

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 670

INTRODUCER: Banking and Insurance Committee and Senator Yarborough

SUBJECT: Paid Family Leave Insurance

DATE: April 19, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Johnson</u>	<u>Yeatman</u>	<u>FP</u>	<u>Pre-meeting</u>
3.	_____	_____	_____	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 670 specifies standards for transacting paid family leave insurance in Florida. Currently, life insurers are authorized to transact health insurance, disability income insurance, and excess coverage for health maintenance organizations and multiple-employer welfare arrangements. CS/SB 670 authorizes life insurers to transact paid family leave insurance as a policy or as rider to a group disability income policy. CS/SB 670 specifies circumstances under which family leave benefits may be provided; and requires paid family leave insurance policies or riders to include disclosures and coverage requirements, such as benefit periods, waiting periods, benefit amounts, offsets, and the payment of benefits. The bill authorizes the Financial Services Commission to adopt rules to administer this act.

The Family and Medical Leave Act of 1993 (FMLA)¹ allows eligible employees of a covered employer to take employment-protected, unpaid leave, or to substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 12 workweeks in any 12 months and meets other requirements. An estimated 60 percent of the workforce is covered by the FMLA and only 23 percent of the workforce has access to paid family leave. New Hampshire and Virginia currently offer voluntary family and medical leave benefits through private insurance.

SB 670 is modeled after the National Council on Insurance Legislators (NCOIL) Paid Family Leave Insurance Model Act, which provides a framework for states to create a new line of

¹ Pub. Law 103-3 (Feb. 5, 1993). 29 U.S.C. 2601 et. seq.

insurance in which an authorized insurer licensed to transact life insurance or disability income insurance will also be able to provide coverage for paid family leave.² An employee's access to such coverage could mitigate income loss when the employee needs to take leave without pay to care for family members.

There is no fiscal impact on local governments. SB 670 will have an indeterminate, but likely positive, fiscal impact on state government.

II. Present Situation:

Federal Family and Medical Leave Act of 1993

The Family and Medical Leave Act of 1993 (FMLA)³ allows eligible employees⁴ of a covered employer⁵ to take job-protected, unpaid leave, or to substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 12 workweeks in any 12 months and meets other requirements.⁶ An eligible employee's FMLA 12 workweek leave entitlement is available for any one, or more, of the following qualifying conditions:

- The birth of the employee's son or daughter, and to care for the newborn child;
- The placement with the employee of a son or daughter for adoption or foster care, and to care for the newly placed child;
- To care for the employee's spouse, son, daughter, or parent with a serious health condition;
- Because of a serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job; and,
- Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty status (or has been notified of an impending call or order to covered active duty).⁷

The maximum amount of FMLA leave increases to 26 workweeks during a 12 month period in the case of leave to care for a covered servicemember with a serious injury or illness.

² [Paid family leave model law one of four adopted by NCOIL – Insurance News | InsuranceNewsNet](#) (last visited Mar. 10, 2023).

³ Pub. Law 103-3 (Feb. 5, 1993). 29 U.S.C. 2601 et. seq.

⁴ Generally, an eligible employee means an employee who has been employed for a total of at least 12 months and meets other requirements. 29 C.F.R. s. 825.110.

⁵ An employer means any person engaged in commerce or in an industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year, and includes:

- (1) Any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer;
- (2) Any successor in interest of an employer; and
- (3) Any public agency.

The terms, "commerce" and "industry affecting commerce," are defined in accordance with section 501(1) and (3) of the Labor Management Relations Act of 1947 (LMRA) (29 U.S.C. 142(1) and (3)), as set forth in the definitions at 29 C.F.R. s. 825.102. For purposes of the FMLA, employers who meet the 50-employee coverage test are deemed to be engaged in commerce or in an industry or activity affecting commerce. 29 C.F.R. ss. 825.102 and 825.104.

⁶ 29 C.F.R. ss. 825.100 and 825.110.

⁷ 29 C.F.R. s. 825.200.

An employee on FMLA leave is also entitled to have any group health insurance benefits maintained while on leave as if the employee had continued to work instead of taking the leave.⁸

An estimated 60 percent of the workforce is covered by the FMLA⁹ and 23 percent of the workforce has access to paid family leave.¹⁰ Some states provide a paid family leave program utilizing either a social insurance policy design that funds benefits through pooled payroll taxes on employees or employers or using private insurance to fund the programs.¹¹ In addition, the availability of a program may be the result of a mandate while other states provide voluntary programs. States that currently offer family and medical benefits through private insurance are New York (mandatory), New Hampshire (voluntary), and Virginia (voluntary).

Florida Office of Insurance Regulation

The Office of Insurance Regulation¹² (OIR) licenses and regulates the activities of insurers, health maintenance organizations (HMOs), and other risk-bearing entities pursuant to the Florida Insurance Code.¹³ The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S., and before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the agency.¹⁴

The code provides that certain insurance coverages may come within the definitions of two or more kinds of insurance as defined in part V of ch. 624, F.S.¹⁵ The inclusion of such coverage within one definition may not exclude it from being considered as any other kind of insurance, the definition of which reasonably includes such coverage.¹⁶ Insurance is classified into the following kinds of insurance: life, health, property, casualty, surety, marine, and title.¹⁷

A qualified insurer¹⁸ may transact any one kind or combination of insurance, including life, health, property, casualty, surety, marine, and title.¹⁹ Paid family leave insurance is not currently included among the kinds of insurance authorized in Florida. The code provides that the transaction of life insurance includes the granting of annuity contracts, including, but not limited to, fixed or variable annuity contracts; the granting of endowment benefits, additional benefits in event of death or dismemberment by accident or accidental means, additional benefits in event of the insured's disability; and optional modes of settlement of proceeds of life insurance.²⁰ A life insurer may grant annuities, but shall not be authorized to transact any other kind of insurance

⁸ 29 C.F.R. s. 825.100(b).

⁹ [Paid Leave in the U.S. | KFF](#) (Dec. 17, 2021) (last visited Mar. 16, 2023).

¹⁰ *Id.*

¹¹ Department of Financial Services, *SB 670 Analysis* (Feb. 27, 2023).

¹² Section 20.121(3)(a), F.S.

¹³ Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S., constitute the "Florida Insurance Code." Section 624.01, F.S.

¹⁴ Section 641.21(1), F.S.

¹⁵ Section 624.601, F.S.

¹⁶ *Id.*

¹⁷ Section 624.6011, F.S.

¹⁸ An authorized insurer is one duly authorized by a subsisting certificate of authority issued by the OIR to transact insurance in Florida. Section 624.09(1), F.S.,

¹⁹ Sections 624.406(1), and 624.6011, F.S.

²⁰ Section 624.602(1), F.S.

except health insurance, disability income insurance, excess coverage for health maintenance organizations, or excess insurance, specific and aggregate, for self-insurers of a plan of health insurance and multiple-employer welfare arrangements.²¹ A “life insurer” or “life insurance company” is an insurer engaged in the business of issuing life insurance contracts, including contracts of combined life and health and accident insurance.²²

Rule 690-154.106(6), F.A.C., defines “disability income protection insurance” as a policy of health insurance identified in the outline of coverage, as to scope of coverage, if limited (e.g., accident only or sickness only), which provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from sickness or injury. The OIR has approved paid family leave insurance products as part of a policy or as riders to disability income benefits.²³

National Council of Insurance Legislators Model Act

The National Council of Insurance Legislators (NCOIL) is an organization comprised principally of legislators serving on state insurance and financial institutions committees around the United States.²⁴ The NCOIL writes insurance model laws in insurance, works to both preserve the state jurisdiction over insurance and to serve as an educational forum for public policy makers and interested parties. On November 19, 2022, the NCOIL adopted the Paid Family Leave Insurance Model Act.²⁵ The purpose of the act is to create a new line of insurance, known as paid family leave insurance, under which any insurer licensed to transact life insurance or disability income insurance business in this state may be authorized to issue policies covering such risk.²⁶

III. Effect of Proposed Changes:

Section 1. Amends s. 624.406, F.S., to include paid family leave as a kind of insurance a qualified life insurer may be authorized to transact.

Section 2. Creates s. 624.6086, F.S., which defines the term, “paid family leave insurance,” as insurance issued to an employer that is related to a benefit program provided to an employee to pay for a percentage or portion of the employee’s income loss due to the any of the following conditions:

- The birth or adoption of a child by the employee;
- Placement of a child with the employee for foster care;
- Care of the employee’s family member who has a serious medical health condition; or
- Circumstances arising out of the fact that the employee’s family member who is a servicemember on active duty or has been notified of an impending call or order to duty.

Subsection (2) authorizes family leave insurance to be written as an amendment or a rider to a group disability income policy, included in a group disability income policy, or written as a

²¹ Section 624.406, F.S.

²² Section 624.602(2), F.S.

²³ Office of Insurance Regulation, *SB 670 Bill Analysis* (Feb. 14, 2023).

²⁴ [History & Purpose - NCOIL](#) (last visited Mar. 1, 2023).

²⁵ [NCOIL-PFL-Model-Adopted-Nov.-2022.pdf \(secureserver.net\)](#) (last visited Mar. 5, 2023).

²⁶ *Id.*

separate group insurance policy purchased by the employer. Subsection (3) provides that the terms “child,” “family leave,” and “family member” have the same meanings as provided in s. 627.445(3), F.S.

Section 3. Creates s. 627.445, F.S., relating to paid family leave insurance requirements. The section creates definitions, family leave benefits and reasons, policy requirements, waiting period requirements, calculation and payment of family leave benefits, and rulemaking authority for the Financial Services Commission.

Subsection (3) defines “Armed Forces of the United States” to include members of the National Guard and the reserves for the purpose of family servicemembers whose call to active duty would be considered for qualification for this insurance benefit. The subsection also defines the following terms: child, family leave, family member, health care provider, parent, and serious health condition.

The bill requires that the policy must provide benefits for any leave taken by an employee from work for the following reasons:

- Participating in providing care, including physical or psychological care, for a family member of the employee made necessary by a serious health condition of the family member;
- Bonding with the employee’s child during the first 12 months after the child’s birth or the first 12 months after the placement of the child for adoption by or foster care with the employee;
- Addressing a qualifying exigency as interpreted under the Family and Medical Leave Act of 1993 arising out of the fact that the spouse, child, or parent of the employee is on active duty or has been notified of an impending call or order to active duty, in the Armed Forces of the United States;
- Caring for a family servicemember injured in the line of duty with the Armed Forces of the United States; or
- Taking other leave to provide care for a family member or other family leave as specified in the policy.

Further, the policy must disclose requirements with regard to each of the covered family leave reasons. The amount of family leave benefits available, including coordinating with other income, must be disclosed in the contract. The length of the benefit period may not be less 2 weeks during a period of 52 consecutive calendar weeks. The policy must specify whether there is an unpaid waiting period, and if so, the terms and conditions.

The bill authorizes limitations, exclusions, or reductions of benefits; however, they must be disclosed in the contract. Family leave benefits must be paid periodically and promptly, except as to a contested period of family leave and subject to any of the specified limitations, exclusions, or reductions.

The rates for policies or riders must be calculated pursuant to s. 627.062, F.S., and rates and forms must be approved by OIR. Section 627.062, F.S., provides that the rates for all classes of insurance to which the provisions of part of ch. 627, F.S., are applicable may not be excessive, inadequate, or unfairly discriminatory.

Section 4. Provides the bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Implementation of the bill will allow some employees eligible to receive family leave insurance benefits to receive compensation they would not have otherwise received while unable to work due to an eligible family leave of their own or a serious health condition of a family member.

SB 670 will allow life insurers to expand existing income replacement benefits products offered to employers to include paid family leave benefits.

C. Government Sector Impact:

The OIR has indicated that the costs associated with the implementation of the bill can be accomplished using existing resources.²⁷

The state may experience an indeterminate, positive impact due to increased premium tax revenues to the extent the demand for the policies grows.²⁸

²⁷ Office of Insurance Regulation, *SB 670 Analysis* (Feb. 14, 2023).

²⁸ Premium taxes are imposed on insurance premiums paid by insurance companies. Sections 624.509, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 624.406 of the Florida Statutes.

This bill creates sections 624.6086 and 627.445 and of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 22, 2023:

The CS:

- Requires the Office of Insurance Regulation to review forms as well rates of a paid family leave insurance rider or policy.
- Eliminates provision creating paid family leave insurance as a kind of insurance under s. 624.624.6011, F.S.
- Provides technical changes.

- B. **Amendments:**

None.