

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 721 Paid Family Leave Insurance

SPONSOR(S): Commerce Committee and Insurance & Banking Subcommittee, Chaney and others

TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 670

FINAL HOUSE FLOOR ACTION: 115 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 721 passed the House on April 20, 2023, and subsequently passed the Senate on May 1, 2023.

Currently, life insurers in the state are authorized to transact health insurance, disability income insurance, excess coverage for health maintenance organizations and multiple-employer welfare arrangements, but are not expressly authorized to issue paid family leave insurance.

Family leave guarantees originated with the Family Medical Leave Act of 1993 (FMLA), requiring covered employers to provide eligible employees job-protected leave for qualifying family and medical reasons. Covered employers under FMLA include private-sector employers who employ 50 or more employees in 20 or more workweeks during a calendar year, all public agencies, and all educational agencies. FMLA protects leave for the birth or adoption of a child, the serious health condition of an employee, care for an employee's family member who has a serious health condition, and reasons related to a family member's service in the military.

The bill creates a regulatory structure for the creation and sale of paid family leave insurance policies by life insurers. Notably, the bill does not create a right to paid family leave benefits for employees not otherwise eligible under FMLA. Rather, the bill gives their employers the option to offer, and authorizes life insurers to transact, paid family leave insurance providing benefits covering certain lost wages.

The bill:

- revises the definition of "kinds of insurance" to include paid family leave insurance,
- defines "paid family leave insurance,"
- specifies requirements under which family leave insurance benefits may be provided,
- requires insurance policies to specify details and requirements for covered leave reasons,
- specifies requirements for policies relating to benefit periods and waiting periods,
- permits limitations, exclusions and reductions for eligibility, and
- authorizes the Financial Services Commission to adopt rules.

While the bill does not have a fiscal impact on local governments, the bill does have an indeterminate, but likely positive, fiscal impact on state government. The bill has a positive and negative fiscal impact on the private sector.

The bill was approved by the Governor on May 25, 2023, ch. 2023-149, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Florida's Insurance Industry

The Florida Office of Insurance Regulation (OIR) regulates the insurance industry in the state. OIR is responsible for the regulation of all activities in the state concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision.¹

OIR is housed within the Florida Department of Financial Services (DFS), and its funding is appropriated by the Legislature from the Insurance Regulatory Trust Fund (IRTF).² The IRTF is funded by insurance company licensing fees, premium tax, surplus lines tax, and fines that may be levied for non-compliance with provisions of the Florida Insurance Code (Insurance Code).³

Under Florida's Insurance Code, a qualifying insurer is authorized to transact any one kind or combination of insurance, including life, health, property, casualty, surety, marine, and title.⁴ Among the types of authorized insurance, paid family leave insurance is not currently included. Nonetheless, OIR has already approved paid family leave insurance products and such products have been sold and marketed in the state as riders to disability income benefits for individuals utilizing family and medical leave.⁵

Paid Family Leave Insurance

The federal Family Medical Leave Act of 1993 (FMLA) requires covered employers to provide eligible employees job-protected leave for qualifying family and medical reasons. Covered employers under FMLA include private-sector employers who employ 50 or more employees in 20 or more workweeks during a calendar year, all public agencies, and all educational agencies. FMLA protects leave for the birth or adoption of a child, the serious health condition of an employee, care for an employee's family member who has a serious health condition, and reasons related to a family member's service in the military.

In 2022, the National Council of Insurance Legislators (NCOIL) adopted the Paid Family Leave Insurance Model Act (Model Act).⁶ The Model Act created a new product of life insurance, known as paid family leave insurance, under which any insurer licensed to transact life insurance or disability income insurance business could be authorized to issue policies covering benefits for employees unable to work due to circumstances eligible for FMLA protection.

Some states provide a program using either a social insurance policy design that funds benefits through pooled payroll taxes on employees and/or employers, or private insurance to fund the programs.⁷ Programs available in these states are the result of legislation either making such programs mandatory or

¹ Florida Office of Insurance Regulation, *Organization and Operation*, <https://floir.com/about-us/organization-and-operation#:~:text=The%20Florida%20Office%20of%20Insurance,settlements%2C%20premium%20financing%2C%20and%20administrative> (last visited Mar. 10, 2023). See also s. 624.308, F.S., and R. 690, *et seq.*, F.A.C.

² Florida Office of Insurance Regulation, *Organization and Operation*, <https://floir.com/about-us/organization-and-operation#:~:text=The%20Florida%20Office%20of%20Insurance,settlements%2C%20premium%20financing%2C%20and%20administrative> (last visited Mar. 10, 2023).

³ *Id.* Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the Florida Insurance Code. See also s. 624.01, F.S.

⁴ Ss. 624.406(1), and 624.6011, F.S.

⁵ Email from Stephen Marante, Deputy Director of Government Affairs, Office of Insurance Regulation, Re: Family Leave Insurance (Feb. 17, 2023).

⁶ National Council of Insurance Legislators, *Paid Family Leave Insurance Model Act* (Adopted on Nov. 19, 2022).

⁷ Department of Financial Services, *Agency Analysis of SB 670*, p. 1 (Feb. 27, 2023).

voluntary.⁸ States currently offering paid family leave insurance benefits through private insurers are New York (mandatory), New Hampshire (voluntary), and Virginia (voluntary).⁹

Effect of the Bill

The bill creates a regulatory structure for creation and sale of paid family leave insurance policies both as a stand-alone product, as a group insurance policy, and as a rider to a group disability income policy. Notably, the bill does not create a right to paid family leave benefits for employees not otherwise eligible under FMLA, but rather gives their employers the option to offer, and authorizes life insurers to transact, paid family leave insurance benefits.

The bill includes paid family leave insurance as a type of insurance product with life, health, property, casualty, surety, marine, and title insurance products. The bill defines paid family leave insurance as insurance issued to an employer to pay for a percentage or portion of the employee's income loss due to:

- The birth of a child or adoption of a child by the employee;
- Placement of a foster child with the employee;
- Care of an employee's family member who has a serious health condition; or
- Circumstances arising out of the fact the employee's family member is a servicemember on active duty or has been notified of an impending call or order to active duty.

Defined Terms

The bill defines the following terms:

- "Armed Forces of the United States" means an officer or enlisted member of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard of the United States, the Florida National Guard, and the United States Reserve Forces.
- "Child" is someone who is:
 - Under 18 years of age, or 18 years of age or older and incapable of self-care because of a mental or physical disability; and
 - A biological, adopted, or foster son or daughter; a stepson or stepdaughter; a legal ward; or a son or daughter of a person to whom the employee stands in loco parentis.
- "Family leave" is any leave taken by an employee for work for any of the reasons specified in the newly created s. 627.445(4), F.S. (as more particularly described below).
- "Family member" includes a child, spouse, or parent, or other person defined as a family member in the policy.
- "Health care provider" means any hospital licensed under ch. 395, F.S., and any health care institution licensed under ch. 400 or ch. 429, F.S., or an individual licensed under ch. 458, 459, 460, 461, 464, or 466, F.S.
- "Parent" means a biological, foster, or adoptive parent; a stepparent; a legal guardian; or other person who stood in loco parentis to the employee when the employee was a child.
- "Serious health condition" means an illness, injury, impairment, or physical or mental condition, including, but not limited to, pregnancy complications that threaten the life of the mother or unborn child; transplantation preparation and recovery from surgery related to organ or tissue donation, which involves inpatient care in a hospital, hospice, or residential health care facility; continuing treatment; or continuing supervision by a health care provider. Continuing supervision by a health care provider includes a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective and where the family member need not be receiving active treatment by a health care provider.

Requirements and Specifications for the Policy

⁸ *Id.*

⁹ *Id.*

The bill provides family leave insurance may be written as an amendment or a rider to a group disability income policy, included in a group disability income policy, or written as a separate group insurance policy purchased by an employer. The bill also provides the policy must specify:

- Details and requirements with regard to each of the covered family leave reasons;
- The length of family leave insurance benefits available for each covered family leave reason, which may not be less than 2 weeks during a period of 52 consecutive calendar weeks;
- Whether there is an unpaid waiting period, and if so, the terms and conditions of the unpaid waiting period;
- The amount of benefits that will be paid for covered family reasons;
- Definition of the wages or other income upon which the amount of family leave insurance benefits will be issued; and
- Whether the family leave insurance benefits are subject to offsets for wages or other income received or for which the insured may be eligible, and if so, all such wages or income that may be set off and the circumstances under which it may be offset.

Permissible Limitations, Exclusions and Reductions for Eligibility

The bill allows eligibility for family leave insurance benefits to be limited, excluded, or reduced, but requires any such limitation, exclusion, or reduction be specified in the policy. Permissible limitations, exclusions, and reductions under the bill include, but are not limited to, any period of leave:

- Wherein the required notice and medical certification as prescribed in the policy has not been provided;
- Related to a serious health condition or other harm to a family member caused by the willful intention of the employee;
- During which the employee performed work for remuneration or profit;
- For which the employee is eligible to receive from his or her employer, or from a fund to which the employer has contributed, remuneration or maintenance;
- In which the employee is eligible to receive benefits under any other statutory program or employer-sponsored program, including, but not limited to, unemployment insurance benefits, workers' compensation benefits, statutory disability benefits, statutory paid leave benefits, or any paid time off or employer's paid leave policy;
- Commencing before the employee becomes eligible for family leave insurance benefits under the policy; or
- Where more than one person seeks family leave insurance for the same family member.

The bill requires that family leave insurance benefits be paid periodically and promptly, except as to a contested period of leave and subject to any of the limitations, exclusions, or reductions explained above. Rates for policies or riders providing paid family leave insurance benefits must meet Florida's rate making standard, to wit, they must not be inadequate, excessive, or unfairly discriminatory¹⁰ and that the applicable insurance forms are subject to review by OIR.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has an indeterminate, but likely positive, fiscal impact on state government. The state may see increased premium tax revenues to the extent that a paid family leave insurance market develops.

2. Expenditures:

¹⁰ S. 627.062, F.S.

OIR will need to add family leave coverage as a new line of business to the correct IT systems.¹¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Employees eligible to receive family leave insurance benefits can receive compensation they would not have otherwise received while unable to work due to eligible parental leave or their own or their family member's serious health condition or military service. Although the paid family leave insurance is optional for private employers not otherwise covered under FMLA, the insurance policy would be funded by the employer and/or the employee.

D. FISCAL COMMENTS:

The bill has an indeterminate impact on state government and none on local governments. If a private employer offers the insurance, the bill has a positive fiscal impact for eligible employees and a negative fiscal impact for employers and employees due to premiums funding the policies. However, such private employers may see greater employee satisfaction and productivity and may also be more competitive in hiring quality employees.

¹¹ Office of Insurance Regulation, Agency Analysis of 2023 HB 721, p. 4 (Mar. 8, 2023).