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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. According to a 2018 report commissioned by Aloha  
4 United Way, entitled "ALICE (Asset Limited, Income Constrained,  
5 Employed) a Study of Financial Hardship in Hawaii", forty-two  
6 per cent of families in Hawaii are living paycheck to paycheck.  
7 While the federal Family and Medical Leave Act of 1993 allows  
8 twelve weeks of unpaid leave to employees who have worked at a  
9 business that employs fifty or more employees, the majority of  
10 Hawaii's workforce cannot afford to take unpaid leave to care  
11 for a new child or attend to the needs of a family member with a  
12 serious health condition. Hawaii law, which offers a modest  
13 four-weeks of unpaid leave, is available only to employees of  
14 large employers with more than one hundred employees.

15           The legislature further finds that according to the Hawaii  
16 Children's Action Network, seven in ten keiki have either their  
17 married parents, or their single parent, in the workforce,



1 leaving them with no full-time caregiver. Yet, mothers with  
2 paid leave are thirty-nine per cent less likely to receive  
3 public assistance after the birth of a child than those without.  
4 Furthermore, paid family leave is associated with a twenty per  
5 cent decrease in infant mortality, greater health equity among  
6 different racial and socioeconomic groups, and increases in  
7 worker retention and loyalty. An actuarial analysis conducted  
8 in 2016 found that the annual cost to cover sixteen weeks of  
9 leave for a Hawaii worker making \$48,000 would be around fifty-  
10 eight dollars, averaging out to cost about \$1.11 per week.

11 The legislature additionally finds that in 2018, only  
12 seventeen per cent of workers in the United States had access to  
13 paid family leave through their employers. Women, as primary  
14 caregivers of infants, children, and elderly parents, are  
15 disproportionately affected by the absence of paid family and  
16 medical leave. According to AARP Hawaii, there are  
17 approximately one hundred fifty-seven thousand unpaid family  
18 caregivers in the State. Hawaii has one of the fastest growing  
19 populations over the age of sixty-five in the nation; from 2020  
20 to 2030, the percentage of people aged sixty-five and over is  
21 expected to increase from 19.1 per cent to 22.5 per cent of the



1 State's population. Nearly one-third of those who need but do  
2 not have access to family leave will need the time off to care  
3 for an ill spouse or elderly parent.

4 The legislature additionally finds that the coronavirus  
5 disease 2019 (COVID-19) spread globally and was declared a  
6 pandemic by the World Health Organization on March 11, 2020.  
7 Upon reaching Hawaii's shores, COVID-19 became a public health  
8 emergency that infected thousands of people, overwhelmed  
9 hospital capacities, created medical supply shortages, and  
10 claimed the lives of numerous Hawaii residents. Enacting a  
11 comprehensive family leave program would allow employees whose  
12 family members are impacted by serious health conditions to  
13 provide adequate care for their loved ones.

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

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

20 "§398-A Family leave insurance program. (a) The  
21 department shall establish and administer a family leave



1 insurance program and pay family leave insurance benefits as  
2 specified in this chapter.

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

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

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

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



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

5       **§398-B Notice to employers.** (a) An employer may require  
6       a covered individual to give the employer written notice at  
7       least thirty days before commencing a period of family leave.

8       (b) A covered individual may commence leave without thirty  
9       days' advance notice if the leave is not foreseeable, as in  
10       circumstances including but not limited to:

11       (1) An unexpected serious health condition of the employee  
12           or a family member of the employee; or

13       (2) A premature birth, unexpected adoption, or unexpected  
14           foster placement by or with the employee.

15       (c) If a covered individual commences leave without thirty  
16       days' advance notice, as described under subsection (b), the  
17       employee shall give oral notice to the employer within  
18       twenty-four hours after the commencement of leave and shall  
19       provide written notice of leave within three days after the  
20       commencement of leave.



1        **§398-C   Employment protection; retaliation prohibited.**

2   After returning to work after a period of family leave, a  
3   covered individual shall be entitled to be restored to the  
4   position of employment held by the employee when the leave  
5   commenced, if that position still exists, without regard to  
6   whether the employer filled the position with a replacement  
7   worker during the period of leave. If the position held by the  
8   employee at the time the leave commenced no longer exists, the  
9   employee shall be entitled to be restored to any available  
10   equivalent position with equivalent employment benefits, pay,  
11   and other terms and conditions of employment.

12        **§398-D   Family leave insurance trust fund; family leave**  
13   **insurance benefits.**   (a) There is established an insurance

14   trust fund to be known as the family leave insurance trust fund.  
15   The family leave insurance trust fund shall be used to provide a  
16   covered individual with up to sixteen weeks per calendar year of  
17   paid family leave.

18        (b) The family leave insurance trust fund shall consist of  
19   employer and employee contributions based on the employee's  
20   average weekly wage, interest earned, income, dividends,  
21   refunds, rate credits, and other returns received by the fund



1 including funds collected pursuant to section 398-I. The rate  
 2 of the contribution shall be in accordance with the contribution  
 3 rate to the temporary disability insurance fund. The department  
 4 of labor and industrial relation shall collect the contributions  
 5 from the employee and employer, which shall be shared at one  
 6 half the cost of the premiums per employee.

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

17 **§398-E Eligibility for payment of benefits.** Family leave  
 18 insurance benefits shall be payable to:

- 19 (1) An employed covered individual; or
- 20 (2) An unemployed covered individual who meets one of the
- 21 following requirements:



- 1           (A) Because of birth, adoption, or placement through
- 2           foster care, is caring for a new child during the
- 3           first year after the birth, adoption, or
- 4           placement;
- 5           (B) Is caring for a family member having a serious
- 6           health condition;
- 7           (C) Is caring for a qualifying service member who is
- 8           the employee's next of kin; or
- 9           (D) Has a qualifying exigency.

10           **§398-F Report to the legislature.** The department shall  
11 submit a report to the legislature no later than twenty days  
12 prior to the convening of each regular session, beginning with  
13 the regular session of 2025, on any outreach efforts and  
14 projected and actual program participation, including the  
15 percentage of covered employees who received family leave  
16 insurance benefits, premium rates, and fund balances under the  
17 family leave insurance program established pursuant to this  
18 chapter.

19           **§398-G Outreach and education.** The department shall  
20 conduct a public outreach and education campaign to inform  
21 employees and employers of the availability of family leave





1 insurance benefits. The department may use a portion of the  
2 funds collected in a given year for the family leave insurance  
3 program to pay for the public outreach and education campaign;  
4 provided that the department shall use no more than      per  
5 cent per year or \$      per year, whichever is greater, for  
6 the public outreach and education campaign. Outreach  
7 information shall be available in English and other languages  
8 spoken within the State.

9        **§398-H Coverage of self-employed.** (a) A self-employed  
10 person, including a sole proprietor, partner, or joint venture  
11 partner, may elect coverage under this chapter by filing a  
12 notice of election in writing with the director, as required by  
13 the department, as follows:

14        (1) For an initial period of not less than three years;  
15            and

16        (2) Following the initial coverage period, not less than  
17            one additional year of coverage;

18 provided that the election shall take effect on the date of  
19 filing the notice.

20        (b) A self-employed person who has elected coverage may  
21 withdraw from coverage within thirty days after the end of the



1 initial period of coverage, or at other times as the director  
2 may prescribe by rule, by filing with the director a notice in  
3 writing, as required by the department. The withdrawal shall  
4 take effect no sooner than thirty days after filing the notice.

5 **§398-I Wage withholding.** (a) An employer may deduct and  
6 withhold contributions from each employee of up to one-half of  
7 the cost of providing family leave insurance premiums, and the  
8 employer shall provide for the remaining cost over the amount of  
9 contributions of the employer's employees.

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

19 **§398-J Weekly benefit amount.** (a) The weekly benefit  
20 amount shall be calculated as follows:



- 1       (1) If the individual's average weekly wage is fifty per  
2       cent or less of the state average weekly wage, the  
3       individual's weekly benefit shall be ninety per cent  
4       of the individual's average weekly wage;
- 5       (2) If the individual's average weekly wage is more than  
6       fifty per cent and less than one hundred per cent of  
7       the state average weekly wage, the individual's weekly  
8       benefit shall be seventy-five per cent of the  
9       individual's average weekly wage; or
- 10       (3) If the individual's average weekly wage is one hundred  
11       per cent or more of the state average weekly wage, the  
12       individual's weekly benefit shall be fifty per cent of  
13       the individual's average weekly wage.
- 14       (b) In no case shall the weekly benefit amount exceed the  
15       state average weekly wage."

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

18       1. By adding eight new definitions to be appropriately  
19 inserted and to read:

20       ""Covered individual" means any person who:



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

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

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

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

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

15       "Next of kin" means a person with the following  
16       relationship to a covered individual:

- 17       (1) The spouse or reciprocal beneficiary;
- 18       (2) An adult child;
- 19       (3) Either parent;
- 20       (4) An adult sibling;
- 21       (5) A grandparent; and



1 (6) A guardian at the time of death.

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

- 8 (1) Provide child care or attend school activities, if due  
9 directly or indirectly to the active duty call or  
10 active duty status of a service member;
- 11 (2) Make financial or legal arrangements for a service  
12 member's absence or as a result of the service  
13 member's absence;
- 14 (3) Attend counseling provided by someone other than a  
15 health care provider if the need for counseling arises  
16 from the active duty call or active duty of a service  
17 member; or
- 18 (4) Spend up to five days with a service member for each  
19 instance of short-term, temporary rest and  
20 recuperation leave during a period of deployment.



1       "Qualifying service member" means an individual who meets  
2 specific criteria established by a program or organization to be  
3 eligible for certain benefits or services related to military  
4 service.

5       "Reciprocal beneficiary" has the same meaning as the term  
6 "reciprocal beneficiaries" as defined in section 572C-3.

7       "Spouse" has the same meaning as defined in section  
8 431:10A-116.5."

9       2. By amending the definition of "child" to read:

10       "Child" means an individual who is a biological, adopted,  
11 hanai, or foster son or daughter; a stepchild; [øx] a legal ward  
12 of [an-employee.] a covered individual; a child of a reciprocal  
13 beneficiary; a grandchild; or a child of a covered individual  
14 who stands in loco parentis."

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

16       "Employer" means any individual or organization, including  
17 the State, any of its political subdivisions, any  
18 instrumentality of the State or its political subdivisions, any  
19 partnership, association, trust, estate, joint stock company,  
20 insurance company, or corporation, whether domestic or foreign,  
21 or receiver or trustee in bankruptcy, or the legal



1 representative of a deceased person, who employs one [hundred]  
2 or more employees for each working day during each of twenty or  
3 more calendar weeks in the current or preceding calendar year."

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

5 ""Parent" means a biological, foster, hanai or adoptive  
6 parent, a parent-in-law, a stepparent, a legal guardian, a  
7 grandparent, [~~or~~] a grandparent-in-law[-], a parent or  
8 grandparent of a reciprocal beneficiary, or a person who stands  
9 in loco parentis for a minor child."

10 SECTION 4. Section 398-3, Hawaii Revised Statutes, is  
11 amended as follows:

12 1. By amending subsection (a) to read:

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

16 [~~(1) Upon the birth of a child of the employee or the~~  
17 ~~adoption of a child; or~~

18 ~~(2) To care for the employee's child, spouse, reciprocal~~  
19 ~~beneficiary, sibling, grandchild, or parent with a~~  
20 ~~serious health condition.]~~



- 1        (1) To care for the covered individual's child within  
2        twelve months of the child's birth, foster placement  
3        with the covered individual, or placement for adoption  
4        with the covered individual;
- 5        (2) To care for a covered individual's family member with  
6        a serious health condition;
- 7        (3) To care for a qualifying service member who is the  
8        covered individual's next of kin; or
- 9        (4) Due to a qualifying exigency."

10       2. By amending subsection (e) to read:

11       "(e) Nothing in this chapter shall entitle ~~[an employee]~~ a  
12 covered individual to more than a total of ~~[four]~~ sixteen weeks  
13 of leave in any twelve-month period."

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

16       **"§398-4 ~~[Unpaid leave permitted;]~~ Paid family leave;**  
17 **relationship to [paid leave; sick] other leave.** (a) Pursuant  
18 to section 398-3, ~~[an employee]~~ a covered individual shall be  
19 entitled to ~~[four]~~ sixteen weeks of family leave. ~~[The family~~  
20 ~~leave shall consist of unpaid leave, paid leave, or a~~  
21 ~~combination of paid and unpaid leave. If an employer provides~~





1 ~~paid family leave for fewer than four weeks, the additional~~  
2 ~~period of leave added to attain the four-week total may be~~  
3 ~~unpaid.] An employer who provides paid family leave beyond what  
4 is required by this chapter may require that the leave run  
5 concurrently with the sixteen weeks required under this chapter;  
6 provided that the employer shall not require the leave to be  
7 applied against accrued sick or vacation hours.~~

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

14 (c) [~~An employer who provides sick leave for employees~~  
15 ~~shall permit an employee to use the employee's accrued and~~  
16 ~~available sick leave for purposes of this chapter; provided that~~  
17 ~~an employee shall not use more than ten days per year for this~~  
18 ~~purpose, unless an express provision of a valid collective~~  
19 ~~bargaining agreement authorizes the use of more than ten days of~~  
20 ~~sick leave for family leave purposes. Nothing in this section~~  
21 ~~shall require an employer to diminish an employee's accrued and~~



1 ~~available sick leave below the amount required pursuant to~~  
2 ~~section 392-41; provided that any sick leave in excess of the~~  
3 ~~minimum statutory equivalent for temporary disability benefits~~  
4 ~~as determined by the department may be used for purposes of this~~  
5 ~~chapter.] No assignment, pledge, or encumbrance of any right to~~  
6 ~~benefits that is or may become due or payable under this chapter~~  
7 ~~shall be valid; and any right to benefits shall be exempt from~~  
8 ~~levy, execution, attachment, garnishment, or any other remedy~~  
9 ~~whatsoever provided for the collection of debt. No waiver of~~  
10 ~~any exemption in this section shall be valid.~~

11 (d) Nothing in this chapter shall prevent a biological  
12 mother who is receiving temporary disability benefits for  
13 recovery from childbirth from applying for and receiving paid  
14 family leave for the purpose of caregiving and bonding with her  
15 child after the temporary disability time period has lapsed.  
16 For family leave purposes, there shall be no waiting period for  
17 benefits to begin.

18 (e) Benefits under the Family and Medical Leave Act of  
19 1993 shall run concurrently with benefits under this chapter."

20 SECTION 6. Section 398-21, Hawaii Revised Statutes, is  
21 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[~~r~~] 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 leave insurance benefits have  
12 been wrongfully withheld, the department shall order immediate  
13 payment to the covered individual found to be 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 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 family leave insurance benefits,
- 3           wages, salary, employment benefits, or other
- 4           compensation denied or lost to the employee by reason
- 5           of the violation; or
- 6           (2) In a case in which family leave insurance benefits,
- 7           wages, salary, employment benefits, or other
- 8           compensation have not been denied or lost to the
- 9           employee, any actual monetary losses sustained by the
- 10          employee as a direct result of the violation, such as
- 11          the cost of providing care, up to a sum equal to four
- 12          weeks of wages or salary for the employee."

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

14          repealed.

15          ~~["**{S398-2}** **Inapplicability.** The rights provided under~~

16          ~~this chapter shall not apply to employees of an employer with~~

17          ~~fewer than one hundred employees."]~~

18          SECTION 11. The department of labor and industrial

19          relations shall adopt rules pursuant to chapter 91, Hawaii

20          Revised Statutes, to implement the purposes of this Act.



1 SECTION 12. There is appropriated out of the general  
 2 revenues of the State of Hawaii the sum of \$ or so  
 3 much thereof as may be necessary for fiscal year 2024-2025 for  
 4 the purpose of administering the family leave insurance program,  
 5 including the oversight of payroll deductions and administrative  
 6 processes and payment to covered individuals.

7 The sums appropriated shall be expended by the department  
 8 of labor and industrial relations for the purposes of this Act.

9 SECTION 13. There is appropriated out of the general  
 10 revenues of the State of Hawaii the sum of \$ or so  
 11 much thereof as may be necessary for fiscal year 2024-2025 for  
 12 the establishment of full-time equivalent positions for the  
 13 establishment and operation of the family leave insurance  
 14 program.

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

17 SECTION 14. In accordance with section 9 of article VII of  
 18 the Hawaii State Constitution and sections 37-91 and 37-93,  
 19 Hawaii Revised Statutes, the legislature has determined that the  
 20 appropriations contained in Act 164, Regular Session of 2023,  
 21 and this Act will cause the state general fund expenditure



1 ceiling for fiscal year 2024-2025 to be exceeded by  
2 \$            or            per cent. This current declaration takes  
3 into account general fund appropriations authorized for fiscal  
4 year 2024-2025 in Act 164, Regular Session of 2023, and this Act  
5 only. The reasons for exceeding the general fund expenditure  
6 ceiling are that:

7        (1) The appropriation made in this Act is necessary to  
8            serve the public interest; and

9        (2) The appropriation made in this Act meets the needs  
10            addressed by this Act.

11        SECTION 15. In codifying the new sections added by section  
12 2 of this Act, the revisor of statutes shall substitute  
13 appropriate section numbers for the letters used in designating  
14 the new sections in this Act.

15        SECTION 16. This Act does not affect rights and duties  
16 that matured, penalties that were incurred, and proceedings that  
17 were begun before its effective date.

18        SECTION 17. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20        SECTION 18. This Act shall take effect on July 1, 2050.



**Report Title:**

Family Leave Insurance Program; Family Leave Insurance Benefits;  
Expenditure Ceiling; 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 the period of family leave to sixteen weeks for businesses that employ one or more employees who meet the hourly qualifications. Eliminates the previous threshold of one hundred employees for employers to be subject to the family leave law. Declares that the general fund expenditure ceiling is exceeded. Appropriates funds. Takes effect 7/1/2050. (SD1)

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

