

## **Enabling Legislation for Twin State Voluntary Leave Plan**

**This legislative language is excerpted from the Governor’s proposed House Bill 2. The full version of the Governor’s proposed House Bill 2 will be delivered to the legislature by the end of next week, the week of February 18<sup>th</sup>.**

1. The Twin State Voluntary Leave Plan. Amend RSA 21-I by inserting after section 95 the following new sections:

21-I: 96 The Twin State Voluntary Leave Plan. - There is hereby established the Twin State Voluntary Leave Plan, which shall be implemented as set out in this subdivision and as provided in RSA 282-B.

21-I: 96-a Purpose and Policy. – The purpose of this subdivision is to leverage the purchasing power and economies of scale available to the state when it is acting as purchaser on behalf of state employees in order to make available to other private and public employers in the state, on a voluntary basis, advantageously priced Family and Medical Leave Insurance (FMLI) wage replacement benefits. By purchasing FMLI coverage for state employees through the medium of commercial insurance and by acting as premium aggregator for individuals and smaller employers, the state will position itself to create a market for advantageously priced FMLI benefits. In order to derive additional purchasing power and economies of scale above what is available through a single state solution, this subdivision also authorizes the Department of Administrative Services to jointly procure with the Vermont Department of Human Resources an FMLI insurance contract or contracts that provide wage replacement benefits, contingent upon each state enacting appropriately similar authorizing legislation. By this means, it is the intent of this subdivision to significantly increase the number of employees in the state who have access to FMLI wage replacement benefits. The social benefits of increasing the rate of FMLI coverage include attracting and retaining workers, including younger workers, to the state; enabling parents to bond with biological, adopted, or foster children, helping to meet the needs of an aging population; advancing the health of the state’s workforce and workplace stability; and enhancing worker retention and productivity. Many larger employers provide paid FMLI benefits through self-insurance, but this is not feasible for most mid-sized and smaller businesses. Over 90% of New Hampshire and Vermont businesses have fewer than 50 employees and face difficulties associated with providing paid FMLI to their employees. The general court therefore finds that it is in the public interest for the state to strategically use its purchasing power to establish a marketplace in the state for advantageously priced FMLI wage replacement benefits.

21-I: 96-b Definitions. – In this subdivision:

- I. "Child" has the same meaning as "son or daughter" in 29 U.S.C. section 2611(12).
- II. "Commissioner" means the commissioner of the department of administrative services.
- III. "Department" means the department of administrative services.
- IV. "Family member" means a "child" as defined in RSA 21-I: 96-b I, a biological, adoptive or foster parent, stepparent, or legal guardian of the child or the child’s spouse or domestic partner,

a biological, adoptive, or foster grandparent or step grandparent, or a spouse or domestic partner under RSA 457.

V. "Family and medical leave" means leave from work:

- (a) Because of the birth of a child of the employee, within the past 12 months; or within the past 12 months;
- (b) Because of the placement of a child with the employee for adoption or fostering within the past 12 months;
- (c) Because of a serious health condition of a family member;
- (d) Because of a serious health condition of the employee that isn't related to employment; or
- (e) Because of any qualifying exigency arising from foreign deployment with the Armed Forces, or to care for a service member with a serious injury or illness as permitted under the federal family and medical leave act, 29 U.S.C. section 2612(a)(1)(E) and 29 C.F.R. section 825.126(a)(1) through (8), as they existed on October 19, 2017, for family members as defined in paragraph VIII.

X. "FMLI" means family and medical leave insurance providing wage replacement benefits under specified conditions.

XI. "Family and Medical Leave Act" means the federal Family and Medical Leave Act of 1993, Pub.L. 103-3 (29 U.S.C. § 2601 et seq.).

XII. "Serious health condition" means any illness covered by the Family and Medical Leave Act including treatment for addiction as prescribed by a treating clinician, consistent with American Society of Addiction Medicine criteria, as well as treatment for a mental health condition, consistent with American Psychiatric Association criteria.

XIII. "State rate" means the per employee premium amount that is charged by the successful bidder or bidders for the state contract for FMLI coverage for state government employees as provided in this subdivision. The state rate shall be expressed as a percentage of wages.

21-I: 96-c Contracting and Administrative Authority. –

I. The commissioner shall be authorized to solicit proposals for, negotiate, enter into and administer group insurance contracts with duly authorized accident and life insurance carriers as necessary and appropriate to provide to qualifying state employees, at state expense and at no cost to such employees, an FMLI plan of wage replacement as described in this subdivision. This authorization is contingent upon the acceptance of this plan through the collective bargaining process by the authorized union representatives of state employees and its inclusion in the collective bargaining agreement.

II. The state shall provide to all permanent state employees wage replacement coverage for qualified leave, which shall be available for the same types of leave as protected under the Family and Medical Leave Act. This shall include leave for:

- (a) the birth of a child and to care for the newborn child within one year of birth;

the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;

(b) caring for the employee's spouse, child, or parent who has a serious health condition; a serious health condition that makes the employee unable to perform the essential functions of his or her job; or

(c) any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty," or to care for a covered service-member with a serious injury or illness if the eligible employee is the service-member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

III. The wage replacement benefits under this FMLI plan shall be structured as follows:

(a) Eligible employees shall receive 60% of their average weekly wage;

(b) The maximum duration of wage replacement shall be six weeks per year, with no minimum duration required;

(c) Wages used to determine the 60% FMLI coverage shall be capped at the amount of the Social Security Taxable Wage Maximum as amended from time to time.

IV. The commissioner shall establish, through his discretionary authority in administering the request for information and the request for proposals process, the following additional elements of the benefit structure consistent with the purposes and policy of this subdivision:

(a) The base period by which the average weekly wage shall be determined.

(b) The tenure requirement, expressed in terms of months of work, before an employee is eligible to be covered—provided, however, that no tenure requirement shall apply to an employee who has already met the requirement and then changes jobs.

(c) A waiting period or elimination period—provided, however, that a waiting or elimination period shall not be a required element of the benefit structure, and the commissioner shall have authority to implement a plan with no such requirement.

21-I: 96-d State Employee Coverage Linked to Coverage Offerings for Other Employers. –

The commissioner shall include in the request for proposals for FMLI benefits for state employees a requirement that the winning bidder or winning bidders shall, as a condition of the state contract, also offer the same FMLI plan to private employers and other public employers and individual employees on the following terms:

I. Employers with 100% employee enrollment shall receive the state rate. In order to make the state rate available to other private and public employers, a carrier must offer the same FMLI coverage for a rate that is based on the same percentage of wages used for the state employee group which is then applied to the non-state group using the wages of each participating employee in that group.

II. Employers with 20 employees or more shall contract directly with the winning bidder or bidders.

III. Employers with fewer than 20 employees shall contract indirectly with the winning bidder or bidders through the purchasing pool for family and medical leave insurance authorized under RSA 282-B and administered by the Department of Employment Security.

IV. Employers that have less than 100% employee enrollment but more than any required minimum participation rate shall receive a scaled rate approved by the commissioner based on their participation rate—provided, however, that this factor shall in no case exceed the state rate by a ratio of 1.25 to 1.

V. Individuals who work for employers who choose not to offer FMLI coverage under this subdivision or who fail to meet minimum participation requirements and who do not offer an FMLI benefit that is at least equivalent to the Twin State Voluntary Leave Plan shall have the opportunity to contract indirectly with the winning bidder or bidders through the purchasing pool for family and medical leave insurance authorized under RSA 282-B and administered by the Department of Employment Security. Rates for this group of individuals shall be limited in the amount by which they can exceed the state rate by a factor to be established by the commissioner—provided, however, that this factor shall in no case exceed the state rate by a ratio of 2 to 1.

VI. The commissioner shall establish, through his discretionary authority in administering the request for information and the request for proposals process, the following additional elements of the benefit structure and plan administration specifically for employees of non-state employers consistent with the purposes and policy of this subdivision:

- (a) The minimum participation requirement, if any—provided, however, that in no event shall the minimum participation requirement exceed 50%.
- (b) The parameters for open enrollment periods.
- (c) Procedures for contributory plans, partially contributory plans, and non-contributory plans.
- (d) Procedures for payroll deduction and premium remittance.

21-I: 96-e Conditions of Non-State Employer Participation. – Participation in the plan by non-state employers shall be voluntary. In addition, non-state employers may choose to provide FMLI at no cost to their employees or on a contributory or partially contributory basis.

21-I: 96-f Twin State Voluntary Leave Plan Joint Procurement Process. – The commissioner is hereby authorized to enter into an interstate compact whereby the Department will jointly procure with the Vermont Department of Human Resources an FMLI insurance contract or contracts conforming to this subdivision provided that each state enact appropriately similar authorizing legislation. It is the intent of this subdivision that the authority to enter into a compact and to engage in a joint procurement process herein delegated to the Department and the Vermont Department of Human Resources shall constitute an exercise of governing authority that is squarely within those powers reserved to the states under the federal constitution and shall not operate in any way as an infringement on federal authority or on the authority of any other state, nor, for this reason, shall the compact require congressional approval. The compact shall be memorialized through a memorandum agreement setting out the governing principles that apply to the two agencies and the two states and providing the terms and conditions for the joint

procurement process. The memorandum agreement shall be approved by the governor and council and the joint fiscal committee prior to implementation. Under this agreement, the Commissioner shall be authorized to issue a joint request for proposals with the Vermont Department of Human Resources to secure FMLI coverage for all eligible employees of the states of New Hampshire and Vermont and to make advantageously priced coverage available to all other private and public employers in the twin states as provided in this subdivision and in the Vermont enabling legislation subject to all of the requirements contained herein and therein. The Department and the Vermont Department of Human Resources shall jointly evaluate the proposals received in response to the request for proposals and jointly contract with an insurance carrier or carriers to provide FMLI coverage. The contract with the winning bidder or bidders shall be subject to governor and council approval. The selected insurance carrier(s) shall be licensed by the States of New Hampshire and Vermont and in good standing in both states. The selected insurance carrier(s) shall be subject to all applicable insurance laws and regulations of the States of New Hampshire and Vermont, and the rates and forms for the FMLI contracts shall be filed for approval with the insurance commissioners of both states. If the Vermont legislature does not enact appropriately similar authorizing legislation, then the commissioner shall proceed under this subdivision on a single state basis.

21-I: 96-g The Family and Medical Leave Insurance Advisory Board. – There is hereby created the Family and Medical Leave Insurance Advisory Board within the department which shall hereinafter be called the FMLI Advisory Board. The FMLI Advisory Board shall consist of 9 members to be appointed, with the exception of the legislative members, by the governor. Three of the appointees of this Advisory Board shall be persons who, because of their vocations, employment or affiliations, shall be classed as representing the point of view of employers; 3 shall be persons who, because of their vocations, employment or affiliations, shall be classed as representing the point of view of employees; one shall be a senator appointed by the senate president; one shall be a representative appointed by the speaker of the house; the remaining appointee, who shall be designated as chairman, shall be a person whose training and experience qualify her or him to deal with the problems of FMLI procurement, eligibility, benefit design, and program administration. Such Advisory Board shall meet no later than 45 days after each calendar quarter and aid the commissioner in formulating policies and discussing problems related to the implementation and administration of this subdivision and RSA 282-B and in assuring impartiality and freedom from political influence in the solution of such problems. Advisory Board meetings shall provide opportunity for public comment.

21-I: 96-h Report and Outreach. –

I. Working in coordination with the commissioner of administrative services as provided in RSA 282-B: 5 I., the Department shall jointly produce, on an annual basis, a summary report on the Twin State Voluntary Leave Plan. This report shall be made public and delivered to the governor, senate president, and speaker of the house of representatives. It shall include but not be limited to, a description of progress in carrying out the processes contemplated under this subdivision, progress in improving the rate of FMLI coverage of employees in the state, and recommendations for more fully achieving the purposes and policy goals of this subdivision.

II. Working in coordination with the department of employment security as provided in RSA 282-B: 5 II., the department shall jointly develop and implement an outreach program to ensure that employers who benefit from sponsoring FMLI coverage for their employees and individuals who may be eligible to receive FMLI coverage under this subdivision are made aware of this program. Outreach information shall explain in an easy to understand format, eligibility requirements, benefit structures, and the process for accessing coverage and enrolling individuals.

21-I: 96-j Rulemaking. – The commissioner may adopt rules, pursuant to RSA 541-A, as deemed necessary for the implementation of this chapter.

21-I: 96-k Program Start-up. – The request for proposals for FMLI coverage as described in this subdivision shall be issued no later than September 30, 2019. The FMLI coverage as described in this subdivision shall be in place for state government employees and available for purchase by other public and private employers and individuals by July 1, 2020.

2. Exemption from state premium tax. Amend RSA 400-A:34 I. to read as follows:

400-A:34 Exemption; Abatement. –

I. (a) The provisions of RSA 400-A:31 and 32 shall not apply to mutual insurance companies that operate on an assessment plan and require as a condition for granting insurance the signing of a premium deposit note by the insured, which note is given for the purpose of establishing a limit of liability to assessment, while their total receipts from policyholders is less than \$10,000 per year.

***(b) The provisions of RSA 400-A:31 and 32 shall not apply to premium written by duly authorized insurance companies for family and medical leave insurance written in connection with the administration of RSA 21-I: 96 or RSA 282-B.***

3. The Twin State Voluntary Leave Plan. Amend RSA by inserting after chapter 282-A the following new chapter:

CHAPTER 282-B  
PURCHASING POOL FOR FAMILY AND MEDICAL LEAVE INSURANCE

282-B:1 Purpose. – The purpose of this chapter is to establish a group purchasing mechanism whereby employers with fewer than 20 employees and individuals who work for employers who do not offer either Family and Medical Leave Insurance (FMLI) coverage under the Twin State Voluntary Leave Plan as authorized under RSA 21-I: 96 or an FMLI benefit that is at least equivalent to such coverage will have the opportunity to purchase Twin State Voluntary Leave Plan coverage through a mechanism established by the state in conjunction with the state government employee FMLI plan.

282-B: 2 Definitions. – In this chapter:

- I. "Child" has the same meaning as "son or daughter" in 29 U.S.C. section 2611(12).
- II. "Commissioner" means the commissioner of the department of employment security.
- II. "Department" means the department of employment security.
- III. "Employer" has the same definition as relevant provisions of RSA 282-A:8, except as provided in RSA 282-A:9.
- IV. "Employment" means wages paid for services by an employer that is covered by this chapter.
- IV. "Family member" means a "child," as defined in RSA 282-B:2, III, a biological, adoptive or foster parent, stepparent, or legal guardian of the child or the child's spouse or domestic partner, a biological, adoptive, or foster grandparent or step grandparent, or a spouse or domestic partner under RSA 457.
- V. "Family and medical leave" means leave from work:
  - (a) Because of the birth of a child of the employee, within the past 12 months; or within the past 12 months;
  - (b) Because of the placement of a child with the employee for adoption or fostering within the past 12 months;
  - (c) Because of a serious health condition of a family member;
  - (d) Because of a serious health condition of the employee that isn't related to employment; or
  - (e) Because of any qualifying exigency arising from foreign deployment with the Armed Forces, or to care for a service member with a serious injury or illness as permitted under the federal family and medical leave act, 29 U.S.C. section 2612(a)(1)(E) and 29 C.F.R. section 825.126(a)(1) through (8), as they existed on October 19, 2017, for family members as defined in paragraph VIII.
- X. "FMLI" means family and medical leave insurance providing wage replacement benefits under specified conditions.
- XI. "Family and Medical Leave Act" means the federal Family and Medical Leave Act of 1993, Pub.L.103-3 (29 U.S.C. § 2601 et seq.).
- XII. "Serious health condition" means any illness covered by the federal family and medical leave act including treatment for addiction as prescribed by a treating clinician, consistent with American Society of Addiction Medicine criteria, as well as treatment for a mental health condition, consistent with American Psychiatric Association criteria.

282-B: 3 Employer and Employee Rights and Responsibilities. –

I. Individuals who are employed by private employers who do not to offer either FMLI coverage under the Twin State Voluntary Leave Plan as authorized under RSA 21-I: 96 or an FMLI benefit that is at least equivalent to such coverage will have the opportunity to purchase Twin State Voluntary Leave Plan coverage through payroll deduction whereby premiums are paid into an FMLI premium fund administered by the department as provided in this chapter and established in coordination with the commissioner of administrative services acting pursuant to RSA 21-I: 96.

II. Employers with fewer than 20 employees who wish to purchase FMLI coverage through the Twin State Voluntary Leave Plan shall have the opportunity to purchase such coverage by making premium remittances into an FMLI premium fund administered by the department as provided in this chapter and established in coordination with the commissioner of administrative services acting pursuant to RSA 21-I: 96.

III. Individuals opting into this group purchasing mechanism shall be required to make their premium remittances to the department in a manner as directed by the commissioner. All private employers who have employees who have individually opted into this group purchasing mechanism or who have, as an employer with fewer than 20 employees, opted into the mechanism shall remit FMLI premium payments to the department in a manner as directed by the commissioner.

282-B:4 FMLI Premium Fund Administration. – The Department shall create and administer an FMLI premium fund for deposits of insurance premium payments paid pursuant to RSA 282-B:3 and for remittance of such premiums to the FMLI carrier or carriers participating in the Twin State Voluntary Leave Plan. The department shall develop standard enrollment procedures in coordination with participating carrier(s) and shall transmit enrollment and eligibility information to such carrier(s) on a timely basis. The department shall establish procedures and mechanisms for the billing and collection of premiums from employers. The department shall specify in contracts with participating carrier(s) how all premiums shall be transmitted and the frequency of that transmission and how penalties and grace periods on late payments of premiums shall be calculated. The department is authorized to contract with qualified, independent vendors for the services necessary to carry out some or all of the duties under this paragraph.

282-B: 5 Report and Outreach. –

I. Working in coordination with the commissioner of administrative services as provided in RSA 21-I: 96-i I., the department shall produce, on an annual basis, a summary report on the Twin State Voluntary Leave Plan. This report shall be made public and delivered to the governor, senate president, and speaker of the house of representatives. It shall include but not be limited to, a description of progress in implementing the provisions of this chapter, payments into and out of the fund, the number of employees in the state participating in the purchasing mechanism, and recommendations for improvement of the program and for further increasing the rate at which New Hampshire employees have FMLI coverage.

II. Working in coordination with the department of administrative services as provided in RSA 21-I: 96-i II., the department shall develop and implement an outreach program to ensure that individuals who may be eligible to receive FMLI benefits under this chapter or under RSA 21-I: 96 are made aware of these benefits. Outreach information shall explain in an easy to understand format, eligibility requirements, benefit structures, and the process for accessing coverage and enrolling.

282-B: 6 Rulemaking. – The commissioner may adopt rules, pursuant to RSA 541-A, as deemed necessary for the implementation of this chapter.

282-B: 7 Program Start-up. – The FMLI premium fund shall be operational and available for use by individuals, the self-employed, and qualifying employers on a timetable that is sufficient to ensure that FMLI coverage shall be available for purchase by July 1, 2020.

4. Discrimination in the Workplace. Amend RSA 275: 37 by inserting after RSA 275: 37-b the following new subsection:

275: 37-c Family and Medical Leave Insurance. – If an employer has 20 or more employees and sponsors family and medical leave insurance pursuant to the provisions of RSA 21-I: 96 (The Twin State Voluntary Leave Plan), then any employee of that employer who takes family or medical leave and accesses wage replacement benefits under such family and medical leave insurance coverage shall be restored to the position she or he held prior to such leave or to an equivalent position by her or his employer consistent with the job restoration provisions of the federal Family and Medical Leave Act of 1993, Pub.L. 103-3 (29 U.S.C. § 2601 et seq.). Such employers shall continue to provide health insurance to employees during the leave. However, employees shall remain responsible for any employee-shared costs associated with the health insurance benefits. Such employers shall not discriminate or retaliate against any employee for accessing family or medical leave wage replacement benefits. However, employers of employees participating in the Twin State Voluntary Leave Plan authorized pursuant to the provisions of RSA 21-I: 96 or RSA 282-B may require that paid leave taken under this program be taken concurrently or otherwise coordinated with leave allowed under the terms of a collective bargaining agreement or other established employer policy or the Family and Medical Leave Act, as applicable.

5. The Twin State Voluntary Leave Plan. New Subparagraph; State Treasurer; Application of Receipts. Amend RSA 6:12, I(b) by inserting after subparagraph (343) the following new subparagraph:

(344) Moneys deposited in the family and medical leave premium fund established in RSA 282-B:4.