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## A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that Hawaii's working  
2 families are not adequately supported during times of caregiving  
3 and illness. While the Federal Family and Medical Leave Act of  
4 1993 (FMLA) allows twelve weeks of unpaid leave to employees who  
5 have worked at a business that employs fifty or more employees,  
6 the majority of Hawaii's workforce cannot afford to take unpaid  
7 leave when needing to provide care to a newborn, bond with a new  
8 child, or care for a family member with a serious health  
9 condition. The legislature further finds that the Hawaii law  
10 only extends four weeks of unpaid leave to employees working for  
11 a business with over one hundred employees.

12           Only 11 per cent of workers in the United States have  
13 access to paid family leave through their employers. Women, as  
14 primary caregivers of infants, children, and elderly parents,  
15 are affected disproportionately by the unavailability of paid  
16 family and medical leave. 247,000 people in Hawaii serve as  
17 family caregivers. Hawaii has the fastest growing population



1 over the age of sixty-five in the nation, and that number is  
2 expected to grow by 81 per cent by the year 2030. Of those who  
3 need leave but do not have that benefit, nearly one in three  
4 need leave to care for an ill spouse or elderly parent.

5 The purpose of this Act is to ensure that employees in  
6 Hawaii are provided family leave insurance benefits during times  
7 when they need to provide care for their families.

8 SECTION 2. Chapter 398, Hawaii Revised Statutes, is  
9 amended by adding nine new sections to be appropriately  
10 designated and to read as follows:

11 **"§398-A Designation of a designated person.** An employer  
12 may establish a process for a covered individual to designate a  
13 designated person within thirty days of the covered individual  
14 becoming eligible for benefits under this chapter. Thereafter,  
15 the employer shall permit the covered individual to make or  
16 change a designation, as applicable, on an annual basis. If a  
17 covered individual's employer establishes such a process, the  
18 covered individual shall comply with the process. If a covered  
19 individual's employer does not establish such a process, the  
20 covered individual may make or change a designation when filing  
21 a claim for family leave insurance benefits under this chapter.



1           §398-B Family leave trust fund; family leave insurance  
2 benefits. (a) There is established a trust fund to be known as  
3 the family leave trust fund.  
4           (b) The trust fund shall consist of employee contributions  
5 based on the employee's average weekly wage as well as interest  
6 earned and income, dividends, refunds, rate credits, and other  
7 returns received by the fund. The taxable rate of the  
8 contribution shall be in accordance with the employee  
9 contribution rate to the temporary disability insurance fund.  
10 Any and all sums contributed or paid from any source to the fund  
11 created by this section, and all assets of the fund including  
12 any and all interest and earnings of the same, are and shall be  
13 held in trust by the department for the exclusive use and  
14 benefit of the employee-beneficiaries, including to finance  
15 benefits, administration, outreach, education or study of or  
16 related to family leave insurance, and shall not be subject to  
17 appropriation for any other purpose.  
18           (c) The trust fund shall be used to provide a covered  
19 individual with up to twelve weeks per calendar year of paid  
20 family leave.



1        (d) The trust fund shall be under the control of and  
2 administered by the department.

3        **§398-C Eligibility for payment of benefits.** Family leave  
4 insurance benefits are payable to a person who:

5        (1) Is a covered individual, as defined in section 398-1;

6        or

7        (2) Meets one of the following requirements:

8        (A) Because of birth, adoption, or placement through  
9 foster care, is caring for a new child during the  
10 first year after the birth, adoption, or  
11 placement;

12        (B) Is caring for a family member with a serious  
13 health condition;

14        (C) Is caring for a qualifying service member who is  
15 the employee's next of kin; or

16        (D) Has a qualifying exigency, as defined in section  
17 398-1, arising out of the deployment of a family  
18 member or the employee; or

19        (3) An individual who is not currently employed, but who  
20 is a covered individual, as defined in section 398-1,



1 and meets one of the requirements listed in paragraph  
2 (2).

3 **§398-D Family leave insurance program.** (a) The

4 department shall establish and administer a family leave  
5 insurance program and pay family leave insurance benefits as  
6 specified in this chapter.

7 (b) The department shall establish procedures and forms  
8 for filing claims for benefits under this chapter. The  
9 department shall notify the employer of a covered individual who  
10 files a claim for benefits under this chapter that the claim has  
11 been filed.

12 (c) The department shall use information sharing and  
13 integration technology to facilitate the disclosure of relevant  
14 information or records including use of information and  
15 technology already existing in the temporary disability  
16 insurance program to the extent feasible following any  
17 requirements for consent to disclosure under state law.

18 (d) Information contained in the files and records  
19 pertaining to an individual under this chapter are confidential  
20 and not open to public inspection, other than to public  
21 employees in the performance of their official duties. However,



1 the individual or an authorized representative of an individual  
2 may review the records or receive specific information from the  
3 records on the presentation of the signed authorization of the  
4 individual.

5 **§398-E Report to the legislature.** Beginning July 1, 2017,  
6 the department shall report to the legislature no later than  
7 twenty days prior to the convening of each regular session on  
8 outreach efforts, projected and actual program participation,  
9 including percentage of those eligible for family leave  
10 insurance benefits under this chapter who receive them, premium  
11 rates, and fund balances.

12 **§398-F Outreach and education.** The department shall  
13 conduct a public outreach and education campaign to inform  
14 employees and employers regarding the availability of family  
15 leave insurance benefits. The department may use a proportion  
16 of the funds collected for the family leave insurance program in  
17 a given year to pay for the public education program. Outreach  
18 information shall be available in English and other languages  
19 spoken within the State.

20 **§398-G Coverage of self-employed.** (a) A self-employed  
21 person, including a sole proprietor, partner, or joint venturer,



1 may elect coverage under this chapter for an initial period of  
2 not less than three years or a subsequent period of not less  
3 than one year immediately following another period of coverage.  
4 The self-employed person shall file a notice of election in  
5 writing with the director, as required by the department. The  
6 election becomes effective on the date of filing the notice.

7 (b) A self-employed person who has elected coverage may  
8 withdraw from coverage within thirty days after the end of the  
9 three-year period of coverage, or at such other times as the  
10 director may prescribe by rule, by filing written notice with  
11 the director, such withdrawal shall take effect no sooner than  
12 thirty days after filing the notice.

13 **§398-H Wage withholding.** (a) Each employee shall make a  
14 contribution to the family leave trust fund per pay period, via  
15 wage withholding per pay period, transmitted by the employer to  
16 the trust fund.

17 (b) If there is a dispute between the employee and the  
18 employer relating to the withholding of wages as contributions  
19 for paid family leave benefits, either party may file with the  
20 director a petition for determination of the amount to be  
21 withheld. The matter shall be determined by an officer of the



1 department. If either party is dissatisfied with the  
2 determination, the party may petition for redetermination and  
3 thereupon the petition shall be transferred to the referee.

4 §398-I Weekly benefit amount. (a) Benefits shall be  
5 computed as weekly amounts in the manner provided by section  
6 392-22.

7 (b) In no case shall the weekly benefit amount exceed the  
8 maximum weekly benefit amount specified in section 386-31."

9 SECTION 3. Section 398-1, Hawaii Revised Statutes, is  
10 amended as follows:

11 1. By adding six new definitions to be appropriately  
12 inserted and to read:

13 "Application year" means the twelve-month period beginning  
14 on the first day of the calendar week in which an individual  
15 files an application for family leave insurance benefits.

16 "Covered individual" means any person who:

17 (1) Is an employee or has been an employee within the last  
18 twenty-six weeks if currently unemployed;

19 (2) Meets the requirements of this chapter and in rules  
20 implemented pursuant to this chapter; and





1       (3) Submits an application for family leave insurance  
2       benefits to the department.

3       "Designated person" means one person designated by a  
4 covered individual for whom the covered individual will provide  
5 care under this chapter if the designated person has a serious  
6 health condition.

7       "Family leave insurance benefits" means the benefits  
8 provided pursuant to this chapter.

9       "Family member" means a child, parent, person to whom the  
10 covered individual is legally married under the laws of any  
11 state, a biological, foster, or adopted sibling, or the spouse  
12 or reciprocal beneficiary of such a sibling, a reciprocal  
13 beneficiary, or a designated person.

14       "Qualifying exigency" means:

15       (1) Notice of deployment of a service member received  
16       within seven days of deployment;

17       (2) Attendance of military events or related activities;

18       (3) Child care or attendance of school activities, if due  
19       directly or indirectly to the active duty call or  
20       active duty status of a service member;



1        (4) To make financial or legal arrangements for a service  
2                    member's absence or as a result of the service  
3                    member's absence;

4        (5) Attending counseling provided by someone other than a  
5                    health care provider if the need for counseling arises  
6                    from the active duty call or active duty of a service  
7                    member; or

8        (6) To spend up to five days with a service member for  
9                    each instance of short-term, temporary rest and  
10                   recuperation leave during a period of deployment."

11        2. By amending the definitions of "child", "employer", and  
12 "parent" to read:

13        "Child" means an individual who is a biological, adopted,  
14 or foster son or daughter; a stepchild; ~~[or]~~ a legal ward of ~~[an~~  
15 ~~employee-]~~ a covered individual; a child of a reciprocal  
16 beneficiary; a grandchild; or a child of a covered individual  
17 who stands in loco parentis.

18        "Employer" means any individual or organization, including  
19 the State, any of its political subdivisions, any  
20 instrumentality of the State or its political subdivisions, any  
21 partnership, association, trust, estate, joint stock company,



1 insurance company, or corporation, whether domestic or foreign,  
 2 or receiver or trustee in bankruptcy, or the legal  
 3 representative of a deceased person, who employs one [~~hundred~~]  
 4 or more employees for each working day during each of twenty or  
 5 more calendar weeks in the current or preceding calendar year.

6 "Parent" means a biological, foster, or adoptive parent, a  
 7 parent-in-law, a stepparent, a legal guardian, a grandparent,  
 8 [~~or~~] a grandparent-in-law[-], a parent or grandparent of a  
 9 reciprocal beneficiary, or a person who stood in loco parentis  
 10 when the covered individual was a minor child."

11 SECTION 4. Section 398-3, Hawaii Revised Statutes, is  
 12 amended as follows:

13 1. By amending subsection (a) to read:

14 "(a) [~~An employee~~] A covered individual shall be entitled  
 15 to a total of [~~four~~] twelve weeks of family leave during any  
 16 calendar year [~~upon the birth of a child of the employee or the~~  
 17 ~~adoption of a child, or to care for the employee's child, spouse~~  
 18 ~~or reciprocal beneficiary, or parent with a serious health~~  
 19 ~~condition-]:~~

20 (1) To care for the covered individual's child within  
 21 twelve months of the child's birth, or foster



1 placement, or placement for adoption with the covered  
2 individual; or

3 (2) To care for the covered individual's family member  
4 with a serious health condition."

5 2. By amending subsection (e) to read:

6 "(e) Nothing in this chapter shall entitle an employee to  
7 more than a total of [~~four~~] twelve weeks of leave in any twelve-  
8 month period."

9 SECTION 5. Section 398-4, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "**§398-4 [~~Unpaid leave~~] Leave permitted; relationship to**  
12 **paid leave; sick leave.** (a) Pursuant to section 398-3, an  
13 employee shall be entitled to [~~four~~] twelve weeks of family  
14 leave. [~~The family leave shall consist of unpaid leave, paid~~  
15 ~~leave, or a combination of paid and unpaid leave. If an~~  
16 ~~employer provides paid family leave for fewer than four weeks,~~  
17 ~~the additional period of leave added to attain the four week~~  
18 ~~total may be unpaid.] An employer who provides paid family leave  
19 beyond what is required by this chapter may require that such  
20 leave run concurrently with the twelve weeks required under this~~



1 chapter, but shall not require the leave to be applied against  
2 accrued sick or vacation hours.

3 (b) Except as otherwise provided in subsection (c), an  
4 employee may elect to substitute any of the employee's accrued  
5 paid leaves, including but not limited to vacation, personal, or  
6 family leave for any part of the [~~four-week~~] twelve-week period  
7 in subsection (a).

8 [~~(c) An employer who provides sick leave for employees~~  
9 ~~shall permit an employee to use the employee's accrued and~~  
10 ~~available sick leave for purposes of this chapter; provided that~~  
11 ~~an employee shall not use more than ten days per year for this~~  
12 ~~purpose, unless an express provision of a valid collective~~  
13 ~~bargaining agreement authorizes the use of more than ten days of~~  
14 ~~sick leave for family leave purposes. Nothing in this section~~  
15 ~~shall require an employer to diminish an employee's accrued and~~  
16 ~~available sick leave below the amount required pursuant to~~  
17 ~~section 392-41; provided that any sick leave in excess of the~~  
18 ~~minimum statutory equivalent for temporary disability benefits~~  
19 ~~as determined by the department may be used for purposes of this~~  
20 ~~chapter.]~~



1        (c) No assignment, pledge, or encumbrance of any right to  
 2 benefits that are or may become due or payable under this  
 3 chapter shall be valid; and such rights to benefits shall be  
 4 exempt from levy, execution, attachment, garnishment, or any  
 5 other remedy whatsoever provided for the collection of debt. No  
 6 waiver of any exemption provided for in this section shall be  
 7 valid.

8        (d) Nothing in this chapter shall prevent a biological  
 9 mother receiving temporary disability benefits for recovery from  
 10 childbirth from applying for and receiving paid family leave for  
 11 the purpose of caregiving and bonding with her child after the  
 12 temporary disability time period has lapsed. For family leave  
 13 purposes, there shall be no waiting period for benefits to  
 14 begin.

15        (e) Benefits under the Family and Medical Leave Act of  
 16 1993 shall run concurrently with benefits under this chapter."

17        SECTION 6. Section 398-21, Hawaii Revised Statutes, is  
 18 amended by amending subsection (a) to read as follows:

19        "(a) Any individual claiming to be aggrieved by an alleged  
 20 unlawful act under this chapter, including the denial of family



1 leave insurance benefits, may file with the department a  
2 verified complaint in writing."

3 SECTION 7. Section 398-23, Hawaii Revised Statutes, is  
4 amended by amending subsection (d) to read as follows:

5 "(d) If the department determines after investigation that  
6 this chapter has been violated by an employer, the department  
7 shall inform the employer and endeavor to remedy the violation  
8 by informal methods, such as conference or conciliation. If the  
9 department determines that family medical leave insurance  
10 benefits have been wrongfully withheld, the department shall  
11 order immediate payment to the employee found entitled to those  
12 benefits."

13 SECTION 8. Section 398-24, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15 "(a) Upon appeal by a complainant or by the employer, the  
16 order issued by the department shall be subject to a de novo  
17 review by a hearings officer appointed by the director."

18 SECTION 9. Section 398-26, Hawaii Revised Statutes, is  
19 amended by amending subsection (b) to read as follows:

20 "(b) Relief under this section may include:



- 1           (1) The amount of any benefits under this chapter, wages,  
2           salary, employment benefits, or other compensation  
3           denied or lost to the employee by reason of the  
4           violation; or
- 5           (2) In a case in which benefits under this chapter, wages,  
6           salary, employment benefits, or other compensation  
7           have not been denied or lost to the employee, any  
8           actual monetary losses sustained by the employee as a  
9           direct result of the violation, such as the cost of  
10          providing care, up to a sum equal to [~~four~~] twelve  
11          weeks of wages or salary for the employee."

12           SECTION 10. There is appropriated out of the general  
13 revenues of the State of Hawaii the sum of \$300,000 or so much  
14 thereof as may be necessary for fiscal year 2015-2016 and the  
15 same sum or so much thereof as may be necessary for fiscal year  
16 2016-2017 for the purpose of hiring and employing an  
17 administrator, administrative assistant, and an accountant to  
18 perform functions relating to the administration of the family  
19 leave trust fund, including the oversight of payroll deductions,  
20 administrative processes, and payment to eligible employees.





1 The sums appropriated shall be expended by the department  
2 of labor and industrial relations for the purposes of this Act.

3 SECTION 11. In codifying the new sections added by section  
4 2 of this Act, the revisor of statutes shall substitute  
5 appropriate section numbers for the letters used in designating  
6 the new sections in this Act.

7 SECTION 12. This Act does not affect rights and duties  
8 that matured, penalties that were incurred, and proceedings that  
9 were begun before its effective date.

10 SECTION 13. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 14. This Act shall take effect on July 1, 2015.

13

INTRODUCED BY: George Takyon

John M. ...  
Tom Ben  
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# H.B. NO. 496

**Report Title:**

Family Leave Trust Fund; Family Leave Insurance Benefits;  
Appropriation

**Description:**

Establishes a family leave insurance program, which requires employees to make contributions into a trust fund to be used to provide employees with family leave insurance benefits in order to care for a designated person. Appropriates funds to DLIR to implement the program.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

