THE SENATE
THIRTIETH LEGISLATURE, 2020
STATE OF HAWAII

S.B. NO. 2491

A BILL FOR AN ACT

RELATING TO FAMILY LEAVE.

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

SECTION 1. The legislature finds that Hawaii's working families are not adequately supported during times of caregiving and illness. According to the 2018 Aloha United Way ALICE (Asset Limited Income Constrained Employed) Study, almost half of the families in Hawaii are living paycheck to paycheck.

While the Federal Family and Medical Leave Act of 1993 allows twelve weeks of unpaid leave to employees who have worked at a business that employs fifty or more employees, the majority of Hawaii's workforce cannot afford to take unpaid leave to care for a new child or attend to the needs of a family member with a serious health condition. Hawaii law, which offers a modest four-week extension of unpaid leave, is available only to employees of large employers having more than one hundred employees.

Only seventeen per cent of workers in the United States have access to paid family leave through their employers.

Women, as primary caregivers of infants, children, and elderly...
parents, are affected disproportionately by the absence of paid family and medical leave. In Hawaii, 247,000 people serve as family caregivers. Hawaii has the fastest growing population over the age of sixty-five in the nation, and that number is expected to grow by eighty-one per cent by the year 2030. Nearly a third of those who need but do not have access to family leave will need the time off to care for an ill spouse or elderly parent.

In short, most workers will need family leave at some point to care for family members, but very few can afford it.

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

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

"§398- Family leave insurance program. (a) The department shall establish and administer a family leave insurance program and pay family leave insurance benefits as specified in this chapter."
(b) The department shall establish procedures and forms for filing claims for family leave insurance benefits.

(c) The information collected and the files and records retained about a covered individual pursuant to this chapter, including the existence of a claim, shall be confidential and shall not be open to inspection; provided that:

1. An employee that applied for family leave insurance benefits or that employee's representative, upon presentation of an authorization signed by the employee to the department, shall be allowed to review any information, files, and records obtained by the department;

2. A public employee acting within the scope of the public employee's official duties shall be permitted to review the minimum necessary information, files, and records to accomplish the public employee's purpose for reviewing the information, files, and records; and

3. The department shall notify an employee's employer that an employee filed a claim pursuant to this
chapter within ___ days after the claim has been filed.

§398- Notice to employers. (a) An employer may require an eligible employee to give the employer written notice at least thirty days before commencing a period of family leave, medical leave or safe leave.

(b) An eligible employee may commence leave without thirty days advance notice if the leave is not foreseeable, as in circumstances including but not limited to:

(1) An unexpected serious health condition of the employee or a family member of the employee; or

(2) A premature birth, unexpected adoption or unexpected foster placement by or with the employee.

(c) If an eligible employee commences leave without prior notice under subsection (b) of this section, the employee must give oral notice to the employer within twenty-four hours of the commencement of the leave and must provide the written notice required under subsection (a) of this section within three days after the commencement of leave.

§398- Employment protection; retaliation prohibited. After returning to work after a period of family leave, an
eligible employee is entitled to be restored to the position of
employment held by the employee when the leave commenced, if
that position still exists, without regard to whether the
employer filled the position with a replacement worker during
the period of leave. If the position held by the employee at
the time leave commenced no longer exists, the employee is
entitled to be restored to any available equivalent position
with equivalent employment benefits, pay and other terms and
conditions of employment.

§398— Family leave insurance fund; family leave

insurance benefits. (a) There is established an insurance fund
to be known as the family leave insurance fund. The family
leave insurance fund shall be used to provide a covered
individual with up to sixteen weeks per calendar year of paid
family leave.

(b) The family leave insurance fund shall consist of
employer and employee contributions based on the employee's
average weekly wage, interest earned, income, dividends,
refunds, rate credits, and other returns received by the fund.
The taxable rate of the contribution shall be in accordance with
the contribution rate to the temporary disability insurance
fund.

(c) The family leave insurance fund shall be under the
control of and administered by the department. Any and all sums
contributed or paid from any source to the family leave fund,
and all assets of the fund including any and all interest and
earnings of the same, shall be held by the department for the
exclusive use and benefit of the employee-beneficiaries. The
fund shall be used to finance benefits, administration,
outreach, and education or study of family leave insurance. The
fund shall not be subject to appropriation for any other
purpose.

§398- Eligibility for payment of benefits. Family leave
insurance benefits are payable to:

(a) An employed covered individual; or

(b) An unemployed covered individual who meets one of the
following requirements:

(1) Because of birth, adoption, or placement through
foster care, is caring for a new child during the
first year after the birth, adoption, or placement;
(2) Is caring for a family member with a serious health condition;

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

(4) Has a qualifying exigency.

§398— Report to the legislature. Beginning July 1, 2020, the department shall report to the legislature no later than twenty days prior to the convening of each regular session on outreach efforts, projected and actual program participation, including the percentage of covered employees who received family leave insurance benefits, the premium rates, and fund balances.

§398— Outreach and education. The department shall conduct a public outreach and education campaign to inform employees and employers regarding the availability of family leave insurance benefits. The department may use a portion of the funds collected for the family leave insurance program in a given year to pay for the public education program, but no more than per cent per year or $ per year, whichever is greater. Outreach information shall be available in English and other languages spoken within the State.
§398- Coverage of self-employed. (a) A self-employed person, including a sole proprietor, partner, or joint venture partner, shall be permitted to elect coverage under this chapter by filing a notice of election in writing with the director, as required by the department, as follows:

(1) A self-employed person shall be permitted to elect coverage under this chapter for an initial period of not less than three years; and

(2) A self-employed person shall be permitted to elect no less than an additional year of coverage following the initial three-year period.

The election shall take effect on the date of filing the notice.

(b) A self-employed person who has elected coverage may withdraw from coverage within thirty days after the end of the three-year period of coverage, or at other times as the director may prescribe by rule, by filing a notice in writing with the director, as required by the department. The withdrawal shall take effect no sooner than thirty days after filing the notice.

§398- Wage withholding. (a) An employer may deduct and withhold contributions from each employee of up to one-half the cost of providing family leave insurance benefits, and the
employer shall provide for the remaining cost over the amount of
contributions of the employer's employees.

(b) If there is a dispute between the employee and the
employer relating to the withholding of wages as contributions
for family leave insurance benefits, either party may file a
petition for determination of the amount to be withheld with the
director. The matter shall be determined by the department. If
either an employer or employee is dissatisfied with the
department's determination, the aggrieved party shall be able to
petition for redetermination and thereupon the petition shall be
transferred to the referee.

§398- Weekly benefit amount. (a) The weekly benefit
amount shall be calculated as follows:

(1) If the individual's average weekly wage is fifty per
cent or less of the state average weekly wage, the
individual's weekly benefit is ninety per cent of the
individual's average weekly wage;

(2) If the individual's average weekly wage is more than
fifty per cent and less than one hundred per cent of
the state average weekly wage, the individual's weekly
benefit is seventy-five per cent of the individual's average weekly wage; or

(3) If the individual's average weekly wage is one hundred per cent or more of the state average weekly wage, the individual's weekly benefit is fifty per cent of the individual's average weekly wage.

(b) In no case shall the weekly benefit amount exceed the maximum weekly benefit amount of $1,000.00."

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

1. By adding five new definitions to be appropriately inserted and to read:

""Covered individual" means any person who:

(1) Is an employee, or is currently unemployed but has been an employee within the last twenty-six weeks;

(2) Meets the requirements set forth in section 392-25 and the requirements in the rules implemented pursuant to this chapter; and

(3) Submits an application for family leave insurance benefits to the department.
"Designated person" means a family member designated by a covered individual for whom the covered individual will provide care under this chapter if the family member has a serious health condition.

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

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

"Qualifying exigency" means a circumstance arising from a notice of deployment of a service member, received within seven days of deployment, or mandatory attendance of military events or related activities by the covered individual or the covered individuals' family member that requires the covered individual to:

(1) Provide child care or attendance of school activities, if due directly or indirectly to the active duty call or active duty status of a service member;
(2) Make financial or legal arrangements for a service member's absence or as a result of the service member's absence;

(3) Attend counseling provided by someone other than a health care provider if the need for counseling arises from the active duty call or active duty of a service member; or

(4) Spend up to five days with a service member for each instance of short-term, temporary rest and recuperation leave during a period of deployment."

2. By amending the definition of "child" to read:

"Child" means an individual who is a biological, adopted, or foster son or daughter; a stepchild; [or] a legal ward of [an employee] a covered individual; a child of a reciprocal beneficiary; a grandchild; or a child of a covered individual who stands in loco parentis; or a hanai parent."

3. By amending the definition of "employer" to read:

"Employer" means any individual or organization, including the State, any of its political subdivisions, any instrumentality of the State or its political subdivisions, any partnership, association, trust, estate, joint stock company,
insurance company, or corporation, whether domestic or foreign, or receiver or trustee in bankruptcy, or the legal representative of a deceased person, who employs one [hundred] or more employees for each working day during each of twenty or more calendar weeks in the current or preceding calendar year."

4. By amending the definition of "parent" to read:

"Parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, a grandparent, [or] a grandparent-in-law[or], a parent or grandparent of a reciprocal beneficiary, or a person who stands in loco parentis for a minor child."

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

1. By amending subsection (a) to read:

"(a) [An employee] A covered individual shall be entitled to a total of [four] sixteen weeks of family leave during any calendar year:

1. [1] Upon the birth of a child of the employee or the adoption of a child, or
(2) To care for the employee's child, spouse, reciprocal beneficiary, sibling, or parent with a serious health condition.]  
(1) To care for the covered individual's child within twelve months of the child's birth, foster placement with the covered individual, or placement for adoption with the covered individual; or  
(2) To care for a covered individual's family member with a serious health condition."

2. By amending subsection (e) to read:
"(e) Nothing in this chapter shall entitle an employee to more than a total of [four] sixteen weeks of leave in any twelve-month period."

SECTION 5. Section 398-4, Hawaii Revised Statutes, is amended to read as follows:
"§398-4 Unpaid leave permitted; relationship to paid leave; sick leave. (a) Pursuant to section 398-3, an employee shall be entitled to [four] sixteen weeks of family leave. [The family leave shall consist of unpaid leave, paid leave, or a combination of paid and unpaid leave. If an employer provides paid family leave for fewer than four weeks, the additional
An employer who provides paid family leave beyond what is required by this chapter may require that the leave run concurrently with the sixteen weeks required under this chapter, but shall not require the leave to be applied against accrued sick or vacation hours.

(b) Except as otherwise provided in subsection (c), an employee may elect to substitute any of the employee's accrued paid leaves, including but not limited to vacation, personal, or family leave for any part of the sixteen-week period in subsection (a).

[(c)] An employer who provides sick leave for employees shall permit an employee to use the employee's accrued and available sick leave for purposes of this chapter, provided that an employee shall not use more than ten days per year for this purpose, unless an express provision of a valid collective bargaining agreement authorizes the use of more than ten days of sick leave for family leave purposes. Nothing in this section shall require an employer to diminish an employee's accrued and available sick leave below the amount required pursuant to section 392-41, provided that any sick leave in excess of the
minimum statutory equivalent for temporary disability benefits
as determined by the department may be used for purposes of this
chapter.]
(c) No assignment, pledge, or encumbrance of any right to
benefits that are or may become due or payable under this
chapter shall be valid; and the rights to benefits shall be
exempt from levy, execution, attachment, garnishment, or any
other remedy whatsoever provided for the collection of debt. No
waiver of any exemption in this section shall be valid.
(d) Nothing in this chapter shall prevent a biological
mother who is receiving temporary disability benefits for
recovery from childbirth from applying for and receiving paid
family leave for the purpose of caregiving and bonding with her
child after the temporary disability time period has lapsed.
For family leave purposes, there shall be no waiting period for
benefits to begin.
(e) Benefits under the Family and Medical Leave Act of
1993 shall run concurrently with benefits under this chapter."
SECTION 6. Section 398-21, Hawaii Revised Statutes, is
amended by amending subsection (a) to read as follows:
"(a) Any individual claiming to be aggrieved by an alleged unlawful act under this chapter, including the denial of family leave insurance benefits, may file with the department a verified complaint in writing."

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

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

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

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

SECTION 9. Section 398-26, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:
"(b) Relief under this section may include:

(1) The amount of any family leave insurance benefits, wages, salary, employment benefits, or other compensation denied or lost to the employee by reason of the violation; or

(2) In a case in which family leave insurance benefits, wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to four weeks of wages or salary for the employee."

SECTION 10. Section 398-2, Hawaii Revised Statutes, is repealed.

"[§398-2—Inapplicability. The rights provided under this chapter shall not apply to employees of an employer with fewer than one hundred employees."

SECTION 11. The department shall establish rules pursuant to chapter 91 to implement the purposes of this Act.

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the sum of $300,000 or so much
thereof as may be necessary for fiscal year 2020-2021 for the
purpose of hiring and employing an administrator, administrative
assistant, and an accountant to perform functions relating to
the administration of the family leave trust fund, including the
oversight of payroll deductions, administrative processes, and
payment to eligible employees.

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

SECTION 13. This Act does not affect rights and duties
that matured, penalties that were incurred, and proceedings that
were begun before its effective date.

SECTION 14. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on July 1, 2020.

INTRODUCED BY: [Signature]
Report Title:
Family Leave Insurance; Appropriation

Description:
Provides family leave insurance benefits and extends period of family leave to sixteen weeks for businesses that employs one or more employees who meet the hourly qualifications.

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