

Subject Paid Family and Medical Leave Benefit Insurance Program
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Article 1: Family and Medical Benefits

Article 1 provides the substance of the new program under chapter 268B.

Section	Description
1	Family and medical insurance data [§ 13.719, subd. 7] Classifies data under chapter 268B as private or nonpublic under the Minnesota Data Practices Act, and allows sharing of the data between the Department of Employment and Economic Development and the Department of Labor and Industry.
2	Compliance orders [§ 177.27, subd. 4] Gives enforcement powers over chapter 268B to the Commissioner of Labor and Industry.
3	Required statement of earnings by employer [§ 181.032] Requires that employers include the amount deducted from employee paychecks for premiums under section 268B.12, subdivision 2, and the amount paid by employers as premiums be included on employee statement of earnings.
4	Use of data [§ 268.19, subd. 1] Allows data gathered under the administration of Minnesota's unemployment insurance statute to be used by the Family and Benefits Division of the Department of Employment and Economic Development as necessary to administer chapter 268B.
5	Definitions [§ 268B.01] Provides a number of definitions of terms used throughout chapter 268B.
6	Family and Medical Benefit Insurance Program creation [§ 268B.02] Subd. 1. Creation. Creates the program and assigns responsibility for administration to the commissioner of employment and economic development. Subd. 2. Creation of division. Creates a division within the Department of Employment and Economic Development for administration of the program and requires the commissioner to appoint a director of the division.

Section	Description
	<p>Subd. 3. Rulemaking. Allows the commissioner to adopt rules to implement the program under the normal, note and comment, rulemaking procedures that typically take 18 months to two years.</p> <p>Subd. 4. Account creation; appropriation. Creates an account in the special revenue fund and appropriates all money in the account to the commissioner to pay benefits under and administer the program.</p> <p>Subd. 5. Information technology services and equipment. Exempts the new department created under the bill from existing statutory requirements that the Office of MN.IT services be responsible for information technology and services.</p>
7	<p>Eligibility [§ 268B.03]</p> <p>Subd. 1. Applicant. Specifies that an applicant who meets one of the criteria under the program is eligible for benefits.</p> <p>Subd. 2. Wage credits. Requires an otherwise eligible applicant for benefits to have earned enough money through covered employment during the prior four complete quarters to qualify for unemployment insurance benefits. This is set in law as 5.3 percent of the state’s average annual wage rounded to the next lowest \$100 increment, which equals \$2,900 for 2019.</p> <p>Subd. 3. Seven-day qualifying event. Sets a requirement that benefits can only be paid for a qualifying event of, at least, seven days duration. The seven days need not be sequential. For example, if an otherwise eligible employee breaks her leg, and the injury requires three days of treatment in a hospital, two days recovery at home, and two follow-up visits to a doctor, that would count as a seven-day qualifying event. Leave and benefits for bonding with a child are not subject to this requirement.</p> <p>Subd. 4. Ineligible. Provides that an applicant is ineligible for benefits for any portion of a day in which the applicant worked for pay.</p> <p>Subd. 5. Certification by health care provider. Requires an application for benefits relating to an applicant’s own serious health condition, care of a relative with a serious health condition, or pregnancy contain a written certification by a qualified health care professional. “Qualified healthcare professional” is defined in the bill as a healthcare professional who, in the judgment of the commissioner of employment and economic development, is qualified to assess the need for the benefits sought. “Healthcare practitioner” is broadly defined and includes physicians, osteopaths, physician assistants, chiropractors (with restrictions), advanced practice registered nurses, registered nurses, optometrists, licensed psychologists, licensed independent clinical social workers, dentists, and podiatrists. The definition also includes that those professionals must be licensed and working within their scope of practice.</p>

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	<p>Subd. 6. Records release. Requires, for an applicant whose medical records are necessary to a determination of benefit eligibility, to provide the Department of Employment and Economic Development and the Department of Labor and Industry a legally effective release for those records. Data collected for the program is classified as private or nonpublic data elsewhere in the bill.</p> <p>Subd. 7. Self-employed applicant. Sets eligibility requirements for a self-employed individual who has elected coverage under the program. The election of coverage is addressed in section 16 of the bill.</p>
8	<p>Applications [§ 268B.04]</p> <p>Subd. 1. Process; deadline. Requires that all claims for benefits be filed within 90 days of the associated qualifying event, with exceptions for good cause, and that all claims include a certification supporting the right to benefits.</p> <p>Subd. 2. Certification. Sets requirement for the content of certifications, as required under subdivision 1, for each category of benefits and leave.</p>
9	<p>Determination of application [§ 268B.05]</p> <p>Requires the commissioner to respond to applications of benefits within two weeks of receipt. The section also requires an applicant whose application is denied to appeal the denial within 30 days, or the determination is final. The commissioner has one year from a determination of benefits to revisit the decision for error or misrepresentation.</p>
10	<p>Employer notification [§ 268B.06]</p> <p>Provides for content of notification to employer when an employee is granted benefits under the program.</p>
11	<p>Appeal process [§ 268B.07]</p> <p>This structure created under this section is generally similar to the structure of appeals under the state's unemployment insurance program.</p> <p>Subd. 1. Hearing. Requires the commissioner to appoint a chief benefit judge, who, in turn, is required to appoint a benefit judge each time an applicant or employer appeals a determination of benefits. This subdivision also allows the commissioner to adopt rules for appeals hearings and provides discretion for the commissioner over how those hearings are structured.</p> <p>Subd. 2. Decision. Requires a benefit judge to send a written decision, including reasons and finding of facts, upon completion of an appeals hearing.</p> <p>Subd. 3. Request for reconsideration. Allows any party or the commissioner to seek reconsideration of an appeals decision within 30 days of receipt of the decision.</p>

Section	Description
12	<p data-bbox="453 270 1382 338">Subd. 4. Appeal to court of appeals. Allows any final decision on a request for reconsideration be appealed to the Minnesota Court of Appeals.</p> <p data-bbox="453 375 1419 510">Subd. 5. Benefit judges. Requires the chief benefit judge and other benefit judges be attorneys, licensed in Minnesota, and employees of the Department of Employment and Economic Development. This subdivision also grants the power of the chief benefit judge to assign and reassign hearings to benefit judges.</p> <p data-bbox="355 562 602 590">Benefits [§ 268B.08]</p> <p data-bbox="453 606 1414 674">Subd. 1. Weekly benefit amount. Sets the formula for calculating weekly benefit amount under the program. That formula works as follows:</p> <ul data-bbox="505 711 1419 1409" style="list-style-type: none"><li data-bbox="505 711 1382 810">• An applicant’s weekly wage is calculated by finding the quarter, out of the prior four completed quarters, in which the applicant earned the most wages and dividing that wage amount by 13.<li data-bbox="505 848 1419 1058">• An applicant is entitled to a weekly benefit amount equal to 90 percent of her weekly wages up to 50 percent of the state’s average weekly wage (\$1,076 for 2019), plus benefits equal to 66 percent of weekly wages at 50 to 100 percent of the state’s average weekly wage, plus 55 percent of any weekly wages that exceed 100 percent of the state’s average weekly wage.<li data-bbox="505 1096 1411 1163">• Weekly benefits are capped at a maximum of the state’s average weekly wage (again, \$1,076 for 2019).<li data-bbox="505 1201 1406 1409">• As an example, an applicant earning \$40,000 per year (evenly divided into \$10,000 quarters) has an average weekly wage of \$769.23 (\$10,000 divided by 13). The state’s average weekly wage at the time of application is \$1,076 (with 50 percent equal to \$538). So, under the formula, the applicant would be entitled to \$636.81 ($0.9 \times \\$538 + 0.66 \times 231.23$). <p data-bbox="453 1446 1203 1474">Subd. 2. Timing of payment. Requires benefits be paid weekly.</p> <p data-bbox="453 1512 1422 1722">Subd. 3. Maximum length of benefits. Sets maximum amount of benefits an applicant may receive within a 52-week period. Specifically, the subdivision allows up to 12 weeks of benefits for care of a family member with a serious health condition, for a qualifying exigency, for safety leave, or for bonding and up to 12 weeks of benefits for pregnancy or a serious health condition of the applicant.</p> <p data-bbox="453 1759 1411 1894">Subd. 4. Minimum period for which benefits are payable. An applicant must accrue, at least seven days for which they are eligible for benefits before making a claim for benefits. After that, benefits may be paid out in single-day minimum increments.</p>

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13	<p data-bbox="453 275 1422 373">Subd. 5. Withholding of federal tax. If the I.R.S. finds benefits under the program to be taxable under federal law, and the applicant elects to have those federal taxes withheld, the commissioner must withhold the tax.</p> <p data-bbox="355 426 586 453">Leave [§ 268B.085]</p> <p data-bbox="453 470 1382 569">Subd. 1. Right to leave. Provides that an employee has a right to leave for any day, or portion of a day, in which the employee would be eligible for benefits under the chapter.</p> <p data-bbox="453 606 1382 705">Subd. 2. Notice to employer. Provides for notice to employers about the need for leave, modeled on similar provisions from the federal Family and Medical Leave Act.</p> <p data-bbox="453 743 1422 919">Subd. 3. Bonding leave. Provides that bonding leave begins at a time chosen by the employee, but such leave must begin within 12 months of the birth, adoption, or foster care placement of the child. There is an exception for children who must remain in the hospital longer than the child’s mother. In that case, the 12-month clock begins when the child leaves the hospital.</p> <p data-bbox="453 957 1422 1056">Subd. 4. Intermittent leave. Provides that employment leave may be taken on an intermittent or reduced-schedule, modeled on similar language from the federal Family and Medical Leave Act.</p>
14	<p data-bbox="355 1110 802 1138">Employment protections [§ 268B.09]</p> <p data-bbox="453 1155 1406 1215">Subd. 1. Retaliation prohibited. Prohibits retaliation for requesting or obtaining benefits or for exercising any right granted under chapter 268B.</p> <p data-bbox="453 1253 1333 1314">Subd. 2. Interference prohibited. Prohibits employer interference with an employee application for benefits.</p> <p data-bbox="453 1352 1406 1413">Subd. 3. Waiver of rights void. Voids any agreement to waive, or otherwise give up the right to benefits under chapter 268B.</p> <p data-bbox="453 1451 1357 1554">Subd. 4. No assignment of benefits. Voids any assignment of benefits under chapter 268B. This subdivision also exempts benefits from any type of debt collection.</p> <p data-bbox="453 1591 1406 1694">Subd. 5. Continued insurance. Requires employers to continue any insurance or health plan during an employee’s leave under the program. Employees continue to be responsible to pay any employee share of such program.</p> <p data-bbox="453 1732 1406 1835">Subd. 6. Reinstatement after leave. Entitles an employee on leave to reinstatement following the leave in a position with equivalent seniority, status, benefits, pay, and other terms and conditions.</p>

Section	Description
15	<p data-bbox="453 275 1398 373">Subd. 7. Remedies. Allows a person injured by a violation of section 268B.09 to bring a private lawsuit seeking damages, equitable remedies (such as reinstatement in a job), and attorney fees.</p> <p data-bbox="355 426 1065 453">Substitution of other plan; employer exclusion [§ 268B.10]</p> <p data-bbox="453 472 1419 642">Subd. 1. Application for substitution. Allows an employer to apply to the commissioner of employment and economic development to substitute a private plan for either, or both, the family and medical benefit programs under chapter 268B. Any private plan must confer the same rights, protections, and benefits as those conferred under chapter 268B.</p> <p data-bbox="453 680 1425 779">Subd. 2. Private plan requirements; medical benefit program. Sets requirements for a private, employer-provided medical benefit program that would allow the employer to substitute the private plan under subdivision 1.</p> <p data-bbox="453 819 1365 917">Subd. 3. Employer plan requirements; family benefit program. Sets requirements for a private, employer-provided family benefit program that would allow the employer to substitute the private plan under subdivision 1.</p> <p data-bbox="453 957 1349 1022">Subd. 4. Use of private insurance products. Clarifies that private insurance products may be used in the creation of a private plan.</p> <p data-bbox="453 1062 1398 1194">Subd. 5. Private plan approval and oversight fee. Sets an annual fee for employers utilizing private plans, equal to five percent of the amount of premiums an employer would have been liable for if they had not substituted a private plan.</p> <p data-bbox="453 1234 1425 1367">Subd. 6. Plan duration. Requires that private plans must be in effect for at least one year and continuously thereafter unless the commissioner approves a withdrawal. Employers can withdraw plans within 30 days of the effective date of a law increasing benefits under chapter 268B or a change in premium rates.</p> <p data-bbox="453 1407 1409 1505">Subd. 7. Appeals. Provides that employers may use the appeals process under section 268B.07 to appeal a decision by the commissioner regarding the use of a private plan.</p> <p data-bbox="453 1545 1419 1680">Subd. 8. Employees no longer covered. Provides the condition under which an employee is no longer covered by a private plan (termination of the employment relationship with the private-plan employer) and that such an employee is thereafter covered by the public insurance provisions of chapter 268B.</p> <p data-bbox="453 1719 1403 1816">Subd. 9. Posting of notice regarding private plan. Requires an employer with a private plan to notify affected employees following the requirements of section 268B.22.</p>

Section	Description
	<p>Subd. 10. Amendment. Provides the conditions under which the commissioner must approve an amendment to a private plan.</p> <p>Subd. 11. Successor employer. Provides for private plan continuation and termination when a business acquires an employer with a private plan. The acquiring business has a 90-day window after acquisition to terminate a private plan.</p> <p>Subd. 12. Revocation of approval by commissioner. Provides that the commissioner may terminate a private plan if certain conditions are met.</p> <p>Subd. 13. Employer penalties. Provides penalties that the Department of Labor and Industry may assess if an employer with a private plan violates chapter 268B.</p> <p>Subd. 14. Reports, information, and records. Requires employers with private plans to keep all records relating to the plan for six years and give them to the commissioner of employment and economic development upon request.</p> <p>Subd. 15. Audit and investigation. Allows the commissioner to investigate and audit opt-out plans under this section.</p>
16	<p>Self-employed election of coverage [§ 268B.11] Allows for self-employed people to elect participation in the program. Those electing to participate pay half of the employer premium under the program.</p>
17	<p>Premiums [§ 268B.12]</p> <p>Subd. 1. Employer. Requires all employers subject to the state's unemployment insurance statute to pay a yearly premium on employee wages, set in subdivision 4.</p> <p>Subd. 2. Employee charge back. Allows an employer to charge an employee up to 50 percent of the premiums paid by the employer based on that employee's wages.</p> <p>Subd. 3. Wages and payments subject to premium. Sets the maximum earnings on which premiums are assessed at the Social Security wage base. For 2019, that wage base is \$132,900. So, if the law were in effect today, employers and employees would pay the percentage premium set in this section on all earnings up to that amount.</p> <p>Subd. 4. Annual premium rates. Provides annual percentage rates of premiums. The rates are unspecified in this engrossment of the bill.</p> <p>Subd. 5. Premium rate adjustments. Sets the formula by which annual percentage rates of premiums increase or decrease each year. Under the formula, the commissioner must calculate 1.45 times the amount disbursed</p>

Section	Description
	<p>under the program during the prior year, ending on September 30. The amount remaining in the program account is subtracted from the resulting sum. The resulting difference is divided by twice the total wages in covered employment (an amount determined currently by the Department of Employment and Economic Development). The resulting quotient is rounded down to the nearest one-hundredth of one percent. The result is the premium rate for the following year unless it would cause the premium to go above the maximum, or fall below the minimum, limits set in subdivision 6.</p> <p>Subd. 6. Premium rate limits. Sets a maximum and minimum percentage rate for premiums, as yet unspecified in the bill.</p> <p>Subd. 7. Deposit of premiums. Requires all premiums collected be deposited in the account in the special revenue fund, established under section 268B.02, subdivision 4 (section 7 of this bill).</p> <p>Subd. 8. Nonpayment of premiums by employer. Clarifies that nonpayment of premiums by an employer do not affect an employee's right to benefits under chapter 268B.</p>
18	<p>Collection of premiums [§ 268B.13]</p> <p>Provides for treatment of premiums under chapter 268B, including with the language modeled from analogous sections under the state's unemployment insurance statutes.</p>
19	<p>Administrative costs [§ 268B.14]</p> <p>Allows the commissioner of employment and economic development to use up to seven percent of projected benefit payments for a calendar year for the administration of the program in that year and allows interagency agreements with the Department of Labor and Industry for transferring funds for enforcement of the chapter.</p>
20	<p>Public outreach [§ 268B.15]</p> <p>Requires the commissioner to use at least 0.5 percent of revenue collected under chapter 268B for outreach, education, and technical assistance about the program for employees and employers. At least half of the amount spent must be used for grants to community groups that will conduct the outreach, education, and technical assistance.</p>
21	<p>Applicant's false representations; concealment of facts; penalty [§ 268B.16]</p> <p>Sets penalties for applicants who intentionally misrepresent or omit facts in an effort to obtain benefits for which they do not qualify. The language is modeled on analogous language under the state's unemployment insurance statutes.</p>
22	<p>Employer misconduct; penalty [§ 268B.17]</p> <p>Sets circumstances and penalties for when an employer colludes with an employee to procure benefits for which the employee was not eligible and for when an employer</p>

Section	Description
	intentionally misrepresents or omits facts. The language is modeled on analogous language under the state's unemployment insurance statutes.
23	Records; audits [§ 268B.18] Requires employers to keep records related to the program that are prescribed by the commissioner. This section also grants the commissioner to conduct audits and investigations of employer, when necessary to administering chapter 268B, and sets penalties for failure to comply with such audits.
24	Subpoenas; oaths [§ 268B.19] Grants the commissioner power to administer oaths and issue subpoenas when necessary for the administration of chapter 268B.
25	Conciliation services [§ 268B.20] Allows the Department of Labor and Industry to offer conciliation services to help settle disputes that arise under chapter 268B.
26	Annual reports [§ 268B.21] Requires the commissioner of employment and economic development to annually report, to the legislative and executive branches, a number of items regarding the operation and finances of the program under chapter 268B.
27	Notice requirements [§ 268B.22] Requires employers to post notices, prepared by the commissioner of employment and economic development, regarding rights under chapter 268B. Employers must also provide separate notices to employees and contractors respectively.
28	Relationship to other leave; construction [§ 268B.23] Subd. 1. Concurrent leave. Provides that an employer may require leave taken under chapter 268B run concurrently with leave taken for the same purpose under the federal Family and Medical Leave Act or section 181.941 (Pregnancy and parenting leave). Subd. 2. Construction. Clarifies that nothing in chapter 268B is intended (1) to allow an employer to require an employee to exhaust accumulated employer-provided leave before taking leave under chapter 268B, or (2) to prohibit an employer from providing more generous benefits than those required under chapter 268B.
29	Small business assistance grants [§ 268B.24] Allows the commissioner to make grants to businesses with 50 or fewer employees to defray the cost of hiring replacement workers for employees on leave.

Section	Description
30	Benefits under chapter 268B [§ 290.0132] Classifies benefits under chapter 268B as a subtraction for state income tax purposes. This means benefits would not be subject to income tax at the state level.
31	Effective date

Article 2: Temporary Provisions and Appropriations

Article 2 provides general fund appropriations and creates a pilot program.

Section	Description
1	Appropriation Appropriates funds to the commissioners of employment and economic development and labor and industry for the program in fiscal year 2021 and allows that money be spent in fiscal year 2022 as well. Provides additional, unspecified appropriations for outreach, education, and technical assistance. The appropriation amounts are unspecified in this engrossment of the bill.
2	Effective date

Article 3: Family and Medical Leave Benefit As Earnings

Article 3 provides for treatment of benefits under the Minnesota Family Investment Program (MFIP) and other programs.

Section	Description
1	Parents receiving family and medical leave benefits [§ 256J.561] Exempts a parent receiving benefits under chapter 268B and participating in MFIP from the employment plan requirements of MFIP.
2	Eligibility of diversionary work program [§ 256J.95] Exempts single parents receiving benefits under chapter 268B from the diversionary work program requirements of MFIP.
3	Universal participation required [§ 256J.95] Exempts a parent, in a two-parent household, receiving benefits under chapter 268B from the MFIP diversionary work requirement, under certain circumstances.

Section	Description
4	Earned income [§ 256P.01] Defines benefits received under chapter 268B as earned income for the purposes of MFIP, general assistance, housing support services, and several other programs.



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