

ASSEMBLY BILL NO. 266—COMMITTEE ON TAXATION

MARCH 7, 2017

Referred to Committee on Taxation

SUMMARY—Authorizes tax credits for employers who provide paid family medical leave for employees. (BDR 32-709)

FISCAL NOTE: Effect on Local Government: No. Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to taxation; authorizing credits against the payroll tax or commerce tax imposed on a business for certain amounts paid by the business for paid family medical leave for employees; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law imposes a tax, commonly known as the modified business tax, on
2 financial institutions and other businesses based on the amount of wages paid to
3 employees each calendar quarter. (NRS 363A.130, 363B.110) Existing law also
4 imposes an annual commerce tax on each business entity engaged in business in
5 this State whose Nevada gross revenue in a fiscal year exceeds \$4,000,000 at a rate
6 that is based on the industry in which the business entity is primarily engaged.
7 (NRS 363C.200)
8 **Sections 1 and 2** of this bill entitle an employer who provides paid family
9 medical leave to a credit against the modified business tax based on the amount
10 paid by the employer for paid family medical leave to the employees of the
11 employer. **Section 3** of this bill entitles a business entity to such a credit against
12 the commerce tax if the business entity has not also applied for a credit against
13 the modified business tax based on paid family medical leave paid in the same quarter.
14 To be eligible for the credit, an employer must provide paid family medical leave
15 under a family medical leave policy that satisfies certain requirements. The amount
16 of the credit is equal to the family medical leave wages paid by the employer during
17 the period for which the tax is paid, but an employer is not allowed to receive a
18 credit for any portion of the family medical leave wages paid to an employee that
19 exceeds \$500 per week or for family medical leave wages paid to an employee for a
20 period of more than 12 weeks. **Sections 1-3** also authorize the credit to be carried
21 forward to future years under certain circumstances, except that any credit expires
22 on the date that is 5 years after the end of the period in which the credit is claimed



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23 and prohibit the carry forward or application of the credit to any tax liability of the
24 employer incurred after that date.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 363A of NRS is hereby amended by
2 adding thereto a new section to read as follows:

3 1. *An employer is entitled to a credit against the tax imposed*
4 *upon the employer by NRS 363A.130 in an amount provided for in*
5 *subsection 2, which is based on the amount of family medical*
6 *leave wages paid by the employer to an employee of the employer*
7 *pursuant to a family medical leave policy that satisfies the*
8 *requirements of subsections 3 and 4.*

9 2. *Except as otherwise provided in this subsection, a credit*
10 *authorized by subsection 1 must be in an amount equal to the*
11 *family medical leave wages paid by the employer to employees of*
12 *the employer during the calendar quarter for which the tax is paid.*
13 *An employer may not receive credit for the portion of the family*
14 *medical leave wages paid to an employee that exceeds \$500 per*
15 *week or for family medical leave wages paid to an employee for a*
16 *period of more than 12 weeks.*

17 3. *To qualify for a credit authorized by subsection 1, an*
18 *employer must provide paid family medical leave to employees of*
19 *the employer pursuant to a family medical leave policy that:*

20 (a) *Must allow an employee to take up to 12 weeks of leave in a*
21 *12-month period for one or more of the following reasons:*

22 (1) *The birth of a child or placement of a child with the*
23 *employee for adoption or foster care.*

24 (2) *To care for a spouse, child or parent who has a serious*
25 *health condition.*

26 (3) *For a serious health condition that makes the employee*
27 *unable to perform the essential functions of his or her position.*

28 (4) *For any qualifying exigency arising out of the fact that*
29 *a spouse, child or parent is a member of the Armed Forces of the*
30 *United States assigned to active duty or called to active duty.*

31 (b) *Must require the payment of family medical leave wages to*
32 *the employee while the employee is taking leave that may not be*
33 *less than 75 percent of his or her normal wages.*

34 (c) *Upon approval of the employer, may allow an employee to*
35 *take paid family medical leave on an intermittent or reduced-*
36 *schedule basis.*

37 (d) *Must provide that the health coverage of the employee*
38 *under any health insurance or health benefit plan provided by the*
39 *employer is maintained on the same terms as if the employee had*



1 *not taken leave and that the taking of leave may not result in the*
2 *loss of any employment benefit that accrued before the start of his*
3 *or her leave.*

4 *(e) Must provide that upon the employee's return from leave,*
5 *the employee is restored to his or her original or equivalent*
6 *position with equivalent pay, benefits and other terms of*
7 *employment.*

8 *4. A paid family medical leave policy that meets the*
9 *requirements of subsection 3 may require an employee to:*

10 *(a) Request leave under the family medical leave policy within*
11 *a reasonable time before taking the leave except that such time*
12 *may not be significantly different from the time required to request*
13 *paid time off, sick leave, annual leave or other leave offered by the*
14 *employer.*

15 *(b) Provide to the employer certification from a provider of*
16 *health care that confirms or supports the reason the employee*
17 *provided for requesting leave.*

18 *(c) Use any accrued paid leave before taking paid family*
19 *medical leave.*

20 *5. A credit described in subsection 1 must not be applied*
21 *retroactively.*

22 *6. If the amount of a credit described in subsection 1 exceeds*
23 *the tax liability of an employer pursuant to this chapter for the*
24 *calendar quarter in which the credit is claimed, the excess amount*
25 *of the credit may be carried forward and applied to the tax liability*
26 *of the employer pursuant to this chapter for the next following*
27 *calendar quarter or calendar quarters for which the employer has*
28 *a tax liability pursuant to this chapter, except that any credit or the*
29 *excess amount of any credit expires on the date that is 5 years*
30 *after the end of the calendar quarter in which the credit is claimed*
31 *and must not be applied to any tax liability of the employer*
32 *incurred pursuant to this chapter on or after that date. If the*
33 *excess amounts of credits for more than 1 calendar quarter are*
34 *carried forward by an employer pursuant to this subsection, the*
35 *excess amount of the credit from the earliest calendar quarter*
36 *must be applied first.*

37 *7. As used in this section:*

38 *(a) "Employee" means an employee whose wages are included*
39 *within the measure of the tax imposed upon an employer by*
40 *NRS 363A.130.*

41 *(b) "Family medical leave wages" means wages paid to an*
42 *employee while the employee is taking paid family medical leave.*



1 **Sec. 2.** Chapter 363B of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 1. *An employer is entitled to a credit against the tax imposed*
4 *upon the employer by NRS 363B.110 in an amount provided for in*
5 *subsection 2, which is based on the amount of family medical*
6 *leave wages paid by the employer to an employee of the employer*
7 *pursuant to a family medical leave policy that satisfies the*
8 *requirements of subsections 3 and 4.*

9 2. *Except as otherwise provided in this subsection, a credit*
10 *authorized by subsection 1 must be in an amount equal to the*
11 *family medical leave wages paid by the employer to employees of*
12 *the employer during the calendar quarter for which the tax is paid.*
13 *An employer may not receive credit for the portion of the family*
14 *medical leave wages paid to an employee that exceeds \$500 per*
15 *week or for family medical leave wages paid to an employee for a*
16 *period of more than 12 weeks.*

17 3. *To qualify for a credit authorized by subsection 1, an*
18 *employer must provide paid family medical leave to employees of*
19 *the employer pursuant to a family medical leave policy that:*

20 (a) *Must allow an employee to take up to 12 weeks of leave in a*
21 *12-month period for one or more of the following reasons:*

22 (1) *The birth of a child or placement of a child with the*
23 *employee for adoption or foster care.*

24 (2) *To care for a spouse, child or parent who has a serious*
25 *health condition.*

26 (3) *For a serious health condition that makes the employee*
27 *unable to perform the essential functions of his or her position.*

28 (4) *For any qualifying exigency arising out of the fact that*
29 *a spouse, child or parent is a member of the Armed Forces of the*
30 *United States assigned to active duty or called to active duty.*

31 (b) *Must require the payment of family medical leave wages to*
32 *the employee while the employee is taking leave that may not be*
33 *less than 75 percent of his or her normal wages.*

34 (c) *Upon approval of the employer, may allow an employee to*
35 *take paid family medical leave on an intermittent or reduced-*
36 *schedule basis.*

37 (d) *Must provide that the health coverage of the employee*
38 *under any health insurance or health benefit plan provided by the*
39 *employer is maintained on the same terms as if the employee had*
40 *not taken leave and that the taking of leave may not result in the*
41 *loss of any employment benefit that accrued before the start of his*
42 *or her leave.*

43 (e) *Must provide that upon the employee's return from leave,*
44 *the employee is restored to his or her original or equivalent*



1 *position with equivalent pay, benefits and other terms of*
2 *employment.*

3 *4. A paid family medical leave policy that meets the*
4 *requirements of subsection 3 may require an employee to:*

5 *(a) Request leave under the family medical leave policy within*
6 *a reasonable time before taking the leave except that such time*
7 *may not be significantly different from the time required to request*
8 *paid time off, sick leave, annual leave or other leave offered by the*
9 *employer.*

10 *(b) Provide to the employer certification from a provider of*
11 *health care that confirms or supports the reason the employee*
12 *provided for requesting leave.*

13 *(c) Use any accrued paid leave before taking paid family*
14 *medical leave.*

15 *5. A credit described in subsection 1 must not be applied*
16 *retroactively.*

17 *6. If the amount of a credit described in subsection 1 exceeds*
18 *the tax liability of an employer pursuant to this chapter for the*
19 *calendar quarter in which the credit is claimed, the excess amount*
20 *of the credit may be carried forward and applied to the tax liability*
21 *of the employer pursuant to this chapter for the next following*
22 *calendar quarter or calendar quarters for which the employer has*
23 *a tax liability pursuant to this chapter, except that any credit or*
24 *excess amount of any credit expires on the date that is 5 years*
25 *after the end of the calendar quarter in which the credit is claimed*
26 *and must not be applied to any tax liability of the employer*
27 *incurred pursuant to this chapter on or after that date. If the*
28 *excess amounts of credits for more than 1 calendar quarter are*
29 *carried forward by an employer pursuant to this subsection, the*
30 *excess amount of the credit from the earliest calendar quarter*
31 *must be applied first.*

32 *7. As used in this section:*

33 *(a) "Employee" means an employee whose wages are included*
34 *within the measure of the tax imposed upon an employer by*
35 *NRS 363B.110.*

36 *(b) "Family medical leave wages" means wages paid to an*
37 *employee while the employee is taking paid family medical leave.*

38 **Sec. 3.** Chapter 363C of NRS is hereby amended by adding
39 thereto a new section to read as follows:

40 *1. A business entity is entitled to a credit against the tax*
41 *imposed upon the business entity by NRS 363C.200 in an amount*
42 *provided for in subsection 2, which is based on the amount of*
43 *family medical leave wages paid by the business entity to an*
44 *employee of the business entity pursuant to a family medical leave*
45 *policy that satisfies the requirements of subsections 3 and 4.*



1 2. *Except as otherwise provided in this subsection, a credit*
2 *authorized by subsection 1 must be in an amount equal to the*
3 *family medical leave wages paid by the business entity to*
4 *employees of the business entity during the taxable year. An*
5 *employer may not receive credit for the portion of the family*
6 *medical leave wages paid to an employee that exceeds \$500 per*
7 *week or for family medical leave wages paid to an employee for a*
8 *period of more than 12 weeks.*

9 3. *To qualify for a credit authorized by subsection 1, the*
10 *business entity must provide paid family medical leave pursuant to*
11 *a family medical leave policy that:*

12 (a) *Must allow an employee to take up to 12 weeks of leave in a*
13 *12-month period for one or more of the following reasons:*

14 (1) *The birth of a child or placement of a child with the*
15 *employee for adoption or foster care.*

16 (2) *To care for a spouse, child or parent who has a serious*
17 *health condition.*

18 (3) *For a serious health condition that makes the employee*
19 *unable to perform the essential functions of his or her position.*

20 (4) *For any qualifying exigency arising out of the fact that*
21 *a spouse, child or parent is a member of the Armed Forces of the*
22 *United States assigned to active duty or called to active duty.*

23 (b) *Must require the payment of family medical leave wages to*
24 *the employee while the employee is taking leave that may not be*
25 *less than 75 percent of his or her normal wages.*

26 (c) *Upon approval of the business entity, may allow an*
27 *employee to take paid family medical leave on an intermittent or*
28 *reduced-schedule basis.*

29 (d) *Must provide that the health coverage of the employee*
30 *under any health insurance or health benefit plan provided by the*
31 *business entity is maintained on the same terms as if the employee*
32 *had not taken leave and that the taking of leave may not result in*
33 *the loss of any employment benefit that accrued before the start of*
34 *his or her leave.*

35 (e) *Must provide that upon the employee's return from leave,*
36 *the employee is restored to his or her original or equivalent*
37 *position with equivalent pay, benefits and other terms of*
38 *employment.*

39 4. *A paid family medical leave policy that meets the*
40 *requirements of subsection 3 may require an employee to:*

41 (a) *Request leave under the family medical leave policy within*
42 *a reasonable time before taking the leave except that such time*
43 *may not be significantly different from the time required to request*
44 *paid time off, sick leave, annual leave or other leave offered by the*
45 *business entity.*



1 ***(b) Provide to the business entity certification from a provider***
2 ***of health care that confirms or supports the reason the employee***
3 ***provided for requesting leave.***

4 ***(c) Use any accrued paid leave before taking paid family***
5 ***medical leave.***

6 ***5. A credit described in subsection 1 must not be applied***
7 ***retroactively.***

8 ***6. If the amount of a credit described in subsection 1 exceeds***
9 ***the tax liability of a business entity pursuant to this chapter for the***
10 ***taxable year in which the credit is claimed, the excess amount of***
11 ***the credit may be carried forward and applied to the tax liability of***
12 ***the business entity pursuant to this chapter for the next following***
13 ***taxable year or taxable years for which the business entity has a***
14 ***tax liability pursuant to this chapter, except that any credit or the***
15 ***excess amount of any credit expires on the date that is 5 years***
16 ***after the end of the taxable year in which the credit is claimed and***
17 ***must not be applied to any tax liability of the business entity***
18 ***incurred pursuant to this chapter on or after that date. If the***
19 ***excess amounts of credits for more than 1 taxable year are carried***
20 ***forward by a business entity pursuant to this subsection, the excess***
21 ***amount of the credit from the earliest taxable year must be applied***
22 ***first.***

23 ***7. A business entity that receives a credit pursuant to section***
24 ***1 or 2 of this act for any wages paid during a calendar quarter is***
25 ***not entitled to the credit described in subsection 1 for any wages***
26 ***paid during the same calendar quarter.***

27 ***8. As used in this section:***

28 ***(a) "Employee" means a natural person whose manner and***
29 ***means of performance of work are subject to the right of control***
30 ***of, or are controlled by, the business entity. The term does not***
31 ***include independent contractors or persons rendering professional***
32 ***services to a business entity on a fee, retainer or contract basis.***

33 ***(b) "Family medical leave wages" means wages paid to an***
34 ***employee while the employee is taking paid family medical leave.***

35 **Sec. 4.** 1. This act becomes effective upon passage and
36 approval for the purpose of adopting any regulations and performing
37 any other preparatory administrative tasks necessary to carry out the
38 provisions of this act.

39 2. This section and sections 1 and 2 of this act become
40 effective on January 1, 2018, for all other purposes.

41 3. Section 3 of this act becomes effective on July 1, 2018, for
42 all other purposes.



