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# A BILL FOR AN ACT

RELATING TO FAMILY LEAVE.

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

1           SECTION 1. The legislature finds that Hawaii's working  
2 families are not adequately supported during times of caregiving  
3 and illness. While the federal Family and Medical Leave Act of  
4 1993 allows twelve weeks of unpaid leave to employees who have  
5 worked at a business that employs fifty or more employees, the  
6 majority of Hawaii's workforce cannot afford to take unpaid  
7 leave when needing to provide care to a newborn, bond with a new  
8 child, or care for a family member with a serious health  
9 condition. The legislature further finds that the Hawaii law  
10 allows for four weeks of unpaid leave to employees working for a  
11 business with over one hundred employees.

12           Only approximately eleven per cent of workers in the United  
13 States have access to paid family leave through their employers.  
14 Women, as primary caregivers of infants, children, and elderly  
15 parents, are affected disproportionately by the unavailability  
16 of paid family and medical leave. Two hundred forty-seven  
17 thousand people in Hawaii serve as family caregivers. Hawaii



1 has the fastest growing population over the age of sixty-five in  
2 the nation, and that number is expected to grow by at least  
3 eighty-one per cent by the year 2030. Of those who need leave  
4 but do not have that benefit, nearly one in three need leave to  
5 care for an ill spouse or elderly parent.

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

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

12 "§398-A Designation of a designated person. An employer  
13 may establish a process for a covered individual to designate a  
14 designated person within thirty days of the covered individual  
15 becoming eligible for benefits under this chapter; provided that  
16 the employer shall notify the department of all designations and  
17 changed designations. Thereafter, the employer shall permit the  
18 covered individual to make or change a designation, as  
19 applicable, on an annual basis. If a covered individual's  
20 employer establishes a process, the covered individual shall  
21 comply with the process. If a covered individual's employer



1 does not establish a process, the covered individual may make or  
2 change a designation when filing a claim for family leave  
3 insurance benefits under this chapter. The department shall  
4 adopt rules pursuant to chapter 91 to implement this section.

5 §398-B Family leave trust fund; family leave insurance  
6 benefits. (a) There is established a trust fund to be known as  
7 the family leave trust fund.

8 (b) The trust fund shall consist of employee contributions  
9 based on the employee's average weekly wage as well as interest  
10 earned and income, dividends, refunds, rate credits, and other  
11 returns received by the fund. The taxable rate of the  
12 contribution shall be in accordance with the employee  
13 contribution rate to the temporary disability insurance fund.  
14 Any and all sums contributed or paid from any source to the fund  
15 created by this section, and all assets of the fund including  
16 any and all interest and earnings of the same, are and shall be  
17 held in trust by the department for the exclusive use and  
18 benefit of the employee-beneficiaries, including to finance  
19 benefits, administration, outreach, education, or study of or  
20 related to family leave insurance, and shall not be subject to  
21 appropriation for any other purpose.



1        (c) The trust fund shall be used to provide a covered  
2 individual with up to four weeks per calendar year of paid  
3 family leave.

4        (d) The trust fund shall be under the control of and  
5 administered by the department.

6        §398-C Eligibility for payment of benefits. Family leave  
7 insurance benefits are payable to:

8        (1) A person who:

9            (A) Is a covered individual, as defined in section  
10            398-1; and

11          (B) Meets one of the following requirements:

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

16            (ii) Is caring for a family member with a serious  
17            health condition;

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



1                    (iv) Has a qualifying exigency, as defined in  
2                    section 398-1, arising out of the deployment  
3                    of a family member or the employee; or

4            (2) An individual who is not currently employed, but who  
5            is a covered individual, as defined in section 398-1,  
6            and meets one of the requirements listed in paragraph  
7            (1) (B).

8            §398-D Family leave insurance program. (a) The  
9            department shall establish and administer a family leave  
10           insurance program and pay family leave insurance benefits as  
11           specified in this chapter.

12           (b) The department shall establish procedures and forms  
13           for filing claims for benefits under this chapter. The  
14           department shall notify the employer of a covered individual who  
15           files a claim for benefits under this chapter that the claim has  
16           been filed.

17           (c) The department shall use information sharing and  
18           integration technology to facilitate the disclosure of relevant  
19           information or records including use of information and  
20           technology already existing in the temporary disability

1 insurance program to the extent feasible following any  
2 requirements for consent to disclosure under state law.

3 (d) Information contained in the files and records  
4 pertaining to an individual under this chapter are confidential  
5 and not available for public inspection, other than to public  
6 employees in the performance of their official duties. However,  
7 the individual or an authorized representative of an individual  
8 may review the records or receive specific information from the  
9 records on the presentation of the signed authorization of the  
10 individual.

11 §398-E Report to the legislature. Beginning July 1, 2017,  
12 the department shall report to the legislature no later than  
13 twenty days prior to the convening of each regular session on  
14 outreach efforts, projected and actual program participation,  
15 including the percentage of those eligible for family leave  
16 insurance benefits under this chapter who receive such benefits,  
17 premium rates, and fund balances.

18 §398-F Outreach and education. The department shall  
19 conduct a public outreach and education campaign to inform  
20 employees and employers regarding the availability of family  
21 leave insurance benefits. The department may use a portion of



1 the funds collected for the family leave insurance program in a  
2 given year to pay for the public education program. Outreach  
3 information shall be available in English and other languages  
4 spoken within the State.

5 §398-G Wage withholding. (a) Each employee shall make a  
6 contribution to the family leave trust fund per pay period, via  
7 wage withholding per pay period, transmitted by the employer to  
8 the trust fund.

9 (b) If there is a dispute between the employee and the  
10 employer relating to the withholding of wages as contributions  
11 for paid family leave benefits, either party may file with the  
12 director a petition for determination of the amount to be  
13 withheld. The matter shall be determined by an officer of the  
14 department. If either party is dissatisfied with the  
15 determination, the party may petition for redetermination and  
16 thereupon the petition shall be transferred to the referee.

17 §398-H Weekly benefit amount. (a) Benefits shall be  
18 computed as weekly amounts in the manner provided by section  
19 392-22.

20 (b) In no case shall the weekly benefit amount exceed the  
21 maximum weekly benefit amount specified in section 386-31.



1       §398-I Duplication of benefits not permitted. No family  
2 leave insurance benefits shall be payable for any period of  
3 leave for which the employee is entitled to receive:

4       (1) Weekly benefits under the Employment Security Law or  
5 similar laws of this State or of any other state or of  
6 the United States, or under any temporary disability  
7 benefits law of any other state or of the United  
8 States except as provided in section 392-66;

9       (2) Weekly disability insurance benefits under title 42  
10 United States Code Annotated section 423;

11       (3) Weekly benefits for total disability under the  
12 workers' compensation law of this State or any other  
13 state or of the United States, except benefits for  
14 permanent partial or permanent total disability  
15 previously incurred. If the claimant does not receive  
16 benefits under such workers' compensation law and the  
17 claimant's entitlement to such benefits is seriously  
18 disputed, the employee, if otherwise eligible, shall  
19 receive temporary disability benefits under this  
20 chapter, but any insurer or employer or the trust fund  
21 for disability benefits providing such benefits shall





1           be subrogated, as hereinafter provided, to the  
2           employee's right to benefits under the workers'  
3           compensation law for the period of disability for  
4           which the employee received benefits under this  
5           chapter to the extent of the benefits so received; and  
6       (4) Indemnity payments for wage loss under any applicable  
7           employers' liability law of this State, or of any  
8           other state or of the United States. If an employee  
9           has received benefits under this chapter for a period  
10           of disability for which the employee is entitled to  
11           such indemnity payments, any insurer or employer or  
12           the trust fund for disability benefits providing such  
13           benefits shall be subrogated to the employee's right  
14           to such indemnity payments in the amount of the  
15           benefits paid under this chapter as hereinafter  
16           provided."

17           SECTION 3. Section 398-1, Hawaii Revised Statutes, is  
18 amended as follows:

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

21           "Covered individual" means any person who:



- 1        (1) Is an employee or has been an employee within the last  
2        twenty-six weeks if currently unemployed;  
3        (2) Meets the requirements of this chapter and in rules  
4        implemented pursuant to this chapter; and  
5        (3) Submits an application for family leave insurance  
6        benefits to the department.

7        "Designated person" means one person designated by a  
8        covered individual for whom the covered individual will provide  
9        care under this chapter if the designated person has a serious  
10       health condition.

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

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

18       "Qualifying exigency" means:

- 19       (1) Notice of deployment of a service member received  
20       within seven days of deployment;  
21       (2) Attendance of military events or related activities;



- 1        (3) Child care or attendance of school activities, if due  
2        directly or indirectly to the active duty call or  
3        active duty status of a service member;
- 4        (4) To make financial or legal arrangements for a service  
5        member's absence or as a result of the service  
6        member's absence;
- 7        (5) Attending counseling provided by someone other than a  
8        health care provider if the need for counseling arises  
9        from the active duty call or active duty of a service  
10       member; or
- 11       (6) To spend up to five days with a service member for  
12       each instance of short-term, temporary rest, and  
13       recuperation leave during a period of deployment."
- 14       2. By amending the definition of "child" to read:
- 15       "Child" means an individual who is a biological, adopted,  
16       or foster son or daughter; a stepchild; ~~[or]~~ a legal ward of ~~[an~~  
17       ~~employee.]~~ a covered individual; a child of a reciprocal  
18       beneficiary; a grandchild; or a child of a covered individual  
19       who stands in loco parentis."
- 20       3. By amending the definition of "employer" to read:



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

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

12        "Parent" means a biological, foster, or adoptive parent, a  
13 parent-in-law, a stepparent, a legal guardian, a grandparent,  
14 [~~or~~] a grandparent-in-law[~~-~~], a parent or grandparent of a  
15 reciprocal beneficiary, or a person who stood in loco parentis  
16 when the covered individual was a minor child."

17        SECTION 4. Section 398-3, Hawaii Revised Statutes, is  
18 amended by amending subsection (a) to read as follows:

19        "(a) [~~An employee~~] A covered individual shall be entitled  
20 to a total of four weeks of family leave during any calendar  
21 year [~~upon the birth of a child of the employee or the adoption~~]



1 ~~of a child, or to care for the employee's child, spouse or~~  
2 ~~reciprocal beneficiary, or parent with a serious health~~  
3 ~~condition.]:~~

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

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

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

12 "§398-4 [Unpaid leave] Leave permitted; relationship to  
13 paid leave; sick leave. (a) Pursuant to section 398-3, an  
14 employee shall be entitled to four weeks of family leave. [The  
15 family leave shall consist of unpaid leave, paid leave, or a  
16 combination of paid and unpaid leave. If an employer provides  
17 paid family leave for fewer than four weeks, the additional  
18 period of leave added to attain the four week total may be  
19 unpaid.] An employer who provides paid family leave beyond what  
20 is required by this chapter may require that the leave run  
21 concurrently with the four weeks required under this chapter,



1 but subject to section 392-41(b)(2), shall not require the leave  
2 to be applied against accrued sick or vacation leave.

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

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



1       (d) No assignment, pledge, or encumbrance of any right to  
2 benefits that are or may become due or payable under this  
3 chapter shall be valid; and the rights to benefits shall be  
4 exempt from levy, execution, attachment, garnishment, or any  
5 other remedy whatsoever provided for the collection of debt. No  
6 waiver of any exemption provided for in this section shall be  
7 valid.

8       (e) Nothing in this chapter shall prevent a biological  
9 mother receiving temporary disability benefits for recovery from  
10 childbirth from applying for and receiving paid family leave for  
11 the purpose of caregiving and bonding with her child after the  
12 period during which temporary disability insurance benefits are  
13 compensable. For family leave purposes, there shall be no  
14 waiting period for benefits to begin.

15       (f) Benefits under the Family and Medical Leave Act of  
16 1993 shall run concurrently with benefits under this chapter.

17       (g) An employee receiving paid family leave shall not earn  
18 wages during such period."

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



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

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

7           "(d) If the department determines after investigation that  
8 this chapter has been violated[7] by an employer, the department  
9 shall inform the employer and endeavor to remedy the violation  
10 by informal methods, such as conference or conciliation. If the  
11 department determines that family medical leave insurance  
12 benefits have been wrongfully withheld, the department shall  
13 order immediate payment to the employee found entitled to those  
14 benefits."

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

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

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





1           "(b) Relief under this section may include:

2           (1) The amount of any benefits under this chapter, wages,  
3           salary, employment benefits, or other compensation  
4           denied or lost to the employee by reason of the  
5           violation; or

6           (2) In a case in which benefits under this chapter, wages,  
7           salary, employment benefits, or other compensation  
8           have not been denied or lost to the employee, any  
9           actual monetary losses sustained by the employee as a  
10          direct result of the violation, such as the cost of  
11          providing care, up to a sum equal to four weeks of  
12          wages or salary for the employee."

13          SECTION 10. There is appropriated out of the general  
14 revenues of the State of Hawaii the sum of \$            or so much  
15 thereof as may be necessary for fiscal year 2016-2017 for the  
16 purpose of hiring and employing an administrator, administrative  
17 assistant, and an accountant to perform functions relating to  
18 the administration of the family leave trust fund, including the  
19 oversight of payroll deductions, administrative processes, and  
20 payment to eligible employees.



1           The sum appropriated shall be expended by the department of  
2 labor and industrial relations for the purposes of this Act.

3           SECTION 11. The department of labor and industrial  
4 relations shall submit a report to the legislature regarding the  
5 implementation of family leave insurance benefits established  
6 under this Act, including the feasibility of extending family  
7 leave insurance benefits to self-employed persons, no later than  
8 twenty days prior to the convening of the regular session of  
9 2017.

10          SECTION 12. The department of budget and finance, in  
11 collaboration with the Hawaii commission on the status of women,  
12 shall perform an actuarial study on the economic impact and  
13 operational requirements of providing the family leave insurance  
14 benefits established under this Act. The department of budget  
15 and finance shall submit the actuarial study to the legislature  
16 no later than twenty days prior to the convening of the regular  
17 session of 2017.

18          SECTION 13. In codifying the new sections added by section  
19 2 of this Act, the revisor of statutes shall substitute  
20 appropriate section numbers for the letters used in designating  
21 the new sections in this Act.



1 SECTION 14. This Act does not affect rights and duties  
2 that matured, penalties that were incurred, and proceedings that  
3 were begun before its effective date.

4 SECTION 15. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 16. This Act shall take effect on July 1, 2091;  
7 provided that sections 2 through 9 shall take effect on July 1,  
8 2017.



**Report Title:**

Family Leave; Insurance; Private; Appropriation

**Description:**

Establishes a family leave insurance program, which allows employees to make contributions into a trust fund to be used to provide employees with family leave insurance benefits to care for a designated person. Appropriates funds to the Department of Labor and Industrial Relations to implement the program. Requires a study to be performed by the Department of Labor and Industrial Relations and an actuarial study to be performed by the Department of Budget and Finance. (SB2961 HD1)

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