

**SENATE . . . . . No. 71**

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The Commonwealth of Massachusetts

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**In the Year Two Thousand Nine**  
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An Act supporting strong families by providing paid family and medical leave, increasing tax deductions, and establishing a work-family council. ..

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           Whereas, The deferred operation of this act would tend to defeat its purpose, which is  
2   forthwith to support strong families by providing paid family and medical leave, increasing tax  
3   deductions and establishing a work-family council, therefore it is hereby declared to be an  
4   emergency law, necessary for the immediate preservation of the public convenience.

5           SECTION 1. Chapter 23A of the General Laws is hereby amended by adding the  
6   following section:—

7           Section 62. (a) There shall be in the executive office of economic development a work-  
8   family council, in this section called the council. The council shall develop broadly shared  
9   understandings of critical work-family issues in the commonwealth, and shall promote through  
10   privately funded research, experimentation, and education both responsive public policies and  
11   innovative private sector practices.

12 (b) A member of the council shall be a person who has demonstrated leadership in  
13 seeking innovative, positive solutions to work-family problems. A member shall serve for a term  
14 of 2 years and may be reappointed for 1 or more terms.

15 (c) (1) The governor, the speaker of the house of representatives and the president of the  
16 senate each shall appoint members, 1 from each of the following categories:

17 (i) an employer or manager of a business representing a key sector of the  
18 commonwealth's economy;

19 (ii) an official of a union representing public sector or private sector workers;

20 (iii) a member of the caucus of women legislators;

21 (iv) a member of a women's professional association or other women's organization;

22 (v) a member of low-income advocacy group or community-based service organization,  
23 including secular and faith-based institutions;

24 (vi) a member of an association representing employers; and

25 (vii) a representative of an organization which focus on Massachusetts tax policy

26 (2) The minority leaders of the senate and house of representatives shall each appoint 1  
27 member.

28 (3) The head of each of the following agencies, departments and offices shall serve as ex-  
29 officio members of the council: department of business and technology; departments of labor and  
30 workforce development; office of children, youth and family services; department of elder  
31 affairs; office of health services; office of Medicaid: executive office of transportation;

32 department of housing and community development; office of disabilities and community  
33 services; department of education; the human resources division; the information technology  
34 division, and the department of early education and care. The council shall appoint a chairperson  
35 from among the members.

36 (d) (1) The council shall meet at least 4 times per year. The council shall appoint an  
37 executive director who shall appoint such staff as needed. Staff may seek funds from public and  
38 private sources to support the work of the council. The council shall select a panel of academic  
39 advisers to provide information and guidance on council activities. An academic adviser shall not  
40 receive compensation from the council but may be reimbursed for customary expenses incident  
41 to the advisor's service.

42 (2) The duties of the council shall include but not be limited to: holding hearings to  
43 identify major work-family issues in the commonwealth; identifying representatives of all groups  
44 with important stakes in resolving specific work-family issues and devising processes for  
45 bringing the groups together to promote mutual understanding as the basis for coordinated  
46 problem-solving; using dialogue and negotiation among stakeholders with differing interests in  
47 work-family conflicts to advance the potential for problem solving that supports both workplace  
48 productivity and family care; designing and supporting pilot projects as requested in workplaces;  
49 proposing public policy solutions to work-family issues; promoting successful policies and  
50 practices in both public and private sectors and creating a repository of best practices; collecting  
51 and maintaining data and information concerning work-family issues including but not limited to  
52 employer policies and practices; and providing public education on work-family issues as  
53 matters of public, as well as individual concern, and on the need for public policies and private  
54 workplace practices that support the wellbeing of both employers and families.

55 (3) The council shall report in writing to the secretaries of economic development and  
56 health and human services every 2 years during the council’s existence. The report shall specify:  
57 the groups actively involved in council meetings and projects; outcomes of research sponsored  
58 by the council; the adoption and results of public policy initiatives; the outcomes of experiments  
59 and pilot projects in workplaces; the experience with techniques of multi-stakeholder dialogue  
60 and negotiation; summaries of data and information collected on work-family issues; and the  
61 purposes and scope of public education projects undertaken.

62 SECTION 2. Section 3 of chapter 62 of the General Laws is hereby amended by striking  
63 out, in line 75, as appearing in the 2004 Official Edition, the figure “\$4,800” and inserting in  
64 place thereof the following figure:- \$7,400.

65 SECTION 3. Said section 3 of said chapter 62 is hereby further amended by striking out,  
66 in line 76, as so appearing, the figure “\$9,600”and inserting in place thereof the following  
67 figure:- \$12,300..

68 SECTION 4. Subparagraph (8) of paragraph (a) of part B of said section 3 of said  
69 chapter 62 of the General Laws, as so appearing is hereby amended by adding the following  
70 sentence:- If the taxpayer is a single person with adjusted gross income of not more than  
71 \$45,000 or joint filers with adjusted gross income of not more than \$75,000, the deduction  
72 available under this section shall be \$4,300 if there is 1 dependent with respect to the taxpayer,  
73 or \$8,600 if there are 2 or more such dependents with respect to the taxpayer.

74 SECTION 5. Chapter 29 of the General Laws is hereby amended by inserting after  
75 section 2NNN the following Section;-

76           Section 2000. There shall be established and set up on the books of the commonwealth  
77 a Strong Families Trust Fund. There shall be credited to said fund (a) all revenues collected  
78 pursuant to paragraph (e) of Section 52E of Chapter 149 and any income derived from the  
79 investment of amounts credited to said fund. The contributions to the fund shall be reserved for  
80 the payment of wage replacement stipends for family and medical leave and for the  
81 administration of those payments and shall not be used for any other purpose. The treasurer of  
82 the commonwealth shall be the fund's trustee and shall pay the wage replacement stipends  
83 required by subsection (c) of said Section 52E of Chapter 149 and any administrative costs  
84 incurred by the department of workforce development for the operations of the paid family and  
85 medical leave program without further appropriation. The department shall annually submit a  
86 detailed account of expenditures for administration of the program established by Section 52E of  
87 Chapter 149 to the treasurer for reimbursement of such expenditures.

88           SECTION 6. Section 52D of chapter 149 of the General Laws, as appearing in the 2004  
89 Official Edition, is hereby amended by inserting after the word “section”, in line 1, 27 and 43,  
90 the following words:- and section 52E.

91           SECTION 7. Said section 52D of said chapter 149, as so appearing, is hereby further  
92 amended by inserting after the word “section”, in lines 26 and 44, the following words:- or  
93 section 52E.

94           SECTION 8. Said chapter 149 is hereby further amended by inserting after said section  
95 52D, as so appearing, the following section:-

96           Section 52E. (a) As used in this section, in addition to the terms defined in section 52D,  
97 the following terms shall have the following meanings:

98 (1) “Department”, the department of workforce development.

99 (2) “Director”, the director of the department of workforce development.

100 (3) “Fund”, the Strong Families Trust Fund established by Chapter 29, Section  
101 2000.

102 (4)“Employee eligible for job protected leave” means an employee working in the  
103 commonwealth who has been employed:

104 (i) for at least 12 months by the employer with respect to whom leave is requested; and

105 (ii) for at least 1,250 hours of service with such employer during the previous 12-month  
106 period.

107 The term "employee eligible for job protected leave" does not include any employee of  
108 an employer who is employed at a worksite at which such employer employs less than 6  
109 employees if the total number of employees employed by that employer within 75 miles of that  
110 worksite is less than 6.

111 (5) “Employee eligible for wage replacement stipend” means an employee who is a  
112 resident of the commonwealth and who has been paid wages in an amount not less than \$3000  
113 from which fund deductions were withheld within any 12 month period and who at the time the  
114 leave begins has been employed in the commonwealth :

115 (i) for at least 12 weeks by the employer with respect to whom leave is requested; and

116 (ii) for at least 216 hours of service with such employer during the previous 12 week  
117 period.

118 (iii) for purposes of this paragraph (a)(5) “Employer”, means any individual,  
119 corporation, partnership or other entity, including any agent thereof, who engages the services, in  
120 the commonwealth, of an employee or employees for wages, remuneration, or other  
121 compensation. (b) Except as this section otherwise provides, employees eligible for job  
122 protected leave shall be entitled to job protected family and medical leave, and all rights and  
123 protections provided under sections 101 to 105, inclusive, of the Family and Medical Leave Act  
124 of 1993, 29 U.S.C. sections 2611 to 2615, inclusive. Amendments to the federal act shall not  
125 diminish an employee’s rights under this section.

126 (c)(1) The department shall determine eligibility of employees for wage replacement  
127 stipend under paragraph (a) and shall certify to the treasurer the amount of stipend to be paid  
128 from the Fund, to each employee eligible for wage replacement stipend.

129 (2) The treasurer of the commonwealth shall pay to an employee eligible for wage  
130 replacement stipend, who is a resident of the commonwealth, who is entitled to leave under  
131 section 102(a) and (b) of the federal act, 29 U.S.C. section 2612(a) and (b), and who takes such a  
132 leave, a stipend in the amount 80% of the employee’s wages or salary, but not more than \$750  
133 per week in calendar year 2008 and 2009. In each year thereafter, the treasurer shall calculate an  
134 adjusted maximum benefit amount to account for inflation using the consumer price index for  
135 urban wage earners or a successor index.. The treasurer shall not pay the stipend for the first 5  
136 business days of an employee’s leave in any calendar year; but these first 5 days of leave need  
137 not be taken consecutively for the employee to be eligible for a stipend under this section for  
138 subsequent days of leave, and an employee eligible for wage replacement stipend under this  
139 section shall receive an additional 5 days of paid leave, to total 12 weeks of paid leave.

140 (3) The treasurer shall also pay the stipend provided by subparagraph (2) to an employee  
141 eligible for wage replacement stipend, who is a resident of the commonwealth, and who takes a  
142 leave to which she would otherwise be entitled under section 102(a) and (b) of the federal act, 29  
143 U.S.C. section 2612(a) and (b), but is not so entitled solely because of the employer's number of  
144 employees under section 101(2)(B)(ii) of the federal act, 29 U.S.C. section 2611(2)(B)(ii), or (2)  
145 because she has not been employed for the time required by section 101(2)(A) of the federal act,  
146 29 U.S.C. section 2612(2)(A)

147 (d) The department, in consultation with the human resources division, shall administer  
148 this section, shall prescribe application forms for employees, and shall adopt regulations  
149 consistent with this section . The department shall provide a draft of proposed regulations to the  
150 joint committees of children and families and persons with disabilities, on labor and workforce  
151 development, and on state administration and regulatory oversight, and to the work-family  
152 council not less than 90 days before adopting the regulations. The department's regulations shall  
153 specify premiums paid by employees necessary in the department's judgment to provide for the  
154 fund's solvency, including all administrative costs incurred by the department in operating the  
155 program. The premium paid by each employee shall be equal to a percentage of the employee's  
156 wages paid for employment with any employer. The regulations shall ensure that payments from  
157 the Fund shall be made to eligible employees when due at the earliest time administratively  
158 feasible The regulations shall include eligibility requirements, the claims process, weekly stipend  
159 amounts, maximum stipends payable, notice and medical certification requirements,  
160 confidentiality provisions, the relationship between benefits under this section and other leave  
161 rights and benefits, and grievance rights. In adopting regulations, the department shall maintain



162 consistency with the rules adopted to implement the federal act to the extent such rules are not in  
163 conflict with this section.

164 (e) On or before October 31st of each year, the Treasurer, in consultation with the  
165 director, shall file with the house and senate committees on ways and means and the clerks of the  
166 house of representatives and the senate and the joint committees on children and families and  
167 labor and workforce development a report which contains a proposal of an adequate and proper  
168 average balance to be maintained in the Fund during the ensuing calendar year and a statement of  
169 the actual balance then projected to be deposited in the Fund during such year. Such report shall  
170 describe in detail the criteria employed by the Treasurer and the director in formulating such a  
171 proposal for an adequate and proper average balance and in developing such a projection relative  
172 to the actual balance, including but not limited to an explanation of the economic assumptions  
173 and projections related thereto, an analysis of the effect upon such balances of actual or proposed  
174 amendments to federal and state law relative to job protected family leave and paid family leave,  
175 both in terms of the amount of monies so deposited and in terms of such monies as a percentage  
176 of total wages paid. If the treasurer's proposal of an adequate and proper average balance for the  
177 ensuing calendar year exceeds the treasurer's statement of the projected actual average balance  
178 for such year, then the report shall in addition include recommendations for such legislative  
179 actions as the treasurer deems appropriate to ensure that an adequate and proper average balance  
180 is maintained during such year, provided, that recommendations for legislative action, if any,  
181 shall be accompanied by drafts of legislation necessary to carry such recommendations into  
182 effect. On or before the fifteenth day of every month of the calendar year next following the  
183 submission of the report required by the first sentence hereof, the treasurer, in consultation with  
184 the director, is hereby further authorized and directed to file with the chairs of said committees

185 an updated report detailing the most recently available statement of the actual balance of Fund  
186 together with a revised statement of the actual balance then projected to be deposited in the Fund  
187 during such year.

188 (f) The department of revenue shall collect premiums from employees in connection with  
189 income taxes collected under chapter 62, and all civil and criminal remedies that apply to such  
190 income taxes shall apply to premiums under this section. The department of revenue shall  
191 deposit in the Fund all premiums received under this section, and shall provide other assistance  
192 requested by the department of workforce development and the Treasurer of the commonwealth  
193 in administering this section.

194 (g) A person who knowingly makes, or causes to be made, any false statement or  
195 misrepresentation of a material fact in connection with an application for paid leave benefits  
196 under this section shall be punished by imprisonment for not more than 6 months or by a fine of  
197 not more than \$4,000, or by both such fine and such imprisonment. In addition, the criminal and  
198 civil remedies that apply to claims for unemployment compensation under chapter 151A shall  
199 apply to applications for stipends under this section.

200 (h) Any payment of unemployment compensation or workers compensation in connection  
201 with a leave under this section shall cause a reduction, in the same amount as the payment, in the  
202 stipend otherwise payable for that week under subsection (c), and an employee eligible to receive  
203 a stipend shall promptly report such a payment to the department.

204 (i) Nothing in this section shall interfere with any greater rights or benefits under a  
205 collective bargaining agreement or other employment agreement between the employer and the  
206 employee, or under any federal, state or municipal law.

207 (j) As part of the posting required by subsection (g) of section 62A of chapter 151A, an  
208 employer shall post information prescribed by the department about applying for stipends under  
209 this section. An employer shall also provide each of its employees, at the beginning of  
210 employment and whenever an employee requests leave under this section, the application form  
211 prescribed by the department under subsection (e). An employer shall include the rights  
212 provided under this section in any written guidance to employees concerning employee benefits  
213 or leave rights, such as in an employee handbook.

214 (k) Leave taken under this section must be taken concurrently with any leave taken under  
215 the federal act.

216 (l) Nothing in this section shall be construed to discourage employers from adopting or  
217 retaining leave policies more generous than policies that comply with this section.

218 (m) The executive office of health and human services, in coordination with the  
219 department, shall develop and implement a multi-lingual outreach program to inform parents  
220 with newborn or adopted children and persons with serious medical conditions about the  
221 availability of paid leave under this section. This program shall include the distribution of  
222 notices and other written materials in English and other languages to all hospitals, community  
223 health centers, and other health care providers. The outreach information shall explain, in an  
224 easy to understand format, eligibility requirements, the claims process, weekly stipend amounts,  
225 maximum stipends payable, notice and medical certification requirements, reinstatement and  
226 nondiscrimination rights and confidentiality provisions.

227 (n) Nothing in this section shall be construed to require a health care provider to disclose  
228 information in violation of section 1177 of the Social Security Act, 42 U.S.C. section 1320d-2.

229 If an employer possesses health information about an employee or an employee's son or  
230 daughter, parent, spouse or elderly relative, such information shall be maintained on a separate  
231 form and in a separate file from other personnel information, be treated as a confidential medical  
232 record, and shall not be disclosed except to the affected employee or with the permission of the  
233 affected employee.

234 (o) The attorney general shall prescribe the employer's obligation to make, keep, and  
235 preserve records pertaining to this section and the requirements for keeping records under section  
236 15 of chapter 151 shall apply to the records required under this section.

237 (p) This act shall be liberally construed as remedial legislation to further its purpose of  
238 providing job-protected leave and wage replacement stipends to eligible employees. All  
239 presumptions shall be made in favor of the availability of leave and payment of stipends under  
240 this section.

241 SECTION 9. Item 1201-0100 The department shall allocate not less than \$250,000 for  
242 purposes of an outreach program to increase participation in the earned income tax credit  
243 program.

244 SECTION 10. Item 7002-0010 The department shall allocate not less than \$200,000 to  
245 the work-family council.

246 SECTION 11. Item 7002-0100 The department shall expend not less than \$500,000 for  
247 the administration of the paid family leave program established in chapter 149 of the General  
248 Laws section 52E and implementation of an outreach program to inform parents with newborn or  
249 adopted children and persons with serious medical conditions about the availability of paid  
250 leave.

251 SECTION 12. The department of workforce development shall commence paying  
252 stipends under section 6 180 days after the effective date of this act.

253 SECTION 13. The work-family council established by section 1 of this act shall, on an  
254 on-going basis, analyze and review the operations of the paid family and medical leave program  
255 created in this act. No later than 2 years after the effective date of this act, the council shall file  
256 with the clerks of the senate and house of representatives a comprehensive report on this  
257 program. This report shall include, but not be limited to, analysis of the following: (1) the extent  
258 to which employees take paid leave under the program; (2) the extent to which employees have  
259 family or medical needs or obligations that they are unable to meet by taking paid leave under  
260 the program; (3) the effect of the program on private employers, including the effect on  
261 employee productivity, employer costs and cost savings, employee morale, and employee  
262 turnover rates; (4) the effect of the program on the competitiveness of the commonwealth's  
263 economy; (5) the medical effects of the program on employees, family members of employees,  
264 and the broader population; (6) the ease or difficulty of administering paid leave for employees;  
265 (7) employee patterns for returning to work; (8) the cost of replacing workers on leave and  
266 training temporary workers; and (9) any proposed modifications to the program.

267 SECTION 14: Section 204 of chapter 6 of the General Laws, as appearing in the 2004  
268 Official Edition, is hereby amended by adding after the words "twenty-three D" in line 47, the  
269 following:-

270 "advising the treasurer in the performance of duties required under section 2000 of  
271 chapter 29 in administering the strong family trust fund to encourage employee involvement in  
272 the program"