

# HOUSE . . . . . No. 4110

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## The Commonwealth of Massachusetts

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INITIATIVE PETITION OF CHRISTINA BARNES AND OTHERS.

OFFICE OF THE SECRETARY.

BOSTON, JANUARY 3, 2018.

Steven T. James  
*Clerk of the House of Representatives*  
State House  
Boston, Massachusetts 02133

Sir: - I herewith transmit to you, in accordance with the requirements of Article XLVIII of the Amendments to the Constitution, an Initiative Petition for a Law Establishing A Paid Family And Medical Leave Insurance Program, signed by ten qualified voters and filed with this department on or before December 6, 2017, together with additional signatures of qualified voters in the number of 87,936, being a sufficient number to comply with the Provisions of said Article.

Sincerely,

WILLIAM FRANCIS GALVIN,

*Secretary of the Commonwealth.*

AN INITIATIVE PETITION.

Pursuant to Article XLVIII of the Amendments to the Constitution of the Commonwealth, as amended, the undersigned qualified voters of the Commonwealth, ten in number at least, hereby petition for the enactment into law of the following measure:

# HOUSE . . . . . No. 4110

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## The Commonwealth of Massachusetts

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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 People, and by their authority, as follows:*

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

### 3       CHAPTER 175M.     FAMILY AND MEDICAL LEAVE

#### 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 subsection (w) of  
8 section 1 of chapter 151A and shall be calculated using the base period earnings as defined by  
9 subsection (a) of section 1 of chapter 151A. In the case of a self-employed individual, “average  
10 weekly wage” means one twenty-sixth of total earnings of such individual in the two highest  
11 quarters of the twelve months preceding such individual’s application for benefits under this  
12 chapter.

(b) “Benefit year” is the period of fifty-two consecutive weeks beginning on the date that leave under this chapter commences for the covered individual.

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

(d) “Contributions” means the payments made by an employer, a covered business entity, an employee, or a self-employed individual to the family and employment security trust fund, as required by this chapter.

(e) “Covered business entity” means a business or trade that contracts with a self-employed individual for services and is required to report the payment for services to such individual on IRS Form 1099-MISC.

(f) “Covered individual” means either (a) an employee who meets the financial eligibility requirements of subsection (a) of section 24 of chapter 151A, provided that all such employment has been with an employer in the Commonwealth; (b) a self-employed individual who has elected coverage under subsection (i) of section 2 of this chapter; or (c) a former employee who met the financial eligibility requirements of subsection (a) of section 24 of chapter 151A at the time of the former employee’s separation from employment, provided that all such employment has been with an employer in the Commonwealth, who has been separated from employment for 26 weeks or less at the start of the former employee’s family or medical leave.

(g) “Covered servicemember” means either (a) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary

disability retired list, for a serious injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or a serious injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces); or (b) a former member of the Armed Forces (including a former member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member was discharged or released from service.

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

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

(j) "Domestic Partner" means a person at least eighteen years of age who: (1) is dependent upon the covered individual for support as shown by either unilateral dependence or mutual interdependence, as evidenced by a nexus of factors including, but not limited to, common ownership of real or personal property, common householding, children in common, signs of intent to marry, shared budgeting, and the length of the personal relationship with the covered individual; or (2) has registered as the domestic partner of the covered individual with any registry of domestic partnerships maintained by the employer of either party, or in any state, county, city, town, or village in the United States.

(k) “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 chapter.

(l) “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 of family and medical leave and completing the procedure established by the department; and provided further, that a municipality, district, political subdivision or its instrumentalities shall not be subject to this chapter unless it adopts this chapter under section 10.

(m) “Employment” has the same meaning as provided by section 1(k) of chapter 151A.

(n) “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.

(o) “Family leave” means leave taken pursuant to paragraph (1) of subsection (a) of section 2 of this chapter.

(p) “Family leave benefits” means wage replacement paid pursuant to section 3 of this chapter and provided in accordance with section 2 of this chapter to a covered individual while on family leave.

(q) “Family member” means the spouse, domestic partner, child, parent, or parent of a spouse or domestic partner of the covered individual; a person who stood in loco parentis to the covered individual when the covered individual was a minor child; or a grandchild, grandparent, or sibling of the covered individual.

(r) “Health care provider” means an individual licensed to practice medicine, surgery, dentistry, chiropractic, podiatry, midwifery, or osteopathy, or any other individual determined by the department to be capable of providing health care services.

(s) “Medical leave” means leave taken pursuant to paragraph (2) of subsection (a) of section 2 of this chapter.

(t) “Medical leave benefits” means wage replacement paid pursuant to section 3 of this chapter and provided in accordance with section 2 of this chapter to a covered individual while on medical leave.

(u) “Qualifying exigency” means a need arising out of a covered individual’s family member’s active duty service or notice of an impending call or order to active duty in the Armed Forces, including but not limited to providing for the care or other needs of the military member’s child or other family member, making financial or legal arrangements for the military member, attending counseling, attending military events or ceremonies, spending time with the military member during a rest and recuperation leave or following return from deployment, or making arrangements following the death of the military member.

(v) "Self-employed individual" means a sole proprietor, member of a limited liability company or limited liability partnership, or an individual whose income for services rendered are reported by a covered business entity on IRS Form 1099-MISC; provided that such individual shall be based in Massachusetts.

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

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

(y) "Weekly benefit amount" means the amount of wage replacement paid to a covered individual 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) Beginning eighteen months after the effective date of this act:

(1) Family leave shall be available to any covered individual for any of the following reasons: (i) to bond with the covered individual'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 covered individual; (ii) to care for a family member with a serious health condition; (iii) because of any qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call or order to active duty in the Armed Forces; or (iv) in order to care for a family member who is a covered servicemember.

(2) Medical leave shall be available to any covered individual with a serious health condition.

(b) (1) A covered individual is eligible for a maximum of 16 weeks of family leave in a benefit year; provided, however, that a covered individual taking family leave in order to care for a covered servicemember pursuant to subsection (a)(1)(iv) of this section shall be eligible for a maximum of 26 weeks of family leave in a benefit year. A covered individual is eligible for medical leave for a maximum of 26 weeks in a benefit year. A covered individual may take an aggregate of no more than 26 weeks of family and medical leave under this chapter in the same benefit year. Nothing in this Section shall prevent a covered individual from taking a medical leave during pregnancy and/or 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) (i) Leave under subsection (a)(1)(i) of this section shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer of the employee agree otherwise. Leave under subsection (a)(1)(ii) of this section, subsection (a)(1)(iv) of this section, or subsection (a)(2) of this section may be taken intermittently or on a reduced leave schedule by an employee when medically necessary. Leave under subsection (a)(1)(iii) of this section may be taken intermittently or on a reduced leave schedule by an employee.

(ii) Leave under subsection (a)(1) or (a)(2) of this section may be taken intermittently or on a reduced leave schedule by a self-employed person or former employee.



(iii) The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the covered individual is entitled under this chapter.

(c) While on family or medical leave, a covered individual shall receive a weekly benefit amount, as provided in section 3 of this chapter.

(d) An employee who has taken family and/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 and/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 and/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 and/or medical leave, the employer shall continue to provide for and contribute to the employee's employment-related health insurance benefits, if any, at the level and under the conditions coverage would have been provided if the employee had continued working continuously for the duration of such leave.

(f) Subsections (d) and (e) of this section shall not apply to a self-employed individual taking family or medical leave under this chapter or a person who was a former employee as defined in clause (c) of subsection (f) of section 1 of this chapter when that person began taking family or medical leave under this chapter.

(g) Nothing in this chapter shall be construed so as to affect any 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; or be deemed to diminish the rights, privileges, or remedies of any employee under any collective bargaining agreement or employment contract; or 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 the Massachusetts Parental Leave Act, section 105D of chapter 149 or under the Family and Medical Leave Act of 1993, 29 U.S.C. sec. 2611, et seq.

(i) A self-employed individual may elect coverage under this chapter and become a covered individual for an initial period of not less than three years. The self-employed individual must file a notice of election in writing with the department and make contributions as required by section 6 of this chapter to the trust fund established by section 7 of this chapter. A self-employed individual who elects coverage shall not be eligible for benefits until that individual has made such required contributions for at least two calendar quarters of the individual's last four completed calendar quarters. The election becomes effective on the date of filing the notice. The department shall establish a process by which self-employed individuals elect coverage under this chapter.

Section 3. - Schedule of Paid Benefits

(a) No family or medical leave benefits shall be payable during the first 7 calendar days of such leave; provided, however, an employee may but shall not be required to utilize accrued sick or vacation pay or other paid leave provided under an employer policy during the first 7 calendar days of such leave. Employees taking family or medical leave for which benefits are not payable under this subsection shall be entitled to the protections of subsections (d) and (e) of section 2 and section 9 of this chapter.

(b)(1) The weekly benefit amount shall be ninety (90%) percent of the covered individual's average weekly wage.

(2) The maximum weekly benefit amount determined under clause (1) of this subsection shall not exceed one thousand (\$1,000.00) dollars per week. Commencing January 1, 2021, 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 a covered individual who takes leave on an intermittent or reduced leave schedule, the weekly benefit amount shall be prorated as determined by the department.

(c) The weekly benefit amount shall be reduced by the amount of wages or wage replacement a covered individual receives for that period under any of the following while on family or medical leave: (i) any government program or law, including but not limited to workers' compensation under chapter 152, other than for permanent partial disability incurred

prior to the family or 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.

The weekly benefit amount shall not be reduced by the amount of wage replacement an employee receives while on family or medical leave under any of the following, unless the aggregate amount an employee would receive exceeds the employee's average weekly wage: (i) a temporary disability policy or program of an employer; or (ii) a paid family, or medical leave policy of an employer. If an employer makes payments to an employee during any period of family or medical leave that are equal to or in excess of the amount required under this section, the employer shall be reimbursed out of any benefits due or to become due from the trust fund established in section 7 of this chapter for family or medical leave benefits for that employee covering the same period of time as the payments made by the employer.

#### Section 4. - Notice Requirements

(a) Each employer and covered business entity shall keep posted in a conspicuous place on each of its premises a workplace notice prepared or approved by the department providing notice of benefits available under this chapter. The 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. The required workplace notice shall be in English and each language other than English which is the primary language of five or more employees or self-employed individuals of that workplace, if such notice is available from the department.

Each employer shall issue to each employee not more than 30 days from the beginning date of the employee's employment, the following written information provided or approved by

the department in the employee's primary language: (i) an explanation of the availability of family and medical leave benefits provided under this chapter, including rights to reinstatement and continuation of health insurance; (ii) the employee's contribution amount and obligations under this chapter; (iii) the name and mailing address of the employer; (iv) the identification number assigned to the employer by the department; (v) instructions on how to file a claim for family and medical leave benefits; (vi) the mailing address, email address and telephone number of the department; and (vi) any other information deemed necessary by the department. Delivery is made when an employee provides written acknowledgement of receipt of the information.

Each covered business entity shall provide to each self-employed individual with whom it contracts, at the time such contract is made, the following written information provided or approved by the department in the self-employed individual's primary language: (i) an explanation of the availability of family and medical leave benefits provided under this chapter and the procedures established by the department for self-employed individuals to become covered individuals; (ii) the self-employed individual's contribution amount and obligations under this chapter if the self-employed individual were to become a covered individual; (iii) the name, mailing address and email address of the covered business entity; (iv) the identification number assigned to the covered business entity by the department; (v) instructions on how to file a claim for family and medical leave benefits; (vi) the address and telephone number of the department; and (vi) any other information deemed necessary by the department. Delivery is made when a self-employed individual provides written acknowledgement of receipt of the information.

Any employer or covered business entity who fails to comply with this subsection shall be issued, for a first violation, a civil penalty of fifty (\$50) dollars per employee and per self-

employed individual with whom it has contracted, and for each subsequent violation, a civil penalty of three hundred (\$300) dollars per employee or self-employed individual with whom it has contracted. The employer or covered business entity shall have the burden of demonstrating compliance with this subsection.

(b) The employee shall give at least two (2) weeks' notice to the employer of the anticipated starting date of the leave, the anticipated length of the leave and the expected date of return or shall provide notice as soon as practicable if the delay is for reasons beyond the employee's control. If an employer fails to provide notice of this chapter as required under subsection (a) of this section, the employee's notice requirement shall be waived.

#### Section 5. - Certification Requirements

(a) A covered individual shall provide to the department certification supporting a request for leave under this chapter as soon as practicable; provided, however, that the department shall not delay the payment of benefits for the period in which leave is taken for covered individuals entitled to a weekly benefit under section 3 on the basis that the department has not yet received the certification.

(1) Certification for a covered individual 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) Certification for a covered individual taking family leave because of the serious health condition of a family member of the covered individual 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 covered individual is needed to care for the family member, and an estimate of the amount of time that the covered individual is needed to care for the family member.

(3) Certification for a covered individual taking family leave because of the birth of a child of the covered individual shall be sufficient if the covered individual provides either the child's birth certificate or a document issued by the health care provider of the child, or the health care provider of the person who gave birth, stating the child's birth date.

(4) Certification for a covered individual taking family leave because of the placement of a child with the covered individual for adoption or foster care shall be sufficient if the covered individual 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 individuals as determined by the department that confirms the placement and the date of placement. To the extent that the status of a covered individual as an adoptive or foster parent changes while an application for benefits is pending, or while the covered individual is receiving benefits, the covered individual is required to notify the department of such change in status in writing. The department of children and families may confirm in writing the status of the covered individual as an adoptive or foster parent while an application for benefits is pending or while a covered individual is receiving benefits.

(5) Certification for a covered individual taking family leave because of a qualifying exigency shall be sufficient if it includes (i) a copy of the family member's active-duty orders;

(ii) other documentation issued by the Armed Forces; or (iii) other documentation permitted by the department.

(6) Certification for a covered individual taking family leave to care for a family member who is a covered servicemember shall be sufficient if it states: (i) 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 covered individual is needed to care for the family member, an estimate of the amount of time that the covered individual is needed to care for the family member; and (ii) an attestation by the covered individual that the health condition is connected to the covered servicemember's military service as required by this chapter.

(b) Any medical or health information required under this section shall be treated as confidential and not disclosed except with permission from the covered individual who provided it unless disclosure is otherwise required by law. Nothing in this section shall be construed to require a covered individual 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) A covered individual shall not be eligible to receive family or medical leave benefits if the department finds, through a process it shall establish through regulations, that the covered individual, 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. – Contributions for Family and Medical Leave Benefits

(a) For each employee the employer shall remit to the trust fund established under section 7 of this chapter contributions in the form and manner determined by the department. Contributions shall commence on July 1, 2019, and be collected at the rate of .63% of the employee's wages. The contribution rate set forth in this section shall be adjusted annually as specified in subsection (e) of section 7.

(b) A self-employed individual who is electing coverage under subsection (i) of section 2 of this chapter shall be responsible for one-half of the percentage contribution set forth in subsection (a) of this section on that individual's income from self-employment.

(c) An employer may deduct not more than fifty (50%) percent of the contribution required for an employee by subsection (a) of this section from that employee's wages, and must remit the full contribution required under subsection (a) of this section to the trust fund.

(d) A covered business entity shall remit one-half of the percentage contribution required under subsection (a) of this section to the trust fund for the income paid to each self-employed individual with whom it contracts for services and for whom it must report payments for services to such an individual on IRS Form 1099-MISC.

(e) Contributions to the trust fund under this section shall not be required for employees' wages above the contribution and benefit base limit established annually by the United States Social Security Administration for purposes of the Old-Age, Survivors, and Disability Insurance program limits pursuant to 42 U.S.C. § 430.

Section 7. – Establishment of the Family and Employment Security Trust Fund

(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. Any sums received under this section shall not be considered revenue of the commonwealth but shall be held in trust for the exclusive benefit of covered individuals eligible for benefits under this chapter, and for the administration of the department, and, subject to appropriation, shall be expended by the director as required by this chapter to pay family and medical leave program benefits to covered individuals eligible to receive benefits, and to pay the administrative costs of the department. The trust fund shall consist of: (i) contributions collected pursuant to section 6 of this chapter together with any interest earned thereon; (ii) property or securities acquired through the use of money belonging to the trust fund together with any earnings of such property and securities; (iii) fines and penalties collected under this chapter; and (iv) other money received from any source, including any grants, gifts, bequests or money authorized by the general court or other party specifically designated to be credited to the trust fund. Money remaining in the fund at the end of a fiscal year shall not revert to the General Fund. Amounts credited to the trust fund shall not be appropriated for any purpose other than the payment of benefits to covered individuals eligible for benefits under this chapter, and for the administration of the department. The trust fund shall maintain an annualized amount of at least one hundred forty (140%) percent of the previous fiscal year's expenditure for benefits paid and for the administration of the department.

(b) The costs of administering the department under this chapter shall not exceed five (5%) percent of the amount deposited under subsection (a) for each fiscal year following the initial year benefits have been paid under section 2 of this chapter. Monies in the trust fund may

be deposited in any depository bank in which general funds of the commonwealth may be deposited, but such monies shall not be commingled with other commonwealth funds and shall be maintained in separate accounts on the books of the depository bank. Such monies shall be secured by the depository bank to the same extent and in the same manner as required by the general depository law of the commonwealth, and collateral pledged for this purpose shall be kept separate and distinct from any other collateral pledged to secure other funds of the commonwealth.

(c) Subject to appropriation, the director shall expend money from the trust fund to provide weekly benefits under section 3. Family and medical leave benefits shall be paid from the trust fund to covered individuals eligible for benefits. An employer's bankruptcy or noncompliance with this chapter shall not interfere with an employee's ability to collect family and medical leave benefits under this chapter. Family or medical leave benefits paid from the trust fund to such an employee may be recovered through bankruptcy proceedings or from the noncomplying employer. The director shall institute administrative and legal action to recover family or medical leave benefits paid through the trust fund.

(d) To accumulate funds for the payment of family and medical leave benefits and administrative costs, employers, covered business entities, and self-employed individuals shall make contributions as required under section 6 of this chapter, and transmit those contributions to the trust fund in the manner determined by the director.

(e) On or before October first, 2021, and annually thereafter, the director shall fix the contribution rate set forth in subsection (a) of section 6 for the coming calendar year in the manner described in this subsection. The director shall first certify to the secretary of the

executive office of labor and workforce development and publish, pursuant to section 2 of chapter 30A, in the Massachusetts Register the following information: i) the total amount of benefits paid by the department during the previous fiscal year; ii) the total amount remaining in the trust fund at the close of such fiscal year; iii) the total amount equal to one hundred forty (140%) percent of the previous fiscal year's expenditure for benefits paid and for the administration of the department; iv) the amount by which the total amount remaining in the trust fund at the close of the previous fiscal year is less than or greater than one hundred forty (140%) percent of the previous fiscal year's expenditure for benefits paid and for the administration of the department; and v) the amount by which the contribution rate set forth in subsection (a) of section 6 shall be adjusted to ensure that the trust fund shall maintain or achieve an annualized amount of at least one hundred forty (140%) percent of the previous fiscal year's expenditure for benefits paid and for the administration of the department. The contribution rate adjustment, if any, made as the result of the director's certification and report under this subsection shall supersede the rate previously set forth in subsection (a) of section 6 of this chapter, and shall become effective January first of the coming calendar year.

On or before October first, 2021 and annually thereafter, the director shall publish a report providing the following information concerning the family and medical leave program for the previous fiscal year: total eligible claims; the percentage of such claims attributable to medical leave; family leave other than the birth, adoption or fostering of a child; family leave attributable to the birth, adoption or fostering of a child; military exigency leave; and family leave for a covered service member; claimant demographics by age, gender, average weekly wage, occupation, and the type of leave taken; percentage of claims denied and the reasons therefore, including but not limited to insufficient information, and ineligibility and the reason

402 therefore; average weekly benefit amount paid for all claims and by category of leaves; changes  
403 in the gross benefits paid compared to previous fiscal years; processing times for initial claims  
404 processing, initial determinations, and final decisions; average duration for cases completed; and  
405 number of cases remaining open at the close of such year.

406 (f) An employer, covered business entity or self-employed individual to whom the  
407 treasurer has sent a request for wage, earnings or employment information for an employee, or  
408 covered individual claiming family or medical leave benefits shall complete and file that  
409 information not later than 10 days after the date the request was sent. If such employer, covered  
410 business entity or self-employed person does not respond within those 10 days, then such  
411 employer, covered business entity or self-employed individual may be held liable for any related  
412 costs incurred by the treasurer.

413 (g) The state treasurer may, from time to time, invest such monies in the trust fund as are  
414 in excess of the amount deemed necessary for the payment of benefits for a reasonable future  
415 period. Such monies may be invested in bonds of any political or municipal corporation or sub-  
416 department of the commonwealth, or any of the outstanding bonds of the commonwealth, or  
417 invested in bonds or interest-bearing notes or obligations of the commonwealth, or of the United  
418 States, or those for which the faith and credit of the United States are pledged for the payment of  
419 principal and interest (or in federal land bank bonds or joint stock farm bonds). The investments  
420 shall at all times be so made that all the assets of the trust fund shall always be readily  
421 convertible into cash when needed for the payment of benefits. The state treasurer shall have the  
422 power to dispose of securities or other properties belonging to the trust fund when needed for the  
423 payment of benefits.

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

(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. Within 3 months of the effective date of this chapter, the director shall publish for public comment and hearing, pursuant to section 2 of chapter 30A, proposed regulations necessary to establish procedures for the collection of contributions, and for the filing and timely processing of claims for benefits, under this chapter. Within 6 months of the effective date of this chapter, the department shall establish and administer a family and medical leave program, and commence the collection of contributions required under this chapter, provided, however, that no contributions shall be required before July 1, 2019.

(b) Within eighteen months of the effective date of this chapter, the department shall pay family and medical leave benefits as specified by this chapter. The department, by regulation, shall set time standards for application processing which shall provide for notifying applicants within 14 days of their eligibility for benefits under this chapter and shall pay benefits no less than 14 days after the eligibility determination unless that determination occurs more than 14 days before the onset of eligibility in which case benefits shall be paid as soon as eligibility begins. The department shall not require documentation of certification beyond the requirements established by this chapter.

(c) The department shall notify the employer within five business days of a claim being filed under this chapter, and shall use information sharing and integration technology to facilitate the disclosure of relevant information or records with the written consent of the individual applying for benefits. The department shall establish by regulation a system for appeals,

pursuant to chapter 30A, in the case of a denial of family or medical leave benefits. In establishing such system, the department shall provide for administrative review in an adjudicatory proceeding held pursuant to section 10 of chapter 30A and 801 CMR 1.02. Judicial review of any decision of the department rendered pursuant to administrative review under this subsection shall be commenced, pursuant to the provisions of section 14 of chapter 30A, within thirty days of the date of the receipt of the notice of such decision, except that such judicial review under this section shall be filed in the district court within the judicial district in which the covered individual lives, or is or was last employed, or has his or her usual place of business, and in such proceeding, the department shall be made a defendant.

(d) Information contained in the files and records pertaining to an individual under this chapter are confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, an individual or authorized representative of an individual may review the individual's records or receive specific information from the records upon the presentation of the individual's signed and dated authorization, which shall remain in force and effect until revoked in writing by such individual.

(e) The department shall conduct a public education campaign to inform workers, employers, self-employed individuals, and covered business entities 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 and covered business entity's obligations under this chapter. The department shall prepare and disseminate model multilingual forms to be used by employers, covered business entities, employees and self-employed individuals in the languages required for the workplace notice under subsection (a) of section 4 of this chapter.

(f) The executive office of labor and workforce development shall be responsible for the interpretation and enforcement of this chapter and shall promulgate rules and regulations pursuant thereto. An employer or covered business entity who fails or refuses make contributions as required in section 6 shall be assessed 0.63% of its total annual payroll for each year it so failed to comply, or fraction thereof, in addition to the total amount of benefits paid to covered individuals for whom it failed to make contributions. The rate of assessment imposed by this subsection shall be adjusted annually consistent with the provisions of subsection (a) of section 6 and subsection (e) of section 7.

(g) 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. 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 (through the application of attendance policies or otherwise), threatening, or in any other manner discriminating against an employee for exercising any right to which such employee is entitled under this chapter or with the purpose of interfering with the exercise of any right to which such employee is entitled under this chapter.

(b) It shall be unlawful for any employer to retaliate by discharging, firing, suspending, expelling, disciplining, threatening 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



490 this section, has testified or is about to testify in an inquiry or proceeding, or has given or is  
491 about to give information connected to any inquiry or proceeding relating to this section.

492 (c) Any negative change in the seniority, status, employment benefits, pay, or other  
493 terms or conditions of employment of an employee which occurs any time during a leave taken  
494 by an employee under this chapter, or during the six-month period following an employee's  
495 leave or restoration to a position pursuant to this section, or of an employee who has participated  
496 in proceedings or inquiries pursuant to this section within six months of the termination of  
497 proceedings shall be presumed to be retaliation under this section. Such presumption shall be  
498 rebutted only by clear and convincing evidence that such employer's action was not retaliation  
499 against the employee and that the employer had sufficient independent justification for taking  
500 such action, and would have in fact taken such action, in the same manner and at the same time  
501 the action was taken, regardless of the employee's use of leave, restoration to a position, or  
502 participation in proceedings or inquiries as described in this subsection. An employer found to  
503 have threatened, coerced or taken reprisal against any employee pursuant to this subsection shall  
504 rescind any adverse alteration in the terms of employment for such employee and shall offer  
505 reinstatement to any terminated employee and shall also be liable in an action brought under  
506 subsection (d) of this section.

507 (d) An employee or former employee aggrieved by a violation of this section or  
508 subsections (d) and (e) of section 2 of this chapter may, within 3 years, institute a civil action in  
509 the superior court. A party to the action shall be entitled to a jury trial. All remedies available in  
510 common law tort actions shall be available to prevailing plaintiffs and shall be in addition to any  
511 legal or equitable relief provided in this section. The court may: (i) issue temporary restraining  
512 orders or preliminary or permanent injunctions to restrain continued violations of this section;

(ii) reinstate the employee to the same position held before the violation or to an equivalent position; (iii) reinstate full fringe benefits and seniority rights to the employee; (iv) compensate the employee for 3 times the lost wages, benefits and other remuneration and the interest thereon; and (v) order payment by the employer of reasonable costs and attorneys' fees.

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 of the city council subject to its charter, in a town by a vote at town meeting, for an authority by a vote of its governing body, in a district, by a vote of the district in a district meeting, and by any other political subdivision or instrumentality, by a vote of its legislative body in accordance with its charter or enabling act.

SECTION 2. Clause (3) of subsection (c) of section 46 of chapter 151A of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the third comma in line 24 the following words:- family and medical leave,

SECTION 3. Section 1 of chapter 23 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking the word “and” from line 11, and inserting after the word “relations” in line 11, the following words:- , and the department of family and medical leave

SECTION 4. Subsection (b) of section 25 of chapter 23 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking the number “17” from line 16, and inserting after the word “of” in line 16 the following words:- 18; and further amended by inserting after the word “designee;” in line 19, the following words:- , and the director of the department of family and medical leave, or a designee;

535           SECTION 5. The department of family and medical leave shall promulgate regulations  
536 to implement this act not later than April 1, 2019.

537           SECTION 6. If any provision of this act or application thereof to any person or  
538 circumstance is judged invalid, the invalidity shall not affect other provisions or applications of  
539 the act which can be given effect without the invalid provision or application, and to this end the  
540 provisions of this act are declared severable.

541           SECTION 7. This act shall take effect on January 1, 2019.

FIRST TEN SIGNERS

<u>NAME</u>	<u>RESIDENCE</u>	<u>CITY OR TOWN</u>
Christina Barnes	29 Homestead Street, # 2	Boston
Paulena D. Bergeron	80 Bowles Street	Springfield
Kari L. Delia	157 Westminster Avenue	Arlington
Bethany Ann Fauteux	36 Dewolf Street	New Bedford
Deborah Frontierro	216 Washington Street	Gloucester
Khrystian E. King	9 Victoria Avenue	Worcester
Christine E. Lavault	14 Spring Street	Fairhaven
Matthew C. McLaughlin	50 Flint Street, # 3	Somerville
Marites M. MacLean	44 Townsend Street	Fitchburg
Jane A. Piercy	8 Still Street	Brookline

CERTIFICATE OF THE ATTORNEY GENERAL.

September 6, 2017.

Honorable William Francis Galvin  
*Secretary of the Commonwealth*  
One Ashburton Place, Room 1705  
Boston, Massachusetts 02108

RE: Initiative Petition No. 17-18: Initiative Petition for a Law Establishing  
A Paid Family And Medical Leave Insurance Program.

Dear Secretary Galvin:

I accordance with the provisions of Article 48 of the Amendments to the Massachusetts Constitution, I have reviewed the above-referenced initiative petition, which was submitted to me on or before the first Wednesday of August of this year.

I hereby certify that this measure is in proper form for submission to the people; that the measure is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people at either of the two preceding biennial state elections; and that it contains only subjects that are related or are mutually dependent and which are not excluded from the initiative process pursuant to Article 48, the Initiative, Part 2, Section 2.

In accordance with Article 48, I enclose a fair, concise summary of the measure.

Sincerely,

MAURA HEALEY,  
*Attorney General.*

## Summary of 17-18.

This proposed law would create a program to provide paid family and medical leave to Massachusetts workers.

Beginning 18 months after the effective date of the proposed law, covered workers could take family leave to care for with a child after the child's birth, adoption, or placement in foster care; to care for a seriously ill family member; or to address needs arising from a family member's active duty military service. Workers could also take medical leave to address their own medical conditions.

Covered workers taking family or medical leave would receive 90% of their average weekly earnings, up to \$1,000 per week. Beginning January 1, 2021, the weekly cap on benefits could be adjusted annually based on the Consumer Price Index published by the United States Department of Labor for the Boston metropolitan area.

Covered workers could take up to 16 weeks of family leave or 26 weeks of medical leave. A covered worker could not take more than a total of 26 weeks of both types of leave in one year. Paid leave could be taken intermittently and would run concurrently with leave taken under the state Parental Leave Act or the federal Family and Medical Leave Act.

The proposed law would create a trust fund into which employers would pay 0.63% of each employee's annual wages, up to half of which could be deducted from employee wages. Businesses that contract with self-employed individuals and any self-employed individuals who elect coverage would be required to pay one-half of the required 0.63% into the trust fund. No contributions would be required for wages above the Social Security contribution and benefit base limit. Contributions to the fund would begin six months after the effective date of the proposed law. Beginning October 1, 2021, the contribution rate would be reviewed and adjusted annually to ensure funding of at least 140% of the amounts paid out during the previous year.

The proposed law would cover both private and public employees, except that municipal employees would be covered only if the proposed law were accepted by vote of the city or town.

Employees would be required to give their employers two weeks' notice of their leave (or give notice as soon as practicable) and provide documentation supporting their need for leave. Employees

returning from family or medical leave would have the right to their positions or to equivalent positions. Employers would be prohibited from retaliating against employees based the use of family and medical leave. Employees could sue in Superior Court seeking three times their lost wages and benefits as well as court costs and attorney's fees for unlawful retaliation by an employer.

The proposed law would create the state Department of Family and Medical Leave, which would implement the proposed law through promulgating regulations, processing applications for benefits, and conducting hearings on denial of benefits. The department's decision could be appealed to District Court. The department would be required to prepare a multilingual notice regarding the proposed law, which employers and covered businesses would be required to post conspicuously and provide to employees and self-employed individuals.

The proposed law states that, if any of its parts were declared invalid, the other parts would stay in effect. The proposed law would take effect on January 1, 2019.