

SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 3335

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Introduction and first reading
Referred to Commerce and Consumer Protection

OFFICIAL STATUS

- 1.1 A bill for an act
- 1.2 relating to employment; creating a voluntary family and medical benefit insurance
- 1.3 plan; providing a marketplace for wage replacement insurance benefits; requiring
- 1.4 a report; appropriating money; amending Minnesota Statutes 2022, section 60A.06,
- 1.5 subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 290;
- 1.6 proposing coding for new law as Minnesota Statutes, chapter 268B.
- 1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.8 Section 1. Minnesota Statutes 2022, section 60A.06, subdivision 1, is amended to read:
- 1.9 Subdivision 1. **Statutory lines.** Insurance corporations may be authorized to transact in
- 1.10 any state or territory in the United States, in the Dominion of Canada, and in foreign
- 1.11 countries, when specified in their charters or certificates of incorporation, either as originally
- 1.12 granted or as thereafter amended, any of the following kinds of business, upon the stock
- 1.13 plan, or upon the mutual plan when the formation of such mutual companies is otherwise
- 1.14 authorized by law; and business trusts as authorized by law of this state shall only be
- 1.15 authorized to transact in this state the following kind of business hereinafter specified in
- 1.16 clause (7) hereof when specified in their "declaration of trust":
- 1.17 (1) To insure against loss or damage to property on land and against loss of rents and
- 1.18 rental values, leaseholds of buildings, use and occupancy and direct or consequential loss
- 1.19 or damage caused by fire, smoke or smudge, water or other fluid or substance, lightning,
- 1.20 windstorm, tornado, cyclone, earthquake, collapse and slippage, rain, hail, frost, snow,
- 1.21 freeze, change of temperature, weather or climatic conditions, excess or deficiency of
- 1.22 moisture, floods, the rising of waters, oceans, lakes, rivers or their tributaries, bombardment,
- 1.23 invasion, insurrection, riot, civil war or commotion, military or usurped power, electrical
- 1.24 power interruption or electrical breakdown from any cause, railroad equipment, motor

vehicles or aircraft, accidental injury to sprinklers, pumps, conduits or containers or other apparatus erected for extinguishing fires, explosion, whether fire ensues or not, except explosions on risks specified in clause (3); provided, however, that there may be insured hereunder the following: (a) explosion of any kind originating outside the insured building or outside of the building containing the property insured; (b) explosion of pressure vessels which do not contain steam or which are not operated with steam coils or steam jackets; and (c) risks under home owners multiple peril policies;

(2)(a) To insure vessels, freight, goods, wares, merchandise, specie, bullion, jewels, profits, commissions, bank notes, bills of exchange, and other evidences of debt, bottomry and respondentia interest, and every insurance appertaining to or connected with risks of transportation and navigation on and under water, on land or in the air;

(b) To insure all personal property floater risks;

(3) To insure against any loss from either direct or indirect damage to any property or interest of the assured or of another, resulting from the explosion of or injury to (a) any boiler, heater or other fired pressure vessel; (b) any unfired pressure vessel; (c) pipes or containers connected with any of said boilers or vessels; (d) any engine, turbine, compressor, pump or wheel; (e) any apparatus generating, transmitting or using electricity; (f) any other machinery or apparatus connected with or operated by any of the previously named boilers, vessels or machines; and including the incidental power to make inspections of and to issue certificates of inspection upon, any such boilers, apparatus, and machinery, whether insured or otherwise;

(4) To make contracts of life and endowment insurance, to grant, purchase, or dispose of annuities or endowments of any kind; and, in such contracts, or in contracts supplemental thereto to provide for additional benefits in event of death of the insured by accidental means, total permanent disability of the insured, or specific dismemberment or disablement suffered by the insured, or acceleration of life or endowment or annuity benefits in advance of the time they would otherwise be payable;

(5)(a) To insure against loss or damage by the sickness, bodily injury or death by accident of the assured or dependents, or those for whom the assured has assumed a portion of the liability for the loss or damage, including liability for payment of medical care costs or for provision of medical care;

(b) To insure against the legal liability, whether imposed by common law or by statute or assumed by contract, of employers for the death or disablement of, or injury to, employees;

(6) To guarantee the fidelity of persons in fiduciary positions, public or private, or to act as surety on official and other bonds, and for the performance of official or other obligations;

(7) To insure owners and others interested in real or personal property as described in section 68A.04;

(8) To insure against loss or damage by breakage of glass, located or in transit;

(9)(a) To insure against loss by burglary, theft, or forgery;

(b) To insure against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptance or any other valuable paper or document, resulting from any cause, except while in the custody or possession of and being transported by any carrier for hire or in the mail;

(c) To insure individuals by means of an all risk type of policy commonly known as the "personal property floater" against any kind and all kinds of loss of or damage to, or loss of use of, any personal property other than merchandise;

(d) To insure against loss or damage by water or other fluid or substance;

(10) To insure against loss from death of domestic animals and to furnish veterinary service;

(11) To guarantee merchants and those engaged in business, and giving credit, from loss by reason of giving credit to those dealing with them; this shall be known as credit insurance;

(12) To insure against loss or damage to automobiles or other vehicles or aircraft and their contents, by collision, fire, burglary, or theft, and other perils of operation, and against liability for damage to persons, or property of others, by collision with such vehicles or aircraft, and to insure against any loss or hazard incident to the ownership, operation, or use of motor or other vehicles or aircraft;

(13) To insure against liability for loss or damage to the property or person of another caused by the insured or by those for whom the insured is responsible, including insurance of medical, hospital, surgical, funeral or other related expense of the insured or other person injured, irrespective of legal liability of the insured, when issued with or supplemental to policies of liability insurance;

(14) To insure against loss of or damage to any property of the insured, resulting from the ownership, maintenance or use of elevators, except loss or damage by fire;

(15) To insure against attorneys fees, court costs, witness fees and incidental expenses incurred in connection with the use of the professional services of attorneys at law;

(16) To insure against loss of wages due to family and medical leave events as defined in section 268B.02, subdivision 8.

Sec. 2. **[268B.01] PURPOSE; CITATION.**

(a) The purpose of this chapter is to increase access and options for paid family and medical leave in Minnesota by establishing a voluntary, cost-effective, and comprehensive Family and Medical Leave Insurance plan (MN FaMLI) made available to all private and public employers and employees in the same manner as currently afforded to state of Minnesota employees.

(b) MN FaMLI will leverage the purchasing power and economies of scale available to the state when it is acting as purchaser on behalf of state employees and will align this purchasing initiative with a MN FaMLI tax incentive in order to make MN FaMLI available throughout the state.

(c) By purchasing MN FaMLI coverage for state employees through the medium of commercial insurance, by linking that contract with a contract to make the same coverage available statewide, by acting as a premium aggregator for individuals whose employers do not sponsor MN FaMLI coverage, and by introducing a new MN FaMLI tax incentive, the state will position itself to create a market for advantageously priced MN FaMLI benefits.

(d) It is the intent of this chapter to significantly increase the number of employees in the state who receive MN FaMLI wage replacement benefits. While many larger employers provide paid MN FaMLI benefits through self-insurance, this is not feasible for most midsize and smaller businesses. The legislature therefore finds that it is in the public interest for the state to strategically use its purchasing power and tax expenditure authority to establish a marketplace in the state for advantageously priced MN FaMLI wage replacement benefits.

(e) Sections 268B.01 to 268B.08 may be cited as the MN FaMLI Act.

Sec. 3. **[268B.02] DEFINITIONS.**

Subdivision 1. **Definitions.** For the purposes of chapter 268B, the following terms have the meanings given.

Subd. 2. **Child.** "Child" has the same meaning as "son" or "daughter" under United States Code, title 29, section 2611(12).

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of employment and economic development.

5.1 Subd. 4. **Department.** "Department" means the Department of Employment and
5.2 Economic Development.

5.3 Subd. 5. **Employee.** "Employee" means any individual who is performing or has
5.4 performed services for an employer in employment.

5.5 Subd. 6. **Employer.** "Employer" means an employer with a physical location in
5.6 Minnesota.

5.7 Subd. 7. **Employment.** "Employment" means an employee performing services for hire
5.8 for an employer.

5.9 Subd. 8. **Family and medical leave.** "Family and medical leave" means leave from
5.10 employment due to:

5.11 (1) the birth of a child of the employee within the past 12 months;

5.12 (2) the placement of a child with the employee for adoption or fostering within the past
5.13 12 months;

5.14 (3) a serious health condition of the employee that is not related to employment and for
5.15 which their employer does not offer short-term disability insurance;

5.16 (4) a serious health condition of a family member; or

5.17 (5) any qualifying exigency arising from foreign deployment with the armed forces, or
5.18 to care for a service member with a serious injury or illness as permitted under the federal
5.19 Family and Medical Leave Act, United States Code, title 29, section 2612(a)(1)(E) and
5.20 Code of Federal Regulations, title 29, section 825.126(a)(1) to (8), as they existed on October
5.21 19, 2017, for family members as defined in subdivision 10.

5.22 Subd. 9. **Family and Medical Leave Act or FMLA.** "Family and Medical Leave Act"
5.23 or "FMLA" means the federal Family and Medical Leave Act of 1993, Public Law 103-3,
5.24 United States Code, title 29, section 2601, et seq.

5.25 Subd. 10. **Family member.** "Family member" means a child; a biological, adoptive, or
5.26 foster parent, stepparent, or legal guardian of the child or employee or an individual who
5.27 stood in loco parentis to the child or employee; the child's spouse or domestic partner; a
5.28 biological, adoptive, or foster grandparent or stepgrandparent; or a spouse or domestic
5.29 partner.

5.30 Subd. 11. **Individual pool.** "Individual pool" means a pooled purchasing mechanism
5.31 for the purpose of providing individual employees of employers who do not sponsor

6.1 qualifying MN FaMLI coverage the option to purchase such coverage on an individual
6.2 basis.

6.3 Subd. 12. **MN FaMLI.** "MN FaMLI" means the Family and Medical Leave Insurance
6.4 Plan under chapter 268B, providing wage replacement benefits under specified conditions.

6.5 Subd. 13. **Serious health condition.** "Serious health condition" means any illness of an
6.6 employee or a family member covered by the Family and Medical Leave Act, including
6.7 treatment for addiction as prescribed by a treating clinician, consistent with American
6.8 Society of Addiction Medicine criteria, as well as treatment for a mental health condition,
6.9 consistent with American Psychiatric Association criteria.

6.10 Subd. 14. **State rate.** "State rate" means the per-employee premium amount that is
6.11 charged by the successful bidder for the state contract for MN FaMLI coverage for state
6.12 government. The state rate shall be expressed as a percentage of wages.

6.13 Sec. 4. **[268B.03] MN FaMLI PROGRAM.**

6.14 Subdivision 1. **Request for proposals and contracts.** The commissioner shall solicit
6.15 information about, seek proposals for, negotiate, enter into, and administer group insurance
6.16 contracts with duly authorized accident and life insurance carriers as necessary and
6.17 appropriate to provide to qualifying state employees, at state expense and at no cost to those
6.18 employees, a MN FaMLI plan of wage replacement as described in this section. The provision
6.19 of this coverage shall begin no later than January 1, 2024, and shall be considered a matter
6.20 of legislatively established public policy that is designed to benefit all employers and
6.21 employees in the state.

6.22 Subd. 2. **State employees.** The state shall provide to all permanent state employees wage
6.23 replacement coverage for family and medical leave. Nothing in this section shall be construed
6.24 to invalidate any portion of a collective bargaining agreement or compensation plan entered
6.25 into by the state.

6.26 Subd. 3. **Wage replacement and duration of benefits.** (a) The wage replacement
6.27 benefits under this MN FaMLI plan shall be structured as follows:

6.28 (1) eligible employees shall receive 67 percent of their average weekly wage, as
6.29 determined under subdivision 5, clause (5); and

6.30 (2) wages used to determine the 67 percent MN FaMLI coverage shall be capped at the
6.31 FICA Old-Age, Survivors, and Disability Insurance taxable wage maximum, as amended
6.32 from time to time.

(b) The maximum duration of wage replacement shall be 12 weeks per year, with no minimum duration required. MN FaMLI leave shall run concurrently with FMLA when a worker is eligible under both programs.

(c) An employee is not eligible for wage replacement for any period under which the employee is being compensated for the same event through employer-provided paid leave, short-term disability insurance, or workers' compensation benefits.

Subd. 4. Private employers and nonstate public employers. The commissioner shall include in the request for proposals for MN FaMLI benefits for state employees a requirement that the winning bidder shall, as a condition of the state contract, also offer the same MN FaMLI coverage to nonstate employers on the following terms:

(1) private and public nonstate employers shall receive a rate that is derived from the state rate through the application of rating factors that are actuarially justified and specified in the bid response;

(2) employers with more than 50 employees who choose to sponsor coverage for their employees shall contract directly with the winning bidder; and

(3) employers with fewer than 50 employees who wish to purchase MN FaMLI coverage shall have the opportunity to purchase coverage by making premium remittances into a MN FaMLI premium fund administered by the department in a manner prescribed by the commissioner.

Subd. 5. Additional requirements. The commissioner shall establish, through the request for information and the request for proposals process, the following additional elements of the benefit structure and plan administration in a form and manner consistent with the purposes and policy of this section:

(1) the minimum participation requirement for nonstate employers;

(2) the parameters for individual pool open enrollment periods;

(3) procedures for contributory plans, partially contributory plans, and noncontributory plans;

(4) procedures for payroll deduction and premium remittance for employers with more than 50 employees;

(5) the base period by which the average weekly wage shall be determined;

(6) unless otherwise specified, a minimum period of employment prior to the use of benefits or wage replacement; and

(7) unless otherwise specified, a waiting period or elimination period, except that a waiting or elimination period shall not be a required element of the benefit structure and the commissioner shall have authority to implement a plan with no such requirement.

Subd. 6. **Plan to be voluntary.** Participation in the plan by nonstate employers and individuals shall be voluntary. In addition, nonstate employers may choose to provide MN FaMLI at no cost to their employees or on a contributory or partially contributory basis.

Subd. 7. **Evaluation.** The commissioners of employment and economic development and commerce shall jointly evaluate the proposals received in response to the request for proposals. The department shall contract with an insurance carrier or carriers authorized under section 60A.06, subdivision 1, clause (16), to provide MN FaMLI coverage. The selected insurance carrier shall be licensed by the state of Minnesota and in good standing. The selected insurance carrier shall be subject to all applicable insurance laws and regulations of the state of Minnesota, and the rates and forms for the MN FaMLI contracts shall be filed for approval with the insurance commissioner.

Sec. 5. [268B.04] INDIVIDUAL POOL.

(a) No later than January 1, 2024, an individual who works for an employer who chooses not to offer MN FaMLI coverage under section 268B.03, fails to meet minimum participation requirements, or does not offer a MN FaMLI benefit that is at least equivalent to that required under this chapter, shall have the opportunity to contract indirectly with the winning bidder through the individual pool for family and medical leave insurance administered by the department. Coverage through the pool shall include a six-month waiting period, a one-week elimination period, and a 60-day annual open enrollment period as established by the commissioner in the procurement process. Premiums for individual pool coverage shall not exceed \$5 per subscriber per week.

(b) Individuals opting into the individual pool shall make their premium remittances by payroll deduction.

(c) The department shall develop and implement an outreach program to ensure that individuals eligible for MN FaMLI benefits under this chapter are made aware of these benefits. Outreach information shall explain, in an easily understood format, the eligibility requirements, benefit structure, and process to access and enroll in MN FaMLI coverage.

9.1 Sec. 6. **[268B.05] MN FaMLI PREMIUM FUND.**

9.2 Subdivision 1. **Fund established.** There is established a MN FaMLI premium fund for
9.3 deposits of insurance premium payments paid pursuant to section 268B.04 and for remittance
9.4 of such premiums to the MN FaMLI carrier or carriers offering MN FaMLI plans. The
9.5 department shall develop standard enrollment procedures in coordination with participating
9.6 carriers and shall transmit enrollment and eligibility information to such carriers on a timely
9.7 basis. The department shall establish procedures and mechanisms for the billing and
9.8 collection of premiums from employers. The department shall specify in contracts with
9.9 participating carriers how all premiums shall be transmitted and the frequency of that
9.10 transmission and how penalties and grace periods on late payments of premiums shall be
9.11 calculated. The department may contract with qualified, independent vendors for the services
9.12 necessary to carry out some or all of the duties under this subdivision.

9.13 Subd. 2. **MN FaMLI premium stabilization fund.** (a) There is established the MN
9.14 FaMLI premium stabilization fund, which shall be held and accounted for separately from
9.15 all other funds. Interest, dividends, and other earnings of the fund shall be added to the fund.
9.16 The money in the fund shall not be subject to any state taxes and shall not be subject to any
9.17 federal taxes to the extent allowed by applicable federal law.

9.18 (b) The money in the fund shall constitute a premium stabilization reserve and shall be
9.19 used exclusively to ensure that the premiums charged to participants in the individual pool
9.20 remain stable from year to year and do not exceed a weekly amount to be determined by
9.21 the commissioner. The fund shall be administered by the commissioner. The department is
9.22 authorized to contract with qualified, independent vendors for the services necessary to
9.23 carry out some or all duties under this subdivision.

9.24 Sec. 7. **[268B.06] REPORT TO LEGISLATURE.**

9.25 The commissioner shall produce an annual summary report on the MN FaMLI program.
9.26 The report shall be made public and delivered to the governor, the president of the senate,
9.27 and the speaker of the house of representatives. At a minimum, the report shall include a
9.28 description of progress in implementing MN FaMLI coverage under this chapter, payments
9.29 into and out of the fund, the number of employees in the state participating in the purchasing
9.30 mechanism, and any recommendations for improvement and to further increase the rate of
9.31 MN FaMLI coverage for eligible employees.

Sec. 8. [268B.07] MN FaMLI ADVISORY BOARD.

Subdivision 1. **Board established.** There is hereby established the Family and Medical Leave Insurance Advisory Board, which shall be called the MN FaMLI Advisory Board.

Subd. 2. **Membership.** (a) The MN FaMLI Advisory Board shall consist of 11 members to be appointed, with the exception of the legislative members, by the governor, as follows:

(1) three persons who, because of their vocations, employment, or affiliations, shall represent employers;

(2) three persons who, because of their vocations, employment, or affiliations, shall represent employees;

(3) one senator appointed by the president of the senate;

(4) one senator appointed by the senate minority leader;

(5) one representative appointed by the speaker of the house of representatives;

(6) one representative appointed by the minority leader of the house of representatives; and

(7) one remaining person to be appointed as the chair, who, because of their vocation, employment, or affiliation, has training and experience to successfully resolve the problems of MN FaMLI procurement, eligibility, benefit design, and program administration.

(b) Appointments under this subdivision must be made no later than September 1, 2023.

Subd. 3. **Duties.** The MN FaMLI Advisory Board is responsible for assisting the commissioner in formulating policies and discussing problems related to the implementation and administration of MN FaMLI and helping to ensure impartiality and freedom from political influence in the solution of problems.

Subd. 4. **Quorum.** A majority of the board members constitutes a quorum. If there is a vacancy in the membership of the MN FaMLI Advisory Board, a majority of the remaining members of the board constitutes a quorum.

Subd. 5. **Meetings.** The first meeting of the MN FaMLI Advisory Board shall occur no later than September 30, 2023. Subsequent meetings shall occur at least once per calendar quarter. MN FaMLI Advisory Board meetings are subject to chapter 13D, shall be open to the public, and shall provide the opportunity for public comment.

Subd. 6. **Terms.** The membership terms, compensation, removal of members, and filling of vacancies on the MN FaMLI Advisory Board are governed by section 15.0575.

11.1 Subd. 7. **Administrative support.** The commissioner shall provide administrative
11.2 support and meeting space for the MN FaMLI Advisory Board.

11.3 Sec. 9. **[268B.08] RULEMAKING.**

11.4 The commissioner may adopt rules as deemed necessary to implement the provisions
11.5 of this chapter. For the purposes of this chapter, the commissioner may use the expedited
11.6 rulemaking process under section 14.389.

11.7 Sec. 10. **[290.0687] TAX CREDIT FOR MN FaMLI COVERAGE.**

11.8 Subdivision 1. **Definitions.** For the purposes of this subdivision, the following terms
11.9 have the meanings given.

11.10 (a) "Employee," "employer," and "MN FaMLI" have the meanings given in section
11.11 268B.02.

11.12 (b) "Small employer" means an employer with fewer than 50 employees.

11.13 (c) "Tax imposed under this chapter" means the taxes imposed under sections 290.06,
11.14 290.091, and 290.0921, but excludes the fee under section 290.0922.

11.15 Subd. 2. **Small employer tax credit.** An employer is allowed a credit against the taxes
11.16 imposed under this chapter for a taxable year equal to the lesser of:

11.17 (1) \$3,000; or

11.18 (2) 50 percent of the MN FaMLI premium paid by the employer for each qualifying
11.19 employee in a taxable year under chapter 268B.

11.20 Subd. 3. **Carryover; refund; appropriation.** (a) If the credit allowed under subdivision
11.21 2 exceeds the tax imposed under this chapter, the excess is a credit carryover to each of the
11.22 five succeeding taxable years. The entire amount of the excess unused credit must be carried
11.23 first to the earliest taxable year to which the amount may be carried. The unused portion of
11.24 the credit must be carried to the following taxable year. No credit may be carried to a taxable
11.25 year more than five years after the taxable year in which the credit was earned.

11.26 (b) If the credit allowed under subdivision 3 exceeds the liability for tax imposed under
11.27 this chapter, the commissioner shall pay the excess as a refund to the eligible employee.

11.28 (c) An amount sufficient to pay the refunds required by this paragraph is appropriated
11.29 from the general fund to the commissioner.

12.1 Sec. 11. **APPROPRIATION.**

12.2 \$334,000,000 in fiscal year 2024 is appropriated from the general fund to the
12.3 commissioner of employment and economic development for the purposes of Minnesota
12.4 Statutes, chapter 268B, including the costs for start-up, necessary and reasonable outreach
12.5 and education to employers and employees about MN FaMLI, and employer tax credits.

12.6 Sec. 12. **EFFECTIVE DATE.**

12.7 Sections 1 to 9 are effective January 1, 2024. Section 10 is effective for taxable years
12.8 beginning after December 31, 2023, and applies to MN FaMLI premiums paid under
12.9 Minnesota Statutes, chapter 268B, beginning on or after January 1, 2024.