

**HOUSE . . . . . No. 2172****The Commonwealth of Massachusetts**

PRESENTED BY:

***Kenneth I. Gordon***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a paid family and medical leave insurance program.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>1/19/2017</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	
<i>Cory Atkins</i>	<i>14th Middlesex</i>	
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>	
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>	
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>	
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>	
<i>Daniel Cahill</i>	<i>10th Essex</i>	
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>	
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>	
<i>Evandro C. Carvalho</i>	<i>5th Suffolk</i>	
<i>Gerard Cassidy</i>	<i>9th Plymouth</i>	
<i>Tackey Chan</i>	<i>2nd Norfolk</i>	
<i>Nick Collins</i>	<i>4th Suffolk</i>	<i>2/2/2017</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	

<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>	
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>	
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>	
<i>Julian Cyr</i>	<i>Cape and Islands</i>	
<i>Michael S. Day</i>	<i>31st Middlesex</i>	
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>	
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>	
<i>William Driscoll</i>	<i>7th Norfolk</i>	
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	
<i>Dylan Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>	
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>	
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>	
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>	
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>	
<i>Solomon Goldstein-Rose</i>	<i>3rd Hampshire</i>	
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>	
<i>Stephan Hay</i>	<i>3rd Worcester</i>	
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>	
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	
<i>Natalie Higgins</i>	<i>4th Worcester</i>	
<i>Kate Hogan</i>	<i>3rd Middlesex</i>	
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>	
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>	
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>	
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	
<i>Kay Khan</i>	<i>11th Middlesex</i>	

<i>Peter V. Kocot</i>	<i>1st Hampshire</i>	
<i>Robert M. Koczera</i>	<i>11th Bristol</i>	<i>2/3/2017</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>	
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	
<i>Jack Lewis</i>	<i>7th Middlesex</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	
<i>Adrian Madaro</i>	<i>1st Suffolk</i>	
<i>John J. Mahoney</i>	<i>13th Worcester</i>	
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>	
<i>Juana B. Matias</i>	<i>16th Essex</i>	
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>	
<i>Joan Meschino</i>	<i>3rd Plymouth</i>	
<i>James R. Miceli</i>	<i>19th Middlesex</i>	
<i>Rady Mom</i>	<i>18th Middlesex</i>	
<i>Frank A. Moran</i>	<i>17th Essex</i>	
<i>James M. Murphy</i>	<i>4th Norfolk</i>	
<i>Brian Murray</i>	<i>10th Worcester</i>	
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>	
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>1/27/2017</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>	
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	
<i>Denise Provost</i>	<i>27th Middlesex</i>	
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	
<i>David M. Rogers</i>	<i>24th Middlesex</i>	
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>	
<i>Byron Rushing</i>	<i>9th Suffolk</i>	
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	
<i>Alan Silvia</i>	<i>7th Bristol</i>	
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>	
<i>Theodore C. Speliotis</i>	<i>13th Essex</i>	
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	
<i>William M. Straus</i>	<i>10th Bristol</i>	
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	

<i>José F. Tosado</i>	<i>9th Hampden</i>	
<i>Paul Tucker</i>	<i>7th Essex</i>	
<i>Chynah Tyler</i>	<i>7th Suffolk</i>	<i>1/30/2017</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	
<i>Aaron Vega</i>	<i>5th Hampden</i>	
<i>RoseLee Vincent</i>	<i>16th Suffolk</i>	
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>1/27/2017</i>
<i>Bud Williams</i>	<i>11th Hampden</i>	

# HOUSE . . . . . No. 2172

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By Mr. Gordon of Bedford, a petition (accompanied by bill, House, No. 2172) of Kenneth I. Gordon and others relative to establishing a paid family and medical leave insurance program. Financial Services.

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## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the One Hundred and Ninetieth General Court  
(2017-2018)  
\_\_\_\_\_

An Act establishing a paid family and medical leave insurance program.

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

1           SECTION 1: The General Laws are amended by inserting after chapter 175L the  
2 following:-

3           CHAPTER 175M.

4           Section 1. – Definitions

5           The following words and phrases as used in this chapter shall have the following  
6 meanings unless the context clearly requires otherwise:

7           (a) "Average weekly wage" has the same meaning as provided by section 1(w) of chapter  
8 151A and shall be calculated using the base period earnings as defined by section 1(a) of chapter  
9 151A.

10          (b) "Benefit year" has the same meaning as provided by section 1(c) of chapter 151A.

(c) "Child" means a biological, adopted, or foster child, stepchild or legal ward, a child to whom the employee stands in loco parentis, or a person to whom the employee stood in loco parentis when the person was a minor child.

(d) "Contributions" means the payments made by an employer, an employee, or a self-employed person to the family and employment security trust fund and administrative account, as required by this chapter.

(e) "Department" means the Massachusetts department of family and medical leave as established under section 8 of this chapter.

(f) "Director" means the director of the Massachusetts department of family and medical leave.

(g) "Employee" has the same meaning as provided by section 1(h) of chapter 151A, provided that notwithstanding section 1(h) of chapter 151A or any other special or general law to the contrary, Family Child Care Providers, as defined in section 17(a) of chapter 15D, shall be deemed employees for purposes of this section.

(h) "Employer" has the same meaning as provided in subsection (i) of section 1 of chapter 151A; provided, however, that for the purposes of this chapter, the department of early education and care shall be deemed the employer of family child care providers, as defined in subsection (a) of section 17 of chapter 15D, and the PCA quality home care workforce council established in section 71 of chapter 118E shall be the employer of personal care attendants, as defined in section 70 of said chapter 118E; provided that any employer not subject to this chapter may become a covered employer under this chapter by notifying the department and completing the procedure established by the department; and provided further, that a political subdivision or

its instrumentalities shall not be subject to this chapter unless it adopts this chapter under section 10.

(i) "Employment" has the same meaning as provided by section 1(k) of chapter 151A.

(j) "Employment benefits" means all benefits provided or made available to employees by an employer, including, but not limited to, group life insurance, health insurance, disability insurance, sick leave, annual or vacation leave, educational benefits, and pensions.

(k) "Family leave" means leave taken by an employee from employment to provide care for a family member for one of the following reasons: (1) to bond with the employee's child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption or foster care with the employee, (2) a serious health condition of a family member; or (3) because of a qualifying exigency pursuant to the Family and Medical Leave Act, 29 U.S.C. 2612(a)(1)(e), arising out of the family member of the employee, as defined in this chapter, being on active duty in the armed forces of the United States.

(l) "Family leave benefits" means wages paid pursuant to section 3 of this chapter and provided in accordance with section 2 of this chapter to an employee who is on family leave from employment.

(m) "Family member" means the spouse, domestic partner, child, parent, parent of a spouse or domestic partner of the employee; a person who stood in loco parentis to the employee when the employee was a minor child; or a grandchild, grandparent, or sibling of the employee.

(n) "Health care provider" means a person licensed to practice medicine, surgery, dentistry, chiropractic, podiatry, or osteopathy, or any other person determined by the department to be capable of providing health care services.

(o) "Medical leave" means leave taken by an employee from employment because of a serious health condition of the employee.

(p) "Medical leave benefits" means wages paid pursuant to section 3 of this chapter and provided in accordance with section 2 of this chapter to an employee who is on medical leave from employment.

(q) "Premium" means the amount paid by the employer, the employee, or a self-employed person into the family and employment security trust fund to receive family and medical leave benefits.

(r) "Self-employed person" means a business owner whose state and federal income tax returns for the two years preceding the business owner's first claim for family or medical leave benefits identify and substantiate ownership of a bona fide business enterprise.

(s) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either (1) inpatient care in a hospital, hospice, or residential medical facility; or (2) continuing treatment by a health care provider.

(t) "State average weekly wage" means the average weekly wage in the Commonwealth as determined under section 29(a) of chapter 151A and promulgated by the Commissioner of Unemployment Assistance.

(u) "Wages" has the same meaning as provided by section 1(s) of chapter 151A.



(v) “Weekly benefit amount” means the amount of wages paid to an employee on a weekly basis while on family or medical leave, as provided by section 3 of this chapter.

## Section 2. – Eligibility for leave and benefits

(a) (1) An employee is eligible for family or medical leave if the employee meets the financial eligibility requirements of Chapter 151A of the General Laws, provided all such employment has been with an employer in the Commonwealth; and provided further that no benefit shall be paid during the first twelve months of the effective date of this act, regardless of the service time of any claimant.

(2) A participating self-employed person shall be eligible for family or medical leave if the self-employed person has paid a premium for at least 2 consecutive quarters during the past 12 month base period prior to the claim and meets the eligibility requirements of subparagraph (1) of subsection (a) of section 2 of this chapter.

(3) An individual who experiences a break in service of nine months or more in their employment in the Commonwealth shall be eligible for leave and benefits under this chapter after meeting the eligibility requirements of subparagraph (1) of subsection (a) of section 2 of this chapter.

(b) (1) An employee or self-employed person is eligible for a maximum of 12 weeks of family leave in a benefit year; provided, however, that eligibility for family leave taken because of (i) the birth of a child of the employee, or (ii) the placement of a child with the employee for adoption or foster care shall expire at the end of the 12-month period beginning on the date of the birth or placement. An employee or self-employed person is eligible for medical leave for a maximum of 26 weeks in a benefit year. An employee or self-employed person may

take an aggregate of no more than 26 weeks of family and medical leave under this chapter in the same benefit year. (iii) Nothing in this Section shall prevent an employee or self-employed person from taking a medical leave during pregnancy and recovery from childbirth if supported by documentation by a health care provider, immediately followed by family leave, in which case the seven-day waiting period for family leave will not be required.

(2) An employee may take leave under this chapter intermittently or on a reduced leave schedule, provided that the employee and the employer agree to said intermittent or reduced leave schedule. The employer shall engage in a timely, good faith, and interactive process with the employee to determine a reasonable intermittent or reduced leave schedule. The taking of leave intermittently or on a reduced leave schedule pursuant to this subsection shall not result in a reduction in the total amount of leave to which the employee is entitled under subsection (b)(1).

(c) While on family or medical leave, an employee or self-employed person shall receive a weekly benefit amount, as provided in section 3 of this chapter, provided, however, that no benefit shall be paid during the first twelve months after the effective date of the act.

(d) An employee who has taken family or medical leave shall be restored to the employee's previous position, or to an equivalent position, with the same status, pay, employment benefits, length of service credit, and seniority as of the date of leave. An employer shall not be required to restore an employee who has taken family or medical leave to the previous or to an equivalent position if other employees of equal length of service credit and status in the same or equivalent positions have been laid off due to economic conditions or other changes in operating conditions affecting employment during the period of leave; provided,

however, that the employee who has taken leave shall retain any preferential consideration for another position to which the employee was entitled as of the date of leave.

(e) The taking of family or medical leave shall not affect an employee's right to accrue vacation time, sick leave, bonuses, advancement, seniority, length of service credit or other employment benefits, plans or programs. During the duration of an employee's family or medical leave, the employer shall continue to provide for and contribute to the employee's employment-related health insurance benefits, if any, under the same terms and conditions as those existing prior to the employee's leave.

(f) Nothing in this chapter shall be construed so as to affect any bargaining agreement, company policy, or other federal, state, or municipal law which provides for greater or additional rights to leave than those provided for by this chapter.

(g) Nothing in this chapter shall be construed to allow an employer to compel an employee to exhaust rights to any sick, vacation, or personal time prior to or while taking leave under this chapter.

(h) Leave taken under this chapter shall run concurrently with leave taken under either section 105D of chapter 149 of the general laws or under the Family Medical Leave Act, 29 U.S.C. sec. 2611, et. seq.

### Section 3. – Schedule of Paid Benefits

(a) No family or medical leave benefits shall be paid during the first 7 consecutive calendar days of such leave; provided, however, an employee may but shall not be required to utilize accrued sick or vacation pay during the first 7 consecutive calendar days of such leave.

(b)(1) The weekly benefit amount for employees and self-employed persons on family or medical leave shall be determined according to the following marginal structure:

(i) The portion of an employee's or self-employed person's average weekly wage that is not more than 30% of the state average weekly wage shall be replaced at a rate of 90%.

(ii) The portion of an employee's or self-employed person's average weekly wage that is more than 30% of the state average weekly wage shall be replaced at a rate of 33%.

(2) The maximum weekly benefit amount determined under paragraph (b) (1) of this section shall not exceed six-hundred and fifty (\$650) dollars per week. Commencing January 1, 2018, the department shall adjust annually the maximum weekly benefit amount to reflect changes in the United States Bureau of Labor Statistics Consumer Price Index for the Boston-Cambridge-Quincy consolidated metropolitan statistical area for all urban consumers, all goods, or its successor index.

(3) For an employee or self-employed person who takes leave on an intermittent or reduced leave schedule, the weekly benefit amount shall be prorated.

(c) The weekly benefit amount shall be reduced by the amount of wages or wage replacement an employee or self-employed person receives under any of the following while on family or medical leave: (i) any government program or law, including but not limited to worker's compensation other than for permanent partial disability incurred prior to the medical leave claim, or under other state or federal temporary or permanent disability benefits law, or (ii) a permanent disability policy or program of an employer, (iii) a temporary disability policy or program of an employer, or (iv) a paid family, or medical leave policy of an employer.

Section 4. – Notice Requirements

(a) (1) Every employer shall keep posted in a conspicuous place or places on its premises a workplace notice prepared or approved by the department which shall set forth excerpts from this chapter and other information the department deems necessary to explain the chapter. Such workplace notice shall be issued in English, Spanish, Chinese, Haitian Creole, Italian, Portuguese, Vietnamese, Laotian, Khmer, Russian, and any other language that is the primary language of at least 10,000 or one-half of one percent of all residents of the commonwealth. Each employer with five or more employees whose primary language is not English shall post the workplace notice in each such primary language of such employees, if such notice is available from the department.

(2) Each employer shall issue to each employee, within 30 days from date of the employee's first day of work, the following written information provided or approved by the department: (i) an explanation of the availability of family and medical leave benefits provided pursuant to this chapter; (ii) the name and mailing address of the employer; (iii) the identification number assigned to the employer by the department; (iv) instructions on how to file a claim for family and medical leave benefits; (v) the address and telephone number of the regional office of the department which serves the employee, as well as the telephone number of the department; and (vi) an explanation of the method through which the employer will provide family and medical leave benefits under this chapter; provided that where an employer changes the method of providing benefits, the employer shall notify the employee within 30 days of the change. Delivery is made when an employer provides such information to an employee in person or by mail to the employee's last known address.

(3) Any employer who fails to comply with the provisions of paragraphs (1) or (2) of this subsection shall be punished by a fine of not less than 50 dollars or more than 300 dollars. A subsequent violation of this subsection by the same employer shall be punished by a fine of not less than 250 dollars or more than 1,000 dollars. The employer shall have the burden of demonstrating compliance with this subsection.

(b) (1) Where the need for family or medical leave is foreseeable, the employee shall notify the employer of the anticipated starting date of the leave, the anticipated length of the leave, and the expected date of return at least 30 days prior to the date that the leave is to begin. Where the need for leave is not foreseeable or if there are exigent circumstances, the employee shall notify the employer as soon as practicable. (2) Where an employer fails to provide notice of the provisions of this chapter as required under subsection (a) of this section, the employee's notice requirement shall be waived.

## Section 5. – Certification Requirements

(a) An employee or self-employed person shall provide certification supporting a request for leave under this chapter as soon as practicable; provided, however, an employer shall not delay the taking of family or medical leave or delay payment of benefits for the period in which leave is taken for employees entitled to a weekly benefit under section 3, on the basis that the employer has not yet received the certification.

(1) The certification for an employee or self-employed person taking medical leave shall be sufficient if it states the date on which the serious health condition commenced, the probable duration of the condition, and the appropriate medical facts within the knowledge of the health care provider as required by the department.

(2) The certification for an employee or self-employed person taking family leave because of the serious health condition of a family member of the employee or self-employed person shall be sufficient if it states the date on which the serious health condition commenced, the probable duration of the condition, the appropriate medical facts within the knowledge of the health care provider as required by the department, a statement that the employee or self-employed person is needed to care for the family member, and an estimate of the amount of time that the employee or self-employed person is needed to care for the family member.

(3) Certification for an employee or self-employed person taking family leave because of the birth of a child of the employee or self-employed person shall be sufficient if the employee or self-employed person provides either the child's birth certificate or a document issued by the health care provider of the child stating the child's birth date.

(4) Certification for an employee or self-employed person taking family leave because of the placement of a child with the employee or self-employed person for adoption or foster care shall be sufficient if the employee or self-employed person provides a document issued by the health care provider of the child, an adoption or foster care agency involved in the placement, or by other persons as determined by the department that confirms the placement and the date of placement. To the extent that the status of the employee as an adoptive or foster parent changes during the pending of benefits the employee is required to notify the employer who is required to notify the Department of Children and Families. The Department of Children and Families may confirm the status of the employee or self-employed person as adoptive or foster parent during the pending of benefits.

(5) Certification for military exigency leave shall include, but not be limited to: (i) a copy of the covered service member's active-duty orders or (ii) other documentation issued by the military.

(b) Any medical or health information required under this section shall be treated as confidential and not disclosed except with permission from the employee or self-employed person who provided it unless disclosure is otherwise required by law. Nothing in this section shall be construed to require an employee or self-employed person to provide as certification any information from a health care provider that would be in violation of section 1177 of the Social Security Act, 42 U.S.C. 1320d-6, or the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d-2 note.

(c) An employee or self-employed person shall not be eligible to receive family or medical leave benefits if the director finds that the employee or self-employed person, for the purpose of obtaining these benefits, has willfully made a false statement or representation, with actual knowledge of the falsity thereof, or has willfully withheld a material fact concerning the facts required to be certified pursuant to this subsection.

#### Section 6 – Methods for Securing Benefits

(a) An employer or an association of employers shall secure family and medical leave benefits for employees in one of the following ways:

(1) by making contributions, solely or jointly with employees, to the family and employment security trust fund established in section 7 of this chapter in the form and manner determined by the department consistent with section 7(h) of this chapter; or



(2) by a private plan or agreement, including but not limited to an insurance policy, collective bargaining agreement, or company policy, that is acceptable to the department as satisfying the obligation to provide for the payment of benefits at least as favorable as the benefits required by this chapter. A private plan or agreement under this subsection may be approved by the department if it finds that:

(i) all of the employees of the employer are to be covered under the provisions of such plan; and

(ii) eligibility requirements for leave are no more restrictive than as provided in this chapter for benefits payable by the trust fund established in section 7 of this chapter; and

(iii) the weekly benefits payable under such plan for any week of leave are at least equal to the weekly benefit amount payable by the trust fund established in section 7 of this chapter; and

(iv) no greater amount is required to be paid by employees toward the cost of family or medical leave benefits than that prescribed by law as the amount of employee contribution to the trust fund established in chapter 7 of this chapter for employers opting to provide coverage under the trust fund

(b) Employers shall file annually with the department a notice of coverage and statement of benefits provided. Where an employer changes the method of providing benefits, the employer shall notify the department within 30 days of the change.

(c) Nothing in this section or chapter shall be construed as to affect any bargaining agreement, company policy, or other state or federal law which provides for greater or additional benefits than those required under this chapter.

(d) Nothing in this section or chapter shall be construed as prohibiting an employer from requiring an employee to provide up to one-half of the contributions required by this section or this chapter. The weekly benefit amount may be reduced by the amount of the employee's contribution that accrued during the benefit period one half of the premium that accrued during the benefit period.

(e) Nothing in this section or chapter shall be construed as prohibiting an employer from contributing an amount that is greater than the amount that is contributed by the employee.

Section 7. – Establishment of the family and employment security trust fund and administrative account

(a) There is established in the Office of the State Treasurer and Receiver General, separate and apart from all public monies or funds of the state, a family and employment security trust fund, hereinafter referred to as the "trust fund" which shall be administered by the state treasurer exclusively for the purposes of this chapter. The trust fund shall consist of:

(1) All employer and employee contributions collected pursuant to section 6(a) (1) of this chapter together with any interest earned thereon;

(2) Any property or securities acquired through the use of monies belonging to the trust fund together with any earnings of such property and securities;

(3) All monies transferred into the trust fund from the family and employment security administrative account; and

(4) All other monies received for the trust fund from any source.

(b) There is established in the Office of the State Treasurer and Receiver General, separate and apart from all public monies or funds of the state, a family and employment security administrative account, hereinafter referred to as the “administrative account”, which shall be administered by the state treasurer exclusively for the purposes of this chapter. The administrative account shall consist of:

(1) All contributions collected pursuant to this section, together with any interest thereon;

(2) All fines and penalties levied pursuant to this chapter;

(3) All monies collected by way of subrogation;

(4) Interest earned on any monies belonging to the administrative account;

(5) Any property or securities acquired through the use of monies belonging to the administrative account together with all earnings of such property and securities;

(6) All monies appropriated to the administrative account by the legislature; and

(7) All other monies received for the administrative account from any source.

(c) The state treasurer shall be the treasurer and custodian of and administer the trust fund and the administrative account. All monies in the trust fund and administrative account shall be held in trust for the purposes of this chapter only and shall not be expended, released, appropriated, or otherwise disposed of for any other purpose. Monies in the trust fund and

304 administrative account may be deposited in any depository bank in which general funds of the  
305 commonwealth may be deposited, but such monies shall not be commingled with other  
306 commonwealth funds and shall be maintained in separate accounts on the books of the  
307 depository bank. Such monies shall be secured by the depository bank to the same extent and in  
308 the same manner as required by the general depository law of the commonwealth, and collateral  
309 pledged for this purpose shall be kept separate and distinct from any other collateral pledged to  
310 secure other funds of the commonwealth. The trust fund shall maintain an annualized amount of  
311 at least 140 percent of the previous year's expenditure.

312 (d) The state treasurer shall pay all expenses incurred in administering the provisions of  
313 this chapter. In the event that the balance in the trust fund shall at any time be insufficient to pay  
314 benefits under this chapter, the governor, upon the state treasurer's request, shall cause such sums  
315 as may be required for the payment of such benefits to be transferred from the administrative  
316 account to the trust fund.

317 (e) Expenditures of monies in the trust fund shall not be subject to provisions of law  
318 requiring specific appropriations or other formal release by state officers of money in their  
319 custody. All benefits shall be paid from the trust fund upon warrants drawn upon the state  
320 treasurer by the comptroller of the commonwealth supported by vouchers approved by the  
321 director.

322 (f) The state treasurer may, from time to time, invest such monies in the trust fund as are  
323 in excess of the amount deemed necessary for the payment of benefits for a reasonable future  
324 period. Such monies may be invested in bonds of any political or municipal corporation or sub-  
325 department of the commonwealth, or any of the outstanding bonds of the commonwealth, or

invested in bonds or interest-bearing notes or obligations of the commonwealth, or of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest (or in federal land bank bonds or joint stock farm bonds). The investments shall at all times be so made that all the assets of the trust fund shall always be readily convertible into cash when needed for the payment of benefits. The state treasurer shall have the power to dispose of securities or other properties belonging to the trust fund when needed for the payment of benefits.

(g) Family and medical leave benefits shall be paid from the trust fund to employees whose employer made contributions to the trust fund pursuant to section 6(a)(1) of this chapter. Family and medical leave benefits shall also be paid from the trust fund to an employee whose employer has not made contributions pursuant to section 6(a)(1), but who is entitled to receive such benefits but cannot because of the bankruptcy of his employer or because the employer is not in compliance with this chapter. Family and medical leave benefits paid from the trust fund to such employee may be recovered through bankruptcy proceedings or from the noncomplying employer. The state treasurer shall institute administrative and legal action to effect recovery of such family and medical leave benefits.

(h) For the purpose of accumulating funds for the payment of family and medical leave benefits, and administrative costs, employers, providing benefits in accordance with section 6(a)(1) of this chapter, shall, together with their employees, pay equal amounts as determined by the state treasurer. Employers and their employees making such contributions under section (6)(a)(1) shall transmit all such payments to the trust fund or administrative account in such manner, at such time, and under such conditions as shall be prescribed by the state treasurer.

(i) On or before October first of each year, the state treasurer shall certify to the secretary of the executive office of labor and workforce development the estimated costs for the coming year of benefits and for administrative services provided by the department. Said rates of employer contribution to both the trust fund as established by this chapter shall be adjusted annually as consistent with the needs of the operation of said trust fund and administrative account.

(j) An employer to whom the department has sent a request for wage and employment information for an employee claiming family or medical leave benefits under this chapter shall complete and file such information within 10 days from the date the request was sent. If an employer does not respond within 10 days, that employer may be held liable for any and all related costs incurred by the commonwealth.

#### Section 8. – Establishment of Department of Family and Medical Leave and Enforcement

(a) There shall be a department of family and medical leave within the executive office of labor and workforce development which shall be administered by a director appointed by the Governor. Claims for family and medical leave benefits shall be filed with the department and shall be handled under the procedures prescribed under sections 1, 10, 11, 12, 14, 15 and 16 of chapter 30A of the general laws.

(b) The department shall conduct a public education campaign to inform workers and employers about the availability of family and medical leave benefits, the requirements for receiving such leave and benefits, how to apply for such leave and benefits, and all of the employer's obligations under this chapter.

(c) The Fair Labor Department of the Office of the Attorney General shall be responsible for the interpretation and enforcement of this chapter and may promulgate rules and regulations pursuant thereto. Violations of this chapter, including the failure to provide benefits as required in section 6, shall be subject to paragraphs (1), (2), (4), (6) and (7) of subsection (b) of section 27C and to section 150 of chapter 149 of the general laws.

(d) This act shall be liberally construed as remedial legislation to further its purpose of providing job-protected family and medical leave, and family and medical leave benefits, to the employees of the commonwealth. All presumptions shall be made in favor of the availability of leave and the payment of family and medical leave benefits under this chapter.

#### Section 9. – Retaliation Protections

(a) It shall be unlawful for any employer to retaliate by discharging, firing, suspending, expelling, disciplining or in any other manner discriminating against an employee for exercising any right to which such employee is entitled under this section or with the purpose of interfering with the exercise of any right to which such employee is entitled under this section.

(b) It shall be unlawful for any employer to retaliate by discharging, firing, suspending, expelling, disciplining or in any other manner discriminating against an employee who has filed a complaint or instituted or caused to be instituted a proceeding under or related to this section, has testified or is about to testify in an inquiry or proceeding, or has given or is about to give information connected to any inquiry or proceeding relating to this section.

(c) Any negative change in the seniority, status, employment benefits, pay, or other terms or conditions of employment of an employee who has been restored to a position pursuant to this section that occurs within six months of such restoration, or of an employee who has

participated in proceedings or inquiries pursuant to this section within six months of the termination of proceedings shall be presumed to be retaliation under this section.

Section 10. A city, town or authority may adopt this chapter upon a majority vote of the local legislative body or the governing body. For the purposes of this section, a vote of the legislative body shall take place in a city by a vote the city council subject to its charter, in a town by a vote at a town meeting and for an authority by a vote of its governing body.

SECTION 2. Subsection (c) of section 46 of chapter 151A of the General Laws, as amended by chapter 70 of the acts of 2016, is hereby further amended by striking out clause (3) and inserting in place thereof the following clause:-

(3) to the heads of the departments of career services, transitional assistance, revenue, veterans' services, family and medical leave, and the office of Medicaid and industrial accidents, information necessary in the performance of their official duties;

SECTION 3. Section 150 of chapter 149 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting after the word "151", in line 23, the following words:- , or of chapter 175M.