

## SENATE BILL NO. 325

INTRODUCED BY D. HARVEY, S. NOVAK, M. LEE, J. SECKINGER, P. ELVERUM, C. NEUMANN, W.  
CURDY, M. DUNWELL, J. ELLIS, S. WEBBER, D. FERN, L. SMITH, J. WINDY BOY, E. BOLDMAN, P.  
FLOWERS, D. HAYMAN, S. HOWELL, E. KERR-CARPENTER, S. MORIGEAU, A. OLSEN, C. POPE, M.  
THANE, S. DEMAROIS, J. LYNCH

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA FAMILY AND MEDICAL LEAVE  
INSURANCE ACT; CREATING AN ENTERPRISE FUND WITH CONTRIBUTIONS FROM COVERED  
EMPLOYERS AND EMPLOYEES; PROVIDING CRITERIA FOR BENEFIT ELIGIBILITY, DURATION OF  
BENEFITS, COORDINATION OF BENEFITS, AND TERMS FOR MAKING CONTRIBUTIONS; PROVIDING  
THAT BENEFITS ARE CONTINGENT ON FUNDS IN THE ENTERPRISE FUND; PROVIDING THE  
COMMISSIONER OF LABOR AND INDUSTRY WITH THE DUTY TO DETERMINE AND MAINTAIN FUND  
SOLVENCY; PROVIDING RULEMAKING AUTHORITY; PROVIDING PROTECTIONS FOR JOB RIGHTS AND  
HEALTH INFORMATION PRIVACY TO THOSE USING BENEFITS; PROVIDING FOR PUBLIC OUTREACH  
AND NOTIFICATIONS; PROVIDING DEFINITIONS; AMENDING SECTIONS 2-18-606 AND 45-6-301, MCA;  
AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 20] may be cited as the "Montana Family  
and Medical Leave Insurance Act".

NEW SECTION. **Section 2. Definitions.** For the purposes of [sections 1 through 20], the following  
definitions apply:

- (1) "Average annual wage" has the same meaning as provided in 39-51-2201.
- (2) "Base period":
  - (a) with respect to an eligible employee's benefit year under [sections 1 through 20], has the same  
meaning as provided in 39-51-201; or

(b) for a self-employed individual, means reported earnings on which contributions were assessed under [section 4] for the first 4 of the last 5 completed calendar quarters immediately preceding the first day of the self-employed individual's benefit year.

(3) "Base wages" means the annual earnings needed by an individual to qualify for the maximum weekly benefit under [section 8(3)].

(4) "Benefit year" means the 12-month period beginning on the first day of the calendar week in which an eligible employee files an application to be covered by family and medical leave insurance benefits allowed under [sections 1 through 20].

(5) "Child" means, regardless of age, a biological, adopted, or foster child, a stepchild, a legal ward, a child of a domestic partner, or a child for whom the covered individual stood in loco parentis when the child was a minor.

(6) "Contributions" means the money payable to the family and medical leave insurance fund, as established in [section 3], by covered employers and eligible employees under [section 4] or by self-employed individuals who have elected coverage under [section 5] but does not include assessments under [section 11].

(7) "Covered active duty" means:

(a) duty served by a member of a regular component of the armed forces while deployed with the armed forces to a foreign country; or

(b) duty served by a member of a reserve component of the armed forces, including a member of the national guard or reserves, who is deployed with the armed forces to a foreign country under a call or order to active duty under a provision of law referred to in 10 U.S.C. 101(a)(13)(B) regarding contingency military operations.

(8) (a) "Covered employer" has the same meaning as "employer" as defined in 39-51-202.

(b) The term does not include a federal or tribal government employer, except when a tribal government has elected coverage provided for in [section 5].

(9) "Covered individual" means a natural person who is either:

(a) an eligible employee who has:

(i) earned qualifying wages from work during the 12-month period prior to submitting an application; and

- 1           (ii)     paid contributions into the family and medical leave insurance fund established in [section 3]; or
- 2           (b)     a self-employed individual who has elected coverage under [section 5] and who has:
- 3           (i)     earned qualifying income from work during the 12-month period prior to submitting an
- 4 application; and
- 5           (ii)     paid contributions into the family and medical leave insurance fund for the period described in
- 6 [section 5].
- 7           (10)    "Department" means the department of labor and industry provided for in Title 2, chapter 15,
- 8 part 17.
- 9           (11)    "Eligible employee" means an individual in employment, as defined in 39-51-203, subject to the
- 10 exclusions from employment described in 39-51-204 and employed by a covered employer.
- 11           (12)    "Family and medical leave insurance benefits" means the money payable to a covered
- 12 individual as provided in [sections 1 through 20].
- 13           (13)    "Family member" means an individual with any of the following relationships to the covered
- 14 individual:
- 15           (a)     a spouse and a parent of the spouse;
- 16           (b)     a child and a spouse of the child;
- 17           (c)     a parent and a spouse of the parent;
- 18           (d)     a sibling and a spouse of the sibling;
- 19           (e)     a grandparent and a spouse of the grandparent;
- 20           (f)     a grandchild and a spouse of the grandchild;
- 21           (g)     a domestic partner and a parent of the domestic partner, including the domestic partner of any
- 22 individual provided in subsections (13)(a) through (13)(f); and
- 23           (h)     any other individuals related to the covered individual by blood or whose close association with
- 24 the covered individual is the equivalent of an acknowledged family relationship.
- 25           (14)    "Health care provider" means an individual licensed in good standing pursuant to Title 37,
- 26 chapter 3, 4, 6, 8, 10, 11, 12, 17, 20, 23, 26, 27, 35, 37, or 39.
- 27           (15)    "Parent" means a biological, adoptive, or foster parent, a stepparent, or a legal guardian of a
- 28 covered individual or a covered individual's spouse or domestic partner. The term includes a parent who stood

1 in loco parentis when the covered individual or the covered individual's spouse or domestic partner was a minor  
2 child.

3 (16) "Qualifying exigency leave" is leave for the family member of a covered active duty service  
4 member for the purposes and periods outlined in 29 CFR 825.126, including short-notice deployment, military  
5 events and related activities, child care and school activities, financial and legal arrangements, counseling, rest  
6 and recuperation, postdeployment activities, and parental care. The length of qualifying exigency leave is  
7 limited to the period provided under 29 CFR 825.126.

8 (17) "Qualifying wages" has the same meaning as provided in 39-51-2105.

9 (18) "Self-employed individual" means an individual who has net earnings from self-employment in  
10 a trade or a business, of which the individual may be a sole proprietor, an independent contractor, or a member  
11 of a partnership, and who includes those net earnings in reporting self-employment income for social security  
12 purposes as provided in 42 U.S.C. 411 or 20 CFR 404.1065.

13 (19) "Serious health condition" means an illness, injury, impairment, or physical or mental condition  
14 that, for the covered individual or the covered individual's family member, involves:

15 (a) inpatient care in a hospital, hospice, or residential medical care facility; or

16 (b) continuing treatment by a health care provider as defined in 29 CFR 825.102.

17 (20) "Wages" has the same meaning as provided in 39-51-201.

18

19 **NEW SECTION. Section 3. Creation of fund -- uses of fund -- rulemaking.** (1) (a) There is an  
20 enterprise fund known as the family and medical leave insurance fund, which is to be kept separate from all  
21 other public money and used exclusively for the purposes of [sections 1 through 20].

22 (b) The fund includes:

23 (i) contributions from covered employers and eligible employees of covered employers;

24 (ii) contributions from self-employed individuals who have elected coverage under [section 5];

25 (iii) interest earned on any money in the fund; and

26 (iv) any gifts, grants, or donations acquired to conduct the actuarial valuation and fund the  
27 administrative costs of setting up and maintaining the fund and program under [sections 1 through 20].

28 (2) The commissioner of labor and industry is the ex officio treasurer of the fund.

(3) Expenditures from the fund may be used only for the purposes and administration of the family and medical leave insurance benefits program outlined in [sections 1 through 20] and rules adopted to implement [sections 1 through 20]. Only the commissioner or the commissioner's designated agent may authorize expenditures from the fund. However, the commissioner may not prevent distributions from the fund unless the fund is determined to be actuarially unsound.

**NEW SECTION. Section 4. Contribution schedule -- rulemaking.** (1) (a) The department shall evaluate and determine on an annual basis the amount of contributions needed to finance the family and medical leave insurance benefits program and shall determine by rule the amount of contributions needed to ensure solvency of the fund provided for in [section 3]. Subject to subsection (2), the department shall set the total contribution as a percentage of wages, split equally into employer and employee shares.

(b) The department may not require contributions by the covered employer and the eligible employee combined that exceed 1% of an eligible employee's monthly wages from a covered employer as calculated on the contribution and benefit base in 42 U.S.C. 430.

(2) (a) The department shall assess and collect contributions at the contribution rate as provided in subsection (1), which must be remitted as follows:

(i) a covered employer with 15 or more employees shall remit an amount equal to the total contribution rate;

(ii) a covered employer with not less than 10 but not more than 15 employees shall remit an amount equal to the employee share plus 75% of the employer share of the contributions;

(iii) a covered employer with fewer than 10 employees shall remit an amount equal to the employee share of contributions plus 50% of the employer share of contributions; and

(iv) a self-employed person participating in the program shall remit an amount equal to the employee share of contributions plus 50% of the employer share of contributions.

(b) If a covered employer pays both the covered employer's and the eligible employee's share of the contribution, the eligible employee's share is considered to have been contributed by the eligible employee.

(c) If a covered employer assesses to eligible employees their share of the overall contribution, the covered employer shall collect each eligible employee's amount as a payroll deduction from the eligible

1 employee's wages each payroll period and remit the full contribution to the department as provided in  
2 subsection (3).

3 (3) The covered employer is responsible for remitting the full contribution to the department  
4 quarterly.

5 (4) The department shall adopt rules as necessary to implement [sections 1 through 20].  
6

7 **NEW SECTION. Section 5. Elective coverage for self-employed individuals and tribal**

8 **employees -- definition.** (1) A self-employed individual may elect coverage under [sections 1 through 20]  
9 during an open enrollment period and become a covered individual for an initial period of not less than 3 years  
10 and for subsequent periods of not less than 1 year immediately following a period of coverage.

11 (2) A self-employed individual electing coverage under this section:

12 (a) shall make payments in accordance with rules adopted by the department as to the covered  
13 employer and eligible employee contribution and payment schedules; and

14 (b) is responsible for 100% of the covered employer and eligible employee contributions, as  
15 provided in [section 4].

16 (3) (a) The department shall notify the self-employed individual who fails to make timely and full  
17 payment of contributions required under this section.

18 (b) Notice to the self-employed individual must:

19 (i) be in writing sent by common carrier with tracking capability, unless the self-employed  
20 individual chooses to receive electronic notifications; and

21 (ii) include information as to when payment must be received to avoid disenrollment for  
22 nonpayment. Any contributions made prior to disenrollment become those of the program and may not be  
23 returned.

24 (c) If payment is not received by the department within 3 months of receipt of the notice, the  
25 department shall notify the self-employed individual that the self-employed individual is being disenrolled from  
26 the program and is ineligible for benefits under [section 7]. After the department receives payment of the past-  
27 due amount, the self-employed individual may reenroll in the program consistent with the requirements in this  
28 section and as provided by rule.

(4) Subject to subsection (5)(b), beginning January 1, 2027, a self-employed individual who previously elected coverage and withdrew from the program is ineligible to receive benefits pursuant to [section 7] for the first year after enrolling or reenrolling in the program.

(5) (a) Subject to subsection (5)(b), a self-employed individual who withdraws from participation in the program two or more times in a 2-year period may not reenroll in the program for a period of 5 years from the date that the self-employed person last made payments into the system.

(b) Subsections (4) and (5)(a) do not apply to a self-employed individual who goes to work for an employer, regardless of whether the employer is a covered employer, and then returns to being a self-employed individual. The department may adopt rules to help determine that the self-employed individual is again eligible for participation consistent with the requirements in this section.

(6) For the purposes of this section, the term "open enrollment period" means:

(a) the first 90 days after the start of contributions;

(b) the first 60 days after an individual becomes self-employed, as defined by department rule; or

(c) the months of November and December of each calendar year.

(7) A tribal government may elect to be covered under [sections 1 through 20], or to terminate coverage, in the same manner as provided for in this section, subject to procedures as the department may require by rule.

**NEW SECTION. Section 6. Rights to benefits subject to availability of funds -- state not liable for fund shortage -- dissolution.** (1) Family and medical leave insurance benefits payable under [sections 1 through 20] are available only to the extent that money is available in the family and medical leave insurance fund.

(2) The state is subject to [sections 1 through 20] as a covered employer.

(3) The state has no more liability than any other covered employer if the department declares a shortage of funds.

(4) A shortage of funds must be addressed by using the payment determination in [section 3].

(5) There is no vested private right of any kind against amendment or repeal of [sections 1 through 20]. If repealed and a balance remains in the family and medical leave insurance fund, the money not paid out

1 in family and medical leave insurance benefits under [sections 1 through 20] must be transferred to the general  
2 fund.

3  
4 **NEW SECTION. Section 7. Benefit payments -- eligibility -- application -- privacy protection. (1)**

5 A payment to a covered individual under [sections 1 through 20] may be made no sooner than 30 days after the  
6 commissioner declares that the family and medical leave insurance fund is solvent.

7 (2) To receive payments from the family and medical leave insurance fund, a covered individual  
8 must meet one of the following requirements:

9 (a) have a serious health condition;

10 (b) be caring for:

11 (i) a new child within the first year after the child's birth, the first year of adoption, or the first year  
12 of placement of a child through foster care into the covered individual's family; or

13 (ii) a family member who has a serious health condition;

14 (c) be taking qualifying exigency leave arising out of the fact that the family member of the covered  
15 individual is on covered active duty or has been notified of an impending call or order to covered active duty in  
16 the armed forces; or

17 (d) be taking any other leave from work authorized by the Family and Medical Leave Act of 1993,  
18 29 U.S.C. 2601, et seq.

19 (3) The department may by rule determine whether a covered individual is subject to documenting  
20 the reason for eligibility under subsection (2). The rule may not be more restrictive than is required under the  
21 Family and Medical Leave Act.

22 (4) To begin receiving payments, a covered individual or a covered individual's authorized legal  
23 representative shall submit an application for family and medical leave insurance benefits under this section to  
24 the department and a copy of the application to the covered employer.

25 (5) Eligibility documentation, to be determined by the department by rule, must be submitted with  
26 the application. The department may not require documentation that exceeds the right to privacy allowed under  
27 the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq., the Americans with  
28 Disabilities Act of 1990, 42 U.S.C. 12101, et seq., and the Genetic Information Nondiscrimination Act of 2008,



1 42 U.S.C. 2000ff, et seq.

2 (6) If the department requires certification by a health care provider as to eligibility, the health care  
3 provider is responsible for retaining patient confidentiality if the applicant has not waived one or more portions  
4 of that confidentiality.

5 (7) The covered individual shall state in the application to the best of the covered individual's  
6 knowledge whether the leave eligible for family and medical leave insurance benefits under [sections 1 through  
7 20] is intended to be taken sequentially or intermittently and for how much time.

8  
9 **NEW SECTION. Section 8. Benefit calculation -- duration.** (1) (a) Family and medical leave  
10 insurance benefits under [sections 1 through 20] correspond to the covered individual's base wages or earnings  
11 during the base period, subject to the provisions of subsection (1)(b) or (1)(c).

12 (b) The wages may be the sum of all covered employment for which the covered individual is  
13 taking leave under [sections 1 through 20].

14 (c) The department shall determine by rule the basis used for determining a self-employed  
15 individual's earnings during the base period.

16 (2) Subject to subsection (3), a weekly benefit amount is calculated as follows:

17 (a) for a covered individual whose wages, or earnings in the case of a self-employed individual, in  
18 the base period are not more than 50% of the average annual wage, the department shall pay weekly benefits  
19 in an amount equal to 1.92% of the covered individual's wages in the base period; or

20 (b) for a covered individual whose wages, or earnings in the case of a self-employed individual, in  
21 the base period are more than 50% of the average annual wage, the department shall pay weekly benefits  
22 equal to 1.92% of 50% of the average annual wage, plus 0.96% of the amount of wages in the base period that  
23 are in excess of 50% of the average annual wage.

24 (3) (a) A weekly benefit may not exceed \$1,000 or the average weekly wage, as defined in 39-51-  
25 2201, whichever is greater.

26 (b) Benefits for partial weeks of leave must be prorated.

27 (c) If a covered individual is eligible and seeking family and medical leave insurance benefits for  
28 more than one job, the benefits must be calculated by the department based on a combination of wages from

1 all jobs from which the covered individual is taking leave based on [sections 1 through 20].

2 (4) A covered individual may receive no more than 480 hours of family and medical leave  
3 insurance benefits in a benefit year, regardless of whether the family and medical leave insurance benefits are  
4 for more than one reason of eligibility.

5  
6 **NEW SECTION. Section 9. Coordination of benefits.** (1) (a) The provisions of [sections 1 through  
7 20] run concurrently with the benefits covered by the Family and Medical Leave Act of 1993, 29 U.S.C. 2601, et  
8 seq.

9 (b) A covered employer may require that the covered individual take family and medical leave  
10 insurance benefits payments concurrently, or otherwise coordinated, with payment made or leave allowed  
11 under the terms of disability or family care leave under a collective bargaining agreement or employer policy.  
12 The covered employer shall give employees written notice of this requirement.

13 (2) The provisions of [sections 1 through 20] do not:

14 (a) supersede any provision of law, collective bargaining agreement, or other contract that  
15 provides paid leave rights in addition to the rights under [sections 1 through 20]; or

16 (b) prevent a covered employer from adopting or retaining a paid leave policy that provides greater  
17 benefits than are required by [sections 1 through 20].

18 (3) The department may not provide family and medical leave insurance benefits for any period in  
19 which the covered individual is receiving unemployment insurance benefits or workers' compensation,  
20 excluding medical benefits.

21  
22 **NEW SECTION. Section 10. Employment and benefits protection -- rights -- enforcement --**  
23 **penalties -- definitions.** (1) A covered employer shall restore a covered individual who receives family and  
24 medical leave insurance benefits under [sections 1 through 20] to the position that the covered individual held  
25 immediately prior to using the family and medical leave insurance benefits provided for in [sections 1 through  
26 20]. If the same position is not available, the covered employer shall provide a position with equivalent seniority,  
27 status, employment benefits, pay, and other terms and conditions of employment, including benefits and  
28 service credits that the covered individual had been entitled to immediately prior to taking leave under [sections

1 1 through 20].

2 (2) A covered employer may not at any time, including in the period prior to the granting of family  
3 and medical leave insurance benefits but after an application is received, retaliate against an eligible employee  
4 for exercising the rights and provisions of [sections 1 through 20], including but not limited to the rights listed in  
5 subsection (3).

6 (3) Rights under [sections 1 through 20] include the right to:

7 (a) take leave from work while receiving benefits under [section 7];

8 (b) request, file for, apply for, or use family and medical leave insurance benefits;

9 (c) communicate to the covered employer or any other person or entity an intent to file a claim, a  
10 complaint with the department or courts, or an appeal;

11 (d) testify or assist in an investigation, hearing, or proceeding under [sections 1 through 20] at any  
12 time, including during the period in which the covered individual receives family and medical leave insurance  
13 benefits;

14 (e) inform any person about any covered employer's alleged violation of [sections 1 through 20];  
15 and

16 (f) inform any person of the rights available under [sections 1 through 20].

17 (4) (a) A covered employer who provides health and pension benefits to eligible employees shall  
18 continue coverage to a covered individual who is receiving family and medical leave insurance benefits under  
19 [sections 1 through 20].

20 (b) If the covered employer requires eligible employees to share the cost of health insurance  
21 premium payments or pension contributions, the same terms apply to a covered individual taking family and  
22 medical leave insurance benefits under [sections 1 through 20].

23 (c) A covered individual who fails to pay the eligible employee's required share of a health  
24 insurance premium payment or pension contribution within 30 days of written notification by a covered  
25 employer of an overdue payment is subject to loss of those benefits.

26 (5) For a violation of rights under this section, an eligible employee may:

27 (a) file a civil action for damages or equitable relief in district court; or

28 (b) seek arbitration for damages or equitable relief in the same manner as provided in 39-2-914(1)

1 through (3). A covered individual who makes a valid offer to arbitrate and who prevails in the arbitration is  
2 entitled to have the arbitrator's fee and all costs of arbitration paid by the covered employer.

3 (6) (a) Except as provided in subsection (6)(b), an action may be brought under this section no  
4 later than 2 years after the date of the last event constituting the alleged violation for which the action is  
5 brought.

6 (b) In the case of an action brought for a willful violation of this section, an action may be brought  
7 no later than 3 years after the date of the last event constituting the alleged violation for which the action is  
8 brought.

9 (7) For the purposes of this section, the following definitions apply:

10 (a) "Damages" means:

11 (i) wages, salary, employment benefits, or other compensation lost or denied to an eligible  
12 employee because of a violation of this section;

13 (ii) in a case in which wages, salary, employment benefits, or other compensation was not lost or  
14 denied to the eligible employee, any actual monetary losses sustained by the eligible employee as a direct  
15 result of the violation, including the cost of providing care, up to a sum equal to 12 weeks of wages or salary for  
16 the eligible employee;

17 (iii) interest on the amount described in subsection (7)(a)(i) at the prevailing rate; or

18 (iv) an additional amount as liquidated damages equal to the sum of the amount described in  
19 subsection (7)(a)(i) and the interest allowed under subsection (7)(a)(iii), except that a court has the discretion to  
20 reduce the liability under this subsection (7)(a)(iv) to the damages in subsections (7)(a)(i) and (7)(a)(iii) if a  
21 covered employer who has violated this section proves to the satisfaction of the court that the act or omission  
22 was in good faith and that the covered employer had reasonable grounds for believing that the act or omission  
23 was not in violation of this section.

24 (b) "Equitable relief" means appropriate employment actions, including reinstatement and  
25 promotion.

26 (c) "Retaliate" means to discharge, demote, or otherwise discriminate or take an adverse  
27 employment action against the eligible employee.

28

1           **NEW SECTION. Section 11. Disqualification for benefits -- erroneous payments -- enforcement**

2   **-- penalties.** (1) (a) An eligible employee is disqualified from receiving family and medical leave insurance  
3   benefits under [sections 1 through 20] for 1 year if the eligible employee, in connection with an application for  
4   benefits under [sections 1 through 20], knowingly makes a false statement or a misrepresentation regarding a  
5   material fact or knowingly fails to report a material fact.

6           (b)     A self-employed individual may be disenrolled for knowingly making a false statement or a  
7   misrepresentation regarding a material fact or for knowingly failing to report a material fact.

8           (2)     For family and medical leave insurance benefits paid erroneously under [sections 1 through  
9   20], whether through error by the department or knowing misrepresentation by a covered individual, the  
10   department may seek repayment of family and medical leave insurance benefits from the covered individual.  
11   The department may adopt rules to determine reasons to waive the right to seek repayment and procedures for  
12   recovering erroneous payments.

13          (3)     (a) The department shall assess a fine of no less than \$500 for each violation against a  
14   covered employer who:

15          (i)     fails to reinstate a covered individual as provided in [section 10];

16          (ii)    fails to continue health insurance or pension contributions for a covered individual; or

17          (iii)   interferes with a covered individual's ability to use [sections 1 through 20].

18          (b)     A covered employer who fails to forward to the department at the time specified by the  
19   department by rule both the covered employer's share and the eligible employee's share of the assessment for  
20   the family and medical leave insurance fund determined under [section 4] is guilty of a misdemeanor and  
21   subject to a fine of no more than 110% of the assessment due but not remitted to the department.

22          (c)     Fines received under this subsection (3) must be deposited in the family and medical leave  
23   insurance fund.

24  
25           **NEW SECTION. Section 12. Notice of eligibility.** (1) (a) A covered employer shall provide to each  
26   eligible employee, on hiring, a written notice that must include descriptions of:

27          (i)     the eligible employee's right to family and medical leave insurance benefits under [sections 1  
28   through 20] and the terms under which family and medical leave insurance benefits may be accessed;

- 1           (ii)     the amount of family and medical leave insurance benefits that the eligible employee may be  
2 eligible to receive;
- 3           (iii)    the procedure for filing a claim for family and medical leave insurance benefits;
- 4           (iv)    the right to job protection and continuation of benefits as provided in [section 10];
- 5           (v)     protections against discriminatory and retaliatory personnel elections under [sections 1 through  
6 20]; and
- 7           (vi)    the right to file a complaint for violations of [sections 1 through 20].
- 8           (b)     A covered employer shall display and maintain a poster that includes the information required  
9 in subsection (1)(a) in a conspicuous place accessible to eligible employees at the covered employer's place of  
10 business.
- 11          (2)     An eligible employee or the eligible employee's legal representative shall provide notice to the  
12 employee's covered employer as soon as practicable of the eligible employee's intention to access family and  
13 medical leave insurance benefits.

14

15           NEW SECTION. Section 13. Public outreach. (1) The department shall conduct public outreach to  
16 inform workers and employers regarding the availability of family and medical leave insurance benefits.

17          (2)     The department shall use 1% of the funds collected for the family and medical leave insurance  
18 fund in any one fiscal year to pay for the public outreach, including costs for posters.

19

20           NEW SECTION. Section 14. Federal income tax -- rulemaking -- state income tax. (1) If the  
21 internal revenue service determines that benefit payments under [sections 1 through 20] are subject to federal  
22 income tax, the department shall:

23          (a)     inform an eligible employee filing an application for family and medical leave insurance benefits  
24 at the time of the filing that the internal revenue service has determined that family and medical leave insurance  
25 benefits are subject to federal and state taxes;

26          (b)     inform the eligible employee that requirements exist pertaining to estimated tax payments or to  
27 withholding from family and medical leave insurance benefit payments; and

28          (c)     adopt rules as necessary to implement [sections 1 through 20].

(2) An eligible employee shall notify the department whether to withhold estimated tax payments from family and medical leave insurance benefits.

(3) If the eligible employee elects for the department to handle withholding of federal income tax, the department shall retain the withheld amount in the family and medical leave insurance fund until transferring that amount to the federal taxing authority as a payment of federal income tax.

(4) Family and medical leave insurance benefits under [sections 1 through 20] are part of gross income under the state's individual income tax and the provisions of subsections (1) through (3) of this section apply to withholding state income taxes.

**NEW SECTION. Section 15. Employment records -- inspection.** (1) A covered employer shall maintain payroll records, including account records that document employee contributions and expenses, and employment records that reflect the total hours worked by all employees and the amount of leave taken by employees under [sections 1 through 20] for the current calendar year and the 5 prior calendar years.

(2) The department may inspect the payroll and employment records of covered employers for the purpose of administering [sections 1 through 20]. Covered employers shall provide the department with all pertinent payroll and employment records upon request.

(3) When an employment agency is acting as a covered employer, the requirements under subsections (1) and (2) of this section are the responsibility of the employment agency.

(4) (a) The department may issue subpoenas and compel testimony and the production of evidence, including books, records, papers, documents, and other objects that may be necessary and proper in regard to any investigation or proceeding under [sections 1 through 20].

(b) If a subpoena issued and served under this section is disobeyed or if a witness refuses to testify to any matter for which the witness may be interrogated in a proceeding before the department, the department may apply to a district court for an order to compel compliance with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court.

**NEW SECTION. Section 16. Delinquent contributions -- interest -- penalties -- rulemaking.** (1) Failure to file reports and make contributions in a timely manner, as required under [section 4], may subject a

1 covered employer to penalty and interest, as provided in subsection (2).

2 (2) The department may assess penalties and interest under this section as follows:

3 (a) A penalty of 10% of the amount of the contributions is assessed for a covered employer in  
4 default with respect to the payment of contributions who fails to make payment within 10 days after a written  
5 demand has been made by the department. A demand for payment is considered to have been made when  
6 deposited in the mail and addressed to the employer at the employer's last known address of record with the  
7 department.

8 (b) If any part of a deficiency is due to fraud with intent to avoid payment of contributions to the  
9 fund, then 50% of the total amount of the deficiency, in addition to the deficiency, must be assessed, collected  
10 and paid, in the same manner as if it were a contribution, and deposited in the fund.

11 (c) (i) Interest on any amounts due from a covered employer must be paid and collected at the rate  
12 of 1.5% per month from the date prescribed for the payment to the fund. In computing the interest, a fraction of  
13 a month shall be counted as a full month.

14 (ii) Interest must be paid at the same time contributions are required to be paid by the covered  
15 employer to the fund.

16 (3) If a covered employer defaults with respect to any amount of contributions required to be made  
17 by the covered employer to the enterprise fund established in [section 3], the unpaid amount, together with  
18 interest and penalties, must be collected by the department in a civil action against the covered employer  
19 brought in the name of the department.

20 (4) (a) Judgment rendered on a civil action brought under subsection (3) of this section in favor of  
21 the department must bear interest at the rate provided in subsection (2) of this section.

22 (b) A covered employer's compliance with the requirements of [section 4] must date from the time  
23 that contributions were collected from the employer.

24 (c) The amount of contributions collected from a covered employer, together with interest and  
25 penalties, must be paid into the fund established in [section 3].

26 (5) The department may make rules to implement this section, including rules regarding settlement  
27 agreements.

28



1           **NEW SECTION. Section 17. Liability of certain officers, members, partners, or employees for**  
2           **amounts in default.** (1) This section applies to an individual who is one or more of the following:

- 3           (a)     an officer or employee of a corporation;  
4           (b)     a member or employee of a limited liability company; or  
5           (c)     a partner in or employee of a limited liability partnership.

6           (2)     In the case of default by a covered employer subject to [section 16], an individual described in  
7           subsection (1) of this section who is under a duty to perform the actions required of covered employers under  
8           [section 4] is personally liable for amounts due under [section 4]. More than one individual may be jointly and  
9           severally liable under this section for amounts due.

10          (3)     If the department determines that an amount is due under this section, the department shall  
11          issue a notice of assessment to the individual liable under this section by mail to the individual's last known  
12          address of record with the department.

13          (4)     If the department has reason to believe that the individual liable under this section is insolvent,  
14          the department may issue a jeopardy assessment and may proceed to enforce the collection immediately.

15  
16          **NEW SECTION. Section 18. Lien for payment of unpaid contributions -- levy and execution.** (1)

17          (a) Unpaid contributions, including penalties and interest assessed on unpaid contributions, have the effect of a  
18          judgment against the covered employer or against the individuals referred to in [section 17]. The judgment  
19          arises at the time that the payments are due.

20          (b)     The department may issue a certificate stating the amount of payments due and directing the  
21          clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant  
22          to 25-9-301.

23          (c)     After the due process requirements of [section 20] have been satisfied, the department may  
24          enforce the judgment through the sheriff or agent authorized to collect the contributions in the same manner as  
25          prescribed for execution upon a judgment.

26          (d)     When issued, a notice of levy has the same force and effect as a writ of execution. A levy upon  
27          earnings continues in effect for 120 days or until the judgment has been satisfied, whichever occurs first. The  
28          levy applies to all pay periods beginning during the 120-day period. A notice of levy may be made by means of

1 a certified letter by an agent authorized to collect the contributions.

2 (e) The department may enforce the judgment at any time within 10 years after the creation of the  
3 lien or after the effective date of the lien, whichever is later.

4 (2) A judgment lien filed pursuant to this section may be renewed for another 10-year period, upon  
5 motion, or by judgment for that purpose founded on supplemental pleadings.

6 (3) The lien provided for in subsection (1) is not valid against any third party owning an interest in  
7 real or personal property against which the judgment is enforced if:

8 (a) the third party's interest is recorded prior to the entrance of the certificate of judgment; and

9 (b) the third party receives from the most recent grantor of the interest a signed affidavit stating  
10 that all contributions, penalties, and interest due from the grantor have been paid.

11 (4) The lien provided for in subsection (1) must be released upon payment in full of the unpaid  
12 taxes, penalties, and accumulated interest. The department may release or may partially release the lien upon  
13 partial payment or whenever the department determines that the release of the lien will facilitate the collection  
14 of unpaid taxes, penalties, or interest. The department may release the lien if it determines that the lien is  
15 unenforceable.

16  
17 **NEW SECTION. Section 19. False statements -- failure to report material fact -- erroneous**  
18 **payments -- recovery -- penalties -- rulemaking.** (1) A covered employer may not willfully make or cause to  
19 be made false statements or willfully fail to report a material fact regarding the claim of a covered employee or  
20 regarding a covered employee's eligibility for family and medical leave insurance benefits under [sections 1  
21 through 20].

22 (2) The department may assess a civil penalty in an amount not to exceed \$1,000 against a  
23 covered employer for each occurrence that violates subsection (1).

24 (3) If the department determines that a covered employee willfully made a false statement or  
25 willfully failed to report a material fact in order to obtain benefits under [sections 1 through 20], the covered  
26 employee is:

27 (a) disqualified from claiming benefits for 1 year; and

28 (b) liable for a penalty imposed at a rate prescribed by the department of at least 15% but not

1 greater than 30% of the amount of benefits the individual received to which the individual was not entitled.

2 (4) If the department determines that a covered employee has received benefits to which the  
3 individual was not entitled, the department may:

4 (a) seek repayment of benefits from the covered employee in a manner prescribed by the  
5 department by rule; and

6 (b) have the amount of the benefits deducted from any future benefits otherwise payable to the  
7 individual under [section 7]

8 (5) If benefits are paid because of an error that is not due to provision of a false statement,  
9 nondisclosure of a material fact, or misrepresentation by a covered individual, the department may adopt rules  
10 to determine reasons to waive the right to seek repayment and procedures for recovering erroneous payments.

11 (6) A decision of the department under this section does not authorize the recovery of the amount  
12 of any benefits paid to a covered employee until the decision is final and the decision specifies:

13 (a) that the covered employee, by reason of false statement, nondisclosure, or misrepresentation,  
14 is liable to repay the amount to the fund established in [section 3];

15 (b) the nature of the false statement, nondisclosure, or misrepresentation;

16 (c) the week or weeks for which the benefits were paid; and

17 (d) that any amount subject to recovery and any penalty due under this section may be collected  
18 by the department in a civil action against the covered employer or covered employee brought in the name of  
19 the department.

20 (7) The department shall adopt rules establishing standards and procedures for the repayment of  
21 benefits and payment of penalties and interest under this section.

22 (8) A covered employer or covered individual may appeal a determination made under this section  
23 as provided in [section 20].

24

25 **NEW SECTION. Section 20. Appeal process.** (1) A covered employer may request a hearing to  
26 obtain a review of an assessment or determination of benefits of a covered employee under [sections 1 through  
27 20].

28 (2) A covered employee may request a hearing to obtain a review of a final decision of the

1 department regarding:

2 (a) approval or denial of a claim submitted to the department for payment of family and medical  
3 leave insurance benefits;

4 (b) the weekly benefit amount payable to a covered employee as determined by [section 8]; or

5 (c) disqualification from the receipt of benefits, including liability or repayment of benefits as  
6 determined under [section 10].

7 (3) A hearing under subsections (1) and (2) must be conducted according to contested case  
8 procedures under Title 2, chapter 4, part 6, except that service need not be made as prescribed for civil actions  
9 in the district court and the hearings officer is not bound by statutory or common-law rules of evidence.

10

11 **Section 21.** Section 2-18-606, MCA, is amended to read:

12 **"2-18-606. Parental leave for state employees.** (1) The department of administration shall develop a  
13 parental leave policy for permanent state employees that is in compliance with [sections 1 through 20]. The  
14 policy must permit coordinate the provisions in [sections 1 through 20] for an employee, to take a reasonable  
15 leave of absence and permit the employee to use sick leave immediately following the birth or placement of a  
16 child for a period not to exceed 15 working daysif:

17 (a) ~~regardless of whether~~ the employee is adopting a child; or is

18 (b) ~~the employee is a~~ the birth mother or birth father.

19 (2) ~~As used in this section, "placement" means placement for adoption as defined in 33-22-130.~~

20 (3)~~(2)~~ A state agency that is not subject to the provisions of the Family and Medical Leave Act of  
21 1993, 29 U.S.C. 2601 through 2654, may extend the provisions of that act to the employees of the agency."

22

23 **Section 22.** Section 45-6-301, MCA, is amended to read:

24 **"45-6-301. Theft.** (1) A person commits the offense of theft when the person purposely or knowingly  
25 obtains or exerts unauthorized control over property of the owner and:

26 (a) has the purpose of depriving the owner of the property;

27 (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the  
28 owner of the property; or

1 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment  
2 probably will deprive the owner of the property.

3 (2) A person commits the offense of theft when the person purposely or knowingly obtains by  
4 threat or deception control over property of the owner and:

5 (a) has the purpose of depriving the owner of the property;

6 (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the  
7 owner of the property; or

8 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment  
9 probably will deprive the owner of the property.

10 (3) A person commits the offense of theft when the person purposely or knowingly obtains control  
11 over stolen property knowing the property to have been stolen by another and:

12 (a) has the purpose of depriving the owner of the property;

13 (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the  
14 owner of the property; or

15 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment  
16 probably will deprive the owner of the property.

17 (4) A person commits the offense of theft when the person purposely or knowingly obtains or  
18 exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or  
19 county agency, regardless of the original source of assistance, by means of:

20 (a) a knowingly false statement, representation, or impersonation; or

21 (b) a fraudulent scheme or device.

22 (5) A person commits the offense of theft when the person purposely or knowingly obtains or  
23 exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title  
24 39, chapter 51, ~~or~~ 71, or sections 1 through 20 by means of:

25 (a) a knowingly false statement, representation, or impersonation; or

26 (b) deception or other fraudulent action.

27 (6) A person commits the offense of theft of property by embezzlement when, with the purpose to  
28 deprive the owner of the property, the person:

1 (a) purposely or knowingly obtains or exerts unauthorized control over property of the person's  
2 employer or over property entrusted to the person; or

3 (b) purposely or knowingly obtains by deception control over property of the person's employer or  
4 over property entrusted to the person.

5 (7) (a) Except as provided in subsections (7)(b), (7)(d), and (7)(e), a person convicted of a first  
6 offense of the offense of theft of property not exceeding \$1,500 in value shall be fined an amount not to exceed  
7 \$500. A person convicted of a second offense shall be fined an amount not to exceed \$500 or be imprisoned in  
8 the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense  
9 shall be fined an amount not to exceed \$500 and be imprisoned in the county jail for a term of not less than 5  
10 days or more than 1 year.

11 (b) (i) Except as provided in subsections (7)(c) and (7)(e), a person convicted of the offense of  
12 theft of property that exceeds \$1,500 in value and does not exceed \$5,000 in value shall be fined an amount  
13 not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 3 years, or both. A person  
14 convicted of a second offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the state  
15 prison for a term not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall be  
16 imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined an  
17 amount not to exceed \$5,000.

18 (ii) A person convicted of the theft of property exceeding \$5,000 in value or as part of a common  
19 scheme as defined in 45-2-101, or the theft of any amount of anhydrous ammonia for the purpose of  
20 manufacturing dangerous drugs, shall be fined an amount not to exceed \$10,000 or be imprisoned in a state  
21 prison for a term not to exceed 10 years, or both.

22 (iii) A person convicted of the theft of any commonly domesticated hoofed animal shall be fined an  
23 amount of not less than \$5,000 or more than \$50,000 or be imprisoned in a state prison for a term not to  
24 exceed 10 years, or both. If a prison term is deferred, the court shall order the offender to perform 416 hours of  
25 community service during a 1-year period, in the offender's county of residence. In addition to the fine and  
26 imprisonment, the offender's property is subject to criminal forfeiture pursuant to 45-6-328 and 45-6-329.

27 (c) A person convicted of the offense of theft of property exceeding \$10,000 in value by  
28 embezzlement shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years

1 and may be fined an amount not to exceed \$50,000. The court may, in its discretion, place the person on  
2 probation with the requirement that restitution be made under terms set by the court. If the terms are not met,  
3 the required prison term may be ordered.

4 (d) A person convicted of a first offense for the offense of theft of property not exceeding \$1,500 in  
5 value and who utilized an emergency exit in furtherance of that offense shall be fined an amount not to exceed  
6 \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. On a second conviction, the  
7 offender shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to  
8 exceed 1 year, or both. On a third conviction, the offender shall be fined an amount not to exceed \$5,000 and  
9 be imprisoned in the county jail for a term of not less than 5 days or more than 1 year.

10 (e) A person convicted of the offense of theft of property of a light vehicle, as defined in 61-1-101,  
11 shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10  
12 years, or both.

13 (8) Amounts involved in thefts committed pursuant to a common scheme or the same transaction,  
14 whether from the same person or several persons, may be aggregated in determining the value of the property.

15 (9) A person convicted of the offense of theft of property not exceeding \$100 in value is presumed  
16 to qualify for a deferred imposition of sentence as long as the person has not been convicted of a misdemeanor  
17 or felony offense in the past 5 years."

18  
19 **NEW SECTION. Section 23. Notification to tribal governments.** The secretary of state shall send a  
20 copy of [this act] to each federally recognized tribal government in Montana.

21  
22 **NEW SECTION. Section 24. Codification instruction.** [Sections 1 through 20] are intended to be  
23 codified as a new chapter in Title 39, and the provisions of Title 39 apply to [sections 1 through 20].

24  
25 **NEW SECTION. Section 25. Severability.** If a part of [this act] is invalid, all valid parts that are  
26 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
27 the part remains in effect in all valid applications that are severable from the invalid applications.

