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SENATE BILL DRS35351-LRf-139A

Short Title: NC Paid Family Insurance Act. (Public)

Sponsors: Senators Grafstein, Batch, and Garrett (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NORTH CAROLINA PAID FAMILY LEAVE INSURANCE ACT.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. Effective July 4, 2024, the General Statutes are amended by adding a
5 new Chapter to read:

6 "Chapter 96A.

7 "Paid Family Leave Insurance Act.

8 "§ 96A-1. Short title; definitions.

9 (a) This Chapter shall be known and may be cited as the "North Carolina Paid Family
10 Leave Insurance Act."

11 (b) The following definitions apply in this Chapter:

12 (1) Application year. – The 12-month period beginning on the first day of the
13 calendar week in which an individual files an application for family and
14 medical leave insurance benefits.

15 (2) Assistant Secretary. – The Assistant Secretary of the Division of Employment
16 Security.

17 (3) Covered individual. – Any person who does all of the following:

18 a. Meets the monetary eligibility criteria set forth in G.S. 96-14.1(b) or
19 is self-employed, elects coverage, and meets the requirements of
20 G.S. 96A-13.

21 b. Meets the administrative requirements outlined in this Chapter and in
22 the rules adopted under this Chapter.

23 c. Submits an application.

24 (4) Covered service member. – Either:

25 a. A member of the Armed Forces, including a member of the National
26 Guard or Reserves, who is (i) undergoing medical treatment,
27 recuperation, or therapy, (ii) otherwise in outpatient status, or (iii)
28 otherwise on the temporary disability retired list for a serious injury or
29 illness that was incurred by the member in the line of duty on active
30 duty in the Armed Forces or a serious injury or illness that existed
31 before the beginning of the member's active duty and was aggravated
32 by service in the line of duty on active duty in the Armed Forces; or

33 b. A former member of the Armed Forces, including a former member of
34 the National Guard or Reserves, who is undergoing medical treatment,
35 recuperation, or therapy for a serious injury or illness that was incurred
36 by the member in the line of duty on active duty in the Armed Forces



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- 1 or a serious injury or illness that existed before the beginning of the
2 member's active duty and was aggravated by service in the line of duty
3 on active duty in the Armed Forces and manifested before or after the
4 member was discharged or released from service.
- 5 (5) Division. – The Division of Employment Security of the Department of
6 Commerce.
- 7 (6) Employee. – Any individual employed by an employer.
- 8 (7) Employer. – Any person acting directly or indirectly in the interest of an
9 employer in relation to an employee. As used in this subdivision, "person"
10 means an individual, partnership, association, corporation, business trust,
11 legal representative, or any organized group of persons. For the purposes of
12 this Chapter, it also means the State of North Carolina, any city, town, county,
13 municipality, or any State or local agency or instrumentality of government.
14 The term does not include the government of the United States and any agency
15 of the United States (including the United States Postal Service and Postal
16 Rate Commission).
- 17 (8) Family and medical leave insurance benefits. – The benefits provided under
18 the terms of this Chapter.
- 19 (9) Family member. – Any of the following:
- 20 a. Regardless of age, a biological, adopted, or foster child, stepchild, or
21 legal ward, a child of a domestic partner, a child to whom the employee
22 stands in loco parentis, or a person to whom the employee stood in
23 loco parentis when the person was a minor.
- 24 b. A biological, adoptive, or foster parent, stepparent, or legal guardian
25 of an employee or an employee's spouse or domestic partner or a
26 person who stood in loco parentis when the employee or the
27 employee's spouse or domestic partner was a minor.
- 28 c. A person to whom the employee is legally married under the laws of
29 any state or a domestic partner of an employee as registered under the
30 laws of any state or political subdivision.
- 31 d. A grandparent, grandchild, or sibling (whether a biological, foster,
32 adoptive, or step relationship) of the employee or the employee's
33 spouse or domestic partner.
- 34 e. Any other individual related by blood or whose close association with
35 the employee is the equivalent of a family relationship.
- 36 (10) Health care provider. – Any person licensed under federal or North Carolina
37 law to provide medical or emergency services, including, but not limited to,
38 doctors, nurses and emergency room personnel, or certified midwives.
- 39 (11) Next of kin. – As defined in section 101(17) of the Family and Medical Leave
40 Act, 29 U.S.C. § 2611(17).
- 41 (12) Qualifying exigency leave. – Leave based on a need arising out of a covered
42 individual's family member's active duty service or notice of an impending
43 call or order to active duty in the Armed Forces, including, but not limited to,
44 providing for the care or other needs of the military member's child or other
45 family member, making financial or legal arrangements for the military
46 member, attending counseling, attending military events or ceremonies,
47 spending time with the military member during a rest and recuperation leave
48 or following return from deployment, or making arrangements following the
49 death of the military member.
- 50 (13) Retaliatory personnel action. – Denial of any right guaranteed under this
51 Chapter, including, but not limited to, any threat, discharge, suspension,

1 demotion, reduction of hours, any other adverse action against an employee
2 for the exercise of any right guaranteed herein, or reporting or threatening to
3 report an employee's suspected citizenship or immigration status or the
4 suspected citizenship or immigration status of a family member of the
5 employee to a federal, State, or local agency. Retaliatory personnel actions
6 shall also include interference with or punishment for in any manner
7 participating in or assisting an investigation, proceeding, or hearing under this
8 Chapter.

9 (14) Serious health condition. – An illness, injury, impairment, pregnancy,
10 recovery from childbirth, or physical or mental condition that involves
11 inpatient care in a hospital, hospice, or residential medical care facility, or
12 continuing treatment by a health care provider.

13 (15) State average weekly wage. – The average weekly insured wage as defined in
14 G.S. 96-1(b)(2).

15 **"§ 96A-2. Eligibility for benefits.**

16 Beginning July 4, 2024, family and medical leave insurance benefits are payable to an
17 individual who:

18 (1) Meets the definition of "covered individual" as defined by G.S. 96A-1(b)(3);
19 and

20 (2) Meets one of the following requirements:

21 a. Because of birth, adoption, or placement through foster care, is caring
22 for a new child during the first year after the birth, adoption, or
23 placement of that child;

24 b. Is caring for a family member with a serious health condition;

25 c. Has a serious health condition;

26 d. Is caring for a covered service member who is the covered individual's
27 next of kin or other family member; or

28 e. Because of any "qualifying exigency leave" arising out of the fact that
29 the family member of the covered individual is on active duty (or has
30 been notified of an impending call or order to active duty) in the
31 Armed Forces.

32 **"§ 96A-3. Duration of benefits.**

33 (a) An eligible covered individual is entitled to a maximum of:

34 (1) Twelve weeks of family and medical leave insurance benefits in any 12-month
35 period for qualifying exigency leave;

36 (2) Twelve weeks of family and medical leave insurance benefits in any 12-month
37 period for the birth, adoption, or placement through foster care of a new child;
38 or

39 (3) Twenty-six weeks of family and medical leave insurance benefits during a
40 single 12-month period to care for a family member with a serious health
41 condition or to recover from the covered individual's own serious health
42 condition.

43 (b) In the case of leave taken to care for a covered service member, an eligible covered
44 individual is entitled to a total of 26 weeks of family and medical leave insurance benefits in any
45 12-month period.

46 (c) The amount of family and medical leave insurance benefits payable to a covered
47 individual for family and medical leave is limited to a total of 12 weeks of family and medical
48 leave insurance benefits in any 12-month period.

49 (d) Family and medical leave insurance benefits are not payable for intermittent leave or
50 leave on a reduced leave schedule taken for the birth, adoption, or placement through foster care

1 of a new child or to care for the covered individual's family member with a serious health
2 condition.

3 **"§ 96A-4. Amount of benefits.**

4 (a) The weekly family and medical leave insurance benefit amount is equal to the covered
5 individual's average weekly wage divided by the State average weekly wage, rounded to the
6 nearest one-hundredth of a percent.

7 (b) The minimum weekly family and medical leave insurance benefit amount is an
8 amount equal to twenty percent (20%) of the State average weekly wage.

9 (c) The maximum weekly family and medical leave insurance benefit amount is an
10 amount equal to one hundred twenty percent (120%) of the State average weekly wage.

11 (d) The weekly family and medical leave insurance benefit amount shall be reduced by
12 the amount of any wages or wage replacement received by the covered individual from any other
13 source during the same period for which family and medical leave insurance benefits are payable.

14 **"§ 96A-5. Contributions.**

15 (a) Employers shall remit contributions to the Paid Family and Medical Leave Fund
16 established pursuant to G.S. 96A-16 to cover the costs of family and medical leave insurance
17 benefits.

18 (b) Employer and employee contributions to the Paid Family and Medical Leave Fund
19 shall be equal to the contribution rate established by the Division to finance the family and
20 medical leave insurance program.

21 (c) Employer and employee contributions shall be withheld from the wages of each
22 covered individual in accordance with rules adopted by the Division.

23 (d) The contribution rate established by the Division under this section shall be expressed
24 as a percentage of the wages of each covered individual and shall not exceed the maximum
25 contribution rate established by the Division.

26 (e) Contributions shall be due and payable quarterly on the last day of the month
27 following the close of the calendar quarter.

28 (f) Each employer shall submit a report to the Division on a quarterly basis that includes
29 a report of the wages paid to each covered individual during the preceding quarter, the amount
30 of contributions withheld from the wages of each covered individual, and any other information
31 required by the Division.

32 (g) The Division may require employers to submit reports and payments electronically.

33 (h) All employer and employee contributions collected under this section shall be paid
34 into the Paid Family and Medical Leave Fund on a quarterly basis.

35 (i) The Division shall establish procedures for the administration of employer and
36 employee contributions, including procedures for the collection, reporting, and remittance of
37 contributions.

38 (j) Contributions to the Paid Family and Medical Leave Fund are due and payable to the
39 Division and constitute a debt owed by the employer to the Division.

40 **"§ 96A-6. Reduced leave schedule.**

41 (a) A covered individual may take family and medical leave on an intermittent or reduced
42 leave schedule.

43 (b) A covered individual taking family and medical leave on an intermittent or reduced
44 leave schedule shall make a reasonable effort to schedule the leave so as not to unduly disrupt
45 the operations of the employer.

46 **"§ 96A-7. Leave and employment protection.**

47 (a) Except as otherwise provided in this Chapter, any eligible covered individual who
48 takes family and medical leave in accordance with this Chapter shall be entitled, on return from
49 such leave:

50 (1) To be restored by the employer to the position of employment held by the
51 eligible covered individual when the leave commenced; or

1 (2) To be restored to an equivalent position with equivalent employment benefits,
2 pay, and other terms and conditions of employment.

3 (b) An employer is not required to restore the employment benefits or pay that accrued
4 prior to the date on which the leave commenced.

5 (c) Except as otherwise provided in this Chapter, an employer shall maintain health care
6 benefits for an eligible covered individual on family and medical leave on the same terms as if
7 the eligible covered individual had continued to work instead of taking family and medical leave.

8 **"§ 96A-8. Retaliatory personnel actions prohibited.**

9 (a) Except as otherwise provided in this Chapter, any eligible covered individual who
10 takes family and medical leave in accordance with this Chapter shall be entitled, on return from
11 such leave:

12 (1) To be restored by the employer to the position of employment held by the
13 eligible covered individual when the leave commenced; or

14 (2) To be restored to an equivalent position with equivalent employment benefits,
15 pay, and other terms and conditions of employment.

16 (b) An employer is not required to restore the employment benefits or pay that accrued
17 prior to the date on which the leave commenced.

18 (c) Except as otherwise provided in this Chapter, an employer shall maintain health care
19 benefits for an eligible covered individual on family and medical leave on the same terms as if
20 the eligible covered individual had continued to work instead of taking family and medical leave.

21 **"§ 96A-9. Coordination of benefits.**

22 (a) Any family and medical leave insurance benefits payable under this Chapter shall be
23 reduced by the amount of compensation, including salary, wages, or wage replacement, that a
24 covered individual receives or is eligible to receive from any of the following:

25 (1) A disability or workers' compensation program or law.

26 (2) A State or federal temporary disability program or law.

27 (3) A State or federal plan that provides maternity or parental benefits.

28 (b) Family and medical leave insurance benefits shall not be payable for any period of
29 leave during which a covered individual receives compensation from a disability or workers'
30 compensation program or law.

31 (c) The amount of family and medical leave insurance benefits shall be reduced by any
32 amount the covered individual receives from a State or federal temporary disability program or
33 law or a State or federal plan that provides maternity or parental benefits.

34 (d) Family and medical leave insurance benefits shall not be payable for any period of
35 leave during which a covered individual receives compensation from a State or federal temporary
36 disability program or law or a State or federal plan that provides maternity or parental benefits.

37 (e) A covered individual shall notify the Division of any payment or prospective payment
38 of compensation from a disability or workers' compensation program or law, a State or federal
39 temporary disability program or law, or a State or federal plan that provides maternity or parental
40 benefits, and the amount of the compensation.

41 **"§ 96A-10. Notice.**

42 (a) Any covered individual intending to take family and medical leave shall provide the
43 employer with not less than 30 days' notice, except in cases of emergency or unforeseen
44 circumstances. If the covered individual is unable to provide 30 days' notice, the covered
45 individual shall provide notice as soon as practicable.

46 (b) When requesting family and medical leave for a foreseeable reason, a covered
47 individual shall:

48 (1) Provide the employer with not less than 30 days' notice before the leave is to
49 begin, except in cases of emergency or unforeseen circumstances.

50 (2) Make a reasonable effort to schedule the family and medical leave so as not
51 to unduly disrupt the operations of the employer.

- 1 (c) When requesting family and medical leave for an unforeseeable reason, a covered
2 individual shall:
- 3 (1) Provide notice to the employer as soon as practicable under the facts and
4 circumstances of the particular case.
- 5 (2) Comply with the employer's usual and customary notice and procedural
6 requirements for requesting leave, absent unusual circumstances.
- 7 (3) Make a reasonable effort to schedule the family and medical leave so as not
8 to unduly disrupt the operations of the employer.
- 9 (d) Notice to the employer shall include:
- 10 (1) The anticipated timing and duration of the leave.
- 11 (2) In the case of a foreseeable family and medical leave, a statement that the
12 covered individual intends to take family and medical leave and an estimate
13 of the dates on which the covered individual will commence and conclude the
14 leave.
- 15 (3) In the case of a leave for a serious health condition, the medical necessity for
16 the leave and the anticipated duration of the leave.
- 17 (4) In the case of a leave to care for a covered service member with a serious
18 health condition, the medical necessity for the leave, the covered service
19 member's need for care, and the anticipated duration of the leave.
- 20 (5) Any changes to the timing or duration of the leave.
- 21 (e) Upon oral or written request of an employer, a covered individual shall provide
22 written certification from a health care provider to support a request for family and medical leave
23 for the covered individual's own serious health condition or the serious health condition of the
24 covered individual's family member.
- 25 (f) An employer may request certification to support a request for family and medical
26 leave for a serious health condition of a covered service member, the covered individual's own
27 serious health condition, or the serious health condition of the covered individual's family
28 member, and for a qualifying exigency, as defined in G.S. 96A-1(b)(12).
- 29 (g) Certification provided under this section shall be made in a timely manner, which is
30 defined as 15 calendar days after the employer's request, if feasible. If 15 calendar days is not
31 feasible despite the employee's diligent good-faith efforts, the certification must be provided as
32 soon as practicable.
- 33 (h) An employer may require an employee to obtain subsequent recertifications on a
34 reasonable basis.
- 35 (i) If the employee provides the employer with complete and sufficient certification
36 signed by the health care provider, the employer may not request additional information from the
37 health care provider.
- 38 (j) Certification shall be sufficient if it includes:
- 39 (1) The date on which the serious health condition commenced.
- 40 (2) The probable duration of the condition.
- 41 (3) The appropriate medical facts within the knowledge of the health care
42 provider regarding the condition.
- 43 (4) If the leave is due to the serious health condition of the covered individual's
44 family member, a statement that the covered individual is needed to care for
45 the family member and an estimate of the frequency and duration of the leave.
- 46 (5) If the leave is due to a qualifying exigency, a statement that the covered
47 individual is needed for the qualifying exigency and a description of the
48 qualifying exigency.
- 49 (6) If the leave is to care for a covered service member, the date on which the
50 serious health condition commenced, the probable duration of the condition,

1 and the need for the covered individual to care for the covered service
2 member.

3 (k) Certification may include the information required by subsection (j) of this section on
4 a single form or on multiple forms.

5 (l) An employer may not require the covered individual to provide additional information
6 or documentation beyond that which is specified in this section.

7 (m) Certification provided under this section shall be confidential and shall not be
8 disclosed to any third party except as required by law.

9 (n) The employer may not request genetic information as part of the certification for leave
10 under this Chapter.

11 (o) An employer may require the covered individual to obtain a second opinion, at the
12 employer's expense, from a health care provider designated or approved by the employer. The
13 health care provider providing the second opinion shall not be employed on a regular basis by
14 the employer.

15 (p) If the second opinion is different from the original certification provided under this
16 section, the employer may require the covered individual to obtain a third opinion, at the
17 employer's expense, from a health care provider designated or approved jointly by the employer
18 and the covered individual. The opinion of the third health care provider shall be final and
19 binding.

20 (q) Any health care provider designated or approved under this section shall not be
21 employed on a regular basis by the employer.

22 (r) If the covered individual provides the employer with a complete and sufficient
23 certification, the employer may not request a second or third opinion.

24 **"§ 96A-11. Records.**

25 An employer shall make, keep, and preserve records pertaining to compliance with this
26 Chapter, including records related to the administration of family and medical leave and medical
27 certifications. The records shall include, but are not limited to:

28 (1) The dates family and medical leave is taken by each covered individual.

29 (2) The dates and duration of any leave or absence from work.

30 (3) The position and pay status of the covered individual.

31 (4) Any health care provider certifications.

32 (5) Any written document giving notice of the need for family and medical leave.

33 (6) Any documents describing the employer's policies for providing family and
34 medical leave.

35 (7) Any documents provided to a covered individual relating to the use of family
36 and medical leave.

37 (8) Any documents provided to employees as part of the employer's employee
38 benefits or leave policies.

39 **"§ 96A-12. Rulemaking.**

40 (a) The Division shall adopt rules to implement and administer the provisions of this
41 Chapter.

42 (b) The rules shall be consistent with the provisions of this Chapter and may include
43 provisions concerning the administration of family and medical leave, the records to be made,
44 kept, and preserved by employers, and any other matter necessary for the proper enforcement of
45 this Chapter.

46 (c) The Division may adopt temporary rules to implement this Chapter. The temporary
47 rules shall be in effect until the effective date of permanent rules adopted under this section.

48 (d) The Division shall adopt rules governing the operation of the family and medical
49 leave insurance program, including rules for the determination of employer contributions, the
50 establishment of procedures for the collection, reporting, and remittance of contributions, and the
51 administration of the family and medical leave insurance program.

"§ 96A-13. Self-employed individuals.

(a) A self-employed individual may elect coverage under the family and medical leave insurance program by submitting written notice of the election to the Division.

(b) A self-employed individual may elect coverage under this Chapter beginning January 1 of any year by filing a written notice of election with the Division.

(c) The Division shall establish procedures for the administration of the family and medical leave insurance program for self-employed individuals.

(d) Self-employed individuals shall make contributions to the Paid Family and Medical Leave Fund on the same terms and conditions as employers.

"§ 96A-14. Employees on leave.

(a) An employee on family and medical leave shall be deemed to be on leave status and shall not be considered an employee for purposes of employee benefits or seniority.

(b) Nothing in this Chapter prohibits an employer from maintaining the employee's health benefits while the employee is on leave.

(c) During a period of family and medical leave, an employer shall maintain coverage for an employee under any group health plan, group life insurance plan, or other employee benefits plan.

(d) If an employee does not return from family and medical leave, the employer may recover the premiums paid by the employer for maintaining coverage for the employee under any group health plan, group life insurance plan, or other employee benefits plan, unless the reason the employee does not return is due to:

(1) The continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under this Chapter; or

(2) Other circumstances beyond the control of the employee.

"§ 96A-15. Confidentiality.

(a) An employer shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided by this Chapter.

(b) Any information received by an employer or the Division about an employee or a covered individual pursuant to this Chapter shall be kept confidential and may not be disclosed except to the extent that disclosure is:

(1) Requested or consented to in writing by the employee or covered individual;

(2) Required by the Division for purposes of administering this Chapter; or

(3) Otherwise required by applicable federal or State law.

(c) Information related to medical histories or records of employees or covered individuals obtained by employers or the Division under this Chapter shall be treated as confidential medical records.

"§ 96A-16. Paid Family and Medical Leave Fund.

(a) The Paid Family and Medical Leave Fund is established as a special revenue fund within the Department of Commerce. The Fund shall consist of:

(1) All contributions collected under this Chapter.

(2) Any interest earned on the investment or deposit of monies in the Fund.

(3) Any gifts or grants accepted by the Department of Commerce for deposit to the Fund.

(4) Any other funds that may be appropriated by the General Assembly or directed to be credited to the Fund by the Division.

(b) Monies in the Fund shall be used to pay family and medical leave insurance benefits under this Chapter and for the administration of this Chapter.

(c) The Division may invest monies in the Fund in the same manner as provided under G.S. 147-69.2.

(d) Monies in the Fund shall not revert to the General Fund.

"§ 96A-17. Violations.

1 (a) An employer who willfully violates any provision of this Chapter may be assessed a
2 civil penalty of not more than one thousand dollars (\$1,000) for each violation.

3 (b) An employer who fails to remit contributions to the Paid Family and Medical Leave
4 Fund as required by this Chapter may be assessed a civil penalty of not more than one thousand
5 dollars (\$1,000) for each violation.

6 (c) An employer who fails to submit reports required by this Chapter may be assessed a
7 civil penalty of not more than one hundred dollars (\$100.00) for each violation.

8 (d) An employer who intentionally provides false information to the Division under this
9 Chapter may be assessed a civil penalty of not more than one thousand dollars (\$1,000) for each
10 violation.

11 (e) Any person who willfully violates this Chapter may be assessed a civil penalty of not
12 more than five hundred dollars (\$500.00) for each violation.

13 (f) Any person who fails to remit contributions to the Paid Family and Medical Leave
14 Fund as required by this Chapter may be assessed a civil penalty of not more than one thousand
15 dollars (\$1,000) for each violation.

16 (g) Any person who fails to submit reports required by this Chapter may be assessed a
17 civil penalty of not more than one hundred dollars (\$100.00) for each violation.

18 (h) Any person who intentionally provides false information to the Division under this
19 Chapter may be assessed a civil penalty of not more than five hundred dollars (\$500.00) for each
20 violation.

21 (i) Any penalty imposed under this section shall be in addition to any other penalties that
22 may be imposed by any other provision of law.

23 (j) Penalties assessed under this section shall be paid into the Paid Family and Medical
24 Leave Fund.

25 (k) Penalties assessed under this section shall be recoverable in an action brought by the
26 Division in any court of competent jurisdiction.

27 (l) The Division may compromise, settle, or release any penalty imposed under this
28 section.

29 (m) The Division shall adopt rules to implement and administer the provisions of this
30 section.

31 **"§ 96A-18. Relationship to federal law.**

32 (a) Family and medical leave benefits provided under this Chapter are not a replacement
33 for any leave required by the Family and Medical Leave Act, 29 U.S.C. §§ 2601, et seq.

34 (b) Family and medical leave benefits provided under this Chapter shall run concurrently
35 with any leave taken under the Family and Medical Leave Act, 29 U.S.C. §§ 2601, et seq.

36 (c) Family and medical leave benefits provided under this Chapter shall not affect the
37 determination of leave available to a covered individual under the Family and Medical Leave
38 Act, 29 U.S.C. §§ 2601, et seq.

39 (d) Family and medical leave benefits provided under this Chapter shall not affect the
40 determination of leave available to a covered individual under any other state or federal law.

41 (e) Nothing in this Chapter shall be construed to preempt, limit, or otherwise affect the
42 applicability of any provision of federal law relating to family and medical leave, leave provided
43 under State law, or any employer plan or program.

44 **"§ 96A-19. Severability.**

45 If any provision of this Chapter or its application to any person or circumstances is held
46 invalid, the invalidity does not affect other provisions or applications of this Chapter that can be
47 given effect without the invalid provision or application and, to this end, the provisions of this
48 Chapter are severable."

49 **SECTION 2.** This act becomes effective July 4, 2024.