shall make a reasonable effort to schedule time off to vote in a manner that does not unduly disrupt the operations of the employer.

(d) If the employee must take more than 2 hours to get to the polling place from work, vote, and return to work due to circumstances beyond the employee's control, the employer must permit the employee to use any accrued paid leave to cover the excess time away from work.

(e) An employer shall display written notice in a conspicuous location in the workplace of the provisions contained in §1203 (a), (b), (c) and (d) of this subchapter.

(f) An employer may not engage in retaliation against an employee who exercises the right to take paid time off to vote.

(g) An employer's failure to provide paid time off to vote based on the employer's misclassification of the employee as an independent contractor is a violation of this subchapter.

§ 1204. Enforcement and Remedies.

(a) The Department shall administer and enforce this subchapter by:

(1) Establishing a system to receive complaints, in writing, by telephone, and online, regarding alleged violations of this subchapter.

(2) Establishing a process for investigating and resolving complaints in a timely manner and keeping complainants notified regarding the status of the investigation of their complaint.

(3) Ensuring employer compliance with this subchapter with the use of audits, investigations, record keeping requirements, and other measures.

(4) Issuing and collecting all penalties imposed for violations of this subchapter.

(b) The Department shall keep confidential the identity of complainants unless disclosure is necessary for resolution of the investigation or required by law. The Department shall notify a complainant that the Department will be disclosing the complainant's identity prior to such disclosure and to the extent practicable.

(c) The Department shall have the power to make, revise and rescind regulations it deems necessary to administer and enforce this subchapter.

77 (d) Any individual or persons may file a civil action for an alleged violation of this subchapter after exhausting all
78 administrative remedies with the Department. A lack of investigation, by the Department, shall not act as a bar to a civil
79 action against the employer. A plaintiff in a civil action, brought under this subchapter, may seek both equitable and legal
80 relief. A plaintiff prevailing in a legal action, brought under this subchapter, shall be entitled to recover the costs of the
81 lawsuit, including reasonable attorney's fees.

82 § 1205. Penalties.

83 (a) An employer who violates or fails to comply with any requirement of this subchapter shall be subject to a civil
84 penalty, assessed by the Department, of not less than \$500 nor more than \$1,000 for each violation.

85 (b) An employer who discharges or in any manner engages in retaliation against an employee because the
86 employee made a complaint or gave information related to an alleged violation of this subchapter, shall be subject to a civil
87 penalty, assessed by the Department, of not less than \$1,000 nor more than \$5,000.

88 § 1206. Short title.

89 This subchapter shall be known as the "Paid Time Off To Vote Act".

90 Section 2. This Act takes effect upon promulgation of regulations adopted under this subchapter or 1 year after
91 enactment, whichever occurs first.

SYNOPSIS

This Act requires private and public employers in the State to give any employee who is a resident of Delaware and scheduled to work at least 7.5 hours on an election day 2 hours of paid leave in order for the employee to exercise the right to vote in person. The Act excludes federal employees, individuals engaged in activities for education, charitable, religious, or nonprofit organizations when the employment relationship does not exist or where services are rendered to such organizations gratuitously, and employees who are party to a collective bargaining agreement in which paid time off to vote has been waived. Employees must give employers 2 working days' notice in advance of an election that the employee intends to use paid time off to vote. Employers must post notice of the rights created in the Act. Enforcement of the Act is through the Department of Labor. Employers who violate the Act are subject to civil penalties ranging from \$500-\$1,000 and from \$1,000-\$5,000 if found to have retaliated against an employee for exercising the rights created by this Act. Employees may bring a civil lawsuit for equitable relief and monetary damages. A prevailing employee may also recover costs and attorney's fees.

TAB 22



SPONSOR: Sen. Walsh & Rep. Osienski
Sens. Lockman, Mantzavinos, S. McBride, Townsend;
Reps. Carson, Cooke, Griffith, Heffernan, Kowalko,
Longhurst, Minor-Brown

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 201

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE PUBLIC EMPLOYMENT
RELATIONS ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 13, Title 19 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 1302. Definitions.

4 (p) "Public employer" or "employer" means the State, any county of the State or any agency thereof, and/or any
5 municipal corporation, municipality, city or town located within the State or any agency thereof, which upon the
6 affirmative legislative act of its common council or other governing body has elected to come within the former Chapter 13
7 of this title or which hereafter elects to come within this chapter, or which employs ~~100~~ 10 or more full-time employees.

8 § 1308. Disposition of complaints.

9 (a) The Board is empowered and directed to prevent any unfair labor practice described in § 1307(a) and (b) of this
10 title and to issue appropriate remedial orders. Whenever it is charged that anyone has engaged or is engaging in any unfair
11 practice as described in § 1307(a) and (b) of this title, the Board or any designated agent thereof shall have authority to
12 issue and cause to be served upon such party a complaint stating the specific unfair practice charge and including a notice
13 of hearing containing the date and place of hearing before the Board or any designated agent thereof. Evidence shall be
14 taken and filed with the Board; provided, that no complaint shall issue based on any unfair labor practice occurring more
15 than 180 days prior to the filing of the charge with the Board.

16 (b) (1) If, upon all the evidence taken, the Board shall determine that any party charged has engaged or is engaging
17 in any such unfair practice, the Board shall state its findings of fact and conclusions of law and issue and cause to be served
18 on such party an order requiring such party to cease and desist from such unfair practice, and to take such reasonable
19 affirmative action as will effectuate the policies of this chapter, such as payment of damages and/or the reinstatement of an
20 employee; provided however, that the Board shall not issue:

21 a. Any order providing for binding interest arbitration on any or all issues arising in collective bargaining

22 between the parties involved; or

23 b. Any order, the effect of which is to compel concessions on any items arising in collective bargaining

24 between the parties involved.

25 (2) If, upon the evidence taken, the Board shall determine that any party charged has not engaged or is not
26 engaging in any such unfair practice, the Board shall state, in writing, its findings of fact and conclusions of law and issues
27 and dismiss the complaint.

28 (3) The Board or any designated agent thereof shall either issue its findings of fact and conclusions of law
29 referenced in (b)(1) and (2) of this section within 180 days of the close of the record, or shall advise the parties of the status
30 of the matter within 180 days of the close of the record, and every 30 days thereafter.

31 (c) In addition to the powers granted by this section, the Board shall have the power, at any time during
32 proceedings authorized by this section, to issue orders providing such temporary or preliminary relief as the Board deems
33 just and proper subject to the limitations of subsection (b) of this section.

SYNOPSIS

This bill amends the Delaware Public Employment Relations Act in two ways. First, it expands the jurisdictional application of the Act to employers with less than 100 employees and as few as 10. Second, it requires the Board either to issue written decisions following hearings on unfair labor practice charges within 180 days of the close of the record, or, if the Board requires more time to issue its decision, it must provide a written notice to the parties advising of the same within the 180 day period and every 30 days thereafter.

Author: Senator Walsh

TAB 23



SPONSOR: Rep. K. Williams & Sen. Walsh & Sen. Pinkney &
Rep. Kowalko
Reps. Bentz, Brady, Lambert, Lynn, Minor-Brown,
Morrison, Osinski, Wilson-Anton

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 94

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE DELAWARE MINIMUM WAGE
FOR EMPLOYEES RECEIVING TIPS OR GRATUITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 9, Title 19 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 902 Minimum wage rate (For current federal minimum wage, see 29 U.S.C. § 206(a)(1)(A))

(a) Except as may otherwise be provided under this chapter, every employer shall pay to every employee in any
occupation wages of a rate:

(1) Not less than \$7.75 per hour effective June 1, 2014;

(2) Not less than \$8.25 per hour effective June 1, 2015;

(3) Not less than \$8.75 per hour effective January 1, 2019;

(4) Not less than \$9.25 per hour effective October 1, 2019;

Upon the establishment of a federal minimum wage in excess of the state minimum wage, the minimum wage in
this State shall be equal in amount to the federal minimum wage, except as may otherwise be provided under this chapter.

(b) Gratuities received by employees engaged in occupations in which gratuities customarily constitute part of the
remuneration may be considered wages for purposes of this chapter in an amount equal to the tip credit percentage, as set
by the federal government as of June 15, 2006, of the minimum rate as set forth in subsection (a) of this section. In no event
shall the minimum rate, under this subsection, be less than ~~\$2.23 per hour~~ 65% of the minimum rate as set forth in
subsection (a).

SYNOPSIS

The minimum wage for employees who receive tips or gratuities has not changed since 1983, when the overall
state minimum wage was \$3.35 per hour. Tipped wage workers at that time were paid a percentage – 66.67% – of the
minimum wage, which was \$2.23 per hour. In 1989, the General Assembly changed the hourly wage to a flat \$2.23 per
hour, where it has remained since. Had the calculation been left unchanged, the tipped wage would have increased along
with the minimum wage. Therefore, this bill ensures that employees who receive tips or gratuities also receive a minimum
wage increase when other employees in the State receive a minimum wage increase.

TAB 24



SPONSOR: Rep. Romer

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO DISCRIMINATION IN
EMPLOYMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 7, Title 19 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 710. Definitions.

For the purposes of this subchapter:

(5) "Domestic violence" means ~~the same as defined in § 1041 of Title 10, verified by an official document,~~
~~such as a court order, or by a reliable third party professional, including a law enforcement agency or officer, a~~
~~domestic violence or domestic abuse service provider, or health care provider, physical, sexual, emotional, economic,~~
psychological actions or other patterns of coercive behavior that influence another person within an intimate partner
relationship.

a. Such actions or patterns include any of the following against an intimate partner:

1. Causing physical injury

2. Placing another person in fear of physical injury

3. Damaging, destroying or taking tangible property

4. Engaging in alarming or distressing conduct in a manner which is likely to cause fear or emotional
distress.

5. Trespassing on or in property.

6. Unlawful imprisonment or kidnapping.

7. Any other conduct which a reasonable person under the circumstances would find threatening or
harmful.

b. Domestic violence may be verified by an official document from a domestic violence service provider,
medical provider, mental health provider, law enforcement, court order, or family medical leave.

(27) "Sexual offense" means ~~the same as defined in § 761 of Title 11, verified by an official document, such~~
~~as a court order, or by a reliable third party professional, including a law enforcement agency or officer, a domestic~~

~~violence or domestic abuse service provider, or health care provider, a sexual act that is committed or attempted by another person against a victim without freely given consent or against a person who is unable to consent or refuse.~~

a. Such sexual acts include any of the following which the victim is forced or coerced to perform

1. Sexual contact.

2. Sexual intercourse.

3. Sexual penetration.

4. Sexual harassment.

b. Sexual offenses may be verified by an official document from a sexual assault service provider, medical provider, mental health provider, law enforcement, court order, or family medical leave.

(29) "Stalking" means ~~the same as in § 1312 of Title 11, verified by an official document, such as a court order, or by a reliable third party professional, including a law enforcement agency or officer, a sexual assault service provider, or health care provider. It is the sexual assault or stalking victim's responsibility to provide the reliable statement from the reliable third party.~~ a course of conduct directed at a specific person and that conduct would cause a reasonable person to fear physical injury that person or another, or suffer other significant mental anguish or distress that may, but does not necessarily, require medical or other professional treatment or counseling. Stalking may be verified by an official document from a sexual assault service provider, domestic violence service provider, medical provider, mental health provider, law enforcement, court order, or family medical leave.

SYNOPSIS

Delaware law expressly prohibits employment discrimination based upon surviving domestic violence, sexual assault, or stalking. Such discrimination includes: (1) failing or refusing to hire or discharging an employee because the individual was a victim of domestic violence, sexual offense, or stalking; or (2) failing or refusing to make reasonable accommodations to the limitations known to the employer and related to domestic violence, a sexual offense, or stalking. This bill redefines domestic violence, sexual offense, and stalking as it applies to employment discrimination in a more holistic and trauma-informed way rather than relying upon the definitions in the criminal code.

TAB 25



SPONSOR: Sen. Sturgeon

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO THE PROHIBITION OF
CONFIDENTIALITY PROVISIONS IN CERTAIN SETTLEMENT AGREEMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 39, Title 10 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 3928. Prohibition of Confidentiality Provisions in Certain Settlement Agreements.

4 (a) Notwithstanding any other law, a provision within a settlement agreement that prevents the disclosure of
5 factual information related to a claim filed in a civil action or a complaint filed in an administrative action, regarding any of
6 the following, is prohibited:

7 (1) An act of sexual assault.

8 (2) An act of sexual harassment.

9 (3) An act of workplace harassment or discrimination, failure to prevent an act of workplace harassment
10 or discrimination, or an act of retaliation against a person for reporting harassment or discrimination.

11 (4) An act of harassment or discrimination, or an act of retaliation against a person for reporting
12 harassment or discrimination.

13 (5) An act of harassment or discrimination, or an act of retaliation against a person for reporting
14 harassment or discrimination by the owner of a housing accommodation.

15 (6) An act that may be prosecuted as a felony or Class A misdemeanor sex offense.

16 (7) An act of sexual exploitation of a minor.

17 (b) Notwithstanding any other law, in a civil matter described in paragraphs (a)(1) to (6), a court shall not enter, by
18 stipulation or otherwise, an order that restricts the disclosure of information in a manner that conflicts with this section.

19 (c) Notwithstanding paragraphs (a) and (b) above, a provision that shields the identity of the claimant and all facts
20 that could lead to the discovery of the claimant's identity, including pleadings filed in court, may be included within a
21 settlement agreement at the request of the claimant.

22 (d) Except as authorized by paragraph (c), a provision within a settlement agreement that prevents the disclosure

23 of factual information related to the claim described in paragraph (a) that is entered into on or after June 30, 2022, is void as
24 a matter of law and against public policy.

25 (e) This section does not prohibit the entry or enforcement of a provision in any agreement that precludes the
26 disclosure of the amount paid in settlement of a claim.

27 (f) In determining the factual foundation of a cause of action for civil damages under subdivision (a), a court may
28 consider the pleadings and other papers in the record, documents produced in the civil action, depositions taken in the civil
29 action, and any findings of the court.

SYNOPSIS

This act prohibits the inclusion of confidentiality provisions in settlement agreements resolving certain civil claims, including claims related to workplace harassment and discrimination, retaliation for reporting workplace harassment and discrimination, sexual assault, sexual harassment, sexual discrimination, and sexual exploitation of a minor.

The act permits provisions in such settlement agreements that shield the identity of the claimant.

Author: Senator Sturgeon

Paid Family Medical Leave Insurance Program

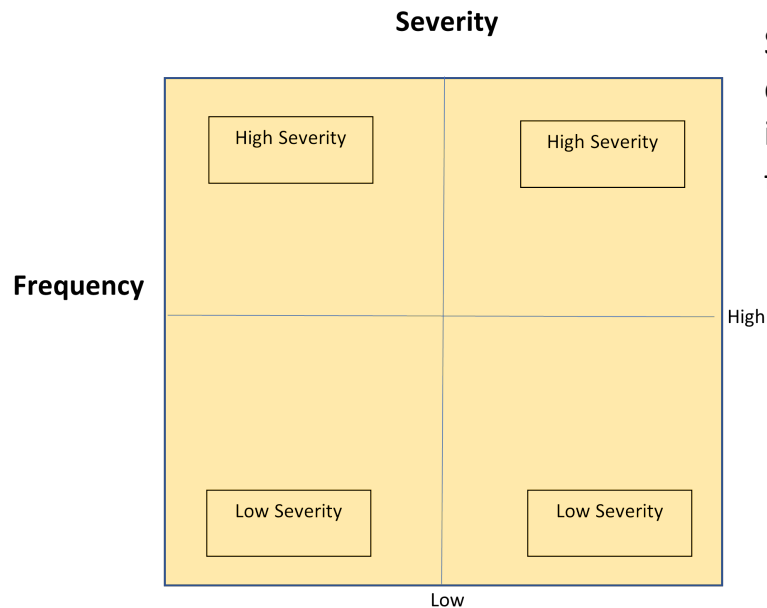
Christopher Counihan
Delaware Department of Labor

Delaware Paid Family Medical Leave Insurance Program



Risk & Risk Management

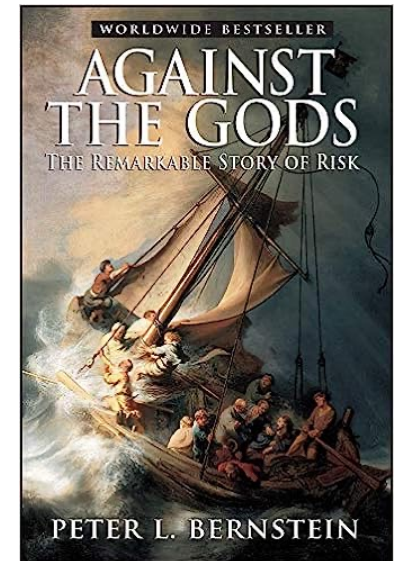
It has been argued that the division between the Ancient World and the Modern Era is the realization that humans can (to a degree) control their future. Pre-Modern societies would toss up their hands and say “It’s up to the Gods”, they did not believe that they had any ability to change their “fate”. Then a bunch of people (mostly inveterate gamblers) devised a type of math that we now call statistics.



Statistics can be used to describe sets of existing data, to analyze known events. But in certain circumstances, it can also be used to forecast future events.

A risk is any future event that can be quantified, often in terms of monetary value (“For every risk, there is a rate.”). Risks can also be measured along two dimensions: Frequency (how often it occurs) and Severity (how bad it is when it happens).

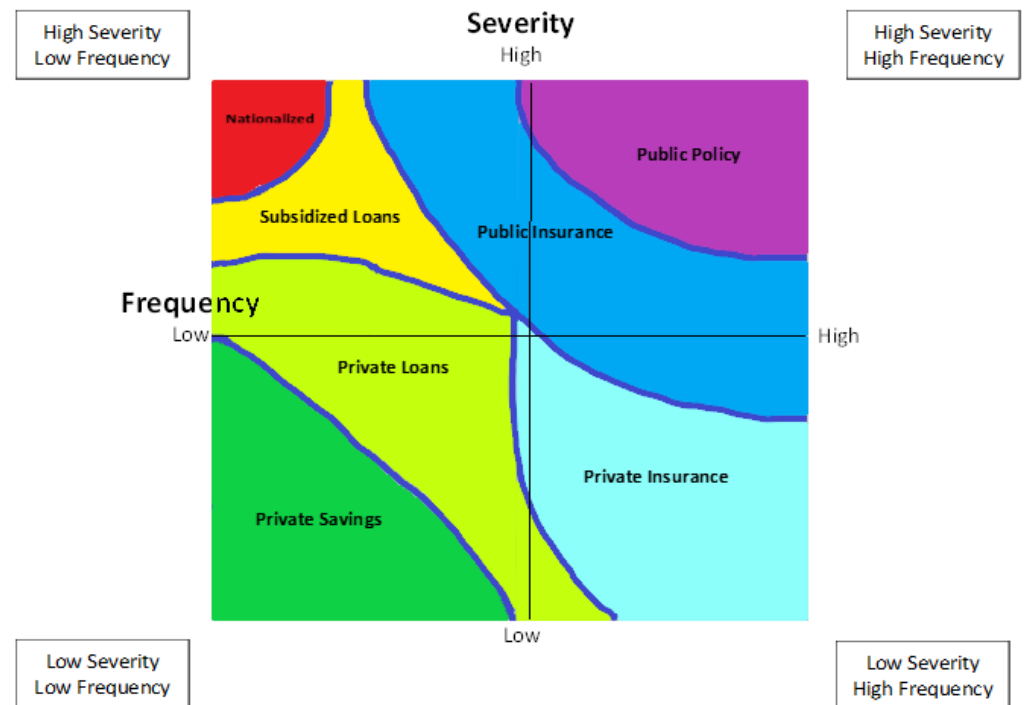
Once we began to measure risk, we are then able to create ways to manage risk, transfer risk, mitigate risk, spread risk across a population, and so on.



Risk & Governance

Every society creates its own balance between individual responsibility and collective action, which can range from family to civil society to the marketplace to government actions.

When risks are manageable, it is often left to the individual to retain through personal means. As the scale of the risk increases, market solutions arise. Often the most severe risks are socialized through government actions.



Lies, Damn Lies, & Statistics

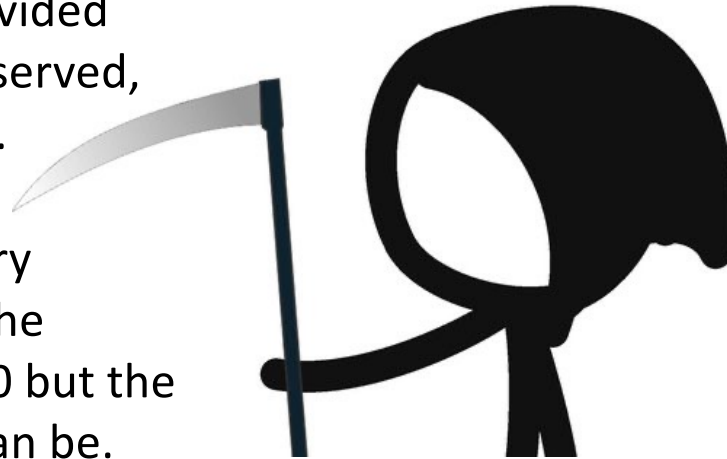
What is the Chance that
you will wake up dead
tomorrow morning?

This is actually an unfair question.
No one who is dead can wake up,
so the answer is 0.

But we won't let that stop us!

If there are only two options provided
and only once instance being observed,
then the odds can only be 50/50.

However, we all know that its very
unlikely that we will be dead in the
morning. So, the odds are 50/50 but the
Margin for Error is as high as it can be.



Law of Large Numbers

We don't/can't know if we will die tomorrow.

However, every life insurance company is built on the certainty that in a group of 1,000 employees where there is:

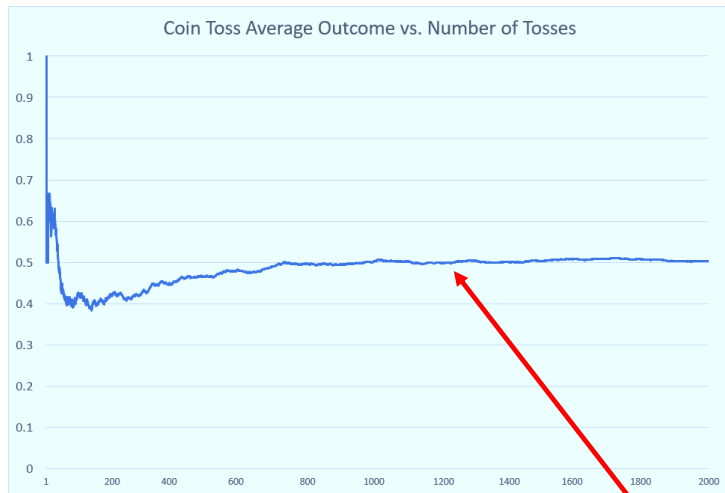
- 60/40 Female/Male split
- Average Age of 42
- Actively at Work provision

An average of 1.2 employees per year will shuffle off their mortal coil.

The larger the group, the more credible our expectations become.



$N \rightarrow \infty$ (Or, For Our Purposes, $n \geq 1200$)



As the number of observations in a data set increases, the “noise” in the data is reduced. As we repeat the experiment, the average of the results gets closer to the expected results.

$$\frac{X_1 + X_1 + \dots + X_n}{n} \rightarrow \mu \quad \text{as } n \rightarrow \infty.$$

But who has time for an infinite number of iterations?!?
The noise in the data basically settles down once you get to around 1,200 observations. As a boss of mine used to say:

Good enough for government work!

Pooling Risk

No one knows the future. In the group of 1,000 employees, we can't predict which particular people will pass away. However, we can be reasonably certain that on average 1.2 of them per year will.

So while the veil of the future blinds us all, as a group we can still approach it with a certain degree of confidence. We can pool together our similar risks to reduce the uncertainty that we all face. This is the basis of insurance.

The difference between public and private insurance is a question of efficiency / efficacy versus social norms. The balance between which changes over time. For instance, taking leave from work to take care of your family members used to be a "private concern", but now Delaware has joined 10 other jurisdictions to mandate that employers provide this coverage.



"You're in the insurance pool with the lowest rates."

Background

- Federal FMLA was passed in 1993. It requires that employers with 50 or more employees must give them up to 12 weeks of job-protected leave in a 12-month period for:
 - The birth, adoption, or fostering of a child;
 - If they have a serious health condition;
 - To provide care for their spouse, child, or parent who has a serious health condition; or
 - For issues connected to the military deployment of their spouse, child, or parent.
- While your job will be waiting for you when you return and you keep your medical coverage, FMLA Leave is unpaid. Which could be an issue if you like to **eat** or pay your **rent**.



SO HERE'S THE PLAN

Which Employers?	Which Workers?	How Much?	For How Long?
<p>All Delaware employers with ten or more workers are required to offer at least some PFML.</p> <p>Smaller employers can "opt in" to the program.</p> <p>Except for:</p> <ul style="list-style-type: none">- Federal Government- Railroad workers- Tribal Government EEs- Seasonal operations that shut down for a month or more	<p>Employees at companies that fit the definition over (←) there, who've worked there for at least:</p> <ul style="list-style-type: none">– The last 12 months <p>&</p> <ul style="list-style-type: none">– Clocked at least 1,250 hours of Delaware work in those prior 12 months (@ 25 hours per week)	<p>If you are eligible and your claim is approved, is 80% of your wages* up to a maximum of \$900 per week**.</p> <p>*: We look back over the past 12 months to find your average weekly wages.</p> <p>** : If you make more than \$52,000 a year, you're capped at the \$900 maximum.</p>	<p>Different time periods for different reasons:</p> <p>New Child</p> <ul style="list-style-type: none">– 12 weeks in a Year <p>Sick Child, Spouse, Parent or if You are Sick</p> <ul style="list-style-type: none">– 6 Weeks in a 24-month period <p>No more than 12 weeks of leave in a year</p>



By the Numbers

- Delaware has almost 34,400 employers and about 446,000 employees
- Of those, 9,730 Delaware employers have 10 or more & those firms employ almost 395,000 people.
 - Not all of those workers will qualify for coverage
 - Some work less than 25 hours per week
 - Others haven't yet reached 12 months with the same employer
 - On the other hand, employers with less than ten employees can Opt-Into coverage.
- If you count all the spouses, children, and parents who will benefit from this coverage, probably 80% of Delawareans will be touched by this program.



Key Dates



- **January 1, 2024** – Last day to **Grandfather** existing plans
You can continue to use “comparable” plans for the first five years. Small groups can also reduce their Parental Leave max. duration from 12 weeks to at least 6 weeks for the first few years.
- **November 1, 2024** - Last day to **Opt-Out** of the Public Plan
Dept. of Insurance is working to admit new insurance carriers and certify new PFML plans. Its also the last day for small groups to **Opt-In** to the Public Plan.
- **January 1, 2025** – **Contributions** begin to be assessed
Contributions will be collected retrospectively (first due date: 4/30/25) but employers will begin collecting employee’s contributions based on pay periods starting 1/1/25).
- **January 1, 2026** – First day to submit **Claims** Applications
Employers will decide whether or not to approve a claim, how much they should receive, and for how long based DOL’s Advisory Algorithms.

Here's the **PROBLEM...**

Since firms have been managing FMLA for nearly 30 years, to reduce the cost of administering (for the State) the program, the Act pushes much of the administrative effort to employers.

Which is not a huge problem if the employer has 50 or more employees, as they are used to the FMLA rules & processes.

However, Delaware's Paid Family Medical Leave program starts at ten employees. Meaning that employers with between 10 – 49 employees have no idea how to administer FMLA or Paid Family Medical Leave (about 8,500 firms and @ 91,500 workers).



Waivers & Private Plans

- If you have an employee that works less than 25 hours per week or on a temporary basis, both of you can sign a **Waiver** to withdraw that worker from the program.
 - They will be exempt from the payroll tax & will not be able to take paid Leave
 - If the conditions of their employment changes, you can both sign an “un-Waiver” to get back into the program
 - If you have a telecommuter who works outside of the state or if one of your Delaware employees goes on temporary assignment out-of-state, you can file a **Reclassification** form to keep them in the plan.
- Employers can **Opt-Out** of the Public Plan for a private plan
 - Must “meet or beat” the State Plan’s coverage
 - Either through
 - an admitted carrier’s certified insurance plan
 - a self-insured program (backed by a surety bond)





SPONSOR: Sen. S. McBride & Sen. Townsend & Sen. Brown & Sen. Gay & Sen. Mantzavinos & Sen. Pinkney & Rep. Heffernan & Rep. Longhurst & Rep. Baumbach & Rep. Dorsey Walker & Rep. Morrison & Rep. Osienski Sens. Ennis, Hansen, Lockman, Paradee, Poore, Sokola, Sturgeon, Walsh; Reps. Bentz, Bolden, Chukwuocha, Cooke, Freel, Griffith, K. Johnson, Kowalko, Lambert, Lynn, Matthews, Minor-Brown, Mitchell, S. Moore, K. Williams, Wilson-Anton

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 2
FOR
SENATE BILL NO. 1
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Part V. Family and Medical Leave Insurance Program.

Chapter 37. Family and Medical Leave Insurance Program.

§ 3701. Definitions.

For purposes of this chapter:

(1) "Application year" means the 12-month period as defined in the FMLA.

(2) "Child" means "son or daughter" as defined in the FMLA.

(3) "Covered individual" means an individual who meets all of the following:

a. Has been employed for at least 12 months by the employer with respect to whom leave is requested.

b. Has been employed for at least 1,250 hours of service with the employer during the previous 12-month period. For purposes of determining whether an individual meets the service hours requirement under this paragraph

(3)b., the legal standards established under the FMLA apply.

c. The administrative requirements under this chapter.

15 d. Has submitted an application under this chapter.

16 (4) "Covered leave" means leave provided under this chapter.

17 (5) "Department" means the Department of Labor.

18 (6)a. "Employee" means an individual employed by an employer. For the purposes of this chapter, individuals
19 primarily reporting for work at a worksite in this State are employees unless otherwise excluded. Individuals primarily
20 reporting for work at a worksite outside of this State are not considered employees under this chapter unless the employer
21 elects to classify them as such. Employers may reclassify an employee as primarily reporting for work at a worksite in
22 another state for the purposes of this chapter through the duration of that individual's tenure at the out-of-state worksite.

23 b. "Employee" does not include an individual covered under § 5903(17)a. of Title 29, an individual
24 employed by entities in Title 14 in a position that would be covered under § 5903(17)a. of Title 29, or an individual
25 in an equivalent position with an entity covered by State employee benefits.

26 (7)a. "Employer" means all those who employ employees working anywhere in this State.

27 1. Employers with 10 to 24 employees during the previous 12 months shall be subject to only the
28 parental leave provisions of this chapter. For purposes of this paragraph (7)a.1., "employees" includes those
29 who meet the requirements of a covered individual under § 3701(3)a. and (3)b. of this title or are reasonably
30 expected to meet the requirements of a covered individual under § 3701(3)a. and b. of this title during the
31 previous 12 months.

32 2. Employers with 25 or more employees during the previous 12 months shall be subject to all parental,
33 family caregiving, and medical leave provisions of this chapter. For purposes of this paragraph (7)a.2.,
34 "employees" includes those who meet the requirements of a covered individual under § 3701(3)a. and (3)b. of
35 this title or are reasonably expected to meet the requirements of a covered individual under § 3701(3)a. and b.
36 of this title during the previous 12 months.

37 b. "Employer" does not include any of the following:

38 1. Anyone who employs less than 10 employees in this State during the previous 12 months.

39 2. The federal government.

40 3. Any business that is closed in its entirety for 30 consecutive days or more per year.

41 (8) "Family and medical leave benefits" means benefits provided under this chapter.

42 (9) "Family caregiving leave" includes leave under § 3702(a)(2) and (a)(4) of this title.

43 (10) "Family caregiving leave benefits" means benefits paid under § 3704 of this title and provided under §
44 3702(a) of this title to a covered individual while the covered individual is on family leave.

(11) "Family member" means all of the following:

a. A parent, as defined under the FMLA.

b. A child.

c. A spouse, as defined under the FMLA.

(12) "FMLA" means the Family and Medical Leave Act, 29 U.S.C. Chapter 28.

(13) "Fund" means the Family and Medical Leave Insurance Account Fund created under this chapter.

(14) "Health care provider" means as defined under the FMLA.

(15) "Medical leave" includes leave under § 3702(a)(3) of this title.

(16) "Medical leave benefits" means benefits paid under § 3704 of this title and provided under § 3702(a) of this title to a covered individual while the covered individual is on medical leave.

(17) "Parental leave" includes leave under § 3702(a)(1) of this title.

(18) "Parental leave benefits" means benefits paid under § 3704 of this title and provided under § 3702(a) of this title to a covered individual while the covered individual is on parental leave.

(19) "Qualifying exigency" means as defined under the FMLA.

(20)a. "Retaliatory personnel action" means an adverse action against an employee for the exercise of, or good faith attempt to exercise, a right guaranteed under this chapter, including any threat, discharge, suspension, demotion, or reduction of hours, or report or threat to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of a family member of the employee to a federal, state, or local agency.

b. "Retaliatory personnel action" includes interference with or punishment for participating or assisting, in any manner, in an investigation, proceeding, or hearing under this chapter.

(21) "Secretary" means the Secretary of the Department.

(22) "Serious health condition" means as defined under the FMLA.

(23) "Small business" means all of the following:

a. For purposes of parental leave, all those that employ 9 or less employees working anywhere in this State.

b. For purposes of family caregiving leave and medical leave, all those that employ 24 or less employees working anywhere in this State.

(24) "Wages" means remuneration for employment as determined for purposes of old-age, survivors, and disability insurance for employees and employers under the Federal Insurance Contribution Act, 26 U.S.C. Chapter 21.

§ 3702. Eligibility for benefits; serious health condition; certification or documentation of leave.

(a) Beginning 1 year after the start of contributions under § 3705 of this title, and subject to subsection (c) of this section, family and medical leave benefits are payable to a covered individual who meets one of the following:

(1) Because of a birth, adoption, or placement through foster care of a child, is caring for the child during the first year after the birth, adoption, or placement of the child.

(2) Is caring for a family member with a serious health condition.

(3) Has a serious health condition that makes the covered individual unable to perform the functions of the covered individual's position.

(4) Has a qualifying exigency.

(b) In applying and construing serious health condition, consideration must be given to the application and construction given to serious health condition under the FMLA.

(c)(1) An employer or an approved private plan under § 3716 of this title shall collect and retain information from covered individuals verifying parental leave status, serious health condition, or qualifying exigency when a covered individual submits an application under this chapter. An employer shall require that a request for leave based on a serious health condition under paragraph (a)(2) or (a)(3) of this section be supported by a certification issued by the health care provider of the covered individual or of the family member of the covered individual, as appropriate. The covered individual shall provide, in a timely manner, a copy of the certification to the employer or an approved private plan under § 3716 of this title.

(2) A certification required under paragraph (c)(1) of this section is sufficient if it includes all of the following:

a. The date on which the serious health condition commenced.

b. The probable duration of the condition.

c. The appropriate medical facts within the knowledge of the health care provider regarding the condition.

d. A statement of the following, as appropriate:

1. For purposes of leave under paragraph (a)(2) of this section, a statement that the covered individual is needed to care for the family member who has a serious health condition and an estimate of the time that the covered individual needs to care for the family member.

2. For purposes of leave under paragraph (a)(3) of this section, a statement that the covered individual is unable to perform the functions of the covered individual's position.

e. If the leave is to be taken intermittently or on a reduced leave schedule under § 3706 of this title for planned medical treatment, the dates on which the medical treatment is expected to be given and the duration of the medical treatment.

103 f. If the leave is to be taken intermittently or on a reduced leave schedule under § 3706 of this title for
104 purposes of leave under paragraph (a)(2) of this section, a statement that the covered individual's intermittent leave
105 or leave on a reduced leave schedule is necessary for the care of the family member who has the serious health
106 condition, or will assist in the family member's recovery, and the expected duration and schedule of the intermittent
107 leave or reduced leave schedule.

108 g. If the leave is to be taken intermittently or on a reduced leave schedule under § 3706 of this title for
109 purposes of leave under paragraph (a)(3) of this section, a statement of the medical necessity of the intermittent
110 leave or leave on a reduced leave schedule and the expected duration of the intermittent leave or reduced leave
111 schedule.

112 (3)a. If the employer or an approved private plan under § 3716 of this title has reason to doubt the validity of a
113 certification provided under this subsection, the employer or private plan may require, at the expense of the employer or
114 private plan, that the covered individual obtain the opinion of a second health care provider designated or approved by
115 the employer or private plan concerning any information certified under this subsection. A health care provider
116 designated under this paragraph (c)(3)a. may not be employed on a regular basis by the employer, Department or private
117 plan.

118 b. If the second opinion under paragraph (c)(3)a. of this section differs from the opinion in the original
119 certification provided by the covered individual under this subsection, the employer or private plan may require, at
120 the expense of the employer or private plan, that the employee obtain the opinion of a third health care provider
121 designated or approved jointly by the employer or private plan and the covered individual concerning any
122 information certified under this subsection. The third opinion is final and binding on the employer or private plan
123 and the covered individual.

124 (4)a. The employer or an approved private plan under § 3716 of this title may require that the covered individual
125 obtain subsequent recertifications on a reasonable basis.

126 b. The standards for determining what constitutes a reasonable basis for recertification may be governed
127 by a collective bargaining agreement between the employer or private plan and a labor organization which is the
128 collective bargaining representative of the unit of which the covered individual is a part if such a collective
129 bargaining agreement is in effect.

130 c. Unless otherwise required by the covered individual's health care provider, the employer or private plan
131 may not require recertification more than once during a 30-day period and, in any case, may not unreasonably require
132 recertification.

d. The employer or an approved private plan under § 3716 of this title shall pay for any recertification that is not covered by the covered individual's health insurance.

(d) The employer or an approved private plan under § 3716 of this title shall require that a request for leave based on a serious health condition under paragraph (a)(2) of this section of a family member be supported by documentation demonstrating the nature and extent of the relationship.

§ 3703. Duration of benefits.

(a) A covered individual is eligible for a maximum of 12 weeks of family and medical leave benefits in an application year.

(1) The maximum number of weeks during which parental leave benefits are payable under § 3702(a)(1) of this title in an application year is 12 weeks.

(2) The maximum aggregate number of weeks during which medical leave and family caregiving leave benefits are payable under § 3702(a)(2), (a)(3), and (a)(4) of this title in an application year is 6 weeks in any 24-month period.

(b) If 2 parents are entitled to leave under § 3702(a)(1), (a)(2), or (a)(4) of this title and are employed by the same employer, the aggregate number of weeks of leave to which both may be entitled may be limited by the employer to 12 weeks during any 12-month period. The Department may adopt regulations limiting aggregate family caregiving leave claimed by multiple family members for the same qualifying event under § 3702(a) of this title.

(c) Except for parental leave benefits, and as permitted under § 3706 of this title, a covered individual is eligible for benefits under this chapter not more than once in a 24-month period.

(d) An employer must approve or deny an application for benefits under this section within 5 business days of receipt of a completed application that includes documentation necessary to review the claim. If the claim is denied, the employer shall notify the covered individual of the reason for the denial.

(e) The employer must notify the Department, in a manner determined by the Department, within 3 business days of a claim being approved under this chapter. The first payment of benefits to a covered individual must be made within 30 days after the employer has notified the Department of the approved claim. Subsequent payments must be made every 2 weeks.

(f) An employer with less than 25 employees may elect, with notice to the Department and employees, for each employee to exercise not less than half of the employee's parental leave for 5 years from the start of benefits under § 3702 of this title.

§ 3704. Amount of benefits.

(a) The amount of family and medical leave benefits is to be determined as follows:

(1) The weekly benefit must be 80% of the covered individual's average weekly wages rounded up to the nearest even \$1.00 increment during the 12 months preceding submission of the application.

(2) The minimum weekly benefit may not be less than \$100 a week, except that if the covered individual's average weekly wage is less than \$100 a week, the weekly benefit must be the covered individual's full wage.

(3) The maximum weekly benefit in 2026 and 2027 must be \$900. In each year after 2027, the maximum weekly benefit must increase in proportion to the annual average increase, if any, in the Consumer Price Index for All Urban Consumers, Philadelphia-Camden-Wilmington Metropolitan area that is published by the Bureau of Labor Statistics of the United States Department of Labor. In each year after 2027, the period of change must be calculated from October 2026 to the October before the start of the calendar year. When the Department determines a maximum weekly benefit amount using the Consumer Price Index under this paragraph (a)(3), the amount must be rounded to the nearest even \$5.00 increment as determined in the discretion of the Secretary.

(b) Family and medical leave benefits are not payable for less than 1 work day of covered leave taken in 1 work week.

(c) The Department shall determine, by regulation, how benefits are to be calculated for covered individuals with more than 1 source of wages and when 12 months of wages preceding the submission of application for benefits are not available to the Department.

§ 3705. Contributions.

(a) Payroll contributions are authorized to finance the payment of benefits under this chapter. The Department shall regulate the deduction, withholding, and payment of the contribution.

(b) Beginning on January 1, 2025, for each employee, an employer shall quarterly, or more frequently as regulated by the Department, remit to the Fund contributions in the form and manner determined by the Department.

(1) The contribution rate for medical leave benefits is as follows:

a. For 2025 and 2026, the contribution rate for medical leave benefits as a percentage of wages is 0.4%.

b. For 2027, and each calendar year after 2027, the Department shall set the contribution rate for medical leave benefits as a percentage of wages based on sound actuarial principles. The Department may not set the contribution rate higher than the rate necessary to obtain a total amount of contributions equal to 125% of the medical leave benefits paid during the immediately preceding calendar year plus an amount equal to 125% of the cost of administration of the payment of those benefits during the immediately preceding calendar year, less the amount of net assets remaining in the Fund as of December 31 of the immediately preceding calendar year.

(2) The contribution rate for family caregiving leave benefits is as follows:

a. For 2025 and 2026, the contribution rate for family caregiving leave benefits as a percentage of wages is 0.08%.

b. For 2027, and each calendar year after 2027, the Department shall set the contribution rate for family caregiving leave benefits based as a percentage of wages on sound actuarial principles. The Department may not set the contribution rate higher than the rate necessary to obtain a total amount of contributions equal to 125% of the family caregiving leave benefits paid during the immediately preceding calendar year plus an amount equal to 125% of the cost of administration of the payment of those benefits during the immediately preceding calendar year, less the amount of net assets remaining in the Fund as of December 31 of the immediately preceding calendar year.

(3) The contribution rate for parental leave benefits is as follows:

a. For 2025 and 2026, the contribution rate for parental leave benefits as a percentage of wages is 0.32%.

b. For 2027, and each calendar year after 2027, the Department shall set the contribution rate for parental leave benefits as a percentage of wages based on sound actuarial principles. The Department may not set the contribution rate higher than the rate necessary to obtain a total amount of contributions equal to 125% of the parental leave benefits paid during the immediately preceding calendar year plus an amount equal to 125% of the cost of administration of the payment of those benefits during the immediately preceding calendar year, less the amount of net assets remaining in the Fund as of December 31 of the immediately preceding calendar year.

(c) Limitation on benefits and contribution rates; evidentiary standard.

(1) General. Notwithstanding a provision of this chapter to the contrary, this subsection controls with respect to benefits available under, and contributions required by, this chapter.

(2) Contribution rate; limitation.

a. For purposes of this subsection, "contribution rate" means the sum of the contribution rate for medical, family caregiving, and parental leave benefits.

b. If, after using the actuarial principles under § 3705(b) of this title, the Department determines that the contribution rate would exceed 1.00%, paragraph (c)(3) of this section applies.

(3) Contribution redetermination; benefits reduction. If, under paragraph (c)(2)b. of this section, the Department determines that the contribution rate effective as of the first day beginning on the next calendar year would exceed 1.00%, effective as of and for such calendar year the Department shall reduce the percentage of average weekly wages for employees from 80% to the lowest percentage of average weekly wages for employees as necessary to compute a contribution rate that does not exceed 1.00%.

222 (4) Preservation of Fund balance. Notwithstanding anything in this chapter to the contrary, after using the
223 actuarial principles under § 3705(b) of this title and considering other information deemed appropriate under the
224 circumstances by the Secretary, the Secretary may at any time reduce the percentage of average weekly wages for
225 employees to the lowest percentage of average weekly wages for employees as necessary to attempt to prevent the
226 projected balance of the Fund during the ensuing 12 month period from falling below a specific balance or other
227 actuarially sound measure adopted by the Department.

228 (5) Evidentiary standard. An allegation of abuse in the exercise of the discretion authorized by this section must
229 be established by clear and convincing evidence of actual abuse of discretion in the court then having primary
230 jurisdiction.

231 (d) From the wages of an employee for whom a contribution is required under subsection (b)(1) of this section, an
232 employer shall deduct not greater than 50% of the contribution required for the employee. However, an employer may elect
233 to pay all or any portion of the employee's share of the contribution listed in subsection (b)(1) of this section.

234 (e) From the wages of an employee for whom a contribution is required under subsection (b)(2) of this section, an
235 employer shall deduct not greater than 50% of the contribution required for the employee. However, an employer may elect
236 to pay all or any portion of the employee's share of the contribution listed in subsection (b)(2) of this section.

237 (f) From the wages of an employee for whom a contribution is required under subsection (b)(3) of this section, an
238 employer shall deduct not greater than 50% of the contribution required for the employee. However, an employer may elect
239 to pay all or any portion of the employee's share of the contribution listed in subsection (b)(3) of this section.

240 (g) An employer's deduction from an employee's wages under this section may only be made concurrent with, and
241 proportionate to, the liability incurred by the employer and the payment of wages to the employee. The employer is liable for
242 the contribution at the time that wages are paid and shall remit the total contribution required under subsection (b) of this
243 section to the Fund. If the employer fails to deduct wages of an employee when the wages are paid, the employer remains
244 liable for the full amount of the contribution, including that amount not deducted from an employee's wages.

245 (h) A contribution that remains unpaid on the date it is due and payable, as determined by the Department, accrues
246 interest, at a rate determined by the Department by regulation, from and after the due date until payment plus the accrued
247 interest is received by the Fund. Interest collected under this section must be paid into the Fund.

248 (i)(1) An employer with an approved private plan under § 3716 of this title for medical leave benefits may not be
249 required to remit the contributions required under subsection (b)(1) of this section.

250 (2) An employer with an approved private plan under § 3716 of this title for family caregiving leave benefits
251 may not be required to remit the contributions required under subsection (b)(2) of this section.

(3) An employer with an approved private plan under § 3716 of this title for parental leave benefits may not be required to remit the contributions required under subsection(b)(3) of this section.

(j) The Department may require from an employer a sworn or unsworn report with respect to employees of the employer which the Department deems necessary for the effective administration of this chapter. Information provided to the Department in the report must be held confidential and must not be published or be open to public inspection, other than to employees of the Department, in a manner that reveals an employee's or employer's identity. However, an employer or employer's legal representative must be supplied with information from the report for purposes related to this chapter, and an employee or employee's legal representative must be supplied with information from the report that relates only to the employee for purposes related to this chapter.

(k) An employee and employer may opt to file a waiver of the payroll contributions required under this section when an employee's work schedule or length of employment with the employer is not expected to meet the requirements for eligibility for family and medical leave benefits.

(1) The employer shall provide notice to the employee that employee's work schedule or length of employment with the employer is not expected to meet the requirements for eligibility for family and medical leave benefits.

(2) The employee shall sign, and the employer shall submit to the Department, a form waiving the payroll contributions required under this section because employee's work schedule or length of employment with the employer is not expected to meet the requirements for eligibility for family and medical leave benefits.

(3) If, after an employee signs a waiver under paragraph (k)(2) of this section, the employee becomes eligible for family and medical leave benefits, the employee shall sign, and the employer shall submit to the Department, a form revoking the waiver under paragraph (k)(2) of this section. Deductions from wages may not begin until a waiver is revoked.

(4) The Department shall adopt a form for the waiver under paragraph (k)(2) of this section and the revocation of the waiver under paragraph (k)(3) of this section.

§ 3706. Reduced leave schedule.

(a) A covered individual may take covered leave on an intermittent

or reduced leave schedule in which all of the leave authorized under this chapter is not taken sequentially. Intermittent or reduced leave may be taken only when medically necessary and supported by documentation as required by the certification requirements under § 3702 of this title. Family and medical leave benefits for intermittent or reduced leave schedules must be prorated.

(b) The covered individual shall provide the employer with prior notice of the schedule on which the covered individual will take the covered leave, to the extent practicable. Covered leave taken under this section may not result in a reduction of the total amount of leave to which an employee is entitled beyond the amount of leave actually taken.

(c) Nothing in this section is to be construed to entitle a covered individual to more leave than required under § 3703 of this title.

§ 3707. Leave and employment protection.

(a) A covered individual who exercises the covered individual's right to family and medical leave benefits shall, on the expiration of the covered leave, be entitled to be restored by the employer to the position held by the covered individual when the covered leave commenced, or to a position with equivalent seniority, status, employment benefits, pay, and other terms and conditions of employment, including fringe benefits and service credits, which the covered individual had been entitled to at the commencement of the covered leave.

(b) During covered leave, the employer shall maintain any health care benefits the covered individual had before taking the leave for the duration of the leave as if the covered individual had continued in employment continuously from the date the covered individual commenced the leave until the date the family and medical leave benefits terminate. The covered individual shall continue to pay the covered individual's share of the cost of health care benefits as required before the commencement of the leave.

(c) An employer who violates this section or § 3708 of this title is liable to an employee affected for all of the following:

(1) Damages equal to all of the following:

a. The amount of any of the following:

1. Any wages or employment benefits denied or lost to the employee by reason of the violation.

2. In an action in which wages or employment benefits have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 12 weeks of wages or employment benefits for the employee.

b. Interest on the amount under paragraph (c)(1)a. of this section, calculated at the legal rate.

c. An additional amount as liquidated damages equal to the sum of the amount described in paragraph (c)(1)a. of this section and the interest under paragraph (c)(1)b. of this section. If an employer who has violated this section or § 3708 of this title proves to the satisfaction of the court that the act or omission that violated this section or § 3708 of this title was in good faith and that the employer had reasonable grounds for believing that the act or

omission was not a violation of this section or § 3708 of this title, the court may reduce the amount of the liability to the amount and interest determined under paragraph(c)(1)a. and (c)(1)b. of this section, respectively.

(2) For equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(d) An action under subsection (c) of this section may be maintained against an employer in a court of competent jurisdiction in this State by any 1 or more employees for and on behalf of the employees or the employees and other employees similarly situated.

(e)(1) The court in an action under subsection (c) of this section may, in addition to any judgment awarded to the plaintiff, award reasonable attorney fees, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(2) The court in an action under subsection (c) of this section shall award reasonable attorney fees to a defendant if the court finds the action was brought in bad faith.

(f) Except as provided under subsection (g) of this section, an action may be brought for a violation of this section or § 3708 of this title not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought.

(g) In an action brought for a wilful violation of this section or § 3708 of this title, the action may be brought not later than 3 years after the date of the last event constituting the alleged violation for which the action is brought.

§ 3708. Retaliatory personnel actions prohibited.

(a) It is unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this chapter.

(b) An employer, temporary help company, employment agency, employee organization, or other person may not take a retaliatory personnel action or otherwise discriminate against an individual because the individual exercised rights protected under this chapter.

(c) Rights protected under this chapter include the following:

(1) The right to request, file for, apply for, or use family and medical leave benefits or covered leave.

(2) The right to communicate to the employer or any other person or entity an intent to file a claim, a complaint with the Department or courts, or an appeal, or testify or prepare to testify or assist in any investigation, hearing, or proceeding under this chapter, at any time, including during the period in which the individual receives family and medical leave benefits under this chapter.

(3) The right to inform a person about an employer's alleged violation of this chapter.

(4) The right to inform an individual of the individual's rights under this chapter.

(d) It is unlawful for an employer's absence control policy to count covered leave taken under this chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

(e) Protections of this section apply to an individual who mistakenly but in good faith alleges violations of this chapter.

(f) This section is to be enforced as provided in § 3707(c) through (g) of this title.

(g) This section applies only to an employee who has been employed by the employer for at least 90 days.

§ 3709. Coordination of benefits.

(a)(1) Covered leave that also qualifies as leave under the FMLA runs concurrently with leave taken under the FMLA and may not be taken in addition to leave under the FMLA.

(2) An employer may require that payment made under this chapter be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy. The employer shall give employees written notice of this requirement.

(3) An employer may require the use of unused accrued paid time off before accessing family and medical leave benefits, and the use of accrued paid time off may count toward the total length of leave provided under this chapter, if the employee is not required to exhaust all paid time off. For purposes of this paragraph (a)(3) of this section, "paid time off" includes an employer's provision of vacation and sick leave.

(4) A covered individual may not access family and medical leave benefits if the use of family and medical leave benefits results in the covered individual receiving more than 100% of the covered individual's weekly wages.

(b)(1) This chapter does not diminish an employer's obligation to comply with any of the following that provide more generous leave:

a. A collective bargaining agreement.

b. An employer policy.

c. Any other law.

(2) An individual's right to covered leave may not be diminished by a collective bargaining agreement entered into or renewed, or an employer policy adopted or retained, after [the effective date of this Act].

(3) An agreement by an individual to waive the individual's rights under this chapter is void as against public policy.

§ 3710. Notice.

(a) An employer shall provide written notice to each employee that includes all of the following:

(1) The employee's right to family and medical leave benefits under this chapter and the terms under which it may be used.

(2) The amount of family and medical leave benefits.

(3) The procedure for filing a claim for family and medical leave benefits.

(4) The right to job protection and benefits continuation under § 3707 of this title.

(5) That discrimination and retaliatory personnel actions against the employee for requesting, applying for, or using family and medical leave benefits is prohibited under § 3708 of this title.

(6) That the employee has a right to file a complaint for violations of this chapter.

(7) Whether family and medical leave benefits are available to the employee through the State or an approved private plan under § 3716 of this title.

(b) An employer shall provide the notice required under subsection (a) of this section as follows:

(1) On hiring of the employee.

(2) When the employee requests covered leave or when the employer acquires knowledge that an employee's leave may be for a qualifying event under § 3702(a) of this title.

(c) An employer shall display and maintain a poster in a conspicuous place accessible to employees at the employer's place of business that contains the information required under subsection (a) of this section in English, Spanish, and any language that is the first language spoken by at least 5% of the employer's workforce, if the poster has been provided by the Department.

(d) The Department may adopt regulations to establish additional requirements concerning the means by which employers shall provide notice of this chapter.

(e) An employee shall provide notice of the employee's intention to take covered leave to the employee's employer 30 days in advance, if known, or as soon as practicable.

§ 3711. Appeal.

(a) The process for review of a denial of family and medical leave benefits is as follows:

(1) On a determination of an individual's claim for family and medical leave benefits under this chapter by the employer, the individual may request review of the determination by the Department within 60 days of the issuance of the determination. The Department shall review the denial and issue a determination to the individual in a time and manner determined by the Department.

(2) On determination by the Department under paragraph (a)(1) of this subsection or final determination by a private plan under § 3716 of this title, an individual may appeal the determination to the Family and Medical Leave

Insurance Appeal Board established under subsection (b) of this section within 30 days of the issuance of the determination.

(b)(1) There is established a Family and Medical Leave Insurance Appeal Board ("Board").

(2) The Board consists of 3 members, appointed by the Governor for a term of 6 years.

(3) The Governor shall fill a vacancy on the Board during a member's term for the unexpired portion of the term.

(4) The Governor may, at any time, after notice and hearing, remove any Board member for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. For purposes of this section, a member who is absent without adequate reason for 3 consecutive meetings or fails to attend at least half of all regular meetings during any calendar year is deemed to be in neglect of duty.

(5) Two members of the Board constitute a quorum. A vacancy does not impair the right of the remaining Board members to exercise all of the powers of the Board.

(6) The Governor shall designate 1 member of the Board as the Chair. If the term of the Chair expires or if the Chair becomes vacant for any cause, the Governor shall designate another member as Chair.

(7)a. The Chair of the Board must be paid \$225 for each meeting attended, not to exceed 80 meetings each year.

b. Each of the other members of the Board is to be paid \$175 for each meeting attended, not to exceed 80 meetings each year.

c. The members of the Board shall devote to the duties of the members' office the time necessary for the satisfactory execution of the office.

(c) The decision of the Board with respect to an individual's claim for family and medical leave benefits is final and binding on the parties.

(d) The Department shall implement procedures to ensure confidentiality of all information related to a claim filed or an appeal taken, to the maximum extent permitted by applicable laws.

(e) The Board shall conduct hearings under the Administrative Procedures Act, Chapter 101 of Title 29, except that the Board's hearings are exempt from the public meeting requirements of Chapter 100 of Title 29 to protect confidential health and privacy information.

(f) The Board may adopt regulations to implement this section.

§ 3712. Erroneous payments; disqualification for benefits.

427 (a) A covered individual is disqualified from family and medical leave benefits for 3 years if the covered individual
428 is determined by the Department to have wilfully made a false statement or misrepresentation regarding a material fact, or
429 wilfully failed to report a material fact, to obtain benefits under this chapter.

430 (b) If family and medical leave benefits are paid erroneously or as a result of wilful misrepresentation, or if a claim
431 for family and medical leave benefits is rejected after benefits are paid, the Department may seek repayment from the recipient
432 of benefits, with interest in an amount to be determined by the Department, consistent with § 3718 of this title. If benefits are
433 paid due to wilful misrepresentation, the Department may seek an additional penalty of up to 50% of the overpayment and a
434 penalty as permitted by § 3719 of this title.

435 (c) When the Department determines that an individual obtained an overpayment by fraud, in addition to any
436 disqualification under subsection (a) of this section, the individual is disqualified from receiving family and medical leave
437 benefits until the Department determines that all of the following have occurred:

438 (1) The total amount of the fraud overpayment, with interest, has been repaid in full.

439 (2) Any monetary penalty under this section has been paid in full.

440 § 3713. Family and Medical Leave Insurance Program.

441 (a)(1) By January 1, 2025, the Department shall establish and administer a family and medical leave insurance
442 program.

443 (2) By not later than the date specified in § 3702(a) of this title, the Department shall pay family and medical
444 leave benefits as specified under this chapter.

445 (b) The Department shall establish, and make available to employers, reasonable procedures and forms for filing
446 claims for benefits under this chapter and shall specify the supporting documentation necessary to support a claim for benefits,
447 including any documentation required from a health care provider for proof of a serious health condition.

448 (c) The Department shall use information sharing and integration technology to facilitate the disclosure of relevant
449 information or records so long as a covered individual consents to the disclosure as required under state law.

450 (d) Information contained in the files and records pertaining to a covered individual under this chapter is confidential
451 and not open to public inspection, other than to public employees in the performance of their official duties. However, the
452 covered individual, or an authorized representative of the covered individual, may review the records or receive specific
453 information from the records on the presentation of the covered individual's signed authorization.

454 § 3714. Federal and state income tax.

455 The employer or an approved private plan under § 3716 of this title shall advise a covered individual filing a new
456 claim for family and medical leave benefits, at the time of filing the claim, of all of the following:

(1) Family and medical leave benefits may be subject to federal and state income taxes.

(2) Requirements exist pertaining to federal and state estimated tax payments on family and medical leave benefits.

(3) Under regulations established by the Secretary, applicable taxes will be deducted and withheld from the covered individual's payment of family and medical leave benefits.

§ 3715. Family and Medical Leave Insurance Account Fund; establishment and investment.

(a) A special fund designated as the Family and Medical Leave Insurance Fund is created. The Fund holds all revenues collected under this chapter. All moneys credited to the Fund are continuously available for expenditure in accordance with this chapter.

(b) The State Treasurer shall invest the Fund consistent with the investment policies established by the Cash Management Policy Board. The State Treasurer shall credit interest to the Fund on a monthly basis consistent with the rate established by the Cash Management Policy Board. Expenditures from the Fund may be used only for the purposes of the family and medical leave benefits program under this chapter. Only the Secretary or the Secretary's designee may authorize expenditures from the Fund.

(c) The Department may use expenditures from the Fund to pay for the costs associated with administering the provisions of this chapter.

§ 3716. Private plans.

(a)(1) Except as provided under subsection (e) of this section, an employer may apply to the Department for approval to meet the employer's obligations under this chapter through a private plan. To be approved as meeting an employer's obligations under this chapter, a private plan must do all of the following:

a. Provide one or more of the following:

1. Family caregiving leave to a covered individual for the reasons under § 3702(a)(2) and (a)(4) of this title for the maximum number of weeks in a benefit year required under § 3703(a)(2) of this title.

2. Medical leave to a covered individual for the reasons under § 3702(a)(3) of this title for the maximum number of weeks in a benefit year required under § 3703(a)(2) of this title.

3. Parental leave to a covered individual for the reasons under § 3702(a)(1) of this title for the maximum number of weeks in a benefit year required under § 3703(a)(1) of this title.

b. Allow a covered individual to take, in the aggregate, the maximum number of weeks of covered leave in a benefit year or 24-month period as required under § 3703(a) and (d) of this title.

c. If family caregiving leave is provided, allow family caregiving leave to be taken for all purposes specified under § 3702(a)(2) and (a)(4) of this title.

d. If family caregiving leave is provided, allow family caregiving leave under § 3702(a)(2) and (a)(4) of this title to be taken to care for any family member.

e. If medical leave is provided, allow medical leave under § 3702(a)(3) of this title to be taken by a covered individual with any serious health condition.

f. Provide a wage replacement rate during all covered leave of at least the amount required under § 3704(a)(1) of this title.

g. Provide a maximum weekly benefit during all covered leave of at least the amount specified under § 3704(a)(3) of this title.

h. Provide a minimum weekly benefit during all covered leave of at least the amount specified under § 3704(a)(2) of this title.

i. Allow covered leave to be taken intermittently or on a reduced schedule as authorized under § 3706 of this title.

j. Impose no additional conditions or restrictions on the use of covered leave beyond those explicitly authorized by this chapter or regulations issued under this chapter.

k. Allow an employee covered under the private plan who is eligible to take covered leave under this chapter to take covered leave under the private plan.

l. Providing that the cost to employees covered by a private plan is not greater than the cost charged to employees under the State program.

m. Provide an internal administrative review process and notice to employees of the option to appeal a final determination of the private plan to the Family and Medical Leave Insurance Appeal, consistent with § 3711 of this title.

(2) For a private plan to be approved as meeting an employer's obligations under this chapter, the private plan must also comply with all of the following:

a. If the private plan is in the form of self-insurance, the employer must furnish a bond running to the State, with a surety company authorized to transact business in this State as surety, in a form as may be approved by the Department and in an amount as may be required by the Department. This paragraph (a)(2)a. does not apply to public employers.

b. Provide for all eligible employees throughout their period of employment.

c. If the private plan provides for insurance, the policy must be issued by an admitted insurer, as defined under § 1904 of Title 18.

d. Submit a certification to the Department, in a form regulated by the Department, certifying that the plan meets the obligations of this chapter

(b) An employer may provide all family and medical leave coverage through an approved private plan or may provide 1 or more of medical leave coverage, family caregiving leave coverage, or parental leave coverage using an approved private plan and provide the remaining coverage not provided through an approved private plan using the State program.

(c) The Department may withdraw approval for an employer's use of a private plan granted under subsection (a) of this section when terms or conditions of the plan have been violated. The Department may withdraw approval for an employer's use of a private plan for any of the following:

(1) Failure to pay approved benefits.

(2) Failure to pay benefits timely and in a manner consistent with the State program.

(3) Failure to maintain an adequate security deposit.

(4) Misuse of private plan trust funds.

(5) Failure to submit reports to the Department as required by regulations adopted by the Department.

(6) Failure to comply with this chapter or the regulations adopted under this chapter.

(d) An employee covered by a private plan approved under this section retains all applicable rights under §§ 3707 and 3708 of this title.

(e)(1) Private benefits in existence on [the enactment date of this Act] that the Department deems to be comparable to the Family and Medical Leave Program under § 3713 of this title qualify as a private plan under this chapter for a period of 5 years from the start of contribution payments under § 3705 of this title if the Department's approval of private plans under this subsection would not adversely impact the solvency of the Fund.

(2) The Department may determine comparable value through consideration of factors including wage replacement, length of leave, interrelated benefits, eligibility criteria, or frequency of allowed leave.

(3) An employer seeking to qualify as a private plan under this subsection must notify the Department before January 1, 2024.

(f) The Department's denial of an employer's application under subsection (a) of this section, withdrawal of approval for an employer's use of a private plan under subsection (c) of this section, and decision under subsection (e) of this section are subject to the appeal process under § 3711 of this title.

(g) An employer that meets the employer's obligations under this chapter through a private plan may provide benefits greater than those required under paragraph (a)(1) of this section.

§ 3717. Small business opt-in.

(a) A small business may opt-in to provide parental leave benefits to its employees who are covered individuals. The small business may opt-in by providing notice to the Department in a manner determined by the Department. After the small business opts-in, the small business must remain opted-in for a period of at least 3 years and may opt-out of coverage for parental leave benefits with 12 months' notice to its employees and the Department, to take effect not sooner than the end of the 3-year period.

(b) A small business may opt-in to provide medical leave benefits to its employees who are covered individuals. The small business may opt-in by providing notice to the Department in a manner determined by the Department. After the small business opts-in, the small business must remain opted-in for a period of at least 3 years and may opt-out of coverage for medical leave benefits with 12 months' notice to its employees and the Department, to take effect not sooner than the end of the 3-year period.

(c) A small business may opt-in to provide family caregiving leave benefits to its employees who are covered individuals. The small business may opt-in by providing notice to the Department in a manner determined by the Department. After the small business opts-in, the small business must remain opted-in for a period of at least 3 years and may opt-out of coverage for family caregiving leave benefits with 12 months' notice to its employees and the Department, to take effect not sooner than the end of the 3-year period.

§ 3718. Powers of the Department.

(a) The Department shall administer and enforce this chapter.

(b) A complaint, on a form created by the Department, may be filed with the Department for noncompliance with this chapter.

(c)(1) The Department may audit employers for compliance with this chapter, as determined by the Department.

(2) Nothing in this chapter limits the Department of Insurance's jurisdiction over an insurer issuing an approved private plan.

(d) The Department may do all of the following under the Department's audit and investigative authority to determine noncompliance with this chapter:

(1) Enter and inspect, after 1 day's notice to the employer, the premises or place of business or employment and, on demand, examine and copy, wholly or partly, any or all books, registers, payrolls, and other records, including those required to be made, kept, and preserved under this chapter.

575 (2) Question any employer, employee, or other person in the premises or place of business or employment.

576 (3) Require from an employer full and correct statements in writing, including sworn statements, on forms
577 prescribed or approved by the Department, with respect to the compliance with this chapter, as the Department may deem
578 necessary or appropriate.

579 (4) Investigate such facts, conditions, or matters as the Department may deem necessary or appropriate to
580 determine whether this chapter has been or is being violated.

581 (5) Hold hearings, administer oaths, and examine witnesses under oath, issue subpoenas, compel the attendance
582 of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony, and take
583 depositions and affidavits in any proceeding before the Department. If a person fails to comply with a subpoena lawfully
584 issued or a witness refuses to testify to a matter that the witness may be lawfully interrogated, the Superior Court, on
585 application by the Department, shall compel obedience as in the case of disobedience of the requirements of a subpoena
586 issued from the Court or a refusal to testify to the Court.

587 (e)(1) Following an investigation in which the Department makes an initial determination that an employer has
588 violated 1 or more provisions of this chapter, or an initial determination that a covered individual received an overpayment
589 or violated § 3712 of this title, the Department shall notify the employer or covered individual of the initial determination
590 and of any amounts owed and shall provide the employer or covered individual with an opportunity to appeal the
591 Department's determination to the Family and Medical Leave Insurance Appeal Board ("Board"). If the Department finds a
592 violation of this chapter, the Department may issue civil penalties under § 3719 of this title.

593 (2) An initial determination that is not appealed within 15 days of the date of the notice is deemed a final
594 determination, and the employer or covered individual shall pay any payments or penalties included in the initial
595 determination to the Fund.

596 (3) If the initial determination is appealed within 15 days from the date of the notice, the Board shall hear the
597 appeal within a reasonable time.

598 (4) The Board shall conduct a hearing on appeal under the Administrative Procedures Act, Chapter 101 of Title
599 29, and the regulations adopted by the Board. The decision of the Board is final unless appealed to the Superior Court
600 within 30 days.

601 (f) The Department may institute an action in a court of competent jurisdiction for overpayments, penalties, unpaid
602 contributions, or violations of this chapter. In an action brought by the Department under this subsection where judgment is
603 entered for the Department, a court may award costs and, when so awarded, the same amount of costs must be allowed, taxed,
604 and collected as are allowed, taxed, and collected for like services in the court.

(g) The Department has exclusive authority to settle any claim related to noncompliance with this.

(h) Nothing in this chapter limits the Department's power or authority under other law of this State which may be otherwise applicable to administer or enforce this chapter.

(i) The Department may not be required to pay the filing fee or other costs of the action or fees of any nature or to file bond or other security of any nature in connection with an action under this chapter or with supplementary proceedings as a condition precedent to the availability of any process in aid of the action or proceedings. The Department may join various claimants in 1 cause of action.

(j) Nothing in this chapter prevents a person from pursuing an action at law or in equity against an employer arising under other applicable law.

(k) In addition to the methods of collection authorized by this chapter, the Department may collect a final determination of liability of an employer or covered individual to the Fund by any manner available under other law of this State, including by any manner that unemployment tax assessments may be collected under Chapter 33 of this title, including §§ 3358, 3360, 3361, 3363, 3368, and 3369 of this title.

§ 3719. Penalties.

(a) An employer who violates or fails to comply with any requirement of this chapter, including failing to file reports as prescribed by the Department, failing to make contributions as required by this chapter, and failing to properly handle and remit wage deductions from employees to the Department, is deemed in violation of this chapter and is subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

(b) An employer who discharges or in any manner discriminates against an employee because that employee has made a complaint or has given information to the Department under this chapter, or because the employee has caused to be instituted or is about to cause to be instituted any proceedings under this chapter, or has testified or is about to testify in any proceedings is deemed in violation of this chapter and is subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

(c) A civil penalty claim may be filed in any court of competent jurisdiction.

(d) Funds from any civil penalty under this chapter, including an overpayment penalty as authorized by § 3712 of this title, must be deposited in the Fund.

§ 3720. Regulations.

(a) The Department may adopt regulations as the Department deems necessary or appropriate to administer or enforce this chapter. Except as may be otherwise provided by the Department, a regulation adopted under this section takes effect on publication.

(b) The Department of Insurance may adopt regulations with respect to private plans under § 3716 of this title.

§ 3721. Reports.

Beginning in 2027, the Department shall report to the General Assembly by April 1 of each year on projected and actual program participation by purpose under § 3702(a) of this title, gender of beneficiary, Fund balances, outreach efforts, and total utilization and amounts paid out of the Fund by category.

§ 3722. Public education.

(a) The Department shall conduct a public education campaign to inform employees and employers regarding the availability of family and medical leave benefits.

(b) The Department may use a portion of the funds collected for the family and medical leave benefits program in a given year to pay for the public education program.

(c) Outreach information provided under this section must be available in English, Spanish, and other languages spoken by more than 5% of the state's population.

§ 3723. Sharing technology.

The Department is encouraged to use State data collection and technology to the extent possible and to integrate the family and medical leave benefits program with existing state policies.

§ 3724. Departmental Report.

The Department shall, before July 1, 2029, submit a report to the General Assembly and the Governor on the family and medical leave insurance program. The report shall include information and data on program usage, program efficiency, finances, employee and employer program experience and feedback, program impact on recruitment, retention, cost, operations, worker morale, and productivity, and recommendations for program improvements.

Section 2. If any provision of this Act or the application of this Act to any person or circumstance is held invalid, the remainder of this Act or the application of the provision to other persons or circumstances is not affected.

Section 3. This Act takes effect on July 1, 2022.

Section 4. This Act is known as the "Healthy Delaware Families Act".

**DEPARTMENT OF LABOR
DIVISION OF PAID LEAVE
HEALTHY DELAWARE FAMILIES ACT**

Statutory Authority: Delaware Code, Section (19 Del.C. §105)
**19 DE Admin. Code
PROPOSED**

PUBLIC NOTICE

**Rules Defining and Regulating the Healthy Delaware Families Act and
the Division of Paid Leave**

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of **19 Del.C. §105**, the Delaware Department of Labor ("Department") proposes to introduce regulations concerning the establishment of the Healthy Delaware Families Act ("Act") and to set forth definitions, guidance, procedures, and standards for the implementation of the Act and its Family and Medical Leave Insurance Program ("PFML"). The Division of Paid Leave ("Division"), a separate division within the Department, is established and will administer the Act, Program, and these regulations.

In accordance with **29 Del.C. §10116**, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed regulations should direct them to the following address:

Christopher Counihan
Division Director, Division of Paid Leave
Delaware Department of Labor
4425 North Market Street, 4th Floor
Wilmington, DE 19802

Comments may also be directed via electronic mail to PFML@Delaware.gov. Any written submission in response to this notice and relevant to the proposed regulations must be received by the above contact at the Delaware Department of Labor no later than 4:00 p.m. EST, on May 2, 2023. The action concerning determination of whether to adopt the proposed regulations will be based upon consideration of the written comments and any other written materials filed by the public.

Background

The Department is authorized by the General Assembly of the State of Delaware, to establish rules and regulations for the administration of the Healthy Delaware Families Act ("Act"). Administering this Act is accomplished with the establishment of the Family and Medical Leave Insurance Program ("PFML") and the Family and Medical Leave Insurance Appeal Board ("Board"). The Department is further authorized to adopt and promulgate rules and regulations not inconsistent with Title 19 or of any other law of the State; provided, however that no such rule or regulation shall extend, modify, or conflict with any law of this State or the reasonable implications thereof; and provided further, that such rules and regulations, as established by the Department, shall focus primarily on the Act, Program, and Board.

Summary of Proposal

In June 2022, three-fifths of all members elected to each house of the Delaware General Assembly passed Senate Substitute No. 2 for Senate Bill No. 1 as amended by House Amendment No. 1. This bill, known as the "Healthy Delaware Families Act" ("Act"), established the Family and Medical Leave Insurance Program ("PFML") and the Family and Medical Leave Insurance Appeal Board ("Board") in the State of

Delaware. The Governor signed the bill in May 2022, and it became effective July 1, 2022.

Bill Detail - Delaware General Assembly

The Act creates a statewide paid family and medical leave insurance program that is primarily administered by the employers. Delaware-based employees can access up to twelve (12) weeks of paid family and medical leave through the State's paid leave trust fund for a qualifying event, including the following: (1) to address a worker's own serious health condition; (2) to care for a family member with a serious health condition; (3) to bond and care for a new child; and (4) to address impact(s) arising from a family member's military deployment.

The first substitute to Senate Bill No. 1 differed with regard to the eligibility determination process, covered relationships, length of leave, forms of leave covered, cumulative leave, eligibility criteria, implementation timeline, appeal process, departmental powers, and not requiring participation from certain smaller businesses. The second substitute to Senate Bill No. 1 differed by making technical corrections, intent and providing greater statutory detail with regard to appeals, coordination of benefits, definitions, private plans, and departmental powers, and providing temporary flexibility regarding implementation.

Overall, the proposed Rules implement the Act, PFML program and Board by providing definitions, guidance, processes, and standards for employees, covered individuals, employers, and small businesses, as defined in the Act. The proposed rules outline procedures, forms, and eligibility standards for employees who apply to their employer for claims and benefits payments under the program and seek review from the Department, including an appeal of a denial to the Board. In addition, the proposed rules also set forth guidance, procedures, and forms for employers and small businesses, as defined in the Act, for their administration of the Act and the PMFL program.

As part of the implementation of the Paid Family Medical Leave insurance program, the State is designing an administrative system, that will be made available for employers and others, to manage the program more efficiently. Employers will be able to use this system to make changes to the enrollment of their program, record their employee's hours and wages, and adjudicate their claim applications. In turn and based on that information, the system will advise the employers as to what the Department would do based on the information at hand. Our goal is to make the program as simple as possible for employers, employees, and others to use.

Statutory Authority

19 Del.C. §105.

19 Del.C. §105 enables the Delaware Department of Labor to adopt and promulgate rules and regulations consistent with Title 19 of the Delaware Code; provided, that no such rule or regulation shall extend, modify, or conflict with any law of the State of Delaware or the reasonable implications thereof.

Rules Defining and Regulating the Healthy Delaware Families Act and the Division of Paid Leave

1.0 Definitions

For purposes of the Healthy Delaware Families Act ("Act") and the following regulations,

"Administrative costs" means those reasonable costs incurred and necessary for the Department to perform any of the functions under the Act or these regulations.

"Application year" means the 12-month period of leave as defined in the Family Medical Leave Act ("FMLA") Regulations, 29 CFR 825.200(b), [29 CFR 825.200\(b\)](#). At the time at which these regulations are written, the FMLA provides the 12-month period, which is chosen by the employer, can be established in any of the following ways:

- **"calendar year"**: 12-month period that runs from January 1 through December 31;
- **"any fixed 12-months"**: 12-month period such as a fiscal year, a year starting on an employee's anniversary date, or a 12-month period required by state law;

- “12-month period measured forward”: 12-month period measured forward from the first date an employee takes family and medical leave. The next 12-month period would begin the first-time family and medical leave is taken after completion of the prior 12-month period;
or

- “A ‘rolling’ 12-month period measured backward”: 12-month period measured backward from the date an employee uses any family and medical leave. Under the “rolling” 12-month period, each time an employee takes family and medical leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12-months.

The Employer has the right to choose which method of counting the 12-month period works best for its business. Whichever method is chosen by the employer must be uniformly applied to all employees.

“Average Weekly Wage” means the employee’s gross earnings, whether salaried or hourly (prior to any payroll deductions or withholdings) for the prior 52 weeks divided by 52.

“Child” means “son or daughter” as defined in the FMLA Regulations, 29 CFR 825.102 29 CFR 825.102. At the time at which these regulations are written, a “son or daughter” is defined to include a biological, adopted, or foster child, a stepchild, a legal ward, or a child of person standing *in loco parentis* who is either:

Under 18 years of age; or

18 years of age or older and incapable of self-care because of a mental or physical disability at the time that leave under the FMLA is to commence.

The FMLA defines “*in loco parentis*” to include those with day-to-day responsibilities to care for and financially support a child. Examples of “*in loco parentis*” include but are not limited to:

- a grandfather may take leave to care for a grandchild whom he has assumed ongoing responsibility for raising if the child has a serious health condition;

- an aunt who assumes responsibility for caring for a child after the death of the child’s parents may take leave to care for the child if the child has a serious health condition;
or

- a person who co-parents a same-sex partner’s biological child may take leave for the birth of the child and for bonding.

An employee is to provide sufficient information to make the employer aware of the *in loco parentis* relationship. Examples of sufficient information may include but are not limited to a simple statement asserting the relationship, including the name of the child and a statement of the employee’s *in loco parentis* relationship to the child.

“Continuing treatment by a health care provider” means any one of the following as defined in the FMLA Regulations, 29 CFR 825.102 29 CFR 825.102

Incapacity and treatment. A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.

The requirement in the above paragraphs of this definition for treatment by a health care provider means an in-person visit to a health care provider. The first in-person treatment visit must take place within seven days of the first day of incapacity.

Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30 day period shall be determined by the health care provider.

Pregnancy or prenatal care. Any period of incapacity due to pregnancy, or for prenatal care.

Chronic conditions. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

Requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;

Continues over an extended period of time (including recurring episodes of a single underlying condition); and

May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

Permanent or long-term conditions. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

Conditions requiring multiple treatments. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:

Restorative surgery after an accident or other injury; or

A condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, for example cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

Absences attributable to incapacity under the above paragraphs labeled "Incapacity and Treatment" qualify for leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

"Covered active duty" means:

In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and

In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of Title 10 of the United States Code. 10 USC §101(a)(13)(B). [10 USC 101\(a\)\(13\)\(B\)](#)

"Covered individual" as defined in the Act includes an individual employed for at least 1,250 hours of service performed within the territory of the State of Delaware with the employer during the previous 12-month period. For purposes of determining the service hours requirement, legal standards established under the FMLA apply. At the time at which these regulations are written, the legal standards under the FMLA are "those hours actually worked for the employer." Time not actually worked, whether paid leave or unpaid leave, including vacation, holidays, furlough, sick leave, leave under the FMLA, or other time off is not included. Per FMLA Regulations, 29 CFR 825.110 [29 CFR 825.110](#), whether the employee has worked the minimum 1,250 hours of service is determined by the principles of the Fair Labor Standards Act.

"Employee" means an individual employed by an employer. For purposes of Chapter 37, Title 19 of the Delaware Code, individuals primarily reporting for work at a worksite in this State are employees unless otherwise excluded. "Primarily" is defined as working at least 60% of an employee's work hours physically in Delaware. Individuals primarily reporting for work at a worksite or telecommuting outside of this State are not considered employees under Chapter 37 unless the employer and employee elect in writing to reclassify them as such.

"Employee" under Delaware Law typically does not include those in business for themselves in a non-corporate form (for example, physicians, dentists, lawyers, construction contractors) who offer their services to the public as a sole proprietor or partner in a partnership. Notwithstanding, such individuals may "reclassify" to be considered employees to participate in the Paid Family Medical Leave insurance program 19 Del.C. Ch. 37 (PFML).

The determination of whether an employee's particular work hours or wages were earned in Delaware or outside of Delaware shall be determined according to whether the income that arose from those hours or

wages was withheld from the employee's paycheck as in-state or out-of-state by the Delaware Department of Finance's rules and regulations.

An "employee" under PFML does not include the following types of individuals:

Federal government workers, railroad workers, and employees of Tribal Governments;

State of Delaware employees who are not "classified service" or "state service" employees. At the time at which these regulations are written, Title 29 Section 5903(17)a, 29 Del.C. §5903(17)a, specifies those individuals as:

Casual seasonal employees may be employed by the State on a temporary basis in order to assist agencies in the following situations:

Casual assistance: employee is needed on a sporadic or on-call basis where hours cannot be predetermined and vary greatly from week to week. Such employees may be used as needed.

Seasonal assistance: employee is needed for peak operating seasons not to exceed nine months.

Institutional assistance: employee is needed to provide optimum staffing levels for clients or to maintain security in an institution. Such employees may be used as needed.

Part-time assistance: employee works less than 30 hours per week on a consistent basis. Such employees may be used as needed.

Project assistance: employee performs duties related to a specific project that has defined objectives and an established time period of completion that does not exceed one year.

Primary incumbent replacement: employee is needed to fulfill the job responsibilities of the primary incumbent who is unable to perform such responsibilities for an extended period of time. Such employees may be used for a maximum of nine months or the length of time the incumbent is unable to perform the job responsibility, whichever is less.

Intern: employee is a college student enrolled in an academic program and working to gain job related experience. Such employees may be used for a maximum of nine months.

Co-op student: employee is a high school or college student enrolled in an academic program who is working to gain job related experience. Such employees may work part time during the school year and full-time during times when school is not in session and may be used as needed.

Summer/School break assistance: employee is hired for a specific time period and uses this employment as an introduction to government and its services. Such employees may be used for a maximum of nine months.

Employed by entities in Title 14, the Department of Education, in a casual/seasonal position that would be covered under 5903(17)a. of Title 29. 29 Del.C. §5903(17)(a); [29 Del.C. § 5903\(17\)\(a\)](#) or

In an equivalent casual/seasonal position with an entity covered by State employee benefits.

"Employer" means those who engage in commerce, or any industry or activity affecting commerce, anywhere within the State of Delaware as well as those acting, directly or indirectly, in the interest of a covered employer to any of the employees of the employer, subject to the limitations set forth in Section 3701(7) of the Act. "Employer" also includes any "successor in interest" of the employer as defined by 29 CFR 825.107 [29 CFR 825.107](#) of the FMLA as well as "integrated employers" as defined by 29 CFR 825.104(c)(2) [29 CFR 825.104\(c\)\(2\)](#). Employer also includes a "joint employer" as defined below.

"Successor employer" means those certain employers that meet the successor in interest test as defined in the FMLA. At the time at which these regulations are written, the factors to consider when determining if an employer is a "successor in interest" under the FMLA are as follows:

- Substantial continuity of the same business operations;
- Use of the same plant;
- Continuity of the work force;
- Similarity of jobs and working conditions;

- Similarity of supervisory personnel;
- Similarity in machinery, equipment, and production methods;
- Similarity of products or services; and
- The ability of the predecessor to provide relief.

A successor in interest is determined by the totality of the circumstances, when considering the factors set forth above. When an employer is a successor in interest, employees' entitlements are the same as if the employment by the predecessor and successor were continuous employment by a single employer.

"Integrated employer" means those certain employers that meet the integrated employer test as defined in the FMLA. At the time of writing this regulation, the FMLA defined an "integrated employer" as those separate entities deemed to be part of a single employer for purposes of FMLA and based upon the entire relationship viewed in its totality. Factors considered in determining an integrated employer include: (1) common management; (2) interrelation between operations; (3) centralized control of labor relations; and (4) degree of common ownership/financial control.

"Joint employer" means where two or more businesses exercise some control over the work or working conditions of the employee, the businesses may be joint employers. Joint employers may be separate and distinct entities with separate owners, managers, and facilities. Where the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist. For purposes of the PFML, the employer who actually pays the employee will be considered that individual's employer.

"Equivalent position" means as is defined under the FMLA. At the time these regulations were written, the FMLA defines this term as a position that is virtually identical to the employee's former position in terms of pay, benefits and working conditions, including privileges, prerequisites, and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

"Family and Medical Leave Act" means the Family and Medical Leave Act of 1993, 2006 or "FMLA" (29 USC §§2601-2654).

"Family caregiving" means those acts as set forth in Section 3702(a)(2) of the Act, 19 Del.C. §3702(a)(2).

"Family member" includes parent, child, and spouse (each as defined herein), but it does not include siblings, parents-in-law, or any other relations not specifically listed.

"Health care provider" means as defined under the FMLA 29 CFR 825.125, [29 CFR 825.125](#). At the time at which these regulations are written, FMLA defines "Health care provider" as:

A Doctor of Medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

Any other person determined by the State to be capable of providing health care services.

Others "capable of providing health care services" include only:

Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;

Nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;

Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement;

Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

The phrase “authorized to practice” as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions by the state where they practice.

“Inpatient care” means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity as defined in 29 CFR 825.113(b) [29 CFR 825.113\(b\)](#), or any subsequent treatment in connection with such inpatient care.

“Line(s) of Coverage” as used in these regulations mean the different coverages for the four different types of leave that are authorized under the Act:

Parental leave – leave authorized under Section 3702(a)(1), which offers eligible employees time off in the event of the birth, adoption, or fostering of a child.

Family caregiving leave – leave authorized under Section 3702(a)(2), which offers eligible employees time off in the event of a serious health condition (illness or accident) of a child, spouse, or parent.

Medical leave - leave authorized under Section 3702(a)(3), which offers eligible employees time off in the event of a serious health condition (illness or accident) of the employee themselves.

Qualified Exigencies - Leave authorized under Section 3702(a)(4), which offers eligible employees time off for qualified issues that arise in connection with a military deployment.

Qualified exigency is a separate line of coverage, in that it has its own FMLA rules and regulations, but the Act requires that it and family caregiving leave be combined in terms of eligibility and contributions. The Act combines coverage for both qualified exigencies and family caregiving leave into a single contribution rate, so both coverages must be provided by employers.

“Parent” means as defined under the FMLA. At the time at which these regulations are written, FMLA defines a parent as the biological, adoptive, step, foster father or mother, or any other individual who stood *in loco parentis* to the employee when the employee was a son or daughter as defined by FMLA. This term does not include parents “in law.”

“Qualifying exigency” means as defined under the FMLA. At the time at which these regulations are written, FMLA provides qualified exigency leave “while the employee’s spouse, son, daughter, or parent is on covered active duty or call to covered active-duty status (or has been notified of an impending call or order to covered active duty).” FMLA regulations limits “active-duty status” for the sake of qualified exigency leave to deployments in a foreign country. FMLA further defines a “qualifying exigency” as:

Issues arising from the military member’s short notice deployment (i.e., deployment within seven or less days of notice). For a period of up to seven days from the day the military member receives notice of deployment, an employee may take qualifying exigency leave to address any issue that arises from the short notice deployment;

Attending military events and related activities, such as official ceremonies, programs, events and informational briefings, or family support or assistance programs sponsored by the military, military service organizations, or the American Red Cross that are related to the member’s deployment.

Certain childcare and related activities arising from the military member’s covered active duty, including arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling in or transferring a child to a new school or day care facility.

Note: The employee taking FMLA qualifying exigency leave does not need to be related to the military member’s child. However, (1) the military member must be the parent, spouse, son, or daughter of the employee taking FMLA leave, and (2) the child must be the child of the military member (including a child to whom the military member stands in loco parentis).

Certain activities arising from the military member’s covered active duty related to care of the military member’s parent who is incapable of self-care, such as arranging for alternative care, providing care on a non-routine, urgent, immediate need basis, admitting or transferring a parent to a new care facility, and attending certain meetings with staff at a care facility, such as meetings with hospice or social service providers.

Note: The employee taking FMLA qualifying exigency leave does not need to be related to the military member's parent. However, (1) the military member must be the parent, spouse, son, or daughter of the employee taking FMLA leave, and (2) the parent must be the parent of the military member (including an individual who stood in loco parentis to the military member when the member was a child).

Making or updating financial and legal arrangements to address a military member's absence while on covered active duty, including preparing and executing financial and healthcare powers of attorney, enrolling in the Defense Enrollment Eligibility Reporting System or obtaining military identification cards.

Attending counseling for the employee, the military member, or the child of the military member when the need for that counseling arises from the covered active duty of the military member and is provided by someone other than a health care provider.

Taking up to 15 calendar days of leave to spend time with a military member who is on short-term, temporary Rest and Recuperation leave during deployment. The employee's leave for this reason must be taken while the military member is on Rest and Recuperation leave.

Certain post-deployment activities within 90 days of the end of the military member's covered active duty, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military, and addressing issues arising from the death of a military member, including attending the funeral.

Any other event that the employee and employer agree is a qualifying exigency.

"Prior notice" means an employee providing the employer at least 30 days advance notice before the need for Delaware PFML. If 30 days' notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. "As soon as practicable" means as soon as both possible and practical, considering all the facts and circumstances in the individual case. When an employee becomes aware of a need for Delaware PFML leave less than 30 days in advance, it should be practicable for the employee to provide notice of the need for leave either the same day the employee knows they need leave or the next business day. In all cases, however, the determination of when an employee could practicably provide notice must consider the individual facts and circumstances. When the need for leave is foreseeable at least 30 days in advance and an employee fails to give timely advance notice with no reasonable excuse, the employer may delay coverage until 30 days after the date the employee provides notice. For the employer to delay the start of leave, the need for leave and the approximate date leave would be taken must have been clearly foreseeable to the employee 30 days in advance of the leave.

"Serious health condition" means as defined under the FMLA. At the time at which these regulations are written, Section 825.113 [29 CFR 825.113](#) of the FMLA defines "serious health condition" as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for PFML. Conditions for which cosmetic treatments are administered (for example, most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of the FMLA regulation are met. Mental illness or allergies may be serious health conditions but only if all the conditions of 29 CFR 825.113 [29 CFR 825.113](#) are met.

"Small business" as defined in the Act as (1) for parental leave, those who employs nine or less employees working anywhere within the State; (2) for family caregiving leave

and medical leave, those who employ 24 or less employees working anywhere within the State.

“Spouse” means as defined under the FMLA Regulations, 29 CFR 825.102 [29 CFR 825.102](#). At the time at which these regulations are written, FMLA defines a “spouse” as a husband or wife as defined or recognized in the state where the individuals were married and include persons in common law or same-sex marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States if the marriage could have occurred here in at least one State.

2.0 Eligibility for benefits; serious health condition; certification or documentation of leave.

2.1 Employer eligibility. For the purposes of this Act, the following are not considered employers and are excluded from coverage under this plan:

2.1.1 Anyone who employs less than 10 employees;

2.1.2 The Federal government; or

2.1.3 Employers that completely close their business for 30 consecutive days or more per year.

To qualify under this exception, employers must not pay their employees during their annual closure, and the employer must not do any business with any client.

To be eligible under this chapter, an employer must first employ the minimum number of employees who are subject to the provisions of this chapter (the “threshold number”) during the previous 12-month period. For parental leave, that threshold number is 10 employees. For family caregiving and medical leave, that threshold number is 25 employees. Employees subject to the provisions of this chapter are those who meet or are reasonably expected to meet the requirements of a covered individual under Section 3701(3), being the 12-month employment period requirement and the 1,250 hours of service requirement during the previous 12-month period.

Employees who are covered by a waiver, signed by both the employer and employee, are excluded from this count towards the 10 or 25 employee threshold numbers. Employees who would normally be excluded from the count, as they are physically employed outside of Delaware, but who have signed a reclassification form with their employer, shall be included in this count towards the 10 or 25 employee threshold numbers.

2.1.4 Employers with fewer than 10 employees. If the number of employees working for an employer is below 10 for all of the previous 12-months (the “lookback period”), that employer shall not be subject to any of the provisions of this chapter, unless they elect to “opt-in” to any of the lines of coverage as permitted by the provisions of Section 3717 of the Act. Those employees on waivers are not included in this count, while those employees who have been Reclassified are included in this count.

2.1.5 Employers with 10 to 24 employees. Employers that have 10 but fewer than 25 employees during the previous 12-months shall only be subject to the parental leave provisions of this chapter. This means that once an employer has 10 or more employees, they are required to provide parental leave coverage for at least the next 12-months, within 30 days after which the employer threshold count rose to 10 or more employees. If more than 12 consecutive months pass and the employer continues to stay below 10 employees, the employer will no longer be required to provide parental leave coverage, effective the next pay period after they fall below 10 employees for 12 consecutive months. If the employee count should thereafter rise to 10 or more (but fewer than 25) employees, the employer will once again be required to provide parental leave coverage for at least the next 12-months, within 30 days after which the employee count rose to 10 or more employees. At any time while the employee count is between 10 and 24 employees, the employer may select to voluntarily “opt-in” to any of the other lines of coverage per the provisions of Section 3717 of the Act. Those employees with waivers are not included in this count towards either the 10 or 25 employee threshold numbers, while those employees who have been reclassified are included in this count.

2.1.6 Employers with more than 24 employees. An employer with 25 or more employees during the previous 12-months shall be subject to the parental, family caregiving, medical leave, and qualified exigency leave provisions of this chapter. If the employee count should fall under 25 employees, the employer will still be required to provide all lines of coverage until the employee count remains below the 25 employee threshold for 12 consecutive months. On the 13th consecutive month, if the employer is still below the threshold, they will no longer be required to offer medical leave, family caregiving leave, or qualified exigency leave. However, if the employee count should ever rise above 24 employees, the employer will once again be required to provide all lines of coverage for at least the

next 12-months, within 30 days after which the employer threshold count rose above 24 employees. Those employees on waivers are not included in this count towards the 25 employee threshold number, while those employees who have been reclassified are included in this count.

2.1.7 **Employee notice.** Whenever an employee gains or loses any coverage provided under this chapter due to a change in the number of employees in the employer, the employees must be provided notice by the employer.

2.1.8 **Continuation of Waivers and Reclassifications.** If an employee and employer sign a waiver such that the employee acknowledges that the terms of their employment do not anticipate them meeting the requirements for coverage, the waiver remains in effect regardless of any fluctuation in the employer's threshold account. Therefore, if an employee has signed a waiver to decline coverage, they will not need to sign a new waiver in the event that the employer should fall, for instance, below nine employees for more than 12-months, then rise back above nine employees at some point thereafter.

Similarly, if an employee and employer sign a reclassification form such that the employee acknowledges that they should be included in this PFML insurance program despite their not being physically located in the State of Delaware, the reclassification remains in effect regardless of any fluctuation in the employer's threshold count. Therefore, if an employee has signed a reclassification to accept coverage, they will not need to sign a new reclassification form if the employer should fall, for instance, below nine employees for more than 12-months, then rise back above nine employees at some point thereafter.

2.2 **Certification.** A certification from a health care provider is sufficient if it contains all of the following:

2.2.1 date on which the serious health condition began;

2.2.2 probable duration of the serious health condition;

2.2.3 appropriate medical facts known to the medical provider regarding the condition;

2.2.4 statement that either the (a) covered individual is needed to care for the family member who has a serious health condition, along with an estimate of the time the covered individual will need to care for the family member; or (b) statement that the covered individual is unable to perform the functions of the covered individual's position due to their own serious health condition.

2.2.5 If leave is going to be taken intermittently or on a reduced leave schedule for planned medical treatment, the certification must include the dates on which the medical treatment is expected to be given and the duration of the medical treatment.

2.2.6 If leave is to be taken intermittently or on a reduced leave schedule by a covered individual to care for a family member who has a serious health condition, then the statement should include that the intermittent or reduced leave schedule is necessary for the care of the family member with the serious health condition or will assist in the family member's recovery and the expected duration and schedule of the intermittent or reduced leave.

2.2.7 If leave is going to be taken intermittently or on a reduced leave schedule for covered individual who has a serious health condition, the statement should include a determination that the intermittent or reduced leave schedule is medically necessary and the expected duration of intermittent or reduced leave.

This certification may also require any other information as the Division may determine. The employee is responsible for the cost of obtaining the initial certification form.

2.2.8 **Validity of Certification.** Regarding certification for eligibility of benefits as stated in 19 Del. C. §3702(c)(3)a., the phrase "reason to doubt the validity of a certification" means the employer, or approved private plan administrator has credible, objective evidence that would reasonably support their belief to suspect, question or not trust the legitimacy or soundness of a certification of a serious health condition submitted on the behalf of a covered individual.

2.2.8.1 **Health Care Provider Opinions.** If the employer or approved private plan reasonably believes the certification provided by the health care provider is invalid for the reasons set forth above, then an employer or approved private plan can request, at their expense, a second opinion. Should the second opinion differ from the first, the employer or approved private plan may request, from a health care provider mutually agreed upon by all parties, a third opinion, which shall also be at the expense of the employer or approved private plan.

2.3 **Recertification standards.** Section 3702(c)(4) states that the standards to determine a reasonable basis for recertification may be governed by a collective bargaining agreement. If no

collective bargaining agreement or provision in such an agreement exists, the standard to determine a reasonable basis for recertification is objective, specific evidence of an event that brings the seriousness of the health issue into doubt. This evidence shall be set forth in a sworn, notarized statement by those with direct knowledge of the event in question. Only one recertification process can be requested or required every 30 days. Employers shall process recertification request through the Division's online portal, which will provide the necessary forms and notice of the request to the appropriate parties.

2.4 Payment for Recertification. Should any amount for recertification not be covered by a covered individual's health insurance, an employer or private plan is responsible for the cost of obtaining a recertification. As with all aspects of plan administration, the recertification process is subject to audits by the Division. If the Division determines that the employer routinely requires employees on approved leave to undergo the recertification process such that it becomes a pattern of behavior, especially if the majority of those recertification processes reconfirm the justification for the employee's leave, the employer may be subject to either the job protections provisions of this Act found in Section 3707, or the retaliation provisions found in Section 3708.

2.5 Documentation or Self-Certification. Section 3702(d) states that a request for leave based on a serious health condition of a family member must be supported by documentation demonstrating the nature and extent of the relationship between the covered individual and the family member with the serious health condition. Such documentation may include self-certification by the applicant on a form in the Division's online portal, as the Division may determine.

2.6 Penalty. If and in the event a willfully false claim is made, for instance, a false assertion that the individual is the parent or child when, in reality, they are not, the individual shall be disqualified from receiving benefits for three years and the Division shall seek repayment of any benefits improperly paid from the Fund and may seek an additional penalty of up to 50% of overpayment and a penalty as permitted by Section 3719 of the Act. The case may also be referred to the Department of Justice for investigation and possible prosecution.

3.0 Duration of benefits.

3.1 Maximum allowable benefit period. Depending on the type of leave, eligible employees can only take a maximum of 12 weeks of PFML in any application year. If a covered individual should elect to return to work earlier than the date provided for in their approved leave schedule, their benefit payments will end one week after the payment period in which they returned.

3.1.1 Parental leave. The maximum duration of approved parental leave is 12 weeks in any application year.

3.1.1.1 Section 3703(f) of the Act provides employers with 10 to 24 employees with the option to temporarily reduce the parental leave maximum benefit duration from 12 weeks to a minimum of six weeks for claims submitted prior to January 1, 2031 (the first five years after the start of benefits on January 1, 2026). To qualify for this option to temporarily reduce the maximum benefit duration, employers must notify the Division of their intention to do so by January 1, 2024. If prior to January 1, 2031, employers who have availed themselves of this reduced parental leave option decide to offer the full 12 week benefit for parental leave claims, the employer may do so by notifying the Division. Employers who chose to reduce maximum parental leave benefits must inform their employees, in writing, of their decision no later than December 1, 2024. If the Division receives a complaint that the changes were discriminatory or done in a discriminatory manner, the Division shall investigate the claims as it would any other claim of discrimination.

3.1.2 Family caregiving leave. If the covered individual is on approved family caregiving leave and that person dies, the reason for that leave has ended. For the public plan, the Division may continue paying the benefit to the covered individual until seven days after the death of the family member or the previously approved end date for the leave. The covered individual must notify the employer and the Division via the Division's online portal of the date of death of this family member for whom the covered individual was caring within 48 hours of the person's passing. The job protection provisions of the Act also remain in effect as they would during any other period of approved leave.

3.1.3 Family and medical leave look-back period. Section 3703(a)(2) states the maximum aggregate number of weeks during which benefits are payable for family caregiving leave and medical leave is six weeks in any 24-month period. For all new claim applications, a look-back period will be required. The Division determines the look-back period is the 24-month period that ends on the first day of requested leave.

3.2 Parent or multiple family members. Section 3703(b) states that the Division may limit aggregate family caregiving leave requested when multiple employees work for the same employer and are requesting leave for the same qualifying event. The Division hereby determines those limits are that both employees may take the full amount of leave that they would otherwise be allowed, but they may not take their leave concurrently, unless the employer decides that all similarly situated covered individuals shall be allowed to take leave concurrently. If an employer decides that one set of covered individuals in the same or an equivalent situation can take their leave concurrently, then all such requests for that employer thereafter shall be allowed to be done concurrently. When two employees working for the same employer are both entitled to parental, family caregiving or qualified exigency leave for the same qualifying event, their employer may limit the aggregate number of weeks of leave to which they may be entitled to 12 weeks during any 12-month period.

3.3 Receipt of a completed Application. An employer, insurance carrier, or third-party administrator has five business days after the receipt of a completed application to approve or deny the claim for benefits. The date of an employer's receipt of the completed application is not counted. The five business day time period does not begin until an employer is in receipt of all necessary documentation, including the required documentation from the relevant healthcare provider. For the PFML public plan, once all of the required information has been uploaded to the Division's online portal by the appropriate parties, the software system will provide an advisory notice to the employer regarding the approval or denial of a claim. The final decision to approve or deny a claim, however, will be made by an employer, based on the totality of the circumstances known to the employer.

3.3.1 To approve a public plan claim, an employer must do so through the Division's online electronic system. If not already in the system, all supporting documentation relied upon by the employer to adjudicate the claim must be uploaded into the Division's online electronic system, or their insurance carrier's administrative system, within three business days of a claim being approved under Chapter 37.

3.3.2 Upon approving an application, the employer, insurance carrier or third-party administrator, shall provide the claimant with written notice of this determination. If approval was for public plan benefits done within the Division's online portal, the covered individual will automatically receive the required notification through their preferred method of communication, either electronically through an electronic mail system to the email address provided by the employee or by regular mail.

If approval is done by an insurance carrier or third-party administrator, written notice shall be provided through an electronic mail system, if the covered individual's email address is known to the insurance carrier/administrator, or via regular mail.

3.3.3 The written approved notice referred to above shall include at least the following information:

- 3.3.3.1** The amount of the benefit payment;
- 3.3.3.2** The party or parties to whom the instrument is made payable;
- 3.3.3.3** The party to whom the instrument was forwarded; and
- 3.3.3.4** The address of the party to whom the instrument was forwarded.
- 3.3.3.5** The date benefit payments began and expected date they will end, if known.

3.3.4 If a claim is denied, an employer shall notify the employee and provide the reason(s) for denial. If the denial was for public plan benefits submitted through the Division's online portal, the covered individual will automatically receive the required notification through their preferred method of communication, either electronically through an electronic mail system to the email address provided by the employee or via regular mail. If the denial is through an insurance carrier or third-party administrator, written notice shall be provided through an electronic mail system, if the covered individual's email address is known to the insurance carrier/administrator, or via regular mail. The employer must ensure that all documents relating to the claim application and decision have been uploaded into the online portal. The notice shall inform the employee of their right to appeal the decision and shall provide the employee with instructions on how to file an appeal, as provided in 19 Delaware Code, Section 3711.

4.0 Amount of benefits.

4.1 Standard benefit calculation. Weekly benefit payments shall be calculated by the online portal system on the following basis:

- **Average weekly wage.** This is the "starting point" for the calculation. Take the average gross (before any deductions for taxes, premiums, or any other cause) weekly wages for the 52 weeks

prior to the submission of the claims application. If the employee is salaried, divide the employee's gross wages by 52 weeks to obtain the average weekly wage.

- **Benefit percentage, minimum and maximum.** Multiply the average weekly wage by the benefit percentage, which, at the time of this writing, is 0.8 (80%). If an employee's average weekly wage is \$500, then their weekly benefit will be \$400 ($\$500 \times .80$). If the result of the benefit calculation is below \$100, then the weekly benefit for that individual will instead be the average of the employee's weekly wages. For example: if an employee has an average weekly wage of \$123, their calculated benefit would be \$98 ($\$123 \times .80$); however, since this amount is below the \$100 minimum, the employee will actually receive a benefit of \$123, their average weekly wage. If the result of the benefit calculation is above \$900, the weekly benefit amount shall be limited to \$900.

4.1.1 Inflation indexing the maximum benefit amount. Beginning on January 1, 2028, the maximum weekly benefit amount may be increased in line with the inflation rate of the prior year. Before December of 2027 (for the 2028 calendar year) and prior to every December thereafter, the Division will issue the maximum benefit amount that shall be used for the applicable calendar year. The Act specifies that the inflation measure to be used in the Division's calculation will be the Consumer Price Index for all Urban Consumers, Philadelphia-Camden-Wilmington Metropolitan area, published by the Bureau of Labor Statistics of the United States Department of Labor. The maximum benefit for each calendar year shall be rounded to the nearest \$5.00 increment.

4.1.2 Preservation of the Fund balance. At the Secretary's discretion, in accordance with the provisions of Section 3705(c)(4) of the Act, the benefit percentage may be reduced to a level sufficient to maintain the solvency of the Fund on the effective date specified by the Secretary. The reduced benefit percentage will then stay in effect for the next 12-months. This will only be done to protect the integrity of the Fund. Notice will be provided by the Division at least 90 days before any such change in the benefit percentage occurs.

4.2 The Division has determined that benefits shall be calculated for a covered individual with more than one source of wages as follows:

4.2.1 If an employee is working multiple jobs at the time of the qualifying event, each employer, insurance carrier, or third-party administrator must review the employee's claims application based on the information about that particular job.

4.2.2 The applicable private or public plans will pay an approved claim as a separate claim.

4.2.3 If the State is the payer on multiple claims, it may combine the benefit payments into a single, bi-weekly payment, instead of multiple checks per payment cycle. However, the program requires that employees may not receive combined income-replacement benefits in excess of their most recent wages.

4.3 If the employer has not submitted the required wage information (i.e., if the failed to satisfy its requirements under these regulations), then the Division will accept the required wage information (12 months of wages and proof of hours requirement preceding the submission of an application for benefits) from the employee. Said information must be uploaded into the Division's online portal supported by the appropriate documentation to verify the employee's missing weekly wages, subject to the Division's approval.

4.4 FICA Limits. [Subsection 4.4 purposely left blank]

4.5 Delaware Wages. As the State of Delaware has no jurisdiction over wages earned outside of its boundaries and has no authority to require contributions on wages earned outside of the State, PFML insurance program benefits will be calculated only on the basis of wages earned within the State of Delaware.

5.0 Contributions.

5.1 Per Section 3705(a), the Division requires that contributions be paid at least quarterly, or more frequently if and as the Division regulates, based on the relevant information received during the period of coverage. Payroll contributions will be assessed against wages paid on or after January 1, 2025. Payroll contributions are assessed against individual employee's wages on the first day of their employment or on the first day that the employer's employee count rises above the threshold number or when their waiver is revoked or when a reclassification form is submitted. Payroll contributions for an employer shall begin the first day of the payroll period after the employer adds an employee and rise above the threshold number for one or all of the mandated lines of coverage under this title. Payroll contributions shall cease being assessed against individual employees on the

day that they either sign a waiver or a declassification form, when their wages reach the FICA limit, or when they are no longer employed by the employer. Payroll contributions for the employees of an employer shall end on the first day of the payroll period after an employer is no longer required to provide one or all mandated lines of coverage due to a sustained drop in their employee count or on the day that any eligible employer should permanently end operations.

Payroll contributions shall be submitted to the Division on a quarterly basis on the 30th day after the end of each quarter (or, if the 30th day after the end of a particular quarter falls on a weekend or holiday, the first business day after the 30th day). At its discretion, the Division may provide up to a six business-day grace period during which contributions can be submitted after the due date without late fees or penalties or both.

5.2 In remitting contributions to the fund, an employer or authorized intermediary acting on the employer's behalf shall provide contributions in any of the following forms and manners: for each employee, the employer shall provide their name and unique identifying information (DOB, SSN, etc.) and their previous quarter's weekly wages and hours worked, with each week's data broken out separately by the particular week, by in-state versus out-of-state hours and wages, and listed separately for each employee. The determination of whether an employee's particular hours or wages were earned in Delaware or outside of Delaware shall be determined in accordance with the Delaware Department of Finance's rules or regulations.

5.2.1 **Form of the Contribution:** Quarterly and in a lump sum that combines the employee and employer shares for each of the 13 weeks in each quarter, accompanied by the information specified in subsection 5.3 of this regulation.

5.2.2 An employer must select its employer/employee contribution split, if it differs from the Act's default of 50/50. Employers are free to contribute more than 50% of the total contribution, but not less than 50%. If an employer decides to contribute a variation of 50/50, the employer must properly notice the employer's variation to all affected employees and file the change with the Division through its online portal system.

5.2.2.1 Any change in an employee/employer contribution split, either increase or decrease, shall be noticed by December 15th of the year prior to the January 1 effective date the following year.

5.2.2.2 Employers may have different employee/employer contribution splits for different classes of employees, for example only management vs. hourly workers if:

5.2.2.2.1 the split applies equally to all that employee classes' lines of coverage; and

5.2.2.2.2 the employee classes are defined without reference to protected classes.

5.2.2.3 Any increase or decrease in the employee/employer contribution split must be properly noticed to all employees with an employer.

5.2.2.4 All rules regarding employee/employer contribution splits shall also apply to voluntary plans where an employer opts into PFML coverage.

5.3. **Manner of Contribution:** Funds and information must be submitted to the Division in electronic form; cash and checks will not be accepted. The Division may elect to allow employers to submit their contributions by credit card, with an additional fee set by the Division for the convenience. In addition to monies, all employers shall be required to provide the following information, itemized by employee:

5.3.1 Employer name and EIN or Individual Tax Identification Number (for Sole Proprietorships);

5.3.2 Employee name & unique identifier (Social Security Number, Individual Tax Identification Number, Permanent Resident Card, or Visa Foil number);

5.3.3 Weekly hours (broken into Delaware vs. non-Delaware hours, if appropriate);

5.3.4 Weekly wages (broken into Delaware vs. non-Delaware wages, if appropriate).

Note: The Act requires that contributions and benefits be calculated according to the employee's FICA wages. The Division will perform these calculations on the data provided quarterly by the employer, which is recorded and tracked by the Division.

Note: For full-time salaried employees for whom the employer does not track their hours, the Division will accept 37.5 hours (or 40 hours, if appropriate), in place of their actual weekly hours.

Note: If the Employer's system (or their payroll servicing company's system) does not have this information available at a weekly level, but rather only on the basis of their payroll period, then the Division will accept the above information based on an estimated weekly basis. For instance, for firms that send out their paychecks once every other week, the Division will accept the payroll period information divided by two (so that both weeks have the same numbers for all four datapoints). For

monthly paychecks, the Division will accept estimated weekly information by dividing the monthly wages and hours by the number of days in the pay period, then multiplying it by seven to arrive at an estimated weekly number for hours and wages (or by some other formula, as appropriate).

5.4 The contribution rates for medical leave benefits for the years 2025, 2026, and 2027 and each calendar year thereafter shall be tracked separately by the Division.

5.5 Current rates are in effect for 12-months and will automatically renew at the same rates as stated in the Act. Beginning in 2027, if there is a new rate, the new rate will be changed by modification to these regulations. Employers will be provided at least 90 days' notice of any change in the payroll contributions rate(s) for this program.

5.6 Per Section 3705(a), employers can only withhold contributions from their employees' paychecks at the time that the contribution was assessed. This means that if the employer makes an error which would otherwise call for additional "back contributions" to be collected from the employee, once the paycheck that would have been reduced by the error has been issued, the employer cannot require the employee to pay their "share" of the employer's error. The employer has only one "bite at the apple" when it comes to making a payroll deduction for the employee's share of the contribution.

5.7 For purposes of Section 3705(h), the Division determines that an unpaid contribution as of the date it is due and payable required by the Division, shall accrue interest at a rate of 1.5% per month regardless of the total amount owed, from and after the due date until payment plus the accrued interest is received by the Fund. The employer is responsible for paying both any unpaid contribution amounts and any interest accrued to the Division as the employer is responsible for collecting the employee's contribution share, if any, from the employee.

5.8 Unless otherwise provided by the Act, the Division has the discretion to require or not require an approved private plan to remit contributions for medical leave benefits as required under Section 3705(i)(1).

5.9 Unless otherwise provided by the Act, the Division has the discretion to require or not require an approved private plan to remit contributions for family caregiving leave benefits as required under Section 3705(i)(2).

5.10 Unless otherwise provided by the Act, the Division has the discretion to require or not require an approved private plan to remit contributions for parental leave benefits as required under Section 3705(i)(3).

5.11 **Opting to file a Waiver.** If both the employer and the employee agree that the employee was not hired with the mutually agreed upon expectation that the employee is intended to work on either a permanent basis and/or for at least 25 hours per week or both, such that they do not reasonably expect to be covered by this plan, then they can apply to waive coverage. To do so, they both must sign the waiver of coverage form provided by the Division and return it to the Division via the Division's online electronic system. The waiver will be accepted by the Division unless the Division has a substantial and verifiable reason compelling them to not accept the waiver, such as reasonable proof that the employee is not temporary or will be expected to work over 25 hours per week. Any waivers that were signed by the employee under any type of duress, intimidation, coercion, or the like, whether explicit or implied, will be considered null and void. If evidence is obtained to indicate that a waiver was signed under any condition indicating that it was not voluntarily chosen by the employee, the case may be referred to the Delaware Department of Justice for consideration.

5.12 For purposes of Section 3705(k)(1), an employer's notice to an employee that their work schedule or length of employment, on a permanent or temporary basis, does not meet the requirements for eligibility for PFML benefits, must be provided in writing within the most recent quarter of said situation occurring. The employer must then file either a waiver form or a reclassification form, as the situation dictates, with the Division through its online portal. In its discretion, the Division may waive coverages and the employee's portion of the payroll contribution for prior quarters, if the employer's failure to submit the waiver on a timely basis was due to clerical error. Waivers will be effective in the quarter they are received. The employer's contribution shall not be waived for prior quarters.

5.13 **Waiver.** Should a waiver not be submitted to the Division, be unsigned, contain a clerical error or otherwise, the Division may accept a sworn statement from the employer or employee, as appropriate, as explanation and support for a missed deadline, missed payment, or other clerical error.

5.14 **Revocation of improper Waivers.** Coverage under this chapter is not optional. Waivers cannot be used to "decline coverage" for employees who would otherwise be eligible for coverage and who reasonably expect they should be covered due to either the term of their employment or the

number of hours that they work. Employers are required to provide accurate quarterly information on all employees, including those employees who are on waivers. If those records show that the employee has worked for more than 12-months for their employer and that they have satisfied the 1,250 hours of service requirement during the preceding 12-months, the waiver will be revoked by the Division, which means that the employer will be responsible for the required payroll contribution and the employee will become eligible for benefits beginning at the moment of the revocation of their waiver.

5.15 Fines for improper Waivers. If the Division determines that the employer or the employee or both signed the waiver in a willfully false manner or if the employee worked substantially more than the minimum 1,250 hours in the previous 12-months (for example only, 25% more than the minimum number of hours), the employer may be fined up to \$1,000 for each instance and the employee may be required to pay an amount equal to what they ought to have paid in payroll deductions. If the employee was forced to sign their waiver by the employer or any other individual or entity, the employee will not be subject to any fines or penalties under this rule.

5.16 Revocation of Waiver. After an employer submits to the Division a form revoking a waiver as required by Section 3705(k), deductions from wages will begin. Upon submitting such a revocation of waiver status form, the employee will thereafter be subject to the payroll contribution.

5.17 Form of Waiver. The Division has adopted a form for each a waiver and a revocation of waiver, as required under Sections 3705(k)(1) and 3705(k)(2), which shall be available on the Division's website and the online portal.

5.18 Reclassification and Declassification Forms. As authorized under Section 3701(6)a., for the purposes of this chapter, employers may reclassify an employee who primarily reports for work at a worksite in another state as working primarily in Delaware through the duration of that individual's tenure at the out-of-state worksite. The purpose of this provision is to either: (1) continue to provide coverage for those Delaware-based employees who are temporarily assigned to an out-of-state location; or (2) to make eligible for coverage those employees who are telecommuting or who work on a continuing basis out-of-state when they would normally be located in the State of Delaware. Such a reclassification shall be memorialized through a reclassification form signed by both the employee and employer stating that, while the employee is not physically located in the State of Delaware, they both voluntarily agree to designate them as a Delaware-based employee for the purposes of paying payroll contributions into the PFML insurance program and to be eligible to apply for paid leave under the terms of this program.

Once an employee is reclassified in this manner, they will remain so until both the employee and employer voluntarily sign a form to declassify the employee, such that they will no longer be subject to the provisions of the PFML insurance program.

Any reclassification or declassification forms that were signed by the employee under any type of duress, intimidation, coercion, or the like, whether explicit or implied, will be considered null and void. If evidence is obtained to indicate that a reclassification or declassification form was signed under any condition indicating that it was not freely chosen by the employee, the case may be referred to the Delaware Department of Justice for their consideration.

While an employee is covered under a reclassification form, they will be included in the employer's count towards the various thresholds for coverage (either more than 10 or more than 25 employees). Once an employee and their employer have signed a declassification form, they will no longer be counted towards any of the employer's threshold numbers.

6.0 Reduced leave schedule and intermittent leave.

For purposes of Section 3706(a), family and medical leave benefits for intermittent or reduced leave schedules must first be determined by employer and if approved per the terms, then prorated by employer. The requirements to approve an application for benefits under a reduced leave schedule are the same as exist for leave periods of longer durations and may only be take when medically necessary. For purposes of this subsection only, employers are permitted to request recertification once every 90 days, without the need to establish doubt regarding the seriousness of the covered individual's health condition.

6.1 Minimum duration of a leave on reduced schedule. If employee requests leave on a reduced schedule, the shortest leave that can be approved will be one full workday. Reduced leave will not be allowed in increments less than a full day under the PFML program.

Note: Leave under the FMLA Regulations, 29 CFR 825.205, [29 CFR 825.205](#), may be taken in periods of whole weeks, single days, hours, and, in some cases, even less than an hour. The employer must allow employees to use FMLA leave in the smallest increment of time the employer allows for the use of other forms of leave, as long as it is no more than one hour. Nothing in the PFML Act changes the protections of the FMLA.

6.2 Division's Responsibilities. The Division shall provide employers and employees with online tools, exportable reports, and forms to submit applications for leave, whether full-time, reduced or intermittent, and to track the amount of leave taken and still available to be taken under the rules of the PFML insurance program. The Division shall provide all eligible employees or their designated assistants and employers with any necessary assistance completing all the Division's online forms.

7.0 Leave and employment protection.

7.1 For removal of any doubt and for purposes of Section 3707(b), a covered individual shall continue to be provided with and receive their health care benefits that they would have had if they had not taken leave. However, to continue to receive their health care benefits during their period of approved leave, the employee must continue to pay their share of the health care insurance premium to their employer. Failure by the employee to pay their share of the medical premium may result in the loss of coverage under their group healthcare plan.

Note: The Division will not withhold these amounts from the claimant's benefit payments. The employee is entirely responsible for paying their share of their medical premium as applicable.

7.2 At no time will the Division be responsible for sending an employee's share of their medical premium to an employer for employer's payment to the insurer.

7.3 For purposes of Section 3707(g), "willful violation" means whether the employer knows or shows reckless disregard for whether their conduct violates the PFML. If an employer acts in good faith and with due diligence, those factors weigh against a finding of willfulness.

8.0 Retaliatory personnel actions prohibited.

[Section 8.0 purposely left blank]

9.0 Coordination of benefits.

9.1 For purposes of Section 3709, the phrase "or otherwise coordinated" means claims which can be justifiably made under this PFML insurance program and other income-replacement plans for which the employee may qualify, including Workers' Compensation. This section does not apply to employer provided paid time off plans that have been "grandfathered" as set forth below.

9.2 Employer requirements for coordination of benefit notice. For purposes of Section 3709(a)(2), if an employer requires that payments made under the Act be made concurrently or otherwise coordinated with payments made or leave allowed under terms of disability or family care leave under a collective bargaining agreement or employer policy, an employer shall give employees written notice of employer's requirements which shall include, at a minimum, the following:

(1) whether "paid time off" includes accrued vacation and sick leave;

(2) whether the use of unused accrued paid time off, as well as how much of the unused accrued paid time off is required to be used before accessing PFML benefits;

(3) whether the use of accrued paid time off counts towards the total length of leave provided; The employee cannot be required to exhaust all of their accrued paid time off. This notice shall also include any additional requirements as per the Division's discretion.

9.3 Claims paid under this chapter that are eligible to be coordinated with other income-replacement or paid time off plans shall be paid out on the following schedule, with the employee being required to submit information about any possible coordinating claim:

9.3.1 Mandatory benefits under State or Federal Law. When coordinating monetary benefits with plans that are required under federal or state law (such as workers' compensation) PFML insurance claims will be the primary payer. The Division will pay the full benefit for which the covered individual is eligible as per the terms of this chapter. The mandatory benefit program that pays out their claim second (or third, etc.) shall be entrusted to limit the combined benefit payments so that the total combined payments do not exceed the employee's average weekly earnings prior to the qualifying event.

9.3.2 **Voluntary insurance plan or employer-paid programs.** When a qualifying event that might trigger a PFML insurance claim arising from this chapter, might also be a qualifying event according to the provisions of a voluntary insurance plan or other type of employer-provided paid time off (vacation days, sick days, floating holidays, personal days, and the like; but excluding any “donated” leave programs in which additional leave is not automatically granted to employees) or income-replacement program (such as, short term disability insurance or the personal injury protection provisions of an automobile insurance policy) in which the employee is enrolled, this PFML program will be paid second. This provision also applies to PFML leave that is taken on a reduced or intermittent schedule. Employees may be required by their employer to use their employer-paid paid time off, but if they are required by their employer to use their employer-paid paid time off before taking PFML benefits, the employer can only require their employee to use up to 75% (rounded to the next whole number of days) of their remaining applicable employer-provided paid time off for that benefit period before they can access benefits under this chapter.

For example only: Imagine a situation where an employer has chosen to require that employees must use their employer-paid time off prior to claiming benefits under this program and their employee applies for leave under this plan: (1) where their employee is eligible for seven sick days, three floating-holidays, and 10 days of paid vacation (for a total of 20 paid days off) in a given calendar year, and (2) they have already used six of those days (meaning that they still have 14 days off remaining) when they experience a qualifying event under this PFML insurance program. In this situation, the employee would have to take 11 of their remaining 14 days ($14 \times .75 = 10.5$ days rounded up to 11) before being able to access PFML benefits. Which means that after they return to work from leave, they will still have three remaining paid days off.

9.4 For purposes of Section 3709(a)(4), the term “wages” provided here has the same meaning as defined in the Act, which follows the regulations defining the Federal Insurance Contributions Act, 26 USC Chapter 21, (“FICA”) wages.

10. Notice.

10.1 Nothing in this Rule shall create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, the Department, or Division, against an employer based upon a failure to serve such notice, or defective service of such notice. Nothing in this section shall establish a defense for any party to any cause of action based upon a failure by the employer to serve such notice, or by the defective service of such notice. However, employees ought to notify the Division if they believe their rights under this program are being violated and the Division will investigate the situation and take all appropriate actions, if necessary.

10.2 For purposes of Section 3710(c), the phrase “a conspicuous place accessible to employees” includes, but is not limited to, the following: [the remainder of this subsection purposely left blank]

10.3 In addition to the requirements set forth in Section 3710 of the Act, the Division adopts requirements concerning the means by which employers shall provide notice of the Act: [the remainder of this subsection purposely left blank]

11.0 Employee Claims, employer adjudication, and Divisional review.

11.1 **Employee claims process.** If an employee wishes to make a claim, they must use the claims application form provided on the Division’s online portal. The claim form will include the following information: employee name, address, SSN or other identifying number; date of birth; email; telephone number; employer name; work location; job title and department; employee number (if any); type of leave requested; whether the employee has more than one employer, whether employee eligible for any other type of benefits (i.e. workers compensation, short term disability), plus any additional information as set forth in the claims application that the Division shall create. The employee must complete and submit the form on the online system. The Division will not accept physical copies and/or scans of physical copies that have been completed by hand, manual typewriters, or similar devices. The online portal will distribute the claims application form to the employee, employer, and Division.

11.1.1 **Designated employee assistant in case of employee incapacitation or inability to manage claim.** If an employee is unable to complete the necessary paperwork (for example, due to the serious illness that is the qualifying event under the medical leave provisions described in Section 3702(a)(3) of the Act) or inability to access or operate the online system, then either (1) a family member or (2) another individual who does not directly benefit from the decisions they make or actions they

take in this role, may, through a signed, sworn assistant designation form created by the Division, be appointed to assist the employee. While acting as the designated assistant, the individual is in fiduciary relationship with the employee. If the designated assistant breaches their fiduciary duties, they will be subject to any applicable civil or criminal penalties. The Division, the employee, or their estate shall have the authority to pursue any claims arising from the assistant's actions or decisions, through any appropriate legal means. The employee may revoke this designation of an assistant at any time. Only one assistant can be appointed at any one time, with the individual named in the chronologically applicable filing being recognized for that specific time period. The online portal will distribute the assistant designation form and, if applicable, the revocation of assistant status form to both the employer and Division. If requested, the Division shall provide reasonable assistance to all employees covered by the PFML insurance program and their designated assistants to properly complete any and all online forms relating to this insurance program.

11.2 Employer's responsibilities, adjudication, protections. Employers, insurance carriers, or third-party administrators shall adjudicate the employee's claims application form to the best of their ability, per the "reasonable person" standard. As required in the Act, the employer shall be expected to make a determination as to whether the claims should be paid, the amount of weekly benefit due to the employee, and the length of time the benefit should be paid out, according to the terms and provisions of the Act and based on the information provided by the employee and certified by the appropriate healthcare provider, in a manner and to the extent that a reasonable person would be expected to do so. The employer shall not be required to make any substantive claims-related decision based on information not in their possession. However, they must make a good faith effort to assist their employees in the gathering of all the required information from either the employee or the designated assistant to make an informed and reasonable decision on the eligibility and payment or ineligibility of the request.

Employers are required to provide reasonable assistance to their employees or their designated assistants to properly complete all the online forms created by this Division for this insurance program, including (but not limited to) claims forms, claims review forms, and Appeals Board applications. This requirement for employers to assist in the completion of these online forms is subject to the anti-retaliation provisions of the Act.

If the health care provider does not return a completed certification of serious health condition within 20 days, the system will notify the employer and employee that the certification is still outstanding. The employee has the responsibility of following up with the health care provider. If, after 30 days from the day the claim form was submitted, the health care provider has still not returned a completed certification via the online portal, the system will mark the claim as "Denied Due to Lack of Certification". Such claims shall automatically be revived if the certification is received after it has been marked "Denied Due to Lack of Certification" without requiring the submission of a new claims form.

For the PFML public plan, once all of the required information has been uploaded to the Division's online portal by the appropriate parties, the software system will provide an advisory notice to the employer regarding the approval or denial of a claim. The employer then has five business days to adjudicate the claim. The length of the approved leave shall be based primarily on the recommendation of the appropriate healthcare provider, as supported by disability industry standards and best practices in this area. After the claims determination is made, the employer will then have three business days to communicate their decision via the online portal system to the employee (or their designated Assistant) and the Division.

11.3 Division's responsibility to pay approved benefit. The Act provides that the Division shall be required to make the first payment of benefits to a covered individual within 30 days after the employer has notified the Division of the approved claim, with subsequent payments being required to be made every two weeks thereafter until the approved length of the employee's leave expires. New requests for (or requested changes to) benefits payments shall be due two days before the day on which the Division pays out biweekly claim payments, to allow for claims to be reconciled. A new benefit payment or an adjustment to a previously approved claim will be released by the Division between two and 16 days after the approval or adjustment is granted by the employer.

11.4 Employee's right to request a claims review by the Division. After an employer who is covered by the public plan or a self-insured plan issues their decision on a claim for paid family and medical leave benefits, the employee or their designated assistant may request, within 60 days of issuance of employer's decision, that the Division review the claim.

This request for the Division to review the claim must be made via a claims review request form that shall be created by the Division and made available on the Division's online portal. Neither the employer nor the Division shall be required to respond to either a handwritten (or manually typed) form submitted by any means other than the online portal or to a handwritten (or manually typed) form that has been scanned and then submitted through the Division's online portal system, as neither of those methods are acceptable and will not update the Division's electronic claims database/records system. Both the Division and the employer are required to provide, without any prejudice or fear of retaliation, reasonable assistance so that the employee or their designated assistant can complete, *inter alia*, the claims review request form. After the claims review request form has been completed and properly transmitted to the Division, the Division shall undertake a review of the employer's claims adjudication decision-making process.

For first level appeals under private plans, employees have the right to request reconsideration of a denial or other decision by an insurance carrier or third party administrator ("TPA") directly with that entity. If the insurance carrier or TPA uphold their decision, the employee may pursue their appeal remedies with the Division.

11.5 Division Claims Review determination. If a claims review request form is filed by the employee, the Division shall review the claim and issue a determination, in writing, to the parties within 10 business days of receipt of the review request, either upholding or reversing the employer's initial determination regarding the claim.

If, after submissions from the parties, the Division determines an employer violated one or more provisions of Chapter 37, or a covered individual received an overpayment or violated Section 3712 of Title 19, 19 Del.C. §3712, the Division shall notify the appropriate party in writing, both by regular mail and by electronic means, within five days of its initial determination. The notice shall provide, at a minimum: the date of the notice, amounts owed, civil penalties (if any) under Section 3719 if a violation is determined, and an opportunity to appeal the Division's initial determination to the Board.

11.6 Family and Medical Leave Insurance Appeal Board.

The Board hereby adopts the following regulations to implement Section 3711 of the Act:

11.6.1 If a covered individual or employer appeals to the Board within 30 days from the date of the Division's claim review determination, the Board shall provide notice within five days that a date has been set for an appeal hearing subject to the Board's schedule.

11.6.2 The Board will have access to all of the Division's records regarding the matter under appeal. Either party may submit additional, relevant information that they wish the Board to consider. Any supplemental information shall be provided to the Board and all parties within five days of the hearing date.

An employee in any Board proceeding may file and serve a motion at any time unless otherwise provided. A written motion shall contain a concise statement of the facts and law which support it and a specific request for relief. Any case dispositive motion, such as a motion to dismiss, should be filed and served as soon as possible prior to the start of the hearing. A written reply to a case dispositive motion may be filed. No motion may be filed with the Board without proof that a copy of the motion has been served on the non-moving party(ies).

The Board may permit oral motions and oral or written responses to be made during a hearing.

At least five business days before the hearing, the parties shall exchange their proposed exhibits and witness summaries with copies to the Division; all documents shall be submitted electronically, no files or documents will be accepted in physical form.

A verbatim record of the proceedings before the Board will be made and archived electronically.

All testimony before the Board shall be taken under oath or affirmation. Evidence, which is irrelevant, immaterial, or unduly repetitive may be excluded. Delaware's rules of evidence shall not apply for any documents submitted or testimony given.

12.0 Erroneous payments; disqualification for benefits.

[Section 12.0 purposely left blank]

13.0 Family and Medical Leave Insurance Program.

The Division shall establish and make available on the Division's online portal system, reasonable procedures and forms for filing claims for benefits and other required or requested processes and shall specify the supporting documentation necessary to support a claim for benefits, including any

documentation required from a health care provider for proof of a serious health condition. In order to provide an incentive to healthcare providers to encourage the timely completion and submission of the requested supporting documentation, the following schedule of payments shall be used for claims submitted through the public plan:

<u>Documentation is completed in full and submitted to the Division via the online portal system within 10 calendar days of the Division's request:</u>	<u>\$20 per claim</u>
<u>Documentation is completed in full and submitted to the Division via the online portal system within 11-30 business days of the Division's request:</u>	<u>\$10 per claim</u>

Healthcare providers may not charge employees or their designated assistants a fee for the completion of this form.

14.0 Federal and state income tax.

The Division shall withhold state and federal income tax from authorized benefit payments. The withholding shall be made at a single flat percentage, that will be applied to all benefits paid out during a calendar year. In December of each year and beginning in 2025, the withholding percent for the following year for federal income taxes shall be established based on the average federal effective income tax rate for the prior year, as calculated in accordance with the data series entitled "Average Federal Tax Rates, by Tax Source, Individual Income Taxes" published by the Congressional Budget Office's annual report entitled "The Distribution of Household Income," which was published in November 2022, for information gathered in 2019. State income taxes shall be withheld at a flat rate of 3.0% for all claimants.

By the end of January, the Division shall send each claimant an accounting of the benefits amounts paid out and the federal and state taxes withheld during the previous calendar year. The accounting shall be presented and follow the rules of IRS form 1099G and shall be sent both by regular mail to the last known address of the claimant and in electronic form, with a record also sent to the federal IRS and the Delaware Division of Revenue by the format and means that those agencies require.

15.0 Family and Medical Leave Insurance Account Fund; establishment and investment.

For purposes of this Section 3715 and these regulations, the Division may use expenditures from the Fund to pay for the costs associated with administering the provisions of Chapter 37, Title 19, Del.C. Ch. 37. "Administrative costs" include but are not limited to: [remainder purposely left blank]

The deposits into and withdrawals out of the Family and Medical Leave Insurance Account Fund ("Fund") shall be tracked, accounted for, and verified on a calendar day basis.

The Office of the State Treasurer shall manage and invest the monies in the Fund per their standard policies. The Division shall follow Government Accounting Standards Board ("GASB") rules in recording the transactions of the Division's account.

16.0 Private plans.

16.1 An employer that elects to provide benefits through a private plan issued and administered by an admitted insurance carrier must ensure that the private plan being purchased has been filed with and approved by the Delaware Department of Insurance (the "DOI"). The DOI has agreed to administer the requirements under Section 3716(a)(1) to certify that these insurance plans have either met or exceeded the requirements for one or more of the lines of coverage (including requiring that family caregiving insurance plans also provide qualified exigency leave) as provided under the Act. The Division will provide additional approvals that employers who "opt-out" (in whole or in part, as a hybrid plan) will need to meet in order to satisfy their obligations under Chapter 37 through a private plan, as set forth in the Act.

16.1.1 Insured private plans: Per Section 3716(1), an employer must notify the Division through its online portal of employer's decision to opt-out of the state's public plan. Employers must indicate that they intend to purchase a DOI-certified PFML insurance plan, which may include coverage through a captive insurance plan approved by the Delaware DOI, for one or all of the required lines of coverage. As part of the process to provide notice to the Division of their decision to opt-out of the public plan, employers must submit proof via the online portal of the Declaration of Insurance from their DOI-approved insurance plan as well as a copy of the policy insurance contract.

For employers seeking approval for 2025, the opt-out form(s) will be available on the Division's online portal from September 1, 2024 through December 1, 2024, at which point the opt-out window will close. Failure to obtain such coverage or to provide a copy of the required documents via the online portal or both will mean that employer cannot opt-out and must, instead, enroll in the public plan and remain in said plan until an approved voluntary or self-insured plan, if any, is in place.

For all subsequent years, employers may seek to opt-out of the public plan or renew their approved plan from October 1 through December 31, to be effective January 1 of the following calendar year, subject to the approval of DOI and submission of the required documentation noted above via the Division's online portal by December 31. Failure to do so will, by default, deny approval of the plan and trigger enrollment in the public plan, which shall remain in effect until an approved voluntary or self-insured plan, if any, is in place.

16.2 An employer shall impose no additional conditions or restrictions on the use of covered leave beyond those explicitly authorized by Chapter 37, 19 Del.C. Ch. 37, or regulations issued under that same chapter.

16.2.1 Required Data. Each quarter, employers will be required to send the Division updated weekly enrollment, wages, and hours information for each employee covered under their plans. This information must be provided to the Division through the Division's online portal according to the technical specifications required at the time of submission.

16.3 The requirements for the private plan and internal administrative review process when a final determination is issued are subject to the appeal process consistent with Section 3711 of Title 19, 19 Del.C. §3711.

16.4 **Self-Insured plans:** per Section 3716(a)(2)a., an employer must notify the Division through its online portal of employer's decision to opt-out of the state's public plan by providing a private plan through a form of self-insurance.

Self-Insured groups must have at least 100 covered employees in the plan at all times. Applicant groups with fewer than 100 eligible employees will have their applications declined. In addition, any employer seeking to self-insure must provide a surety bond per the requirements set forth in the Act and these regulations.

For 2025 only, the opt-out form(s) will be available on the Division's online portal from September 1, 2024 through December 1, 2024, at which point the opt-out window will close. By January 1, 2025, the employer must submit via the Division's online portal, the required surety bond. For all subsequent years, employers may seek approval to opt-out of the public plan or seek renewal of their self-insured plan during the period of October 1 to December 1, to be effective January 1 of the following calendar year. The employer must also submit the required bond by December 1 if not already on file with the Division.

If any self-insured employer falls below 100 employees at the time of their annual renewal, they will be decertified, will be required to enroll in the public plan immediately and remain in said plan until an approved voluntary plan, if any, is in place. In addition, the employer must pay to the Fund, within 30 days from the date of decertification, an amount equal to the contributions that would have been due for the previous 12-months had the employer been a participant in the public plan.

The Division may waive this requirement of a minimum of 100 employees if the employer is able to demonstrate that it has the administrative capacity to adequately manage a self-insured plan. Each quarter, all self-insured plans must send the Division updated weekly enrollment, wages, and hour information for all the employees covered under their plans. This information should be provided to the Division through the Division's online portal according to the technical specifications required at the time of the submission.

16.4.1 **Surety Bonds:** Employers that intend to provide the mandated coverage through a self-insured plan for one or more of the required lines of coverage must also provide the Division a surety bond as required under the Act. The surety bond shall be issued by a surety company authorized to do business in Delaware, in an amount equal to one year of total contributions that would have been required to be paid by the employer had they participated in the public plan. This bond shall be in the "continuous until canceled" bond form. The contribution amount shall be based on the actual wages, adjusted for inflation by the "Consumer Price Index for All Urban Consumers, Philadelphia-Camden-Wilmington Metropolitan Area" that is published by the Bureau of Labor Statistics of the United States Department of Labor, earned by the employees in the 12-month period ending on October 31st prior to the December 31st due date of the plan approval. By way of example, for a self-insured plan renewing

in 2028, the employer would calculate the actual wages earned by the employees (with no employee excluded from the calculation, as none have signed a Waiver) that were earned between November 1, 2026 to October 31, 2027, adjusting it for inflation, then applying any applicable FICA limits to the employee's wages, and then applying the contribution rate. Any change to the amount of the surety bond based on that calculation must be provided to the Division by December 1, 2027. Failure to provide the initial surety bond and documents supporting the initial bond calculation and any subsequent calculations supported by a signed statement by either a qualified actuary (having met the American Academy of Actuaries' qualification standards) or licensed Certified Public Accountant ("CPA") will result in the employer self-insured plan being terminating effective December 31 and entering the public plan as of (in this example) January 1, 2028.

The State of Delaware shall be named as the obligee of the surety bond and the employer shall be named the principal. The State of Delaware is the only entity that has standing to pursue a claim against the bond if the employer fails to meet its obligations under these provisions.

The bond shall include a statement that the bonding company must give 90 days' notice of its intent to terminate liability to the employer/principal and the Division, except that if a bonding company is terminating liability because it is issuing a replacement bond, it may do so without providing prior notice. In the event of a replacement bond, the surety company and the employer must notify the Division no later than 10 days after its effective date.

The employer must maintain surety bond coverage for the plan approval period granted by the Division. The Division will review the bond annually, in connection with the employer's annual opt-out renewal, to ensure that the amount of the bond corresponds with the wage requirements described in these regulations. Employers must apply to renew their approval no later than December 1st of each year. At that time, the employer must provide the Division with any documentation necessary to review the bond amount. If the Division determines the bond amount must increase, the employer must do so to renew its self-insured plan approval. If the Division determines that the bond amount exceeds the actual wage calculation set forth above, then the employer may reduce the bond amount to correspond to said wages.

In addition to the bond review documents, the employer will provide the Division with any changes to the plan's Schedule of Benefits and report the current number of eligible employees covered under employer's self-insured plan. If the plan no longer "meets or exceeds" the provisions of the Act or if there are less than 100 eligible employees covered under the plan, the self-insured plan will not be allowed to renew for the next calendar year. Upon decertification of a self-insured plan, an employer must pay to the Fund, within 30 days from the date of decertification, an amount equal to the contributions that would have been due for the previous year had the employer been a participant in the public plan. The employer is then required to join the public plan beginning January 1st and remain in said plan until an approved voluntary plan, if any, is in place.

The Division may execute on and collect the bond amount if the employer's self-insured plan approval is terminated, decertified or withdrawn, voluntarily or involuntarily. Upon execution, the amount to be collected by the Division will be the entire bond amount, less any funds received from the employer within the 30 day period after the effective date of the termination of the self-insured plan approval. Funds so received by the Division from the employer or surety or both will be deposited into the Fund and, if applicable, will be credited toward the employer's contribution obligation per this section.

16.4.2 Self-Insured Plan Design: For any line of coverage that the employer provides under a self-insured plan, the terms and conditions of the plan must at least meet the requirements provided in the Act. Beginning with the opening of the Division's online portal system on September 1, 2024, for self-insured plans not applying for grandfathering, the employer must provide a copy of the self-insured plan's schedule of benefits, terms, and conditions to the Division for its review and approval. The last day to submit this information and the required surety bond is December 1, 2024 for the initial benefit period beginning January 1, 2026. The Division must either approve or decline the employer's application for self-insurance by December 31, 2024. If the Division does not approve the employer's application for self-insurance, the employer must instead comply with the requirements of the Act. For all subsequent years, employers seeking to self-insure must submit all of the required information to the Division no later than December 1st of the year prior to the start of the plan on the following January 1st.

The Division will accept a sworn self-certification or attestation listing specific, detailed components of the plan design, signed by the employer, as initial proof that the plan design meets or exceeds the public plan requirements. At its discretion, the Division will verify the attestation by comparing the submitted plan documents to the requirements of the Act. If, at any time, the Division finds that the employer's self-insured plan does not meet or exceed the requirements of the Act, the Division shall have the power to immediately decertify the employer's self-insured plan, triggering the payment of contributions to the Fund by employer within 30 days from the date of decertification, an amount equal to the contributions that would have been due for the previous year had the employer been a participant in the public plan. If the employer fails to make the required payment, the Division shall execute and collect on the employer's surety bond. The employer will also be immediately added to the public plan with no lapse in coverage for the employers or employees and will remain on the public plan until an approved voluntary plan, if any, is in place.

Any proposed substantive changes to any of the provisions of an approved self-insured plan must be approved by the Division in writing and must be equal or exceed the requirements of the public plan. The Division will review any requested change within 30 days from the receipt of said request via the Division's online portal. Changes to the plan can only go into effect at the beginning of each calendar year, unless the Division approves a different effective date.

16.4.3 Self-Insured Plan Claims Fund: The Division reserves the right to audit the financials of any employer applying to administer a self-insured plan to verify that it has the financial ability to pay all expected claims. Employers with a self-insured private plan must have the financial ability to pay at least six maximum dollar claims per 100 employees per year, and each employer with a self-insured plan must prefund a claims reserve account in a separate dedicated bank account with at least 1/2 of that amount held in reserve to pay future claims. An employer must provide proof of said appropriately funded bank account as part of the opt-out process. This requirement does not apply to self-insured plans that have been approved under the grandfathering provisions of this Act.

For Example: If an employer with 500 employees wishes to self-insure their PFML benefit plan, they would have to fund a bank account as a claims reserve, as follows. A maximum benefit is \$10,800 (which is the cost of a 12-week Parental Leave claim at \$900 per week), half of which comes to \$5,400. The employer would therefore have to fund a claims reserve sufficient to cover 30 claims, which is six claims per 100 employees times five (because they have 500 employees). Meaning the employer would have to maintain a claims reserve with \$162,000 (\$5,400 x 30 = \$162,000).

16.4.4 Audits and Claims Reviews of self-insured plans: Employees and their designees shall be able to avail themselves of the claims review process as set forth in Section 3711(a)(1) of the Act. Per Section 3718 of the Act, the Division retains the right to audit any and all claims or enrollment decisions made by the employer in any self-insured plan. The employer must make available to the Division any requested documentation, file, or system regarding any issue in connection with an audit of the self-insured plan within 24 hours of the Division's written request.

Self-insured plans that are found, either through the claims review or auditing process, to have an excessive number of mis-adjudicated claims, either due to error or arising from a purposeful attempt to deny claims for, among other things, punitive, discriminatory, or financial reasons will be referred by the Division to the Delaware Attorney General for, at the Department of Justice's discretion, civil or criminal prosecution or both.

16.5 Grandfathering plans: Per Section 3716(e) of the Act, private paid time off benefit plans that employers had in place before May 10, 2022, the enactment date of the Act, and that are deemed by DOI or the Division to be comparable to the state's public plan, will be allowed to continue until January 1, 2030, five years from the start of contributions being collected under PFML. Employer paid time off benefit plans will qualify regardless of their risk transference provisions including, but not limited to, any of the following arrangements: (1) private insurance contracts through an admitted carrier including captives; (2) self-insured plans regardless of whether they are backed by a surety bond; or (3) "employee handbook plans" which continue paying an employee's wages in the same manner as it had been paying prior to the leave, while the employee is on a period of leave, that is defined by the contractual relationship between employer and the employee, usually as described in an employee handbook.

16.5.1 Grandfathering Application: In order to qualify for the five year grandfathering period for existing plans, employers must apply through the Division's online portal by the January 1, 2024 deadline described in Section 3716. The online portal will open for grandfathering requests on October

1, 2023. If an employer does not apply by January 1, 2024 through the portal, grandfathering an existing plan shall no longer be an option. If the employer's application is declined, the employer will be subjected to the normal requirements of the Act. If the employer's application is approved, the employer and their employees will not be subject to the normal provisions of the Act until January 1, 2030.

16.5.2 Definition of a comparable plan: For an employer's paid time off benefit plan to be considered to be in existence as of May 10, 2022, the employer must submit a sworn affidavit via the Division's online portal that the plan had been available to all of the employer's employees. The employer's paid time off benefit plan may qualify even if does not provide all four lines of coverage included in the state's public plan, as long as the plan provides comparable coverage on one or more of the lines of coverage. Only that line(s) of coverage that is comparable will be grandfathered. Each application must include a copy of the employer's paid time off benefit plan for consideration by the Division. To be considered "comparable," the employees covered under the existing plan must not be required to contribute more to their employer's existing plan than is required under the public plan. All employer paid time off benefit plans that offer benefits that equal or exceed the state's public plan in three specific components of the plan design will qualify under the grandfathering provision of Section 3716(e)(1) of the Act. An employer's paid time off benefit plan will be considered "comparable" if the plan's three main plan components (benefit percent, maximum benefit, and benefit duration) are within 10% of the equivalent state plan components. For example:

16.5.2.1 Benefit percent – the Act provides for 80% of the employee's wages, 10% less than 80% is 72%. So, if the employer's paid time off benefit plan pays out at 75% or more of the employee's wages, it will be considered comparable for that component of the plan.

16.5.2.2 Maximum benefit – the Act provides for a maximum weekly benefit of \$900 and 10% less than \$900 is \$810. For example, if the employer's paid time off benefit plan provides a maximum benefit of at least \$810, then that criterion of the plan is considered comparable to the state's public plan.

16.5.2.3 Benefit duration – for parental leave, the public plan allows up to 12 weeks of leave. If an employer's paid time off benefit plan allows 10.8 or more weeks (or up to 54 days) of parental leave, then it will be considered comparable. For all other types of leave, the public plan allows for six weeks of leave. If the employer's paid time off benefit plan allows for all employees to receive up to 5.4 weeks, or 27 days, of leave or more, then it will be considered comparable.

An employer's paid time off benefit plan must be within 10% of all three of these plan components for the employer's grandfathering application to be accepted by the Division. If the application is not accepted, the employer must enroll in the state's public plan and remain in said plan until an approved voluntary or self-insured plan, if any, is in place.

In addition, for an employer's existing paternal leave plan to be comparable to the public plan for the paternal leave line of coverage, an employer's paid time off benefit plan must:

- provide coverage for birth, adoption, and fostering of a child; and
- offer these benefits regardless of the parent's sex or gender or marital status.

For example, if the employers' plan is just a "maternity benefit", it will not qualify for grandfathering.

For the five year period during which the plan is grandfathered, until December 31, 2029, the employer shall not alter any of the terms or conditions of the employer's paid time off benefit plan as it existed as of May 10, 2022, unless such a change is approved in writing by the Division or unless the change is to the benefit of employees (an enrichment of the plan).

16.5.3 Short Term Disability Plans: Employers with short term disability ("STD") plans that meet the 10% test are eligible to be grandfathered. Once a plan is approved, all of the provisions of that plan continue as prior to May 10, 2022, including any applicable elimination period. Due to the number of such plans in force in the State of Delaware prior to the enactment of the Act and the number of which may be successfully grandfathered by employers, there is a significant potential for them to adversely impact the solvency of the Fund. The Division will undertake an analysis of the impact of STD plan grandfathering on the future solvency of the Fund based upon the actual experience of the medical leave line of coverage in each of the initial years of the program. If the grandfathered STD plans are determined to be a threat to the solvency of the Fund, their grandfathered status will be terminated earlier than normally provided by the Act.

16.6 **Notice and Appeal Process:** If the Division terminates, decertifies or withdraws approval of an employer's private plan, the Division will issue a notice of termination of private benefit plan approval to the employer, with an effective date 15 days after the date of the notice. Prior to the effective date, the employer may file appeal this decision, on an appeal form found on the Division's online portal to Board. The decision of the Board is final unless appealed to the Superior Court within thirty 30 days. The employer is required to provide notice as set forth in Section 3710 of the Act to all employees affected by any changes in the plan.

17.0 Small business opt-in.

17.1 **Voluntary.** For all small business, the ability to opt-in to provide parental leave benefits, medical leave benefits, or family caregiving leave benefits, any or all of them, is voluntary. However, once an employer opts-in, compliance with the terms of the program is mandatory and applies to all eligible employees.

17.2 **Notice to the Division.** For all opt-ins and opt-outs of any of the benefits, a small business must provide notice to the Division and its employees on the appropriate forms to be created by the Division and available on the Division's online portal system. All forms and processes shall take place in or by electronic means as established by the Division. Notwithstanding any provision to the contrary, employers who opt-in or opt-out of the State's public plan will do so on an effective date at the beginning of each calendar year. Per Section 3717(a), if the employer decides to opt-in to the public plan, they must do so for at least three years. If the employer then decides to leave the State's public plan, they must provide their employees with at least 12 months advanced notice before exiting the plan, which exit shall take effect not sooner than the end of the initial three year period.

18.0 Powers of the Division.

18.1 **Forms.** The Division shall create forms, including a form for a complaint, that may be filed with the Division for a claim of non-compliance with Chapter 37. The forms will be on the Division's website. All forms shall be produced and be made available on the Division's online portal and website in both English and Spanish. The website itself shall be available in both languages, as well. If a third (or fourth, etc.) language achieves a level of common usage such that it is primarily spoken by 5.0% of the state's population (as established by the U.S. Census Bureau), those languages shall also be used in all forms and communications, in addition to English and Spanish. All material released by the Division shall be formatted so that it can machine read for purposes of improved accessibility for people with disabilities.

18.2 **Audit.** In addition to those powers stated in Section 3718, the Division may audit employers for compliance with Chapter 37, as the Division determines. The Division reserves the right to examine any adjudicated claims application, whether they have been approved or denied, on a random basis. Admitted private insurers with certified PFML coverage plans shall provide the Division access to their records systems, along with the training and assistance necessary to understand the materials therein, such that the Division may audit claims adjudicated by those carriers. The records and systems of self-insured private plans shall likewise be made available to and intelligible by the Division for auditing purposes.

18.3 **Division audit and investigative authority.** The Division may enter and inspect an employer's premises or place of business or employment. In so far as possible, the Division will attempt to arrange a mutually acceptable time for such inspections, providing at least eight business hours' notice to employer.

18.3.1 All employers shall keep and preserve any or all books, registers, payrolls, and other records, including those required by Chapter 37, for at least three calendar years. Items preserved or archived in electronic form (rather than in physical form) for three years shall be considered to satisfy this requirement.

18.3.2 The Division may deem it necessary or appropriate to prescribe or approve forms, which may be used by an employer for statements, sworn statements, or other information the Division determines.

18.4 **Division initial determination.**

If, after submissions from the parties, the Division initially determines an employer violated one or more provisions of Chapter 37, or a covered individual received overpayment or violated

Section 3712 of Title 19, the Division shall notify the appropriate party in writing within five days of its initial determination. The notice shall provide, at a minimum: the date of the notice, amounts owed, civil penalties under Section 3719 if a violation is determined, and an opportunity to appeal the Division's initial determination to the Board.

18.5 **Appeal to the Board.** A covered individual or employer must file an appeal, if any, to the Board within 15 days from the date of the Division's claim review determination. Within five days of receipt of said appeal, the Board shall provide the parties with a hearing date.

18.6 Notwithstanding any other provision in the Act or these Rules, the Department of Insurance shall have primary jurisdiction in certain issues and the Division shall have authority to pursue any issues in its jurisdiction that the Department of Insurance declines to pursue.

19.0 Penalties.

19.1 **Penalty.** If the Division deems an employer in violation of Chapter 37 and subject to a civil penalty, such penalty shall not be less than \$1,000 nor more than \$5,000 for each violation. The Division has determined that "each violation" means each alleged action against each employee. For example, only, a failure to pay the contributions for an employee who would have been eligible for five years is a total of 20 violations, specifically four missing quarterly reporting periods per year, over a five year period.

19.2 **Civil penalty claim.** [subsection 19.2 purposely left blank]

19.3 **Anti-Discrimination.** All provisions of this chapter are subject to the state's anti-discrimination laws and regulations. While an employer may be granted discretion to make decisions in regard to certain aspects of employee eligibility, claims adjudication, or any other aspect of the PFML insurance program, this grant of authority does not allow them to violate any provision of the state's anti-discrimination laws or regulations.

20.0 Regulations.

In accordance with Section 3720 of the Act, the Regulations adopted herein take effect 10 days after their final publication.

21.0 Reports.

[Subsection 21.0 purposely left blank]

22.0 Public education.

When making outreach information available, the Division may determine those languages, other than English and Spanish, that are spoken by more than 5.0% of the state's population at the time. Under the terms of Section 3722(b), the Division may use a portion of the monies collected in the Fund to pay for a public education plan. The Division may also use other funds, once properly authorized by the Secretary of Labor or other appropriate officials, from the State of Delaware or other sources to pay for a public education program.

23.0 Sharing technology.

[Subsection 23.0 purposely left blank]

24.0 Departmental Report.

[Subsection 24.0 purposely left blank]

Mental Health and Wellness with DE-LAP

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Delaware Lawyers Assistance Program