a better balance
the work and family legal center

Headquarters
250 West 55th Street, 17th Floor
New York, NY 10019
tel: 212.430.5982

Southern Office
701 Bradford Ave.
Nashville, TN 37204
tel: 615.915.2417

DC Office
815 16th Street NW, Suite 4162
Washington, DC 20005

Colorado Office
303 E. 17th Ave., Suite 400
Denver, CO 80203

abetterbalance.org | info@abetterbalance.org

Voluntary Private Insurance Paid Family Leave Bills

Background Context

- In recent years, many Southern states (including Virginia, Tennessee, Texas, and Florida) have passed bills allowing private insurance companies to sell paid family leave insurance products to employers, which they can voluntarily choose to purchase. These laws generally enable private insurers to sell a new category of insurance in the private marketplace: paid family leave (to bond with a new child, care for a family member's serious health condition, or address certain military family caregiving needs).
    - Virginia was the first state to pass one of these bills in 2022, and the policy has had a slow rollout, taking over a year for just one insurance company (Aflac) to become approved to start selling paid family leave policies.
- Private insurance paid family leave bills **do not** require any employers to provide paid family leave, which means they **do not** give workers a legal right to paid family leave, nor do they guarantee access to paid leave for any workers. There is not yet reliable data to demonstrate that a meaningful number of employers will voluntarily choose to purchase paid family leave insurance following the enactment of such a policy.
- Most of these bills are based on model legislation from the National Council of Insurance Legislators (NCOIL) and tend to be supported by state chambers of commerce and the insurance lobby.
    - Private insurance bills can be seen as a precautionary measure to ensure financial gain for insurance companies, even though some states may already allow insurance companies to sell paid family leave insurance if they so choose.
    - Lawmakers know that paid family leave is a popular and much-needed policy, but powerful actors such as large statewide chambers of commerce often prevent the passage of comprehensive paid family and medical leave programs, which give workers a legal right to paid leave. Thus, private insurance bills allow lawmakers to claim to address the issue of paid leave without actually increasing guaranteed access for working families in a meaningful way.
- Employers already have the option to purchase short-term disability insurance policies for their employees' own serious health needs, an option that is not widely utilized by employers in the South. As of March 2023, access to short-term disability plans was

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available to only 33 percent of employees in the South, further demonstrating that the voluntary approach leaves the majority of families without access.

How to Frame the Issue

- Private insurance paid family leave bills do not entitle any workers to paid family leave, as opposed to the 14 existing comprehensive paid family and medical leave programs in states across the country. Instead, these bills expand the private insurance marketplace, authorizing private insurers to sell paid family leave insurance as a product to employers.
- To substantially increase access to paid family and medical leave, the preferred, data-driven approach is structured as a social insurance program that shares costs and covers nearly all workers.
    - The preferred approach has already been enacted in 13 states plus D.C. and is proven to support businesses in a cost-effective manner.
    - In a state-run program where everyone shares costs, small businesses see a more level playing field because their employees can take advantage of a benefit that usually only large companies can afford to offer. In fact, several states allow small businesses to participate in the program and provide paid leave to their employees without paying any premiums at all.
    - Voluntary private insurance bills do not include any incentives to encourage employers who are not *already* providing paid leave to *start* providing it, further calling into question whether this approach will significantly increase access to paid leave for those who need it most.
- While voluntary private insurance bills are not necessarily harmful, they will likely not meaningfully increase access to paid family leave—especially for lower-wage workers in sectors like retail, hospitality, and manufacturing who need it the most—and they are therefore not a substitute for comprehensive paid family and medical leave.
    - There is a large swath of data and research from several states that supports the ability of state-run paid family and medical leave insurance programs to improve employee retention rates, recruitment, productivity, and morale. Meanwhile, no data yet exists to support private insurance bills' voluntary approach.
    - One potential downside of these bills passing is that they allow lawmakers to claim to have addressed the issue of paid leave without increasing workers' right or access to paid leave in a meaningful way.

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- As outlined in the side-by-side comparison below, voluntary private insurance bills allow insurers to establish products that are far less comprehensive than statewide paid family and medical leave programs and that provide fewer protections for covered employees. The ability of private insurers to charge premiums based on risk or experience rating can also lead to discriminatory effects for young women and family caregivers.
    - According to the National Academy of Social Insurance, "…experience rating paid leave insurance would incentivize hiring discrimination against any worker who an employer might perceive to be more likely to require medical leave or take family leave, e.g. young women, workers with disabilities, or older workers."
- Rather than a private, opt-in approach that only marginally increases access to paid leave, if at all, what working families and small businesses truly need is a comprehensive paid family and medical leave program that shares costs, reduces the administrative burden on businesses, and guarantees access to paid leave for all.

Side-By-Side Comparison

NCOIL Model Bill	Statewide Paid Family and Medical Leave Insurance Program
• **Authority:** Authorizes private insurance companies to issue policies covering paid family leave that employers can voluntarily choose to purchase	• **Authority:** Authorizes the state to create and administer a paid family and medical leave insurance fund and collect small payroll contributions from employers and employees to be used for paid leave
• **Family leave insurance:** An insurance policy issued to an employer to pay for a percentage or portion of an employee's income loss due to the birth of a child, placement of a child through adoption or foster care, or family caregiving needs. There is no guarantee that any employer will choose to purchase such a policy, so a worker's	• **Family and medical leave insurance:** Benefits payable to covered workers who meet certain eligibility requirements when the worker: welcomes a new child through birth, adoption, or foster care; has a serious health condition; or cares for a family member with a serious health condition. Guaranteeing access to

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access to paid leave is entirely dependent upon whether their employer voluntarily decides to purchase.

- **Risk/Experience Rating:** Risk and experience rating is ***not*** explicitly prohibited, and the cost of premiums could vary based on either an employer's or industry's perceived risk of needing access to paid family leave or their experience with insurance usage. Research shows that risk or experience rating in the context of paid family leave can have the effect of leading to discrimination in hiring, retention, and promotions for populations seen as more likely to need leave (such as young women and family caregivers of children, people with disabilities, or older adults).

- **Benefit period:** Allows insurance companies to set the length of family leave benefits, but the minimum duration is two weeks during a period of fifty-two consecutive calendar weeks. Two weeks falls far below the 12 weeks that nearly all statewide paid family and medical leave programs offer, and is not sufficient to recover from childbirth or a serious medical condition, bond with a new child, or secure childcare for an infant.

- **Wage replacement rate:** Allows insurance companies to set the amount of benefits that will be paid, leaving it up to companies to decide to purchase a

nearly all workers helps reduce costs and provides financial security to families.

- **Risk/Experience Rating:** Prohibits experience or risk rating. Uses community rating, where rates do not fluctuate based on workforce or industry demographics or experience, preventing discriminatory effects and leading to more uniformity and predictability in premium costs.

- **Benefit Period:** Includes a maximum benefit period. The maximum number of weeks during which family and medical leave insurance benefits are payable in an application year is typically 12 weeks, but this varies by state and leave type.

- **Wage replacement rate:** Outlines a minimum wage replacement rate (i.e. The weekly benefit is 80% of an employee's average weekly wage up

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policy with adequate wage replacement. This creates the possibility that the wage replacement rate may be too low for workers to be able to afford to use the policy in practice.	to a maximum benefit level of $1,000). Many states are moving towards a graduated wage replacement rate, meaning that lower-income workers receive a higher percentage of their income while on leave. This ensures that all eligible workers can actually afford to take paid leave and still cover their household expenses.
• **Eligible Employees:** Any employee who meets the eligibility requirements and whose company has voluntarily purchased a paid family leave policy that covers the specific leave needs of that employee. The bill allows for policies to be issued covering a variety of caretaking and parental leave needs, but does not require each policy to cover all of these needs.	• **Eligible Employees:** Any individual who meets the eligibility requirements and demonstrates one of the required family or medical leave needs.
• **Worker Protections:** There are no guaranteed protections for a worker's job or health insurance benefits while on leave. The legislation lists several possible reasons for which leave can be denied and allows insurance companies to impose additional limitations or exclusions that could further reduce access for otherwise eligible employees.	• **Worker Protections:** Workers who take paid leave are protected from retaliation or punishment. Typically, employers must maintain the employee's health insurance benefits while they are on paid leave, and must reinstate them to their job or a similar position once they return from leave.