



Amendment to HB 628-FN

1 Amend the title of the bill by replacing it with the following:

2
3 AN ACT relative to disability insurance for non-work related employee health issues and
4 family and medical leave insurance.
5

6 Amend the bill by replacing all after the enacting clause with the following:
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8 1 New Chapter; Disability Insurance for Non-Work Related Employee Health Issues and
9 Family and Medical Leave Insurance. Amend RSA by inserting after chapter 282-A the following
10 new chapter:

11 CHAPTER 282-B

12 DISABILITY INSURANCE FOR NON-WORK RELATED EMPLOYEE HEALTH ISSUES
13 AND FAMILY AND MEDICAL LEAVE INSURANCE

14 282-B:1 Findings. The general court finds that disability insurance for non-work related
15 employee health issues coupled with family and medical leave insurance will help New Hampshire
16 attract and retain workers, including younger workers, will enable parents to bond with biological,
17 adopted, or foster children, will help meet the needs of an aging population, will advance the health
18 of New Hampshire's workforce and workplace stability, and will enhance worker retention and
19 productivity. The general court therefore finds that it is in the public interest to establish a system
20 of disability insurance for non-work related employee health issues and family and medical leave
21 insurance (FMLI) with benefits to be provided to qualified workers on a limited basis.

22 282-B:2 Definitions. In this chapter:

23 I. "Child" has the same meaning as "son or daughter" in 29 U.S.C. section 2611(12).

24 II. "Commissioner" means the commissioner of the department of labor.

25 III. "Department" means the department of labor.

26 IV. "Disability insurance for non-work related employee health issues" means insurance
27 designed to provide financial support to an employee who is unable to perform the activities of his
28 or her employment due to a non-work related injury or sickness.

29 V. "Employer" means any individual, organization, partnership, association, corporation, or
30 limited liability company that employs or puts to work a person as an employee. "Employer" shall
31 not include a sole proprietor with no employees.

32 VI. "Employment" means service performed for wages for an employer under this chapter.

33 VII. "Family and medical leave" means leave from work due to:



- 1 (a) The birth of a child of the employee, within the past 12 months;
2 (b) The placement of a child with the employee for adoption or fostering, within the past
3 12 months; or
4 (c) A serious health condition of a family member.

5 VIII. "Family member" means a child, a biological, adoptive, or foster parent, a stepparent
6 or legal guardian of a child, a child's spouse or domestic partner, a biological, adoptive, or
7 stepgrandparent, or a spouse or domestic partner.

8 IX. "Federal family and medical leave act" means the federal Family and Medical Leave Act
9 of 1993, 29 U.S.C. section 2601 et seq.

10 X. "FMLI" means family and medical leave insurance.

11 XI. "Serious health condition" for the purpose of family and medical leave means any illness
12 covered by the federal family and medical leave act including treatment for addiction as prescribed
13 by a treating clinician, consistent with American Society of Addiction Medicine criteria, as well as
14 treatment for a mental health condition, consistent with American Psychiatric Association criteria.

15 282-B:3 Employer Responsibility.

16 I. All employers except the state and its political subdivisions shall provide family and
17 medical leave insurance, provided that any employer participating in a self-insured plan or who is
18 self-insured may opt out of family and medical leave insurance upon certification by the
19 commissioner or authorized representative that the employer provides an equivalent benefit for its
20 employees. The state or its political subdivisions may provide insurance under this chapter upon
21 certification by the commissioner or authorized representative that the insurance benefits are at
22 least equivalent to the benefits provided under the collective bargaining agreement, provided the
23 applicable bargaining unit has first ratified this option. All employers shall offer paid family and
24 medical leave insurance policies from an approved list of insurers maintained by the department of
25 insurance unless self-insured.

26 II. Prior to the commencement of employment or the commencement of the provision of
27 insurance, each employer shall provide to a prospective employee department-approved written
28 information containing conspicuous language explaining the costs and benefits of family and
29 medical leave insurance and indicating that the employee may affirmatively opt out of the
30 insurance by downloading a form from the department to be completed, signed, and submitted to
31 the department and the employer before employment commences or before insurance is provided,
32 and that the employee shall be provided the opportunity to opt in or opt out on January 1 of each
33 year. No employer shall make opting in or opting out of the insurance a condition of employment
34 nor discriminate against an employee in compensation or in terms, conditions, or privileges of
35 employment because such employee chose not to opt out.

36 III. Employers shall withhold a percentage of each participating employee's wages per
37 week, as determined by the insurance commissioner under RSA 400-A:68, I, for family and medical



1 leave insurance premiums.

2 IV. An employer may require that leave taken under this chapter be taken concurrently or
3 otherwise coordinated with leave allowed under the terms of a collective bargaining agreement or
4 employer policy. An employer shall give employees written notice of this requirement.

5 V. Annually, on or before January 31, every employer shall provide an annual report for
6 the most recent calendar year on leave usage, aggregate benefits paid, average benefit paid, and
7 participation rates. Such report shall be in a format established by the department.

8 VI. A violation of any provision of this chapter shall require corrective action. The
9 department shall issue a written warning for a first offense. The employer may appeal in writing to
10 the commissioner from the initial determination. For a second offense, an employer shall be guilty
11 of a class A misdemeanor.

12 282-B:4 Employee Responsibility.

13 I. An employee shall provide his or her employer with written notice of intent to take family
14 and medical leave at least 30 days before the leave will begin unless the leave was not reasonably
15 foreseeable or the time of the leave changes due to circumstances that were not reasonably
16 foreseeable. An employee's failure to provide required notice may delay or reduce benefits.

17 II. Any employee of an employer covered under the federal Family and Medical Leave Act
18 who takes leave under this chapter shall be restored to the position he or she held prior to taking
19 such leave or to an equivalent position by his or her employer. Employers shall continue to provide
20 health insurance to employees during the leave, but employees shall remain responsible for any
21 employee-shared costs associated with the health insurance benefits. No employer shall retaliate
22 against any employee solely for exercising his or her rights under this chapter.

23 282-B:5 Eligibility Process. In order to be eligible to participate in family and medical leave
24 insurance, an employee shall be employed by the same employer for 12 months. An employee must
25 participate in the program for 12 months with the same employer before being eligible for family
26 and medical leave benefits. No employee may take paid family and medical leave for himself or
27 herself until he or she has exhausted all short term disability benefits. An employee shall have
28 worked in employment resulting in wages in the amount of at least 1,040 hours annually multiplied
29 by the applicable minimum wage. An employee who earns less than the required wages may not
30 contribute to the program or be eligible for benefits.

31 282-B:6 Calculation of Minimum Benefits. An employer must withhold premium payments
32 from the employee's wages for at least 12 months before the employee is eligible for benefits.
33 Family and medical leave insurance benefits in any 12 month period shall be as least as follows:

34 I. In the first year of eligibility, an employee is limited to 4 weeks of paid family leave at 50
35 percent of average weekly wage capped at 50 percent of New Hampshire's state average weekly
36 wage as reported by the department of employment security. No employee shall earn more than 50
37 percent of his or her weekly wage.



1 II. In the second year of eligibility, an employee is limited to 4 weeks of paid family leave at
2 55 percent of average weekly wage capped at 55 percent of New Hampshire's state average weekly
3 wage as reported by the department of employment security. No employee shall earn more than 55
4 percent of his or her weekly wage.

5 III. In the third year of eligibility, an employee is limited to 4 weeks of paid family leave at
6 60 percent of average weekly wage capped at 60 percent of New Hampshire's state average weekly
7 wage as reported by the department of employment security. No employee shall earn more than 60
8 percent of his or her weekly wage.

9 IV. In the fourth and subsequent years of eligibility, an employee is limited to 4 weeks of
10 paid family leave at 67 percent of average weekly wage capped at 67 percent of New Hampshire's
11 state average weekly wage as reported by the department of employment security. No employee
12 shall earn more than 67 percent of his or her weekly wage.

13 282-B:7 Limitations. Nothing in this chapter shall diminish an employer's obligation to comply
14 with a collective bargaining agreement or employer policy, nor does this chapter, or any decision by
15 the commissioner or authorized representative under this chapter, limit the ability of employers to
16 provide short term disability insurance, family and medical leave insurance benefits, or benefits
17 beyond what is required by this chapter.

18 282-B:8 Oversight Committee Established.

19 I. There is established a legislative oversight committee to monitor disability insurance for
20 non-work related employee health issues and family medical leave insurance under RSA 282-B.

21 II.(a) The members of the committee shall be as follows:

22 (1) Four members of the house of representatives appointed by the speaker of the
23 house of representatives, one of whom shall be the chairperson of the commerce and consumer
24 affairs committee and one of whom shall be the chairperson of the finance committee.

25 (2) One member of the senate, appointed by the president of the senate.

26 (b) Members of the committee shall receive mileage at the legislative rate when
27 attending to the duties of the committee.

28 III. The committee shall monitor disability insurance for non-work related employee health
29 issues and family medical leave insurance. The committee shall work with the departments of
30 insurance, labor, and employment security to evaluate the efficiency and effectiveness of disability
31 insurance for non-work related employee health issues and family medical leave insurance under
32 RSA 282-B.

33 IV. The chairperson of the commerce and consumer affairs committee and the chairperson
34 of the finance committee shall be co-chairpersons of the oversight committee. The first meeting of
35 the committee shall be called by the first-named house member. The first meeting of the committee
36 shall be held within 45 days of the effective date of this section. Three members of the committee
37 shall constitute a quorum.



V. The legislative oversight committee shall submit an annual report of its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the chairpersons of the house and senate finance and executive departments and administration committees, the house clerk, the senate clerk, the governor, and the state library on or before November 1.

2 New Subdivision; Disability Insurance for Non-Work Related Employee Health Issues. Amend RSA 275 by inserting after section 27 the following new subdivision:

Disability Insurance for Non-Work Related Employee Health Issues

275:27-a Disability Insurance for Non-Work Related Employee Health Issues. All employers, including the state and its political subdivisions and nonprofit organizations that opt into this chapter, shall provide disability insurance for non-work related employee health issues for their employees, provided that any employer providing disability coverage already or who is self-insured and participating in a self-insured plan shall not be required to change coverage.

3 New Subdivision; Disability Insurance for Non-Work Related Employee Health Issues. Amend RSA 400-A by inserting after section 67 the following new subdivision:

Disability Insurance for Non-Work Related Employee Health Issues

400-A:68 Disability Insurance for Non-Work Related Employee Health Issues.

I. The insurance commissioner, in consultation with the department of employment security, shall annually adjust the payroll withholding percentage based on market rates and pursuant to RSA 282-B:3, III, and provide the new rate to the department of labor for dissemination to eligible employers.

II. The insurance commissioner, in consultation with the department of employment security, shall make public and provide annual reports on or before March 31 to the senate president, speaker of the house of representatives, and members of the house and senate committees with jurisdiction over commerce and finance, and make available to the public on the insurance department website a summary including, but not limited to, program usage, aggregate benefits paid, average benefit paid, and participation rates.

III. The insurance commissioner shall provide information to all insurance providers that provide or may be interested in providing disability insurance for non-work related employee health issues products in New Hampshire.

4 Effective Date. This act shall take effect January 1, 2019.



2018-1111h

AMENDED ANALYSIS

This bill establishes disability insurance for non-work related employee health issues and family and medical leave insurance.