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BILL NO. _____ Date of Intro. _____ Ref. _____

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AN ACT concerning family leave, family temporary disability leave, and domestic or sexual violence safety leave, amending various parts of the statutory law and supplementing P.L.2008, c.17 (C.43:21-39.1 et al.).

Revises law concerning family leave, family temporary disability leave, and domestic or sexual violence safety leave.

PRIME Sponsor _____ / _____

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Same as _____ 14/15 Same as _____ 16/17

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AN ACT concerning family leave, family temporary disability leave, and domestic or sexual violence safety leave, amending various parts of the statutory law and supplementing P.L.2008, c.17 (C.43:21-39.1 et al.).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 3 of P.L.1989, c.261 (C.34:11B-3) is amended to read as follows:

3. As used in this act:

a. "Child" means a biological, adopted, or resource family child, stepchild, legal ward, or child of a parent, including a child who becomes the child of a parent pursuant to a valid written agreement between the parent and a gestational carrier, who is

(1) under 18 years of age; or

(2) 18 years of age or older but incapable of self-care because of a mental or physical impairment.

b. "Director" means the Director of the Division on Civil Rights.

c. "Division" means the Division on Civil Rights in the Department of Law and Public Safety.

d. "Employ" means to suffer or permit to work for compensation, and includes ongoing, contractual relationships in which the employer retains substantial direct or indirect control over the employee's employment opportunities or terms and conditions of employment.

e. "Employee" means a person who is employed for at least 12 months by an employer, with respect to whom benefits are sought under this act, for not less than 1,000 base hours during the immediately preceding 12-month period. Any time, up to a maximum of 90 calendar days, during which a person is laid off or furloughed by an employer due to that employer curtailing operations because of a state of emergency declared after October 22, 2012, shall be regarded as time in which the person is employed for the purpose of determining eligibility for leave time under this act. In making the determination, the base hours per week during the layoff or furlough shall be deemed to be the same as the average number of hours worked per week during the rest of the 12-month period.

f. "Employer" means a person or corporation, partnership, individual proprietorship, joint venture, firm or company or other similar legal entity which engages the services of an employee and which:

(1) With respect to the period of time from the effective date of this act until the 365th day following the effective date of this act, employs 100 or more employees for each working day during each

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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of 20 or more calendar workweeks in the then current or immediately preceding calendar year;

(2) With respect to the period of time from the 366th day following the effective date of this act until the 1,095th day following the effective date of this act, employs 75 or more employees for each working day during each of 20 or more calendar workweeks in the then current or immediately preceding calendar year; and

(3) With respect to any time after the 1,095th day following the effective date of this act, employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the then current or immediately preceding calendar year. "Employer" includes the State, any political subdivision thereof, and all public offices, agencies, boards or bodies.

g. "Employment benefits" means all benefits and policies provided or made available to employees by an employer, and includes group life insurance, health insurance, disability insurance, sick leave, annual leave, pensions, or other similar benefits.

h. "Parent" means a person who is the biological parent, adoptive parent, resource family parent, step-parent, parent-in-law or legal guardian, having a "parent-child relationship" with a child as defined by law, or having sole or joint legal or physical custody, care, guardianship, or visitation with a child, or who became the parent of the child pursuant to a valid written agreement between the parent and a gestational carrier.

i. "Family leave" means leave from employment so that the employee may provide care made necessary by reason of:

- (1) the birth of a child of the employee;
- (2) the placement of a child with the employee in connection with adoption of such child by the employee; or
- (3) the serious health condition of a family member of the employee.

j. "Family member" means a child, parent, parent-in-law, sibling, grandparent, grandchild, spouse, or one partner in a civil union couple.

k. "Reduced leave schedule" means leave scheduled for fewer than an employee's usual number of hours worked per workweek but not for fewer than an employee's usual number of hours worked per workday, unless agreed to by the employee and the employer.

l. "Serious health condition" means an illness, injury, impairment, or physical or mental condition which requires:

- (1) inpatient care in a hospital, hospice, or residential medical care facility; or
- (2) continuing medical treatment or continuing supervision by a health care provider.

m. "State of emergency" means a natural or man-made disaster or emergency for which a state of emergency has been declared by the President of the United States or the Governor, or for which a

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state of emergency has been declared by a municipal emergency management coordinator.

(cf: P.L.2013, c.221, s.1)

2. Section 3 of P.L.2013, c.82 (C.34:11C-3) is amended to read as follows:

3. a. Any employee of an employer in the State who was a victim of an incident of domestic violence as defined in section 3 of P.L.1991, c.261 (C.2C:25-19) or a sexually violent offense as defined in section 3 of P.L.1998, c.71 (C.30:4-27.26), or whose parent-in-law, sibling, grandparent, grandchild, child, parent, spouse, domestic partner, or civil union partner was a victim shall be entitled to unpaid leave of no more than 20 days in one 12-month period, to be used in the 12-month period next following any incident of domestic violence or any sexually violent offense as provided in this section. For purposes of this section, each incident of domestic violence or any sexually violent offense shall constitute a separate offense for which an employee is entitled to unpaid leave, provided that the employee has not exhausted the allotted 20 days for the 12-month period. The unpaid leave may be taken intermittently in intervals of no less than one day, as needed for the purpose of engaging in any of the following activities as they relate to the incident of domestic violence or sexually violent offense:

(1) seeking medical attention for, or recovering from, physical or psychological injuries caused by domestic or sexual violence to the employee or the employee's parent-in-law, sibling, grandparent, grandchild, child, parent, spouse, domestic partner, or civil union partner;

(2) obtaining services from a victim services organization for the employee or the employee's parent-in-law, sibling, grandparent, grandchild, child, parent, spouse, domestic partner, or civil union partner;

(3) obtaining psychological or other counseling for the employee or the employee's parent-in-law, sibling, grandparent, grandchild, child, parent, spouse, domestic partner, or civil union partner;

(4) participating in safety planning, temporarily or permanently relocating, or taking other actions to increase the safety of the employee or the employee's parent-in-law, sibling, grandparent, grandchild, child, parent, spouse, domestic partner, or civil union partner from future domestic or sexual violence or to ensure economic security;

(5) seeking legal assistance or remedies to ensure the health and safety of the employee or the employee's parent-in-law, sibling, grandparent, grandchild, child, parent, spouse, domestic partner, or civil union partner, including preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic or sexual violence; or

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(6) attending, participating in, or preparing for a criminal or civil court proceeding relating to an incident of domestic or sexual violence of which the employee or the employee's parent-in-law, sibling, grandparent, grandchild, child, parent, spouse, domestic partner, or civil union partner, was a victim.

An eligible employee may elect, or an employer may require the employee, to use any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee during any part of the 20-day period of unpaid leave provided under this subsection. In such case, any paid leave provided by the employer, and accrued pursuant to established policies of the employer, shall run concurrently with the unpaid leave provided under this subsection and, accordingly, the employee shall receive pay pursuant to the employer's applicable paid leave policy during the period of otherwise unpaid leave. If an employee requests leave for a reason covered by both this subsection and the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or the federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29 U.S.C. s.2601 et seq.), the leave shall count simultaneously against the employee's entitlement under each respective law.

Leave granted under this section shall not conflict with any rights pursuant to the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.), the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), or the federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29 U.S.C. s.2601 et seq.).

b. Prior to taking the leave provided for in this section, an employee shall, if the necessity for the leave is foreseeable, provide the employer with written notice of the need for the leave. The notice shall be provided to the employer as far in advance as is reasonable and practical under the circumstances.

c. Nothing contained in this act shall be construed to prohibit an employer from requiring that a period of leave provided pursuant to this section be supported by the employee with documentation of the domestic violence or sexually violent offense which is the basis for the leave. If the employer requires the documentation, the employee shall be regarded as having provided sufficient documentation if the employee provides one or more of the following:

- (1) a domestic violence restraining order or other documentation of equitable relief issued by a court of competent jurisdiction;
- (2) a letter or other written documentation from the county or municipal prosecutor documenting the domestic violence or sexually violent offense;
- (3) documentation of the conviction of a person for the domestic violence or sexually violent offense;
- (4) medical documentation of the domestic violence or sexually violent offense;

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(5) certification from a certified Domestic Violence Specialist or the director of a designated domestic violence agency or Rape Crisis Center, that the employee or employee's parent-in-law, sibling, grandparent, grandchild, child, parent, spouse, domestic partner, or civil union partner is a victim of domestic violence or a sexually violent offense; or

(6) other documentation or certification of the domestic violence or sexually violent offense provided by a social worker, member of the clergy, shelter worker, or other professional who has assisted the employee or employee's parent-in-law, sibling, grandparent, grandchild, child, parent, spouse, domestic partner, or civil union partner in dealing with the domestic violence or sexually violent offenses.

For the purposes of this subsection:

"Certified Domestic Violence Specialist" means a person who has fulfilled the requirements of certification as a Domestic Violence Specialist established by the New Jersey Association of Domestic Violence Professionals; and "designated domestic violence agency" means a county-wide organization with a primary purpose to provide services to victims of domestic violence, and which provides services that conform to the core domestic violence services profile as defined by the Division of Child Protection and Permanency in the Department of Children and Families and is under contract with the division for the express purpose of providing the services.

"Rape Crisis Center" means an office, institution, or center offering assistance to victims of sexual offenses through crisis intervention, medical and legal information, and follow-up counseling.

d. An employer shall display conspicuous notice of its employees' rights and obligations pursuant to the provisions of this act, in such form and in such manner as the Commissioner of Labor and Workforce Development shall prescribe, and use other appropriate means to keep its employees so informed.

e. No provision of this act shall be construed as requiring or permitting an employer to reduce employment benefits provided by the employer or required by a collective bargaining agreement which are in excess of those required by this act. Nor shall any provision of this act be construed to prohibit the negotiation and provision through collective bargaining agreements of leave policies or benefit programs which provide benefits in excess of those required by this act. This provision shall apply irrespective of the date that a collective bargaining agreement takes effect.

Nothing contained in this act shall be construed as permitting an employer to:

(1) rescind or reduce any employment benefit accrued prior to the date on which the leave taken pursuant to this act commenced; or

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(2) rescind or reduce any employment benefit, unless the rescission or reduction of the benefit is based on changes that would have occurred if an employee continued to work without taking the leave provided pursuant to this section.

f. All information provided to an employer pursuant to subsection c. of this section, and any information regarding a leave taken pursuant to this section and any failure of an employee to return to work, shall be retained in the strictest confidentiality, unless the disclosure is voluntarily authorized in writing by the employee or is required by a federal or State law, rule, or regulation.

(cf: P.L.2013, c.82, s.3)

3. Section 3 of P.L.1948, c.110 (C.43:21-27) is amended to read as follows:

3. As used in this act, unless the context clearly requires otherwise:

(a) (1) "Covered employer" means, with respect to whether an employer is required to provide benefits during an employee's own disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, who is an employer subject to the "unemployment compensation law" (R.S.43:21-1 et seq.), except the State, its political subdivisions, and any instrumentality of the State unless such governmental entity elects to become a covered employer pursuant to paragraph (2) of this subsection (a); provided, however, that commencing with the effective date of this act, the State of New Jersey, including Rutgers, The State University and the New Jersey Institute of Technology, shall be deemed a covered employer, as defined herein.

"Covered employer" means, after June 30, 2009, with respect to whether the employer is an employer whose employees are eligible for benefits during periods of family temporary disability leave pursuant to P.L.1948, c.110 (C.43:21-25 et al.), and, after December 31, 2008, whether employees of the employer are required to make contributions pursuant to R.S.43:21-7(d)(1)(G)(ii), any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or domestic or foreign corporation, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, who is an employer subject to the "unemployment compensation law" (R.S.43:21-1 et seq.), including any governmental entity or instrumentality which is an employer under R.S.43:21-19(h)(5), notwithstanding that the governmental entity or instrumentality has not elected to be a covered employer pursuant to paragraph (2) of this subsection (a).

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(2) Any governmental entity or instrumentality which is an employer under R.S.43:21-19(h)(5) may, with respect to the provision of benefits during an employee's own disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), elect to become a "covered employer" under this subsection beginning with the date on which its coverage under R.S.43:21-19(h)(5) begins or as of January 1 of any year thereafter by filing written notice of such election with the division within at least 30 days of the effective date. Such election shall remain in effect for at least two full calendar years and may be terminated as of January 1 of any year thereafter by filing with the division a written notice of termination at least 30 days prior to the termination date.

(b) (1) "Covered individual" means, with respect to whether an individual is eligible for benefits during an individual's own disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any person who is in employment, as defined in the "unemployment compensation law" (R.S.43:21-1 et seq.), for which the individual is entitled to remuneration from a covered employer, or who has been out of such employment for less than two weeks, except that a "covered individual" who is employed by the State of New Jersey, including Rutgers, The State University or the New Jersey Institute of Technology, or by any governmental entity or instrumentality which elects to become a "covered employer" pursuant to this amendatory act, shall not be eligible to receive any benefits under the "Temporary Disability Benefits Law" until such individual has exhausted all sick leave accumulated as an employee in the classified service of the State or accumulated under terms and conditions similar to classified employees or accumulated under the terms and conditions pursuant to the laws of this State or as the result of a negotiated contract with any governmental entity or instrumentality which elects to become a "covered employer."

"Covered individual" shall not mean, with respect to whether an individual is eligible for benefits during an individual's own disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any member of the Division of State Police in the Department of Law and Public Safety.

(2) "Covered individual" means, with respect to whether an individual is eligible for benefits during the individual's period of family temporary disability leave pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any individual who is in employment, as defined in the "unemployment compensation law" (R.S.43:21-1 et seq.), for which the individual is entitled to remuneration from a covered employer, or who has been out of that employment for less than two weeks.

(3) "Covered individual" means, with respect to whether an individual is eligible for benefits during the individual's period of family temporary disability leave pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any self-employed individual who is approved for participation in the paid family leave program pursuant to

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section 9 of P.L. , c. (C.)(pending before the Legislature as this bill).

(c) "Division" or "commission" means the Division of Temporary Disability Insurance of the Department of Labor and Workforce Development, and any transaction or exercise of authority by the director of the division shall be deemed to be performed by the division.

(d) "Day" shall mean a full calendar day beginning and ending at midnight.

(e) "Disability" shall mean such disability as is compensable under section 5 of P.L.1948, c.110 (C.43:21-29).

(f) "Disability benefits" shall mean any cash payments which are payable to a covered individual for all or part of a period of disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.).

(g) "Period of disability" with respect to any covered individual shall mean:

(1) The entire period of time during which the covered individual is continuously and totally unable to perform the duties of the covered individual's employment because of the covered individual's own disability, except that two periods of disability due to the same or related cause or condition and separated by a period of not more than 14 days shall be considered as one continuous period of disability; provided the individual has earned wages during such 14-day period with the employer who was the individual's last employer immediately preceding the first period of disability; and

(2) On or after July 1, 2009, the entire period of family temporary disability leave taken from employment by the covered individual.

(h) "Wages" shall mean all compensation payable by covered employers to covered individuals for personal services, including commissions and bonuses and the cash value of all compensation payable in any medium other than cash.

(i) (1) (Deleted by amendment, P.L.2001, c.17).

(2) (Deleted by amendment, P.L.2001, c.17).

(3) (Deleted by amendment, P.L.2013, c.221).

(4) "Base week" with respect to periods of disability commencing on or after January 1, 2001, means any calendar week of a covered individual's base year during which the covered individual earned in employment from a covered employer remuneration not less than an amount 20 times the minimum wage in effect pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year preceding the calendar year in which the benefit year commences, which amount shall be adjusted to the next higher multiple of \$1.00 if not already a multiple thereof, except that if in any calendar week an individual subject to this paragraph is in employment with more than one employer, the covered individual may in that calendar week establish a base week with respect to each of the employers from whom the covered

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individual earns remuneration equal to not less than the amount defined in this paragraph during that week.

(5) In the case of an individual who is laid off or furloughed by an employer curtailing operations because of a state of emergency declared after October 22, 2012, any week in which the individual is separated from employment due to that layoff or furlough, up to a maximum of 13 weeks, shall be regarded as a week which is a "base week" for the purpose of determining whether the individual becomes eligible for benefits pursuant to subsection (d) or (e) of section 17 of P.L.1948, c.110 (C.43:21-41), but shall not be regarded as a base week when calculating the "average weekly wage" pursuant to subsection (j) of this section.

(j) (1) "Average weekly wage" means the amount derived by dividing a covered individual's total wages earned from the individual's most recent covered employer during the base weeks in the eight calendar weeks immediately preceding the calendar week in which a period of disability commenced, by the number of such base weeks.

(2) If the computation in paragraph (1) of this subsection (j) yields a result which is less than the individual's average weekly earnings in employment with all covered employers during the base weeks in such eight calendar weeks, then the average weekly wage shall be computed on the basis of earnings from all covered employers during the base weeks in the eight calendar weeks immediately preceding the week in which the period of disability commenced.

(3) For periods of disability commencing on or after July 1, 2009, if the computations in paragraphs (1) and (2) of this subsection (j) both yield a result which is less than the individual's average weekly earnings in employment with all covered employers during the base weeks in the 26 calendar weeks immediately preceding the week in which the period of disability commenced, then the average weekly wage shall, upon a written request to the department by the individual on a form provided by the department, be computed by the department on the basis of earnings from all covered employers of the individual during the base weeks in those 26 calendar weeks, and, in the case of a claim for benefits from a private plan, that computation of the average weekly wage shall be provided by the department to the individual and the individual's employer.

When determining the "average weekly wage" with respect to a period of family temporary disability leave for an individual who has a period of family temporary disability immediately after the individual has a period of disability for the individual's own disability, the period of disability is deemed to have commenced at the beginning of the period of disability for the individual's own disability, not the period of family temporary disability.

(k) "Child" means a biological, adopted, or foster child, stepchild or legal ward of a covered individual, child of a domestic

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partner of the covered individual, or child of a civil union partner of the covered individual, including a child who becomes the child of a parent pursuant to a valid written agreement between the parent and a gestational carrier, who is less than 19 years of age or is 19 years of age or older but incapable of self-care because of mental or physical impairment.

(l) "Domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

(m) "Civil union" means a civil union as defined in section 2 of P.L.2006, c.103 (C.37:1-29).

(n) "Family member" means a sibling, grandparent, grandchild, child, spouse, domestic partner, civil union partner, parent-in-law, or parent of a covered individual.

(o) "Family temporary disability leave" means leave taken by a covered individual from work with an employer to:

(1) participate in the providing of care [,];

(A) as defined in the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) and regulations adopted pursuant to that act, for a family member of the individual made necessary by a serious health condition of the family member; or

(B) as defined in the "New Jersey Security and Financial Empowerment Act," for a family member of the individual who has been a victim of an incident of domestic violence as defined in section 3 of P.L.1991, c.261 (C.2C:25-19) or a sexually violent offense as defined in section 3 of P.L.1998, c.71 (C.30:4-27.26); or

(2) be with a child during the first 12 months after the child's birth, if the individual, or the domestic partner or civil union partner of the individual, is a biological parent of the child, or parent of the child pursuant to a valid gestational carrier agreement or the first 12 months after the placement of the child for adoption with the individual.

"Family temporary disability leave" does not include any period of time in which a covered individual is paid benefits pursuant to P.L.1948, c.110 (C.43:21-25 et al.) because the individual is unable to perform the duties of the individual's employment due to the individual's own disability.

(p) "Health care provider" means a health care provider as defined in the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.), and any regulations adopted pursuant to that act.

(q) "Parent of a covered individual" means a biological parent, foster parent, adoptive parent, or stepparent of the covered individual or a person who was a legal guardian of the covered individual when the covered individual was a child, or who became parent of the covered individual pursuant to a valid gestational carrier agreement.

(r) "Placement for adoption" means the time when a covered individual adopts a child or becomes responsible for a child pending adoption by the covered individual.

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(s) "Serious health condition" means an illness, injury, impairment or physical or mental condition which requires: inpatient care in a hospital, hospice, or residential medical care facility; or continuing medical treatment or continuing supervision by a health care provider.

(t) "12-month period" means, with respect to an individual who establishes a valid claim for disability benefits during a period of family temporary disability leave, the 365 consecutive days that begin with the first day that the individual first establishes the claim.

(u) "State of emergency" means a natural or man-made disaster or emergency for which a state of emergency has been declared by the President of the United States or the Governor, or for which a state of emergency has been declared by a municipal emergency management coordinator.

(v) "Normally and continuously engaged in a regular trade, business, or occupation" means:

(1) regularly performing services and engaging in an uninterrupted pattern of work that is customary for the individual's trade, business, or occupation; and

(2) in the case of a self-employed individual in a trade, business, or occupation that requires a valid and active license, that the individual has been issued that license. An individual operating a business without a required license shall not be considered normally engaged in a trade, business, or occupation.

(w) "Seasonal in its operations" means:

(1) the trade, business, or occupation is not continuous or carried on throughout the year;

(2) the operation of the trade, business, or occupation is temporarily or intermittently suspended for regularly recurring periods of time; or

(3) the performance of services in the trade, business, or occupation is regularly suspended due to weather, climate, or other conditions.

(cf: P.L.2013, c.221, s.3)

4. Section 14 of P.L.1948, c.110 (C.43:21-38) is amended to read as follows:

14. With respect to any period of disability for an individual's own disability commencing on or after January 1, 1953, disability benefits, not in excess of an individual's maximum benefits, shall be payable with respect to disability which commences while a person is a covered individual under the Temporary Disability Benefits Law, and shall be payable with respect to the eighth consecutive day of such disability and each day thereafter that such period of disability continues; and if benefits shall be payable for three consecutive weeks with respect to any period of disability commencing on or after January 1, 1968, then benefits shall also be payable with respect to the first seven days thereof. With respect to

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any period of family temporary disability leave commencing on or after July 1, 2009 and while an individual is a covered individual, family temporary disability benefits, not in excess of the individual's maximum benefits, shall be payable with respect to the first day of leave taken after the first one-week period following the commencement of the period of family temporary disability leave and each subsequent day of leave during that period of family temporary disability leave; and if benefits become payable on any day after the first three weeks in which leave is taken, then benefits shall also be payable with respect to any leave taken during the first one-week period in which leave is taken. The maximum total benefits payable to any eligible individual for any period of disability of the individual commencing on or after January 1, 1968, shall be either 26 times his weekly benefit amount or 1/3 of his total wages in his base year, whichever is the lesser; provided that such maximum amount shall be computed in the next lower multiple of \$1.00 if not already a multiple thereof. The maximum total benefits payable to any eligible individual for any period of family temporary disability leave commencing on or after July 1, 2009 and before July 1, 2018, shall be six times the individual's weekly benefit amount or 1/3 of his total wages in his base year, whichever is the lesser; provided that the maximum amount shall be computed in the next lower multiple of \$1.00, if not already a multiple thereof. The maximum total benefits payable to any eligible individual for any period of family temporary disability leave commencing on or after July 1, 2018, shall be twelve times the individual's weekly benefit amount or 1/3 of the individual's total wages in the individual's base year, whichever is the lesser; provided that the maximum amount shall be computed in the next lower multiple of \$1.00, if not already a multiple thereof.

(cf: P.L.2008, c.17, s.5)

5. Section 15 of P.L.1948, c.110 (C.43:21-39) is amended to read as follows:

15. Limitation of benefits. Notwithstanding any other provision of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), no benefits shall be payable under the State plan to any individual:

(a) for the first seven consecutive days of each period of disability; except that:

(1) if benefits shall be payable for three consecutive weeks with respect to any period of disability, then benefits shall also be payable with respect to the first seven days thereof;

(2) in the case of intermittent leave in a single period of family temporary disability leave taken to provide care for a family member of the individual with a serious health condition, benefits shall be payable with respect to the first day of leave taken after the first one-week period following the commencement of the period of family temporary disability leave and each subsequent day of leave

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during that period of family temporary disability leave; and if benefits become payable on any day after the first three weeks in which leave is taken, then benefits shall also be payable with respect to any leave taken during the first one-week period in which leave is taken; and

(3) in the case of an individual taking family temporary disability leave immediately after the individual has a period of disability for the individual's own disability, there shall be no waiting period between the period of the individual's own disability and the period of family temporary disability;

(b) (1) for more than 26 weeks with respect to any one period of disability of the individual;

(2) for more than six weeks with respect to any one period of family temporary disability leave commencing before July 1, 2018 and more than 12 weeks if the period of leave commences on or after July 1, 2018, or more than 42 days with respect to any one period of family temporary disability leave commencing before July 1, 2018 and more than 84 days if the period of leave commences on or after July 1, 2018, in the case of leave taken on an intermittent basis to provide care for a family member of the individual with a serious health condition; and

(3) for more than six weeks of family temporary disability leave during any 12-month period commencing before July 1, 2018 and more than 12 weeks for any 12-month period commencing on or after July 1, 2018, or for more than 42 days of family temporary disability leave taken during any 12-month period commencing before July 1, 2018 and more than 84 days if the period of leave commences on or after July 1, 2018, on an intermittent basis to provide care for a family member of the individual with a serious health condition, including family temporary disability leave taken pursuant to R.S.43:21-4(f)(2) while unemployed;

(c) for any period of disability which did not commence while the claimant was a covered individual;

(d) for any period of disability of a claimant during which the claimant is not under the care of a legally licensed physician, dentist, optometrist, podiatrist, practicing psychologist, advanced practice nurse, certified nurse midwife, or chiropractor, who, when requested by the division, shall certify within the scope of the practitioner's practice, the disability of the claimant, the probable duration thereof, and, where applicable, the medical facts within the practitioner's knowledge or for any period of family temporary disability leave for a serious health condition of a family member of the claimant, during which the family member is not receiving inpatient care in a hospital, hospice, or residential medical care facility or is not subject to continuing medical treatment or continuing supervision by a health care provider, who, when requested by the division, shall certify within the scope of the provider's practice, the serious health condition of the family

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member, the probable duration thereof, and, where applicable, the medical facts within the provider's knowledge;

(e) (Deleted by amendment, P.L.1980, c.90.)

(f) for any period of disability due to willfully and intentionally self-inflicted injury, or to injury sustained in the perpetration by the claimant of a crime of the first, second, third, or fourth degree, or for any period during which a covered individual would be disqualified for unemployment compensation benefits for gross misconduct under subsection (b) of R.S.43:21-5;

(g) for any period during which the claimant performs any work for remuneration or profit;

(h) in a weekly amount which together with any remuneration the claimant continues to receive from the employer would exceed regular weekly wages immediately prior to disability;

(i) for any period during which a covered individual would be disqualified for unemployment compensation benefits under subsection (d) of R.S.43:21-5, unless the disability commenced prior to such disqualification;

and there shall be no other cause of disqualification or ineligibility to receive disability benefits hereunder except as may be specifically provided in this act.

(cf: P.L.2009, c.114, s.1)

6. Section 12 of P.L.2008, c.17 (C.43:21-39.3) is amended to read as follows:

12. a. (1) All of the disability benefits paid to a covered individual during a period of family temporary disability leave with respect to any one birth or adoption shall be for a single continuous period of time [, except that the employer of the covered individual may permit the covered individual to receive the disability benefits] or during non-consecutive weeks [in a manner mutually agreed to by the employer and the covered individual and] on an intermittent basis pursuant to paragraph (2) of this subsection, which shall be disclosed to the division by the employer.

(2) In the case of intermittent benefits for family temporary disability leave with respect to a birth or adoption, the covered individual shall provide the employer with prior notice of the leave not less than 15 days before the first day on which benefits are paid for the intermittent leave, unless an emergency or other unforeseen circumstance precludes prior notice; and the covered individual makes a reasonable effort to schedule the leave so as not to unduly disrupt the operations of the employer and, if possible, provide the employer, prior to the commencement of intermittent leave, with a regular schedule of the days or days of the week on which the intermittent leave will be taken.

b. [The] In the case of single continuous benefits for family temporary disability leave with respect to birth or adoption, the covered individual shall provide the employer with prior notice of

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the [period of family temporary disability] leave [with respect to birth or adoption] not less than 30 days before the leave commences, unless it commences while the individual is receiving unemployment benefits, in which case the covered individual shall notify the division. The amount of benefits shall be reduced by two weeks worth of benefits if the individual does not provide notice to an employer as required by this subsection b., unless the time of the leave is unforeseeable or the time of the leave changes for unforeseeable reasons.

c. Family temporary disability leave taken because of the birth or placement for adoption of a child may be taken at any time within a year after the date of the birth or placement for adoption.
(cf: P.L.2008, c.17, s.12)

7. Section 16 of P.L.1948, c.110 (C.43:21-40) is amended to read as follows:

16. a. With respect to periods of disability commencing on or after July 1, 1961, an individual's weekly benefit amount shall be determined and computed by the division on the same basis as the weekly benefit rate is determined and computed pursuant to subsection (c) of R.S. 43:21-3, except that for periods of disability commencing on or after October 1, 1984, an individual's weekly benefit rate shall be two-thirds of his average weekly wage, subject to a maximum of 53% of the Statewide average weekly remuneration paid to workers by employers, as determined under subsection (c) of R.S. 43:21-3; provided, however, that such individual's benefit rate shall be computed to the next lower multiple of \$1.00 if not already a multiple thereof.

b. For periods of family temporary disability leave commencing on or after the effective date of P.L. _____, c. (C. _____)(pending before the Legislature as this bill), an individual's weekly benefit rate, subject to a maximum of 78% of the Statewide average weekly remuneration paid to workers by employers, as determined under subsection (c) of R.S. 43:21-3, shall be:

(1) For an individual with a household income at or below 200% of the federal poverty level for a family of four, 90% of the individual's average weekly wage; or

(2) For an individual with a household income above 200% of the federal poverty level for a family of four, 80% of the individual's average weekly wage.

c. The amount of benefits for each day of disability for which benefits are payable shall be one-seventh of the corresponding weekly benefit amount; provided that the total benefits for a fractional part of a week shall be computed to the next lower multiple of \$1.00 if not already a multiple thereof.

(cf: P.L.1984, c. 104, s.3)

8. (New section) a. An employer shall not discharge, harass, threaten, or otherwise discriminate or retaliate against an employee

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with respect to the compensation, terms, conditions, or privileges of employment on the basis that the employee took or requested any family temporary disability leave to which the employee was entitled to pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.).

b. Upon a violation of subsection a. of this section, an employee or former employee may institute a civil action in the Superior Court for relief. All remedies available in common law tort actions shall be available to a prevailing plaintiff. The court may also order any or all of the following relief:

(1) an assessment of a civil fine of not less than \$1,000 and not more than \$2,000 for the first violation of any of the provisions of this section and not more than \$5,000 for each subsequent violation;

(2) an injunction to restrain the continued violation of any of the provisions of this section;

(3) reinstatement of the employee to the same position or to a position equivalent to that which the employee held prior to unlawful discharge or retaliatory action;

(4) reinstatement of full fringe benefits and seniority rights;

(5) compensation for any lost wages, benefits and other remuneration; and

(6) payment of reasonable costs and attorney's fees.

9. (New section) a. (1) Any individual who is self-employed, who is not a covered employer, and who receives the major part of total remuneration from the trade, business, or occupation in which the individual is normally and continuously engaged, may file with the division a written election that the individual be considered a covered individual for the purposes of family temporary disability leave pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.). Notwithstanding any law to the contrary, upon approval of the election by the division, the services of the individual in connection with the trade, business, or occupation shall be deemed to constitute employment for an employer for purposes of family temporary disability leave under P.L.2008, c.17 (C.43:21-39.1 et al.) only.

(2) An individual participating in elective coverage shall make quarterly contributions to the State disability benefits fund, which shall be deposited into the account of that fund reserved for payment of benefits during periods of family temporary disability leave. The quarterly contribution amount shall be the product of one-fourth of the amount of the annual net profit of the individual, but not less than \$1,150, and the contribution rate established pursuant to subparagraph (ii) of paragraph (1) of subsection (G) of R.S.43:21-7.

b. (1) An individual applying for or continuing elective coverage under this section shall be requested to sign an annual statement authorizing the division to verify the net profit declared on the individual's Internal Revenue Service Schedule SE. Failure of the individual to sign a statement authorizing the division to

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verify income shall result in the individual being assigned an annual income level of \$8,400 for contribution and benefit purposes.

(2) Any individual applying for elective coverage shall submit a copy of that individual's Internal Revenue Service Schedule SE filed on or before April 15 of the preceding year with the application for elective coverage in order to establish first-year contributions and benefits in excess of the minimum required to qualify for elective coverage.

(3) Any self-employed individual continuing elective coverage who fails to file an Internal Revenue Service Schedule SE by April 15 of each calendar year is required to remit contributions based upon the last year the self-employed individual filed an Internal Revenue Service Schedule SE.

(4) Any self-employed individual who has not yet filed an Internal Revenue Service Schedule SE shall be assigned an annual income level of \$8,400 for contribution and benefit purposes.

c. Worker contributions required under this section are payable on and after the date stated in the approval of the division. The division may levy assessments under this section for any amount due when an elective coverage agreement has been in effect for less than two complete calendar years.

d. The weekly benefit amount for a self-employed individual electing coverage pursuant to this section shall be determined pursuant to section 16 of P.L.1948, c.110 (C.43:21-40), using the individual's quarterly net profit divided by 14 to determine the individual's average weekly wage.

10. (New section) a. The division may terminate any elective coverage agreement issued pursuant to section 9 of P.L. , c. (C.)(pending before the Legislature as this act) if any of the following conditions exist:

(1) The self-employed individual is not normally and continuously engaged in a regular trade, business, or occupation.

(2) The self-employed individual has discontinued the regular trade, business, or occupation.

(3) The regular trade, business, or occupation of the self-employed individual is seasonal in its operations.

(4) The major portion of the self-employed individual's remuneration is not derived from that individual's trade, business, or occupation.

(5) The self-employed individual reports a net profit of less than \$8,400 on the individual's Internal Revenue Service Schedule SE for a third consecutive year.

(6) The self-employed individual has failed to make a return or report, or to pay contributions and there is an unpaid amount of contributions owing by self-employed individual.

(7) The self-employed individual, or a representative thereof, is found by the director to have filed a false statement in order to be considered eligible for elective coverage.

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(8) The self-employed individual is subject to a violation pursuant to section 31 of P.L.1948, c.110 (C.43:21-55).

b. The division shall give to the self-employed individual, a written notice of the division's decision of termination of the elective coverage agreement under this section. The date of termination may be the end of the calendar quarter immediately preceding the existence of any condition specified in subsection a. of this section, or the end of any subsequent calendar quarter thereafter, as determined by the division.

c. Any termination of elective coverage shall not affect the liability of the self-employed individual for any contributions due, owing, and unpaid to the division.

11. The division shall not approve an elective coverage agreement pursuant to section 9 of P.L. , c. (C.)(pending before the Legislature as this act) if any of the following conditions exist:

a. The self-employed individual is currently unable to perform regular and customary work due to injury or illness.

b. The self-employed individual is not normally and continuously engaged in a regular trade, business, or occupation.

c. The self-employed individual intends to discontinue the regular trade, business or occupation within eight calendar quarters.

d. The regular trade, business, or occupation of the self-employed individual is seasonal in its operations.

e. The major portion of the self-employed individual's remuneration is not derived from that individual's trade, business, or occupation.

f. The self-employed individual is unable to provide a copy of the Internal Revenue Service Schedule SE as reported on or before April 15 of the preceding year showing a net profit of at least \$8,400 or to certify to an average net profit of at least \$1,150 per quarter since becoming self-employed or for the preceding four quarters, whichever period is less.

g. The self-employed individual has failed to make a return or report, or to pay contributions within the time required by this division and there is an unpaid amount of contributions owing by the employing unit or self-employed individual.

h. (1) A prior elective coverage agreement entered into pursuant to section 9 of P.L. , c. (C.)(pending before the Legislature as this act) has been terminated by the division under section 10 of P.L. , c. (C.)(pending before the Legislature as this act), and the individual has not completed a waiting period of 18 consecutive months from the date of termination.

(2) The waiting period for reinstatement to the elective coverage program may be waived for any individual who becomes eligible for coverage after being terminated under paragraph (1), (2), (4), or (5) of subsection a. of section 10 of P.L. , c. (C.)(pending before the Legislature as this act), upon receipt by the division of an

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application for coverage to be effective the first day of the quarter in which the application is received.

i. The self-employed individual has been subject to a violation pursuant to section 31 of P.L.1948, c.110 (C.43:21-55) within the preceding eight consecutive calendar quarters.

12. (New section) a. The division shall implement disability insurance goals for the timely payment of family temporary disability benefits under the State plan, that provide, in each calendar year:

(1) not less than 50 percent of the original benefit determinations shall be completed within seven days after the receipt of the benefit claims by the division;

(2) not less than 75 percent of the original benefit determinations shall be completed within 14 days after the receipt of the benefit claims by the division;

(3) not less than 85 percent of the original benefit determinations shall be completed within 21 days after the receipt of the benefit claims by the division; and

(4) not less than 95 percent of the original benefit determinations shall be completed within 28 days after the receipt of the benefit claims by the division.

b. The commissioner shall, not later than September 30 of 2018 and each subsequent year, issue, provide to the Legislature, and make available to the public on the department's webpage, a report regarding those efforts for family temporary disability benefits. Each report shall include:

(1) the total number of claims and the number and percentage of original determinations completed within each number of days specified in the goals set pursuant to this section, and the number and percentage of original determinations completed within the following number of days after the receipt of the benefit claims: 35 days, 42 days, 49 days and 56 days, and the number and percentage of original determinations completed more than 56 days after the receipt of the claims and the average number of days to make the determinations for the claims that took more than 56 days;

(2) the number and percentage of claims received with insufficient information, what portion of those claims were because of failure of claimants to provide sufficient information, what portion of those claims were because of failures of medical providers of claimants to provide sufficient information, and what portion of those claims were because of failures of employers to provide sufficient information;

(3) the number and percentage of claims for which determinations were delayed because of a failure of the employer to make the notifications or disclosures to employees and the division within the amount of time required by subsection (a) of section 25 of P.L.1948, c.110 (C.43:21-49) or subsections f. or g. of section 10 of P.L.2008, c.17 (C.43:21-39.1), the number of complaints

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received related to employer noncompliance with those requirements, and the number of employers which have been, because of the failures, required, pursuant to section 31 of P.L.1948, c.110 (C.43:21-55), to pay fines or penalties to the division or added amounts to claimants, the total amount of payments to the division, and the total amount of payments to claimants;

(4) the number of personnel in the division and the budgeted cost of salaries and benefits for those personnel; the number of personnel who are processing family temporary disability benefit claims and the budgeted cost of salaries and benefits for those personnel; what percentage of total division administrative costs is comprised of those categories of personnel costs; and a comparison of total division administrative costs to the maximum amount permitted to be expended for those division administrative costs pursuant to section 22 of P.L.1948, c.110 (C.43:21-46); and

(5) if any of the disability insurance goals set pursuant to this section were not attained during the year, the report shall provide an evaluation of the causes of the deficiencies and a plan to correct them and that plan shall include:

- (a) any increase in personnel needed to process claims;
- (b) any measures needed to enforce notification and reporting requirements;
- (c) any measures needed to inform employees of their responsibilities to facilitate the timely provision of benefits; and
- (d) any improvements needed in data processing and other administrative services and equipment.

The plan shall specify any added costs entailed in implementing the plan, which shall be regarded as costs of administration of family temporary disability benefits, and shall specify the amount of any resulting increase in the estimate made pursuant to subparagraphs (i) and (ii) of R.S.43:21-7(d)(G) of the amount needed to provide 100 percent of the cost of administration of family temporary disability benefits.

The commissioner shall use that increased estimate in setting the rate of contributions pursuant to those subsections, except that the increase may not result in the total amount credited to those administrative costs to exceed the maximum amount permitted pursuant to subsection (a) of section 22 of P.L.1948, c.110 (C.43:21-46).

c. (1) The division shall disseminate information about the rights and responsibilities of employers and employees regarding temporary disability benefits and family temporary disability benefits by means of programs of educational outreach in communities and workplaces. The division may enter into contracts with community-based organizations to disseminate information to workers regarding temporary disability benefits and family temporary disability benefits.

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(2) The commissioner shall, not later than September 30 of 2018 and each subsequent year, issue, provide to the Legislature, and make available to the public on the department’s webpage, a report regarding efforts made during the preceding calendar year of the division and of community-based organizations to disseminate information about the rights and responsibilities of employers and employees regarding temporary disability and family temporary disability benefits. Each report shall include, for that preceding calendar year:

(a) an accounting of all funds and expenditures made by the division and each community-based organization entering into contracts with the division pursuant to this subsection, and estimates of the number of employers and the number of workers to which the information was disseminated;

(b) an estimate of the number of workers who were eligible for temporary disability and family temporary disability benefits and what percentage of those workers received those benefits, including an assessment of whatever progress was made to increase that percentage; and

(c) a plan to increase the percentage of workers who are aware of the benefits which specifies the amounts to be allocated to the division and community-based organizations for the purposes of this subsection during the subsequent calendar year.

d. The commissioner shall, not later than September 30 of 2018 and each subsequent year, collect and issue a report the following information:

(1) the number of claims for bonding, care for family serious family member broken down by relationship;

(2) demographic info: income, age, gender, ethnicity, occupation, full or part-time employment status;

(3) length of leave, intermittent basis or not;

(4) percentage of bonding leave applicants that report providing their employer with at least 30 days’ notice of leave-taking;

(5) the percentage of employers who reduced employee’s max entitlement by up to 2 weeks if employee is required to use paid time off; and

(6) for all claims, the percentage of employers who reported that the employee will have additional paid time off with the source being the difference between their regular weekly wages and the maximum benefit provided under P.L.2008, c.17 (C.43:21-39.1 et al.).

13. This act shall take effect on the first day of the third month next following enactment.

STATEMENT

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This bill revises the law concerning family leave, family temporary disability leave, and domestic or sexual violence safety leave.

The bill expands the family members which individuals covered under the family temporary disability law may receive paid benefits during periods of leave from employment to care for to include siblings, grandparents, grandchildren, and parents-in-law. Family members for whom covered individuals may currently use family leave benefits include children, spouses, domestic partners, civil union partners, or parents of covered individuals.

The bill also expands the "Family Leave Act" and the "NJ SAFE Act" to include siblings, grandparents, grandchildren, and parents-in-law. Additionally, the bill provides that family temporary disability leave may be taken by a covered individual from work with an employer to participate in the providing of care as defined in the "NJ SAFE Act," for a family member of the individual who has been a victim of an incident of domestic violence or a sexually violent offense.

The bill amends the "Family Leave Act" and the family temporary disability leave law to provide to an employee who becomes a parent of a child pursuant to a gestational carrier agreement with the same rights to unpaid and paid family leave as those laws currently provide to an employee who is a parent of a newborn child.

The bill expands the maximum total benefits payable to any eligible individual for a period of family temporary disability leave, and expands the length of time for which benefits will be paid. The bill increases the maximum number of weeks of family temporary disability leave benefits for a period of family temporary disability leave, or for any given 12-month period, is increased from six to twelve weeks. In cases of intermittent leave, the maximum number is increased from 42 days to 84 days.

The bill provides that family temporary disability leave benefits with respect to a birth or adoption may be taken on an intermittent basis. The bill requires the covered individual seeking the intermittent benefits to provide the employer with prior notice of the leave not less than 15 days before the first day on which benefits are paid for the intermittent leave, unless an emergency or other unforeseen circumstance precludes prior notice. The covered individual must make a reasonable effort to schedule the leave so as not to unduly disrupt the operations of the employer and, if possible, to provide the employer, prior to the commencement of intermittent leave, with a regular schedule of the days or days of the week on which the intermittent leave will be taken.

The bill expands the amount that covered individuals would collect in benefits. Under the bill, an individual's weekly benefit rate, subject to a maximum of 78% of the Statewide average weekly remuneration paid to workers by employers will be:

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(1) For an individual with a household income at or below 200% of the federal poverty level for a family of four, 90% of the individual's average weekly wage; or

(2) For an individual with a household income above 200% of the federal poverty level for a family of four, 80% of the individual's average weekly wage.

The bill also provides that an employer may not discharge, harass, threaten, or otherwise discriminate or retaliate against an employee with respect to the compensation, terms, conditions, or privileges of employment on the basis that the employee took or requested any family temporary disability leave to which the employee was entitled. The bill provides for various remedies in case of violations.

The bill also provides that any individual who is self-employed, who is not a covered employer, and who receives the major part of total remuneration from the trade, business, or occupation in which he or she is self-employed, may file with the division a written election that the individual be considered a covered individual for the purposes of the family temporary disability leave law.

The bill provides that, upon approval of the election by the division, the individual must make quarterly contributions to the State disability benefits fund. The quarterly contribution amount is the product of one-fourth of the amount of annual net profit of the individual, but not less than \$1,150, and the contribution rate established pursuant to current law. The worker contribution rate to the family leave insurance program is currently .001000 of worker wages. There is no employer contribution.

Under the bill, an individual applying for or continuing elective coverage must sign an annual statement authorizing the division to verify the net profit declared on the individual's Internal Revenue Service Schedule SE. Failure of the individual to sign a statement authorizing the division to verify income results in the individual being assigned an annual income level of \$8,400 for contribution and benefit purposes.

Any individual applying for elective coverage under the bill must submit a copy of that individual's Internal Revenue Service Schedule SE filed on or before April 15 of the preceding year with the application for elective coverage in order to establish first-year contributions and benefits in excess of the minimum required to qualify for elective coverage.

The bill provides that worker contributions are payable on and after the date stated in the approval of the division. The division may levy assessments for any amount due when an elective coverage agreement has been in effect for less than two complete calendar years.

The bill provides that the weekly benefit amount for a self-employed individual electing coverage pursuant to this section shall be determined pursuant to the formula for calculating family leave insurance benefits used for other family leave benefits claimants

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under the bill, using the individual's quarterly net profit divided by 14 to determine the individual's average weekly wage.

The bill also establishes procedures for the division to terminate elective coverage and to disapprove applications for elective coverage certain circumstances.

The bill also requires the division to implement goals for the timely payment of family temporary disability benefits. The goals specified by the bill set the minimum percentages at 50% within seven days, 75% within 14 days, 85% within 21 days, and 95% within 28 days.

The bill requires the Commissioner of Labor and Workforce Development to issue annual reports regarding efforts to attain those goals. Each report is required to contain details related to the family leave disability claims and completion.

The commissioner is required to use that increased estimate in setting the rate of family temporary disability worker taxes, except that the increase may not result in the total amount credited to administrative costs to exceed the maximum amount allowed by the family temporary disability law.

Finally, the bill directs the division to disseminate information about the rights and responsibilities of employers and employees regarding family temporary disability benefits. The bill also requires the commissioner to collect and issue a report containing certain demographic information.

Revises law concerning family leave, family temporary disability leave, and domestic or sexual violence safety leave.

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