

A BILL FOR AN ACT

RELATING TO FAMILY LEAVE.

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. According to a 2018 report commissioned by Aloha
- 4 United Way, entitled "ALICE [Asset Limited, Income Constrained,
- 5 Employed] a Study of Financial Hardship in Hawaii", forty-two
- 6 per cent of families in Hawaii are living paycheck to paycheck.
- 7 While the federal Family and Medical Leave Act of 1993 allows
- 8 twelve weeks of unpaid leave to employees who have worked at a
- 9 business that employs fifty or more employees, the majority of
- 10 Hawaii's workforce cannot afford to take unpaid leave to care
- 11 for a new child or attend to the needs of a family member with a
- 12 serious health condition. Hawaii law, which offers a modest
- 13 four-week extension of unpaid leave, is available only to
- 14 employees of large employers with more than one hundred
- 15 employees.
- 16 The legislature further finds that in 2018, only seventeen
- 17 per cent of workers in the United States had access to paid



- 1 family leave through their employers. Women, as primary
- 2 caregivers of infants, children, and elderly parents, are
- 3 disproportionately affected by the absence of paid family and
- 4 medical leave. According to AARP Hawaii, there are
- 5 approximately 157,000 unpaid family caregivers in the State.
- 6 Hawaii has one of the fastest growing populations over the age
- 7 of sixty-five in the nation; from 2020 to 2030, the percentage
- 8 of people age sixty-five and over is expected to go from 19.1
- 9 per cent to 22.5 per cent of the State's population. Nearly a
- 10 third of those who need but do not have access to family leave
- 11 will need the time off to care for an ill spouse or elderly
- 12 parent.
- 13 The legislature additionally finds that the coronavirus
- 14 disease 2019 (COVID-19) spread globally and was declared a
- 15 pandemic by the World Health Organization on March 11, 2020.
- 16 Upon reaching Hawaii's shores, COVID-19 became a public health
- 17 emergency that infected thousands of people, overburdened
- 18 hospital capacities, created medical supply shortages, and
- 19 claimed the lives of numerous Hawaii residents. Enacting a
- 20 comprehensive family leave program would allow employees whose

1	family	members	are	impacted	hν	serious	health	conditions	to

- 2 provide adequate care for their loved ones.
- 3 The purpose of this Act is to ensure that employees in
- 4 Hawaii are provided family leave insurance benefits when they
- 5 need to provide care for their families.
- 6 SECTION 2. Chapter 398, Hawaii Revised Statutes, is
- 7 amended by adding ten new sections to be appropriately
- 8 designated and to read as follows:
- 9 "\$398- Family leave insurance program. (a) The
- 10 department shall establish and administer a family leave
- 11 insurance program and pay family leave insurance benefits as
- 12 specified in this chapter.
- (b) The department shall establish procedures and forms
- 14 for filing claims for family leave insurance benefits.
- 15 (c) The information collected and the files and records
- 16 retained about a covered individual pursuant to this chapter,
- 17 including the existence of a claim, shall be confidential and
- 18 shall not be open to inspection; provided that:
- 19 (1) An employee who applied for family leave insurance
- benefits or that employee's representative, upon
- 21 presentation of an authorization signed by the

1		employee to the department, shall be allowed to review
2		any information, files, and records obtained by the
3		department;
4	(2)	A public employee acting within the scope of the
5		public employee's official duties shall be permitted
6		to review the minimum necessary information, files,
7		and records to accomplish the public employee's
8		purpose for reviewing the information, files, and
9		records; and
10	(3)	The department shall notify an employee's employer
11		that an employee filed a claim pursuant to this
12		chapter within days after the claim has been
13		<u>filed.</u>
14	<u>§398</u>	- Notice to employers. (a) An employer may
15	require a	n eligible employee to give the employer written notice
16	at least	thirty days before commencing a period of family leave,
17	medical l	eave, or safe leave.
18	(b)	An eligible employee may commence leave without thirty
19	days' adv	ance notice if the leave is not foreseeable, as in
20	circumsta	nces including but not limited to:

1	(1)	An unexpected serious health condition of the employee
2		or a family member of the employee; or
3	(2)	A premature birth, unexpected adoption, or unexpected
4		foster placement by or with the employee.
5	(c)	If an eligible employee commences leave without prior
6	notice und	der subsection (b), the employee shall give oral notice
7	to the emp	ployer within twenty-four hours of the commencement of
8	the leave	and shall provide the written notice required under
9	subsection	(a) within three days after the commencement of
10	<u>leave.</u>	
4.4	5300	
11	<u>8398-</u>	Employment protection; retaliation prohibited.
12	***************************************	arning to work after a period of family leave, an
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12	After retu	arning to work after a period of family leave, an
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12 13 14 15 16 17	After return eligible	employee shall be entitled to be restored to the of employment held by the employee when the leave if that position still exists, without regard to the employer filled the position with a replacement ring the period of leave. If the position held by the entitle time the leave commenced no longer exists, the

1	§398- Family leave insurance fund; family leave
2	insurance benefits. (a) There is established an insurance fund
3	to be known as the family leave insurance fund. The family
4	leave insurance fund shall be used to provide a covered
5	individual with up to sixteen weeks per calendar year of paid
6	family leave.
7	(b) The family leave insurance fund shall consist of
8	employer and employee contributions based on the employee's
9	average weekly wage, interest earned, income, dividends,
10	refunds, rate credits, and other returns received by the fund.
11	The taxable rate of the contribution shall be in accordance with
12	the contribution rate to the temporary disability insurance
13	<u>fund.</u>
14	(c) The family leave insurance fund shall be under the
15	control of and administered by the department. All sums
16	contributed or paid from any source to the family leave fund,
17	and all assets of the fund including all interest and earnings,
18	shall be held by the department for the exclusive use and
19	benefit of the employee-beneficiaries. The fund shall be used

to finance benefits, administration, outreach, and education or

20

1	study of	famil	y leave insurance. The fund shall not be subject
2	to approp	riati	on for any other purpose.
3	<u>§398</u>	-	Eligibility for payment of benefits. Family
4	leave ins	uranc	e benefits shall be payable to an:
5	(1)	Empl	oyed covered individual; or
6	(2)	Unem	ployed covered individual who meets one of the
7		foll	owing 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			<pre>placement;</pre>
12		<u>(B)</u>	Is caring for a family member having a serious
13			health condition;
14		<u>(C)</u>	Is caring for a qualifying service member who is
15			the employee's next of kin; or
16		<u>(D)</u>	Has a qualifying exigency.
17	<u>§398</u>	<u>-</u>	Report to the legislature. The department shall
18	submit an	annu	al report to the legislature no later than twenty
19	days prio	r to	the convening of each regular session, beginning
20	with the	regul	ar session of 2023, on any outreach efforts and
- 21	projected	and	actual program participation, including the

- 1 percentage of covered employees who received family leave
- 2 insurance benefits, premium rates, and fund balances under the
- 3 <u>family leave insurance program established pursuant to this</u>
- 4 chapter.
- 5 §398- Outreach and education. The department shall
- 6 conduct a public outreach and education campaign to inform
- 7 employees and employers of the availability of family leave
- 8 insurance benefits. The department may use a portion of the
- 9 funds collected in a given year for the family leave insurance
- 10 program to pay for the public education program; provided that
- 11 the department shall use no more than per cent per year or
- 12 \$ per year, whichever is greater, for the public
- 13 education program. Outreach information shall be available in
- 14 English and other languages spoken within the State.
- 15 <u>\$398-</u> Coverage of self-employed. (a) A self-employed
- 16 person, including a sole proprietor, partner, or joint venture
- 17 partner, may elect coverage under this chapter by filing a
- 18 notice of election in writing with the director, as required by
- 19 the department, as follows:
- 20 (1) For an initial period of no less than three years; and

1	(2) Following the initial coverage period, no less than
2	one additional year of coverage;
3	provided that the election shall take effect on the date of
4	filing the notice.
5	(b) A self-employed person who has elected coverage may
6	withdraw from coverage within thirty days after the end of the
7	initial period of coverage, or at other times as the director
8	may prescribe by rule, by filing with the director a notice in
9	writing, as required by the department. The withdrawal shall
10	take effect no sooner than thirty days after filing the notice.
11	§398- Wage withholding. (a) An employer may deduct
12	and withhold contributions from each employee of up to one-half
13	the cost of providing family leave insurance benefits, and the
14	employer shall provide for the remaining cost over the amount of
15	contributions of the employer's employees.
16	(b) If there is a dispute between the employee and the
17	employer relating to the withholding of wages as contributions
18	for family leave insurance benefits, either party may file with
19	the director a petition for determination of the amount to be
20	withheld. The matter shall be determined by an officer of the
21	department. If either an employer or employee is dissatisfied

1	with the	department's determination, the aggrieved party may
2	appeal th	e petition for redetermination pursuant to the
3	procedure	under part V of chapter 392.
4	<u>§398</u>	- Weekly benefit amount. (a) The weekly benefit
5	amount sh	all be calculated as follows:
6	(1)	If the individual's average weekly wage is fifty per
7		cent or less of the state average weekly wage, the
8		individual's weekly benefit shall be ninety per cent
9		of the individual's average weekly wage;
10	(2)	If the individual's average weekly wage is more than
11		fifty per cent and less than one hundred per cent of
12		the state average weekly wage, the individual's weekly
13		benefit shall be seventy-five per cent of the
14		individual's average weekly wage; or
15	<u>(3)</u>	If the individual's average weekly wage is one hundred
16		per cent or more of the state average weekly wage, the
17		individual's weekly benefit shall be fifty per cent of
18		the individual's average weekly wage.
19	(b)	In no case shall the weekly benefit amount exceed the
20	maximum w	eekly benefit amount of \$1,000."

1	SECTION 3. Section 398-1, Hawaii Revised Statutes, is				
2	amended as follows:				
3	1. By adding five new definitions to be appropriately				
4	inserted and to read:				
5	""Covered individual" means any person who:				
6	(1) Is an employee or is currently unemployed but has been				
7	an employee within the last twenty-six weeks;				
8	(2) Meets the requirements set forth in section 392-25 and				
9	the requirements in the rules implemented pursuant to				
10	this chapter; and				
11	(3) Submits an application for family leave insurance				
12	benefits to the department.				
13	"Designated person" means a family member designated by a				
14	covered individual for whom the covered individual will provide				
15	care under this chapter if the family member has a serious				
16	health condition.				
17	"Family leave insurance benefits" means the benefits				
18	provided pursuant to this chapter.				
19	"Family member" means a child; parent; person to whom the				
20	covered individual is legally married under the laws of any				
21	state; biological, foster, or adopted sibling; the spouse or				



1	reciproca	l beneficiary of a sibling; or a reciprocal
2	beneficia	ry.
3	"Qua	lifying exigency" means a circumstance arising from a
4	notice of	deployment of a service member received within seven
5	days of d	eployment, or mandatory attendance of military events
6	or relate	d activities by the covered individual or the covered
7	individua	l's family member that requires the covered individual
8	to:	
9	(1)	Provide child care or attend school activities, if due
10		directly or indirectly to the active duty call or
11		active duty status of a service member;
12	(2)	Make financial or legal arrangements for a service
13		member's absence or as a result of the service
14		<pre>member's absence;</pre>
15	<u>(3)</u>	Attend counseling provided by someone other than a
16		health care provider if the need for counseling arises
17		from the active duty call or active duty of a service
18		member; or
19	(4)	Spend up to five days with a service member for each
20		instance of short-term, temporary rest and
21		recuperation leave during a period of deployment."

- 1 2. By amending the definition of "child" to read:
- ""Child" means an individual who is a biological, adopted,
- 3 or foster son or daughter; a stepchild; [or] a legal ward of [an
- 4 employee.] a covered individual; a child of a reciprocal
- 5 beneficiary; a grandchild; a child of a covered individual who
- 6 stands in loco parentis; or a hanai parent."
- 7 3. By amending the definition of "employer" to read:
- 8 ""Employer" means any individual or organization, including
- 9 the State, any of its political subdivisions, any
- 10 instrumentality of the State or its political subdivisions, any
- 11 partnership, association, trust, estate, joint stock company,
- 12 insurance company, or corporation, whether domestic or foreign,
- 13 or receiver or trustee in bankruptcy, or the legal
- 14 representative of a deceased person, who employs one [hundred]
- 15 or more employees for each working day during each of twenty or
- 16 more calendar weeks in the current or preceding calendar year."
- 4. By amending the definition of "parent" to read:
- 18 ""Parent" means a biological, foster, or adoptive parent, a
- 19 parent-in-law, a stepparent, a legal guardian, a grandparent,
- 20 [or] a grandparent-in-law[-], a parent or grandparent of a

1	reciprocal	beneficiary, or a person who stands in loco parentis
2	for a mino	or child."
3	SECTI	ION 4. Section 398-3, Hawaii Revised Statutes, is
4	amended as	s follows:
5	1. F	By amending subsection (a) to read:
6	"(a)	[An employee] A covered individual shall be entitled
7	to a total	of [four] sixteen weeks of family leave during any
8	calendar y	year:
9	[(1)	Upon the birth of a child of the employee or the
10		adoption of a child; or
11	(2)	To care for the employee's child, spouse, reciprocal
12		beneficiary, sibling, grandchild, or parent with a
13		serious health condition.
14	(1)	To care for the covered individual's child within
15		twelve months of the child's birth, foster placement
16		with the covered individual, or placement for adoption
17		with the covered individual; or
18	(2)	To care for a covered individual's family member with
19		a serious health condition."
20	2. I	By amending subsection (e) to read:

1 "(e) Nothing in this chapter shall entitle [an employee] a 2 covered individual to more than a total of [four] sixteen weeks 3 of leave in any twelve-month period." 4 SECTION 5. Section 398-4, Hawaii Revised Statutes, is 5 amended to read as follows: 6 "§398-4 Unpaid leave permitted; relationship to paid 7 leave; sick leave. (a) Pursuant to section 398-3, [an 8 employee] a covered individual shall be entitled to [four] 9 sixteen weeks of family leave. [The family leave shall consist 10 of unpaid leave, paid leave, or a combination of paid and unpaid 11 leave. If an employer provides paid family leave for fewer than 12 four weeks, the additional period of leave added to attain the 13 four-week total may be unpaid.] An employer who provides paid 14 family leave beyond what is required by this chapter may require 15 that the leave run concurrently with the sixteen weeks required 16 under this chapter; provided that the employer shall not require **17** the leave to be applied against accrued sick or vacation hours. 18 Except as otherwise provided in subsection (c), [an 19 employee] a covered individual may elect to substitute any of 20 the [employee's] covered individual's accrued paid leaves, 21 including but not limited to vacation, personal, or family

leave, for any part of the [four-week] sixteen-week period in 1 2 subsection (a). 3 [(c) An employer who provides sick leave for employees 4 shall permit an employee to use the employee's accrued and available sick leave for purposes of this chapter; provided that 5 6 an employee shall not use more than ten days per year for this 7 purpose, unless an express provision of a valid collective 8 bargaining agreement authorizes the use of more than ten days of 9 sick leave for family leave purposes. Nothing in this section 10 shall require an employer to diminish an employee's accrued and 11 available sick leave below the amount required pursuant to section 392-41; provided that any sick leave in excess of the 12 13 minimum statutory equivalent for temporary disability benefits 14 as determined by the department may be used for purposes of this 15 chapter.] 16 (c) No assignment, pledge, or encumbrance of any right to 17 benefits that is or may become due or payable under this chapter 18 shall be valid; and any right to benefits shall be exempt from 19 levy, execution, attachment, garnishment, or any other remedy 20 whatsoever provided for the collection of debt. No waiver of 21 any exemption in this section shall be valid.

- 1 (d) Nothing in this chapter shall prevent a biological
- 2 mother who is receiving temporary disability benefits for
- 3 recovery from childbirth from applying for and receiving paid
- 4 family leave for the purpose of caregiving and bonding with her
- 5 child after the temporary disability time period has lapsed.
- 6 For family leave purposes, there shall be no waiting period for
- 7 benefits to begin.
- 8 (e) Benefits under the Family and Medical Leave Act of
- 9 1993 shall run concurrently with benefits under this chapter."
- 10 SECTION 6. Section 398-21, Hawaii Revised Statutes, is
- 11 amended by amending subsection (a) to read as follows:
- "(a) Any individual claiming to be aggrieved by an alleged
- 13 unlawful act under this chapter, including the denial of family
- 14 leave insurance benefits, may file with the department a
- verified complaint in writing."
- 16 SECTION 7. Section 398-23, Hawaii Revised Statutes, is
- 17 amended by amending subsection (d) to read as follows:
- "(d) If the department determines after investigation that
- 19 this chapter has been violated $[\tau]$ by an employer, the department
- 20 shall inform the employer and endeavor to remedy the violation
- 21 by informal methods, such as conference or conciliation. If the



1	department of	determines that family medical leave insurance
2	benefits hav	ve been wrongfully withheld, the department shall
3	order immedi	ate payment to the covered individual found to be
4	entitled to	those benefits."
5	SECTION	N 8. Section 398-24, Hawaii Revised Statutes, is
6	amended by a	amending subsection (a) to read as follows:
7	"(a) (Jpon appeal by <u>a complainant or</u> the employer, the
8	order issued	d by the department shall be subject to a de novo
9	review by a	hearings officer appointed by the director."
10	SECTION	N 9. Section 398-26, Hawaii Revised Statutes, is
11	amended by a	amending subsection (b) to read as follows:
12	"(b) F	Relief under this section may include:
13	(1) Th	ne amount of any family leave insurance benefits,
14	Wá	ages, salary, employment benefits, or other
15	CC	ompensation denied or lost to the employee by reason
16	oi	f the violation; or
17	(2) Ir	n a case in which <u>family leave insurance benefits</u> ,
18	Wa	ages, salary, employment benefits, or other
19	CC	ompensation have not been denied or lost to the
20	er	mployee, any actual monetary losses sustained by the
21	er	mployee as a direct result of the violation, such as

1 the cost of providing care, up to a sum equal to four 2 weeks of wages or salary for the employee." 3 SECTION 10. Section 398-2, Hawaii Revised Statutes, is 4 repealed. 5 ["[\$398-2] Inapplicability. The rights provided under 6 this chapter shall not apply to employees of an employer with 7 fewer than one hundred employees."] 8 SECTION 11. The department of labor and industrial 9 relations shall adopt rules pursuant to chapter 91, Hawaii 10 Revised Statutes, to implement the purposes of this Act. 11 SECTION 12. There is appropriated out of the general 12 revenues of the State of Hawaii the sum of \$300,000 or so much 13 thereof as may be necessary for fiscal year 2022-2023 for the 14 purpose of hiring and employing an administrator, administrative 15 assistant, and accountant to perform functions relating to the 16 administration of the family leave insurance program, including 17 the oversight of payroll deductions, administrative processes, 18 and payment to eligible employees. 19 The sum appropriated shall be expended by the department of 20 labor and industrial relations for the purposes of this Act.

- 1 SECTION 13. This Act does not affect rights and duties
- 2 that matured, penalties that were incurred, and proceedings that
- 3 were begun before its effective date.
- 4 SECTION 14. Statutory material to be repealed is bracketed
- 5 and stricken. New statutory material is underscored.
- 6 SECTION 15. This Act shall take effect on July 1, 2022.

7

INTRODUCED BY:

JAN 1 8 2022

H.B. NO. \500

Report Title:

Family Leave Insurance Program; Family Leave Insurance Benefits; Appropriation

Description:

Requires the department of labor and industrial relations to establish and administer a family leave insurance program. Provides family leave insurance benefits and extends the period of family leave to 16 weeks for businesses that employ one or more employees who meet the hourly qualifications. Appropriates funds.

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