A BILL FOR AN ACT

RELATING TO FAMILY LEAVE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that Hawaii's working families are not adequately supported during times of caregiving and illness. According to a 2018 report commissioned by Aloha United Way, entitled "ALICE [Asset Limited, Income Constrained, Employed] a Study of Financial Hardship in Hawaii", forty-two per cent of families in Hawaii are living paycheck to paycheck. While the federal Family and Medical Leave Act of 1993 allows twelve weeks of unpaid leave to employees who have worked at a business that employs fifty or more employees, the majority of Hawaii's workforce cannot afford to take unpaid leave to care for a new child or attend to the needs of a family member with a serious health condition. Hawaii law, which offers a modest four-week extension of unpaid leave, is available only to employees of large employers with more than one hundred employees.

The legislature further finds that in 2018, only seventeen per cent of workers in the United States have access to paid
family leave through their employers. Women, as primary
caregivers of infants, children, and elderly parents, are
disproportionately affected by the absence of paid family and
medical leave. According to AARP Hawaii, there are
approximately 157,000 unpaid family caregivers in the State.
Hawaii has one of the fastest growing populations over the age
of sixty-five in the nation; from 2020 to 2030 the percentage of
people age sixty-five and over is expected to go from 19.1 per
cent of the State's population to 22.5 per cent. Nearly a third
of those who need but do not have access to family leave will
need the time off to care for an ill spouse or elderly parent.
The legislature additionally finds that the virus known as
SARS-CoV-2 causes a disease named coronavirus disease 2019
(COVID-19), which spread globally and was declared a pandemic by
the World Health Organization on March 11, 2020. Upon reaching
Hawaii's shores, COVID-19 became a public health emergency that
infected thousands of people, overburdened hospital capacities,
created medical supply shortages, and claimed the lives of
numerous Hawaii residents. Enacting a comprehensive family
leave program would allow employees whose family members are
impacted by serious health conditions to provide adequate care
for their loved ones.

The purpose of this Act is to ensure that employees in
Hawaii are provided family leave insurance benefits during times
when they need to provide care for their families.

SECTION 2. Chapter 398, Hawaii Revised Statutes, is
amended by adding ten new sections to be appropriately
designated and to read as follows:

"§398- Family leave insurance program. (a) The
department shall establish and administer a family leave
insurance program and pay family leave insurance benefits as
specified in this chapter.

(b) The department shall establish procedures and forms
for filing claims for family leave insurance benefits.

(c) The information collected and the files and records
retained about a covered individual pursuant to this chapter,
including the existence of a claim, shall be confidential and
shall not be open to inspection; provided that:

(1) An employee who applied for family leave insurance
benefits or that employee's representative, upon
presentation of an authorization signed by the
employee to the department, shall be allowed to review
any information, files, and records obtained by the
department;

(2) A public employee acting within the scope of the
public employee's official duties shall be permitted
to review the minimum necessary information, files,
and records to accomplish the public employee's
purpose for reviewing the information, files, and
records; and

(3) The department shall notify an employee's employer
that an employee filed a claim pursuant to this
chapter within days after the claim has been
filed.

§398— Notice to employers. (a) An employer may
require an eligible employee to give the employer written notice
at least thirty days before commencing a period of family leave,
medical leave, or safe leave.

(b) An eligible employee may commence leave without thirty
days advance notice if the leave is not foreseeable, as in
circumstances including but not limited to:
(1) An unexpected serious health condition of the employee
or a family member of the employee; or
(2) A premature birth, unexpected adoption, or unexpected
foster placement by or with the employee.

(c) If an eligible employee commences leave without prior
notice under subsection (b), the employee shall give oral notice
to the employer within twenty-four hours of the commencement of
the leave and shall provide the written notice required under
subsection (a) within three days after the commencement of
leave.

§398- Employment protection; retaliation prohibited.
After returning to work after a period of family leave, an
eligible employee shall be entitled to be restored to the
position of employment held by the employee when the leave
commenced, if that position still exists, without regard to
whether the employer filled the position with a replacement
worker during the period of leave. If the position held by the
employee at the time the leave commenced no longer exists, the
employee shall be entitled to be restored to any available
equivalent position with equivalent employment benefits, pay,
and other terms and conditions of employment.
§398- Family leave insurance fund; family leave insurance benefits. (a) There is established an insurance fund to be known as the family leave insurance fund. The family leave insurance fund shall be used to provide a covered individual with up to sixteen weeks per calendar year of paid family leave.

(b) The family leave insurance fund shall consist of employer and employee contributions based on the employee's average weekly wage, interest earned, income, dividends, refunds, rate credits, and other returns received by the fund. The taxable rate of the contribution shall be in accordance with the contribution rate to the temporary disability insurance fund.

(c) The family leave insurance fund shall be under the control of and administered by the department. All sums contributed or paid from any source to the family leave fund, and all assets of the fund including all interest and earnings, shall be held by the department for the exclusive use and benefit of the employee-beneficiaries. The fund shall be used to finance benefits, administration, outreach, and education or
study of family leave insurance. The fund shall not be subject to appropriation for any other purpose.

§398- Eligibility for payment of benefits. Family leave insurance benefits shall be payable to an:

(1) Employed covered individual; or

(2) Unemployed covered individual who meets one of the following requirements:

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

(B) Is caring for a family member having a serious health condition;

(C) Is caring for a qualifying service member who is the employee's next of kin; or

(D) Has a qualifying exigency.

§398- Report to the legislature. The department shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session, beginning with the regular session of 2022, on any outreach efforts and projected and actual program participation, including the
percentage of covered employees who received family leave
insurance benefits, premium rates, and fund balances under the
family leave insurance program established pursuant to this
chapter.

§398- Outreach and education. The department shall
conduct a public outreach and education campaign to inform
employees and employers of the availability of family leave
insurance benefits. The department may use a portion of the
funds collected in a given year for the family leave insurance
program to pay for the public education program; provided that
the department shall use no more than ___ per cent per year or
$____ per year, whichever is greater, for the public
education program. Outreach information shall be available in
English and other languages spoken within the State.

§398- Coverage of self-employed. (a) A self-employed
person, including a sole proprietor, partner, or joint venture
partner, may elect coverage under this chapter by filing a
notice of election in writing with the director, as required by
the department, as follows:

(1) For an initial period of not less than three years;
and
(2) Following the initial coverage period, no less than one additional year of coverage; provided that the election shall take effect on the date of filing the notice.

(b) A self-employed person who has elected coverage may withdraw from coverage within thirty days after the end of the initial period of coverage, or at other times as the director may prescribe by rule, by filing with the director a notice in writing, as required by the department. The withdrawal shall take effect no sooner than thirty days after filing the notice.

§398- Wage withholding. (a) An employer may deduct and withhold contributions from each employee of up to one-half the cost of providing family leave insurance benefits, and the employer shall provide for the remaining cost over the amount of contributions of the employer's employees.

(b) If there is a dispute between the employee and the employer relating to the withholding of wages as contributions for family leave insurance benefits, either party may file with the director a petition for determination of the amount to be withheld. The matter shall be determined by an officer of the department. If either an employer or employee is dissatisfied
with the department's determination, the aggrieved party may appeal the petition for redetermination pursuant to the procedure under part V of chapter 392.

§398- Weekly benefit amount. (a) The weekly benefit amount shall be calculated as follows:

(1) If the individual's average weekly wage is fifty per cent or less of the state average weekly wage, the individual's weekly benefit shall be ninety per cent of the individual's average weekly wage;

(2) If the individual's average weekly wage is more than fifty per cent and less than one hundred per cent of the state average weekly wage, the individual's weekly benefit shall be seventy-five per cent of the individual's average weekly wage; or

(3) If the individual's average weekly wage is one hundred per cent or more of the state average weekly wage, the individual's weekly benefit shall be fifty per cent of the individual's average weekly wage.

(b) In no case shall the weekly benefit amount exceed the maximum weekly benefit amount of $1,000."
SECTION 3. Section 398-1, Hawaii Revised Statutes, is amended as follows:

1. By adding five new definitions to be appropriately inserted and to read:

"Covered individual" means any person who:

(1) Is an employee or is currently unemployed but has been an employee within the last twenty-six weeks;

(2) Meets the requirements set forth in section 392-25 and the requirements in the rules implemented pursuant to this chapter; and

(3) Submits an application for family leave insurance benefits to the department.

"Designated person" means a family member designated by a covered individual for whom the covered individual will provide care under this chapter if the family member has a serious health condition.

"Family leave insurance benefits" means the benefits provided pursuant to this chapter.

"Family member" means a child; parent; person to whom the covered individual is legally married under the laws of any state; biological, foster, or adopted sibling; the spouse or
reciprocal beneficiary of a sibling; or a reciprocal beneficiary.

"Qualifying exigency" means a circumstance arising from a notice of deployment of a service member received within seven days of deployment, or mandatory attendance of military events or related activities by the covered individual or the covered individual's family member that requires the covered individual to:

(1) Provide child care or attend school activities, if due directly or indirectly to the active duty call or active duty status of a service member;

(2) Make financial or legal arrangements for a service member's absence or as a result of the service member's absence;

(3) Attend counseling provided by someone other than a health care provider if the need for counseling arises from the active duty call or active duty of a service member; or

(4) Spend up to five days with a service member for each instance of short-term, temporary rest and recuperation leave during a period of deployment."
2. By amending the definition of "child" to read:

"Child" means an individual who is a biological, adopted, or foster son or daughter; a stepchild; [e#] a legal ward of [an employee] a covered individual; a child of a reciprocal beneficiary; a grandchild; a child of a covered individual who stands in loco parentis; or a hanai parent.

3. By amending the definition of "employer" to read:

"Employer" means any individual or organization, including the State, any of its political subdivisions, any instrumentality of the State or its political subdivisions, any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or receiver or trustee in bankruptcy, or the legal representative of a deceased person, who employs one [hundred] or more employees for each working day during each of twenty or more calendar weeks in the current or preceding calendar year.

4. By amending the definition of "parent" to read:

"Parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, a grandparent, [e#] a grandparent-in-law[ ], a parent or grandparent of a
SECTION 4. Section 398-3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) [An employee] A covered individual shall be entitled to a total of [four] sixteen weeks of family leave during any calendar year:

1. Upon the birth of a child of the employee or the adoption of a child; or

2. To care for the employee's child, spouse, reciprocal beneficiary, sibling, grandchild, or parent with a serious health condition;]

(1) To care for the covered individual's child within twelve months of the child's birth, foster placement with the covered individual, or placement for adoption with the covered individual; or

(2) To care for a covered individual's family member with a serious health condition."

2. By amending subsection (e) to read:
"(e) Nothing in this chapter shall entitle [an employee] a covered individual to more than a total of [four] sixteen weeks of leave in any twelve-month period."

SECTION 5. Section 398-4, Hawaii Revised Statutes, is amended to read as follows:

"§398-4 Unpaid leave permitted; relationship to paid leave; sick leave. (a) Pursuant to section 398-3, [an employee] a covered individual shall be entitled to [four] sixteen weeks of family leave. [The family leave shall consist of unpaid leave, paid leave, or a combination of paid and unpaid leave. If an employer provides paid family leave for fewer than four weeks, the additional period of leave added to attain the four-week total may be unpaid.] An employer who provides paid family leave beyond what is required by this chapter may require that the leave run concurrently with the sixteen weeks required under this chapter; provided that the employer shall not require the leave to be applied against accrued sick or vacation hours.

(b) Except as otherwise provided in subsection (c), [an employee] a covered individual may elect to substitute any of the [employee]s covered individual's accrued paid leaves, including but not limited to vacation, personal, or family leave
for any part of the [four-week] sixteen-week period in
subsection (a).

[(c) An employer who provides sick leave for employees
shall permit an employee to use the employee's accrued and
available sick leave for purposes of this chapter, provided that
an employee shall not use more than ten days per year for this
purpose, unless an express provision of a valid collective
bargaining agreement authorizes the use of more than ten days of
sick leave for family leave purposes. Nothing in this section
shall require an employer to diminish an employee's accrued and
available sick leave below the amount required pursuant to
section 392-41, provided that any sick leave in excess of the
minimum statutory equivalent for temporary disability benefits
as determined by the department may be used for purposes of this
chapter.]

(c) No assignment, pledge, or encumbrance of any right to
benefits that is or may become due or payable under this chapter
shall be valid; and any right to benefits shall be exempt from
levy, execution, attachment, garnishment, or any other remedy
whatsoever provided for the collection of debt. No waiver of
any exemption in this section shall be valid.
(d) Nothing in this chapter shall prevent a biological mother who is receiving temporary disability benefits for recovery from childbirth from applying for and receiving paid family leave for the purpose of caregiving and bonding with her child after the temporary disability time period has lapsed. For family leave purposes, there shall be no waiting period for benefits to begin.

(e) Benefits under the Family and Medical Leave Act of 1993 shall run concurrently with benefits under this chapter."

SECTION 6. Section 398-21, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any individual claiming to be aggrieved by an alleged unlawful act under this chapter, including the denial of family leave insurance benefits, may file with the department a verified complaint in writing."

SECTION 7. Section 398-23, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) If the department determines after investigation that this chapter has been violated by an employer, the department shall inform the employer and endeavor to remedy the violation by informal methods, such as conference or conciliation. If the
department determines that family medical leave insurance benefits have been wrongfully withheld, the department shall order immediate payment to the covered individual found to be entitled to those benefits."

SECTION 8. Section 398-24, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Upon appeal by a complainant by the employer, the order issued by the department shall be subject to a de novo review by a hearings officer appointed by the director."

SECTION 9. Section 398-26, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Relief under this section may include:

(1) The amount of any family leave insurance benefits, wages, salary, employment benefits, or other compensation denied or lost to the employee by reason of the violation; or

(2) In a case in which family leave insurance benefits, wages, salary, employment benefits, or other compensation 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 four
weeks of wages or salary for the employee."

SECTION 10. Section 398-2, Hawaii Revised Statutes, is
repealed.

"[§398-2]—Inapplicability. The rights provided under
this chapter shall not apply to employees of an employer with
fewer than one hundred employees."

SECTION 11. The department shall establish rules pursuant
to chapter 91, Hawaii Revised Statutes, to implement the
purposes of this Act.

SECTION 12. There is appropriated out of the general
revenues of the State of Hawaii the sum of $300,000 or so much
thereof as may be necessary for fiscal year 2021-2022 and the
same sum or so much thereof as may be necessary for fiscal year
2022-2023 for the purpose of hiring and employing an
administrator, administrative assistant, and an accountant to
perform functions relating to the administration of the family
leave insurance program, including the oversight of payroll
deductions, administrative processes, and payment to eligible
employees.
The sums appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 13. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on July 1, 2021.

INTRODUCED BY: [Signature]

JAN 20 2021
Report Title:
Family Leave Insurance Program; Family Leave Insurance Benefits; Appropriation

Description:
Requires the department of labor and industrial relations to establish and administer a family leave insurance program. Provides family leave insurance benefits and extends period of family leave to 16 weeks for businesses that employs one or more employees who meet the hourly qualifications. Appropriates funds.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.