

State Corporation Commission

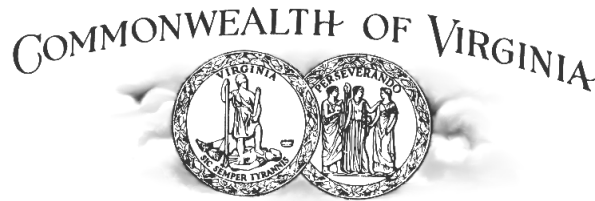
Senate Bill 1219 (2021)

Paid Family Leave

“An Act to direct the Bureau of Insurance to review and make recommendations regarding paid family and medical leave”

Bureau of Insurance
November 30, 2021

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BUREAU OF INSURANCE



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November 30, 2021

The Honorable Richard L. Saslaw, Chair
Committee on Commerce and Labor
Virginia Senate

The Honorable Janet D. Howell, Chair
Committee on Finance and Appropriations
Virginia Senate

The Honorable Jeion A. Ward, Chair
Committee on Labor and Commerce
Virginia House of Delegates

The Honorable Luke E. Torian, Chair
Committee on Appropriations
Virginia House of Delegates

This report has been prepared in response to the charges given to the Bureau of Insurance (Bureau) in Senate Bill 1219¹, which was introduced in the regular session of the 2021 Virginia General Assembly and became law during the 2021 Special Session I. Senate Bill 1219 requires the Bureau to:

1. Make recommendations regarding any necessary statutory changes that would permit the sale of private insurance plans that would help meet the policy goals identified in the "Paid Family and Medical Leave Study" published by the Offices of the Secretary of Commerce and Trade and the Chief Workforce Development Advisor in September 2020 and coexist as part of a statewide paid family and medical leave program, administered by the Commonwealth, as outlined in such study.
2. Convene a stakeholder group to participate in the process, which shall include representatives from the insurance industry, the business community, including small and mid-size businesses that have had difficulty purchasing private insurance in the past, labor organizations, advocates for paid family leave and medical leave, and other interested parties.

This report outlines the efforts of the Bureau and the stakeholders and the Bureau's recommendations for legislation necessary to permit private insurers to write paid family leave coverage in Virginia.

On behalf of the Bureau, attached is its report.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Scott A. White', written in a cursive style.

Scott A. White

¹ A copy of Senate Bill 1219 may be found in Appendix A.

Executive Summary

Senate Bill 1219 (SB1219) allows the Bureau of Insurance (Bureau) to convene a stakeholder group to make recommendations as to statutory changes necessary to permit private insurers to provide family leave coverage in Virginia. The Bureau drafted proposed legislation for the stakeholder group to review and comment upon. The stakeholder group approved the draft legislative proposal, which may be found in Appendix B. The new line of authority allows insurers to write group policies offering paid family leave. The proposed draft legislation closely adheres to the language in the federal Family and Medical Leave Act, "to eliminate confusion of eligibility, leave time and administration."²

Background

Insurers who are interested in writing paid family leave coverage are not currently permitted to do so, as there is no such line of authority presently in Title 38.2 of the Code of Virginia (Virginia Insurance Code), nor does paid family leave coverage fall under any of the existing lines of authority.

Nationally, paid family leave coverage is most often offered with short-term disability income protection coverage (DI). The Virginia Insurance Code permits insurers to offer DI coverage under the definition of "accident and sickness coverage." The Bureau has been contacted by several insurers wanting to write both coverages as they are typically offered together in other jurisdictions.

Stakeholder Process

Thirty-six persons participated in the stakeholder group, including representatives from the insurance industry and the business community, advocates for paid family leave, and other interested parties.³

The stakeholder group held its first meeting on May 11, 2021. The Bureau provided the group with an overview of paid family leave programs in other states. The group thereafter discussed the various characteristics of an ideal public paid family and medical leave program. The group noted that in other states, private paid family leave programs are almost always offered in conjunction with, or as part of, a public family leave program. The group determined that it would focus on language for proposed legislation authorizing the sale of group family leave plans in Virginia. Any such proposal was to be broadly drafted to compliment, and not conflict with, any public program that might be enacted by the General Assembly in the future.

While SB1219 required the group to address "the policy goals identified in the 'Paid Family and Medical Leave Study'" published by the administration that includes paid *medical* leave, the Bureau noted that there is currently authority in the Virginia Insurance Code that permits insurers to write the paid *medical* leave coverage. Therefore, the stakeholder group limited its efforts to paid *family* leave. The stakeholder group also focused on group policies, as this coverage is not

² Item #10 of the considerations offered in the "[Paid Family and Medical Leave Study](#)" published in September 2020 by the Offices of the Secretary of Commerce and Trade and the Chief Workforce Development Advisor.

³ A list of participants may be found in Appendix C.

often written on an individual basis. The group agreed that the Bureau would draft language providing authority in the Virginia Insurance Code to permit insurers to write paid family leave coverage. On July 8, 2021, the Bureau sent the stakeholders a copy of the draft legislative language for their review.

On July 27, 2021, the stakeholder group held its second meeting to discuss the proposed legislative language. The Bureau reiterated that, as discussed above, the draft language only addressed "paid family leave" as opposed to the "paid family and medical leave" that was previously addressed by the General Assembly and by the administration in its "Paid Family and Medical Leave Study." The Bureau noted that leave due to a medical event of the insured is provided under DI coverage, which insurers licensed to write accident and sickness coverage may currently write. The stakeholder group approved of the proposed language to create a line of authority in the Virginia Insurance Code for paid family leave coverage.

As directed by SB1219, the Bureau drafted this report outlining the group's efforts in addressing paid family leave insurance coverage in the Commonwealth. The report was sent to stakeholders for their comments. Members of the stakeholder group approved the report.

Appendix A

VIRGINIA ACTS OF ASSEMBLY -- 2021 SPECIAL SESSION I

CHAPTER 512

An Act to direct the Bureau of Insurance to review and make recommendations regarding paid family and medical leave.

[S 1219]

Approved March 31, 2021

Be it enacted by the General Assembly of Virginia:

1. *§ 1. The State Corporation Commission's Bureau of Insurance (the Bureau) shall make recommendations regarding any necessary statutory changes that would permit the sale of private insurance plans that would help meet the policy goals identified in the "Paid Family and Medical Leave Study" published by the Offices of the Secretary of Commerce and Trade and the Chief Workforce Development Advisor in September 2020 and coexist as part of a statewide paid family and medical leave program, administered by the Commonwealth, as outlined in such study. In conducting its review, the Bureau shall convene a stakeholder group to participate in the process, which shall include representatives from the insurance industry, the business community, including small and mid-size businesses that have had difficulty purchasing private insurance in the past, labor organizations, advocates for paid family leave and medical leave, and other interested parties. The Bureau shall report its findings and recommendations to the Senate Committees on Commerce and Labor and Finance and Appropriations and the House Committees on Labor and Commerce and Appropriations by November 30, 2021.*

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1 **§ 38.2-107.2. Paid family leave.**

2 Paid family leave insurance means a policy issued to an employer related to a benefit program
3 provided to employees to pay for employees' income loss due to (i) the birth of a child or adoption
4 of a child by the employee, (ii) placement of a child with the employee for foster care; (iii) care of
5 a family member of the employee who has a serious health condition; or (iv) circumstances arising
6 out of the fact that the employee's family member who is a military member is on active duty or
7 has been called to active duty status. Paid family leave coverage may be written as an
8 amendment to a group disability income policy, included in a group disability income policy, or as
9 a separate group policy purchased by an employer.

10 **§ 38.2-135. Classes of insurance companies may be licensed to write.**

11 Except as otherwise provided in this title and subject to any conditions and restrictions imposed
12 therein, any insurer licensed to transact the business of insurance in this Commonwealth, other
13 than life insurers and title insurers, may be licensed to write one or more of the classes of
14 insurance enumerated in Article 2 (§ 38.2-101 et seq.) of this chapter that it is authorized under
15 its charter to write, except life insurance, industrial life insurance, credit life insurance, variable life
16 insurance, modified guaranteed life insurance, annuities, variable annuities, modified guaranteed
17 annuities, and title insurance. An insurer licensed to write life insurance shall not be licensed to
18 write any additional class of insurance except modified guaranteed life insurance, variable life
19 insurance, annuities, modified guaranteed annuities, variable annuities, credit life insurance,
20 credit accident and sickness insurance, accident and sickness insurance, ~~and~~ industrial life
21 insurance, and paid family leave insurance. An insurer licensed to write title insurance shall not
22 be licensed to write any additional class of insurance. However, any life insurer that has been
23 licensed to write and has been actively engaged in writing life insurance and any additional class
24 of insurance set out in Article 2 (§ 38.2-101 et seq.) of this chapter continuously during a period
25 of twenty years immediately preceding July 1, 1952, may continue to be licensed to write those

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26 classes of insurance. No company shall write any class of insurance unless it has a current annual
27 license from the Commission to do so.

28 **§ 38.2-316. Policy forms to be filed with Commission; notice of approval or disapproval;**
29 **exceptions.**

30 A. No policy of life insurance, industrial life insurance, variable life insurance, modified guaranteed
31 life insurance, group life insurance, paid family leave insurance, accident and sickness insurance,
32 or group accident and sickness insurance; no annuity, modified guaranteed annuity, pure
33 endowment, variable annuity, group annuity, group modified guaranteed annuity, or group
34 variable annuity contract; no health services plan, legal services plan, dental or optometric
35 services plan, or health maintenance organization contract; no dental plan organization dental
36 benefit contract; and no fraternal benefit certificate nor any certificate or evidence of coverage
37 issued in connection with such policy, contract, or plan issued or issued for delivery in Virginia
38 shall be delivered or issued for delivery in this Commonwealth unless a copy of the form has been
39 filed with the Commission. In addition to the above requirement, no policy of accident and sickness
40 insurance or paid family leave insurance shall be delivered or issued for delivery in this
41 Commonwealth unless the rate manual showing rates, rules, and classification of risks applicable
42 thereto has been filed with the Commission.

43 B. Except as provided in this section, no application form shall be used with the policy or contract
44 and no rider or endorsement shall be attached to or printed or stamped upon the policy or contract
45 unless the form of such application, rider or endorsement has been filed with the Commission. No
46 individual certificate and no enrollment form shall be used in connection with any group life
47 insurance policy, group accident and sickness insurance policy, group annuity contract, ~~or~~ group
48 variable annuity contract, or group paid family leave insurance policy unless the form for the
49 certificate and enrollment form have been filed with the Commission.

50 C. 1. None of the policies, contracts, and certificates specified in subsection A of this section shall
51 be delivered or issued for delivery in this Commonwealth and no applications, enrollment forms,

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52 riders, and endorsements shall be used in connection with the policies, contracts, and certificates
53 unless the forms thereof have been approved in writing by the Commission as conforming to the
54 requirements of this title and not inconsistent with law.

55 2. In addition to the above requirement, no premium rate change applicable to individual accident
56 and sickness insurance policies, subscriber contracts of health services plans, dental or
57 optometric services plans, or fraternal benefit contracts providing individual accident and sickness
58 coverage as authorized in § 38.2-4116 shall be used unless the premium rate change has been
59 approved in writing by the Commission. No premium rate change applicable to individual or group
60 Medicare supplement policies shall be used unless the premium rate change has been approved
61 in writing by the Commission.

62 D. The Commission may disapprove or withdraw approval of the form of any policy, contract or
63 certificate specified in subsection A of this section, or of any application, enrollment form, rider or
64 endorsement, if the form:

- 65 1. Does not comply with the laws of this Commonwealth;
- 66 2. Has any title, heading, backing or other indication of the contents of any or all of its provisions
67 that is likely to mislead the policyholder, contract holder or certificate holder; or
- 68 3. Contains any provisions that encourage misrepresentation or are misleading, deceptive or
69 contrary to the public policy of this Commonwealth.

70 E. Within 30 days after the filing of any form requiring approval, the Commission shall notify the
71 organization filing the form of its approval or disapproval of the form which has been filed, and, in
72 the event of disapproval, its reason therefor. The Commission, at its discretion, may extend for
73 up to an additional 30 days the period within which it shall approve or disapprove the form. Any
74 form received but neither approved nor disapproved by the Commission shall be deemed
75 approved at the expiration of the 30 days if the period is not extended, or at the expiration of the
76 extended period, if any; however, no organization shall use a form deemed approved under the
77 provisions of this section until the organization has filed with the Commission a written notice of

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78 its intent to use the form together with a copy of the form and the original transmittal letter thereof.

79 The notice shall be filed in the offices of the Commission at least 10 days prior to the organization's
80 use of the form.

81 F. If the Commission proposes to withdraw approval previously given or deemed given to the form
82 of any policy, contract or certificate, or of any application, rider or endorsement, it shall notify the
83 insurer in writing at least 15 days prior to the proposed effective date of withdrawal giving its
84 reasons for withdrawal.

85 G. Any insurer or fraternal benefit society aggrieved by the disapproval or withdrawal of approval
86 of any form may proceed as indicated in § 38.2-1926.

87 H. This section shall not apply to any special rider or endorsement on any policy, except an
88 accident and sickness insurance policy that relates only to the manner of distribution of benefits
89 or to the reservation of rights and benefits under such policy, and that is used at the request of
90 the individual policyholder, contract holder or certificate holder.

91 I. The Commission may exempt any categories of such policies, contracts, and certificates and
92 any applicable rate manuals from (i) the filing requirements, (ii) the approval requirements of this
93 section, or (iii) both such requirements. The Commission may modify such requirements, subject
94 to such limitations and conditions which the Commission finds appropriate. In promulgating an
95 exemption, the Commission may consider the nature of the coverage, the person or persons to
96 be insured or covered, the competence of the buyer or other parties to the contract, and other
97 criteria the Commission considers relevant.

98 J. In lieu of complying with the requirements of subsections A, B, and C, any legal services
99 organization operating, conducting, or administering a legal services plan may provide the
100 Commission with an informational filing regarding a subscription contract, enrollment form, rider,
101 or endorsement used by the legal services organization in connection with a legal services plan
102 offered in the Commonwealth together with written notice of its intent to use the form. Upon
103 providing such informational filing and notice, the legal services organization may use the

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104 subscription contract, enrollment form, rider, or endorsement without its prior approval by the
105 Commission. This subsection shall not limit the authority of the Commission to review a legal
106 services plan and any subscription contract, enrollment form, rider, or endorsement used in
107 connection therewith and to disapprove the use of such form for any of the grounds set forth in
108 subsection D.

109 K. Pursuant to the authority granted by § 38.2-223, the Commission may promulgate such rules
110 and regulations as it may deem necessary to set standards for policy and other form submissions
111 required by this section or § 38.2-3501.

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Senate Bill 1219 Paid Family Leave Stakeholder Group Members

• 1	• Don Beatty	• Deputy Commissioner, SCC BOI	Donald.Beatty@scc.virginia.gov
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• 6	• Patrick Cushing - (ACLI)	• Williams Mullen	Pcushing@williamsmullen.com
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• 8	• Senator Jennifer Boysko	• VA Senator	district33@virginia.senate.gov
• 9	• Kate Baker	• VA Retail Federation	Kbaker@virginiaretailfederation.com
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• 15	• Susan Gaston	• PRA Group	Susan@gastongroup.com
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• 17	• Sarah Jane Glynn	• Center for American Progress	Sarahjaneglynn@gmail.com
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Senate Bill 1219 Paid Family Leave Stakeholder Group Members

• 20	• Julie Hunter	• AFL-CIO	Jhunter@va-aflcio.org
• 21 • 22	• Sean Hutson - MetLife (Virginia)/Cynthia Hudson	• Sands Anderson	SHutson@sandsanderson.com/ CHudson@sandsanderson.com
• 23	• Charlie Jackson	• SEIU Virginia 512	Cjackson@jackson-west.com
• 24	• Keith Martin	• Virginia Chamber of Commerce	K.martin@vachamber.com
• 25	• Freddy Mejia	• The Commonwealth Institute	Freddy@thecommonwealthinstitute.org
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