A BILL FOR AN ACT

CONCERNING THE CREATION OF A FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill creates the family and medical leave insurance (FAMLI) program in the division of family and medical leave insurance (division) in the department of labor and employment to provide partial wage-replacement benefits to an eligible individual who takes leave from work to care for a new child or a family member with a serious health condition or who is unable to work due to the individual's own serious
health condition.
Each employee in the state will pay a premium determined by the
director of the division by rule, which premium is based on a percentage
of the employee's yearly wages and must not initially exceed .99%. The
premiums are deposited into the family and medical leave insurance fund
from which family and medical leave benefits are paid to eligible
individuals. The director may also impose a solvency surcharge by rule
if determined necessary to ensure the soundness of the fund. The division
is established as an enterprise, and premiums paid into the fund are not
considered state revenues for purposes of the taxpayer's bill of rights
(TABOR).

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly
hereby finds and declares that:
(a) Colorado is a family-friendly state;
(b) Providing the workers of Colorado with family and medical
leave insurance will encourage an entrepreneurial atmosphere, encourage
economic growth, and promote a healthy business climate; and
(c) The premiums collected under the "FAMLI Act", part 3 of
article 13.3 of title 8, Colorado Revised Statutes, are used exclusively for
the payment of family and medical leave benefits and the administration
of the family and medical leave insurance program.

SECTION 2. In Colorado Revised Statutes, add part 3 to article
13.3 of title 8 as follows:

PART 3
FAMILY AND MEDICAL LEAVE INSURANCE

8-13.3-301. Short title. The short title of this part 3 is the
"FAMILY AND MEDICAL LEAVE INSURANCE ACT" or "FAMLI ACT".

8-13.3-302. Definitions. As used in this part 3, unless the
context otherwise requires:
(1) "Annual mean wage" means the estimated total annual wages of all occupations in Colorado divided by the occupations' estimated employment, as determined by the federal bureau of labor statistics in the United States Department of Labor.

(2) "Colorado personal income" means the total personal income for Colorado, as defined and officially reported by the bureau of economic analysis in the United States Department of Commerce, or any successor index.

(3) "Covered individual" means an individual who has been employed by and worked for one or more employers for at least six hundred eighty hours, or five hundred four hours in the case of airline flight crew members, during the person's qualifying year.

(4) "Department" means the Department of Labor and Employment.

(5) "Director" means the director of the division.

(6) "Division" means the division of family and medical leave insurance created in section 8-13.3-303.

(7) "Eligible individual" means an individual who satisfies the requirements of section 8-13.3-305 and is eligible to receive family and medical leave insurance benefits.

(8) "Employee" means any person, including a migratory laborer, performing labor or services for the benefit of an employer in which the employer may command when, where, and how much labor or services shall be performed. For the purposes of this part 3, an individual primarily free from control and
DIRECTION IN THE PERFORMANCE OF THE SERVICE, BOTH UNDER HIS OR
HER CONTRACT FOR THE PERFORMANCE OF SERVICE AND IN FACT, AND
WHO IS CUSTOMARILY ENGAGED IN AN INDEPENDENT TRADE, OCCUPATION,
PROFESSION, OR BUSINESS RELATED TO THE SERVICE PERFORMED IS NOT
AN "EMPLOYEE".

(9) (a) "EMPLOYER" MEANS ANY PERSON ENGAGED IN COMMERCE
OR AN INDUSTRY OR ACTIVITY AFFECTING COMMERCE THAT EMPLOYS AT
LEAST ONE PERSON FOR EACH WORKING DAY DURING EACH OF TWENTY OR
MORE CALENDAR WORKWEEKS IN THE CURRENT OR IMMEDIATELY
PRECEDING CALENDAR YEAR.

(b) "EMPLOYER" INCLUDES:

(I) A PERSON WHO ACTS, DIRECTLY OR INDIRECTLY, IN THE
INTEREST OF AN EMPLOYER WITH REGARD TO ANY OF THE EMPLOYEES OF
THE EMPLOYER;

(II) A SUCCESSOR IN INTEREST OF AN EMPLOYER; AND

(III) THE STATE OR A POLITICAL SUBDIVISION OF THE STATE.

(10) "FAMILY AND MEDICAL LEAVE" MEANS LEAVE FROM WORK
AND ALL BENEFITS AUTHORIZED UNDER THE FMLA OR PART 2 OF THIS
ARTICLE 13.3.

(11) "FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS" OR
"BENEFITS" MEANS THE BENEFITS PROVIDED UNDER THE PROGRAM.

(12) "FAMILY MEMBER" MEANS AN EMPLOYEE'S IMMEDIATE
FAMILY MEMBER, AS DEFINED IN SECTION 2-4-401 (3.7), AN EMPLOYEE'S
DOMESTIC PARTNER, AS DEFINED IN SECTION 24-50-603 (6.5), AND UP TO
ONE ADDITIONAL PERSON DESIGNATED ANNUALLY BY THE EMPLOYEE IN
ACCORDANCE WITH SECTION 8-13.3-306.

(13) "FMLA" MEANS THE FEDERAL "FAMILY AND MEDICAL LEAVE
(14) "FMLA leave" means leave from work and all benefits authorized by the FMLA.

(15) "Fund" means the family and medical leave insurance fund created in section 8-13.3-309.

(16) "Health care provider" has the same meaning as set forth in the FMLA.

(17) "Premium" means the payments an individual is required by this part 3 to pay to the division for the program.

(18) "Program" means the family and medical leave insurance program established pursuant to this part 3.

(19) "Qualifying year" means the first four of the last five completed calendar quarters or the last four completed calendar quarters immediately preceding the first day of a covered individual's application year.

(20) "Recent average change in Colorado personal income" means the average percentage change in Colorado personal income from one calendar year to the next for the six immediately preceding calendar years.

(21) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

(a) Inpatient care in a hospital, hospice, or residential medical care facility; or

(b) Continuing treatment by a health care provider.

8-13.3-303. Division of family and medical leave insurance - creation as an enterprise - authority to issue bonds. (1) There is hereby created in the department the division of family and
MEDICAL LEAVE INSURANCE, THE HEAD OF WHICH IS THE DIRECTOR OF THE

DIVISION.

(2) (a) THE DIVISION CONSTITUTES AN ENTERPRISE FOR PURPOSES

OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, AS LONG AS

THE DIVISION RETAINS AUTHORITY TO ISSUE REVENUE BONDS AND THE

DIVISION RECEIVES LESS THAN TEN PERCENT OF ITS TOTAL ANNUAL

REVENUES IN GRANTS, AS DEFINED IN SECTION 24-77-102 (7), FROM ALL

COLORADO STATE AND LOCAL GOVERNMENTS COMBINED. FOR AS LONG AS

IT CONSTITUTES AN ENTERPRISE PURSUANT TO THIS SECTION, THE DIVISION

IS NOT SUBJECT TO SECTION 20 OF ARTICLE X OF THE STATE

CONSTITUTION.

(b) THE ENTERPRISE ESTABLISHED PURSUANT TO THIS SUBSECTION

(2) HAS ALL THE POWERS AND DUTIES AUTHORIZED BY THIS PART 3

PERTAINING TO FAMILY AND MEDICAL LEAVE INSURANCE. THE FUND

CONSTITUTES PART OF THE ENTERPRISE ESTABLISHED PURSUANT TO THIS

SUBSECTION (2).

(c) NOTHING IN THIS SUBSECTION (2) LIMITS OR RESTRICTS THE

AUTHORITY OF THE DIVISION TO EXPEND ITS REVENUES CONSISTENT WITH

THIS PART 3.

(d) THE DIVISION IS HEREBY AUTHORIZED TO ISSUE REVENUE

BONDS FOR THE EXPENSES OF THE DIVISION, WHICH BONDS MAY BE

SECURED BY ANY REVENUES OF THE DIVISION.

8-13.3-304. Family and medical leave insurance program -
creation - division duties - applicant duties - outreach and education
- rules. (1) (a) THE DIVISION SHALL ESTABLISH AND ADMINISTER A

FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM AND PAY FAMILY AND

MEDICAL LEAVE INSURANCE BENEFITS TO ELIGIBLE INDIVIDUALS AS
SPECIFIED IN THIS PART 3.

(b) STARTING JULY 1, 2019, THE DIVISION SHALL ESTABLISH AND
IMPLEMENT THE PROGRAM, INCLUDING SETTING PREMIUM AMOUNTS BY
RULE IN ACCORDANCE WITH SECTION 8-13.3-309 (2)(a).

(2) THE DIVISION, BY RULE, SHALL ESTABLISH PROCEDURES AND
FORMS FOR FILING CLAIMS FOR BENEFITS UNDER THE PROGRAM. THE
DIVISION SHALL NOTIFY AN EMPLOYER WITHIN FIVE BUSINESS DAYS AFTER
A COVERED INDIVIDUAL FILES A CLAIM FOR BENEFITS UNDER SECTION
8-13.3-305.

(3) THE DIVISION SHALL USE INFORMATION SHARING AND
INTEGRATION TECHNOLOGY TO FACILITATE THE DISCLOSURE OF RELEVANT
INFORMATION OR RECORDS PERTAINING TO A COVERED INDIVIDUAL IF THE
COVERED INDIVIDUAL CONSENTS TO THE DISCLOSURE IN ACCORDANCE
WITH THIS PART 3.

(4) INFORMATION CONTAINED IN THE FILES AND RECORDS
PERTAINING TO A COVERED INDIVIDUAL UNDER THIS PART 3 ARE
CONFIDENTIAL AND NOT OPEN TO PUBLIC INSPECTION; EXCEPT THAT A
COVERED INDIVIDUAL OR A PERSON AUTHORIZED BY A COVERED
INDIVIDUAL, AS EVIDENCED BY A SIGNED AUTHORIZATION FROM THE
COVERED INDIVIDUAL, MAY REVIEW THE RECORDS OR RECEIVE SPECIFIC
INFORMATION FROM THE RECORDS. IN ADDITION, A PUBLIC EMPLOYEE MAY
ACCESS AND USE THE INFORMATION IN THE PERFORMANCE OF THE PUBLIC
EMPLOYEE’S OFFICIAL DUTIES.

(5) (a) BY JANUARY 1, 2020, AND FOR AS LONG AS THE PROGRAM
CONTINUES, THE DIVISION SHALL DEVELOP AND IMPLEMENT OUTREACH
SERVICES TO EDUCATE THE PUBLIC ABOUT THE AVAILABILITY OF FAMILY
AND MEDICAL LEAVE INSURANCE BENEFITS UNDER THIS PART 3 FOR
COVERED INDIVIDUALS.

(b) THE DIVISION SHALL ENSURE THAT THE OUTREACH INFORMATION EXPLAINS, IN AN EASY-TO-UNDERSTAND FORMAT, AT LEAST THE FOLLOWING:

(I) ELIGIBILITY REQUIREMENTS;

(II) THE CLAIMS PROCESS;

(III) WEEKLY BENEFIT AMOUNTS AND MAXIMUM BENEFITS PAYABLE;

(IV) NOTICE AND MEDICAL CERTIFICATION REQUIREMENTS;

(V) REINSTATEMENT AND NONDISCRIMINATION RIGHTS;

(VI) CONFIDENTIALITY OF RECORDS;

(VII) THE RELATIONSHIP BETWEEN EMPLOYMENT PROTECTION, LEAVE FROM EMPLOYMENT, AND WAGE REPLACEMENT BENEFITS UNDER THIS PART 3 AND OTHER LAWS, COLLECTIVE BARGAINING AGREEMENTS, AND EMPLOYER POLICIES; AND

(VIII) ANY OTHER DETAILS OR INFORMATION ABOUT THE PROGRAM THE DIVISION DEEMS APPROPRIATE.

(c) THE DIVISION SHALL DEVELOP A PROGRAM NOTICE THAT DETAILS THE PROGRAM REQUIREMENTS, BENEFITS, CLAIMS PROCESS, PAYROLL DEDUCTION REQUIREMENTS, AND OTHER PERTINENT PROGRAM INFORMATION. EACH EMPLOYER SHALL POST THE PROGRAM NOTICE IN A PROMINENT LOCATION IN THE WORKPLACE AND NOTIFY ITS EMPLOYEES OF THE PROGRAM, IN WRITING, UPON HIRING AND UPON LEARNING OF AN EMPLOYEE EXPERIENCING A QUALIFYING EVENT.

(d) THE DIVISION SHALL PROVIDE THE INFORMATION REQUIRED BY THIS SUBSECTION (5) IN A MANNER THAT IS CULTURALLY COMPETENT AND LINGUISTICALLY APPROPRIATE.
(e) The division may, on its own or through a contract with an outside vendor, use a portion of the money in the fund to develop, implement, and administer outreach services.

8-13.3-305. Family and medical leave insurance benefits - application - eligibility - rules. (1) Beginning January 1, 2021, except as provided in subsection (3) of this section, an individual is eligible to receive family and medical leave insurance benefits if the individual:

(a) is taking family and medical leave:
   (I) because he or she has a serious health condition;
   (II) because he or she is caring for his or her new child during the first year after the birth or adoption of the child or the placement of the child through foster care;
   (III) because he or she is caring for a family member who has a serious health condition;
   (IV) for any other purpose authorized by the FMLA; or
   (V) for a qualifying exigency related to a family member's military service in accordance with 29 U.S.C. sec. 2612(a)(1)(E);

(b) files a claim for benefits in a form and manner required by the director by rule;

(c) is a covered individual;

(d) consents to the disclosure of information or records deemed confidential under state law pursuant to section 8-13.3-304 (3); and

(e) if currently employed, attests, in the application for family and medical leave insurance benefits, that the individual
NOTIFIED HIS OR HER EMPLOYER IN WRITING OF THE INTENT TO TAKE
FAMILY AND MEDICAL LEAVE FROM WORK FOR ONE OF THE PURPOSES
SPECIFIED IN SUBSECTION (1)(a) OF THIS SECTION.

(2) IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (1) OF THIS
SECTION, THE DIVISION MAY REQUIRE A COVERED INDIVIDUAL WHO
APPLIES FOR BENEFITS TO:

(a) ATTEST THAT THE COVERED INDIVIDUAL:

(I) (A) BECAUSE OF A BIRTH, ADOPTION, OR PLACEMENT THROUGH
FOSTER CARE, IS CARING FOR A NEW CHILD DURING THE FIRST YEAR AFTER
BIRTH, ADOPTION, OR PLACEMENT OF THE CHILD;

(B) IS CARING FOR A FAMILY MEMBER WHO HAS A SERIOUS HEALTH
CONDITION;

(C) HAS A SERIOUS HEALTH CONDITION; OR

(D) IS TAKING LEAVE FOR A QUALIFYING EXIGENCY RELATED TO
A FAMILY MEMBER'S MILITARY SERVICE IN ACCORDANCE WITH 29 U.S.C.
SEC. 2612 (a)(1)(E);

(II) IS NOT RECEIVING UNEMPLOYMENT INSURANCE BENEFITS OR
BENEFITS UNDER A DISABILITY INSURANCE POLICY IN AN AMOUNT THAT,
IF COMBINED WITH THE BENEFITS AVAILABLE TO THE COVERED INDIVIDUAL
UNDER THE PROGRAM, WOULD EXCEED THE COVERED INDIVIDUAL'S
WAGES, AS DETERMINED BY THE DIVISION; AND

(b) FOR LEAVE DESCRIBED IN SUBSECTION (1)(a)(I) OR (1)(a)(III)
OF THIS SECTION, SUBMIT A CERTIFICATION FROM THE HEALTH CARE
PROVIDER PROVIDING HEALTH CARE TO THE COVERED INDIVIDUAL OR THE
COVERED INDIVIDUAL'S FAMILY MEMBER, AS APPLICABLE, SUPPORTING
THE CLAIM THAT THE COVERED INDIVIDUAL OR THE COVERED
INDIVIDUAL'S FAMILY MEMBER HAS A SERIOUS HEALTH CONDITION.
(3) A covered individual who meets the requirements of subsection (2)(a)(I) of this section is eligible for family and medical leave insurance benefits:

(a) Regardless of whether the covered individual is currently employed or is working at an additional job while taking family and medical leave; or

(b) If the covered individual fails to file an application for benefits pursuant to subsection (1)(b) of this section, notify his or her employer pursuant to subsection (1)(e) of this section, or submit a certification pursuant to subsection (2)(b) of this section, but the payment of benefits is subject to the limitations specified in section 8-13.3-307 (2).

(4) If the division denies a claim for benefits submitted pursuant to this section, the covered individual may appeal that decision in the manner specified in article 74 of this title 8.

8-13.3-306. Designation of a designated person. An employer may establish a uniform process for employees to select a designated person for whom the employee may take family and medical leave within thirty days after the employee's date of hire. Thereafter, the employer must permit the employee to make or change the designation on an annual basis. If an employer establishes a uniform process, the covered employee must make the designation in accordance with the employer's process. If an employer does not establish a uniform process, the employee may make a designation when filing a claim for benefits.

8-13.3-307. Duration of benefits - payment intervals. (1) The maximum number of weeks for which family and medical leave
INSURANCE BENEFITS ARE PAYABLE TO AN ELIGIBLE INDIVIDUAL IN ANY CONSECUTIVE FIFTY-TWO-WEEK PERIOD IS TWELVE WEEKS.

(2) Failure by a covered individual who is otherwise eligible under section 8-13.3-305 to file a claim for benefits pursuant to section 8-13.3-305 (1)(b), furnish notice to an employer pursuant to section 8-13.3-305 (1)(e), or submit certification from a health care provider in the manner specified in section 8-13.3-305 (2)(b) does not invalidate a claim for benefits or an eligible individual's eligibility for benefits, but the division is not required to pay benefits for a period of more than two weeks prior to the date on which the eligible individual files the required application, furnishes notice to his or her employer, and submits the certification from the health care provider, unless the eligible individual demonstrates to the satisfaction of the division that:

(a) it was not reasonably possible to submit the application or certification or furnish the notice to his or her employer; and

(b) the eligible individual submitted the application and certification, and notified his or her employer, as soon as was possible.

(3) The division shall make the first payment of benefits to an eligible individual within two weeks after the eligible individual files the claim for benefits and shall make subsequent payments biweekly.

8-13.3-308. Amount of benefits - maximum weekly benefit.

(1)(a) The division shall determine the weekly benefit amount,
SUBJECT TO SUBSECTION (1)(b) OF THIS SECTION, AS FOLLOWS:

(I) FOR AN ELIGIBLE INDIVIDUAL WHOSE YEARLY EARNINGS ARE NOT MORE THAN TWENTY PERCENT OF THE ANNUAL MEAN WAGE, THE DIVISION SHALL PAY WEEKLY BENEFITS IN AN AMOUNT EQUAL TO NINETY-FIVE PERCENT OF THE ELIGIBLE INDIVIDUAL'S WEEKLY WAGE.

(II) FOR AN ELIGIBLE INDIVIDUAL WHOSE YEARLY EARNINGS ARE MORE THAN TWENTY PERCENT BUT NOT MORE THAN THIRTY PERCENT OF THE ANNUAL MEAN WAGE, THE DIVISION SHALL PAY WEEKLY BENEFITS IN AN AMOUNT EQUAL TO NINETY PERCENT OF THE ELIGIBLE INDIVIDUAL'S WEEKLY WAGE.

(III) FOR AN ELIGIBLE INDIVIDUAL WHOSE YEARLY EARNINGS ARE MORE THAN THIRTY PERCENT BUT NOT MORE THAN FIFTY PERCENT OF THE ANNUAL MEAN WAGE, THE DIVISION SHALL PAY WEEKLY BENEFITS IN AN AMOUNT EQUAL TO EIGHTY-FIVE PERCENT OF THE ELIGIBLE INDIVIDUAL'S WEEKLY WAGE.

(IV) FOR AN ELIGIBLE INDIVIDUAL WHOSE YEARLY EARNINGS ARE MORE THAN FIFTY PERCENT OF THE ANNUAL MEAN WAGE, THE DIVISION SHALL PAY WEEKLY BENEFITS IN AN AMOUNT EQUAL TO SIXTY-SIX PERCENT OF THE ELIGIBLE INDIVIDUAL'S WEEKLY WAGE.

(b) THE MAXIMUM WEEKLY BENEFIT AMOUNT DETERMINED UNDER SUBSECTION (1)(a) OF THIS SECTION MUST NOT EXCEED ONE THOUSAND DOLLARS PER WEEK. STARTING JANUARY 1, 2022, THE DIVISION SHALL ANNUALLY ADJUST THE MAXIMUM WEEKLY BENEFIT AMOUNT TO REFLECT THE RECENT AVERAGE CHANGE IN COLORADO PERSONAL INCOME.

(c) THE DIVISION SHALL CALCULATE AN ELIGIBLE INDIVIDUAL'S WEEKLY BENEFIT AMOUNT BASED ON THE ELIGIBLE INDIVIDUAL'S WEEKLY WAGE EARNED FROM THE JOB FROM WHICH THE ELIGIBLE INDIVIDUAL IS
TAKING FAMILY AND MEDICAL LEAVE. IF THE ELIGIBLE INDIVIDUAL IS ABLE TO CONTINUE WORKING AT A SECOND JOB WHILE TAKING FAMILY AND MEDICAL LEAVE, THE DIVISION SHALL NOT CONSIDER THE ELIGIBLE INDIVIDUAL'S WEEKLY WAGE EARNED FROM THE SECOND JOB WHEN CALCULATING THE ELIGIBLE INDIVIDUAL'S WEEKLY BENEFIT AMOUNT.

(2) BENEFITS ARE NOT PAYABLE FOR LESS THAN ONE DAY OR EIGHT CONSECUTIVE HOURS OF FAMILY AND MEDICAL LEAVE TAKEN IN ONE WORKWEEK.

8-13.3-309. Family and medical leave insurance fund - creation - employee premiums. (1) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE FAMILY AND MEDICAL LEAVE INSURANCE FUND. MONEY IN THE FUND MAY BE USED ONLY TO PAY REVENUE BONDS ISSUED IN ACCORDANCE WITH SECTION 8-13.3-303 (2)(d) AND TO PAY BENEFITS UNDER, AND TO ADMINISTER, THE PROGRAM PURSUANT TO THIS PART 3, INCLUDING OUTREACH SERVICES DEVELOPED UNDER SECTION 8-13.3-304 (5). INTEREST EARNED ON THE INVESTMENT OF MONEY IN THE FUND REMAINS IN THE FUND. ANY MONEY REMAINING IN THE FUND AT THE END OF A FISCAL YEAR REMAINS IN THE FUND AND DOES NOT REVERT TO THE GENERAL FUND OR ANY OTHER FUND. THE GENERAL ASSEMBLY SHALL NOT APPROPRIATE MONEY FROM THE FUND FOR THE GENERAL EXPENSES OF THE STATE.

(b) THE DIVISION MAY SEEK AND ACCEPT GIFTS, GRANTS, AND DONATIONS, INCLUDING PROGRAM-RELATED INVESTMENTS AND COMMUNITY REINVESTMENT FUNDS, TO FINANCE THE COSTS OF SETTING UP THE PROGRAM. THE DIVISION SHALL TRANSMIT ANY GIFTS, GRANTS, AND DONATIONS IT RECEIVES TO THE STATE TREASURER FOR DEPOSIT IN THE FUND.
(2) (a) (I) ON AND AFTER JULY 1, 2020, EVERY INDIVIDUAL EMPLOYED BY AN EMPLOYER IN THIS STATE SHALL PAY A PREMIUM IN AN AMOUNT DETERMINED BY THE DIRECTOR BY RULE IN ACCORDANCE WITH THIS SUBSECTION (2)(a). PREMIUMS ESTABLISHED IN ACCORDANCE WITH THIS SUBSECTION (2) ARE FEES AND NOT TAXES.

(II) FOR THE FIRST YEAR, THE DIRECTOR, BY RULE, SHALL SET THE PREMIUM AMOUNT BASED ON TOTAL ESTIMATED CLAIMS AS A PORTION OF TOTAL ANNUAL COVERED WAGES, NOT TO EXCEED NINETY-NINE ONE-HUNDREDTHS OF ONE PERCENT. EACH YEAR THEREAFTER, THE DIRECTOR, BY RULE, SHALL SET THE PREMIUM BASED ON THE PRIOR YEAR'S CLAIMS PAYMENTS AS A PORTION OF TOTAL ANNUAL COVERED WAGES.

(III) THE DIRECTOR MAY ADJUST PREMIUM AMOUNTS ANNUALLY, BY RULE, TO ENSURE THE ACTUARIAL SOUNDNESS OF THE FUND AND AVOID AN EXCESSIVE FUND BALANCE.

(b) EACH EMPLOYER SHALL COLLECT THE PREMIUM AMOUNT FROM EACH EMPLOYEE AS A PAYROLL DEDUCTION FROM THE EMPLOYEE'S WAGES EACH PAYROLL PERIOD AND SHALL REMIT THE PREMIUM AMOUNT TO THE DIVISION, WHICH SHALL TRANSMIT THE PREMIUMS TO THE STATE TREASURER FOR DEPOSIT IN THE FUND.

(c) THE DEPARTMENT SHALL DETERMINE THE NOMINAL AND REASONABLE ASSISTANCE TO BE PROVIDED TO EMPLOYERS TO OFFSET THE INITIAL COSTS OF CREATING THE PAYROLL DEDUCTION FOR ITS EMPLOYEES. THE DEPARTMENT SHALL PROVIDE EMPLOYERS THE NOMINAL AND REASONABLE ASSISTANCE FROM THE FUND.

(3) ON AND AFTER JANUARY 1, 2021, IF THE DIRECTOR DETERMINES THAT A SOLVENCY SURCHARGE IS REQUIRED TO ENSURE THE SOLVENCY OF THE FUND, THE DIRECTOR, BY RULE, MAY ESTABLISH A
SOLVENCY SURCHARGE THAT EVERY INDIVIDUAL EMPLOYED BY AN
EMPLOYER IN THIS STATE SHALL PAY THROUGH A PAYROLL DEDUCTION IN
THE MANNER SPECIFIED IN SUBSECTION (2)(b) OF THIS SECTION.

8-13.3-310. Employment protection - discrimination
prohibited - rules. (1) (a) An eligible individual who was employed
by an employer for ninety days or longer and who takes family
and medical leave under this Part 3 for the intended purpose of
the leave is entitled, on return from such leave:

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

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

(b) This subsection (1) does not apply to seasonal workers,
as defined in Section 8-73-106.

(2) An employer shall not discharge, demote, or otherwise
discriminate or take an adverse employment action against an
individual because he or she:

(a) Filed for, applied for, or used benefits under this Part
3;

(b) Communicated to the employer an intent to file a
claim for benefits, a complaint, or an appeal;

(c) Testified, agreed to testify, or otherwise assisted in
any proceeding under this Part 3; or

(d) Took, or attempted to take, family and medical leave.

(3) An employer shall not reduce an eligible individual's
PREVIOUSLY ACCRUED BENEFITS THAT HAVE ACCRUED PRIOR TO THE DATE
ON WHICH THE FAMILY AND MEDICAL LEAVE COMMENCED.

(4) DURING ANY PERIOD OF FAMILY AND MEDICAL LEAVE TAKEN
UNDER THIS PART 3, AN EMPLOYER SHALL MAINTAIN ANY EXISTING
HEALTH BENEFITS OF THE ELIGIBLE INDIVIDUAL FOR THE DURATION OF
SUCH LEAVE AS IF THE ELIGIBLE INDIVIDUAL CONTINUED TO WORK FROM
THE DATE THE ELIGIBLE INDIVIDUAL COMMENCED FAMILY AND MEDICAL
LEAVE.

(5) (a) THE DIRECTOR, BY RULE, SHALL ESTABLISH A FINE
STRUCTURE FOR EMPLOYERS WHO VIOLATE THIS SECTION. THE DIRECTOR
SHALL TRANSFER ANY FINES COLLECTED PURSUANT TO THIS SECTION TO
THE STATE TREASURER FOR DEPOSIT IN THE FUND.

(b) AN EMPLOYER WHO VIOLATES THIS SECTION IS SUBJECT TO THE
DAMAGES AND EQUITABLE RELIEF AVAILABLE UNDER 29 U.S.C. SEC. 2617
(a)(1). AN AGGRIEVED INDIVIDUAL MAY BRING AN ACTION IN COURT
AGAINST THE EMPLOYER.

8-13.3-311. Coordination of benefits. (1) (a) LEAVE TAKEN
UNDER THIS PART 3 RUNS CONCURRENTLY WITH ANY LEAVE TAKEN UNDER
THE FMLA OR PART 2 OF THIS ARTICLE 13.3. IF A PERIOD OF FAMILY AND
MEDICAL LEAVE INSURANCE BENEFITS RECEIVED BY AN ELIGIBLE
EMPLOYEE UNDER THIS PART 3 IS CONCURRENTLY DESIGNATED AS LEAVE
PURSUANT TO THE FMLA OR PART 2 OF THIS ARTICLE 13.3, THE EMPLOYER
SHALL NOTIFY THE ELIGIBLE EMPLOYEE OF SUCH DESIGNATION AND SHALL
ALSO PROVIDE THE EMPLOYEE WITH THE NOTICE REQUIRED UNDER 29 CFR
825.301.

(b) AN EMPLOYER MAY REQUIRE THAT PAYMENT MADE OR LEAVE
TAKEN UNDER THIS PART 3 BE MADE OR TAKEN CONCURRENTLY OR
OTHERWISE COORDINATED WITH PAYMENT MADE OR LEAVE ALLOWED UNDER THE TERMS OF DISABILITY OR FAMILY CARE LEAVE UNDER A COLLECTIVE BARGAINING AGREEMENT OR EMPLOYER POLICY, AS APPLICABLE. THE EMPLOYER SHALL GIVE ITS EMPLOYEES WRITTEN NOTICE OF THIS REQUIREMENT.

(c) NOTWITHSTANDING SUBSECTIONS (1)(a) AND (1)(b) OF THIS SECTION, AN EMPLOYER SHALL NOT REQUIRE AN EMPLOYEE TO USE TIME OFF UNDER AN EMPLOYER POLICY, INCLUDING PAID TIME OFF, VACATION TIME, OR SICK TIME, PRIOR TO USE OF FAMILY AND MEDICAL LEAVE UNDER THIS PART 3. IN ADDITION, AN EMPLOYER SHALL NOT REQUIRE AN EMPLOYEE TO CHARGE ALL OR PART OF THE EMPLOYEE'S FAMILY AND MEDICAL LEAVE UNDER THIS PART 3 TO UNUSED ACCRUALS OR OTHER PAID TIME OFF, INCLUDING VACATION TIME AND SICK TIME, EXCEPT WHERE THE EMPLOYER MAINTAINS A SEPARATE BANK OF PAID TIME SOLELY FOR THE PURPOSE OF PAID FAMILY AND MEDICAL LEAVE UNDER THIS PART 3.

(2) (a) THIS PART 3 DOES NOT DIMINISH:

(I) THE RIGHTS, PRIVILEGES, OR REMEDIES OF AN EMPLOYEE UNDER A COLLECTIVE BARGAINING AGREEMENT OR EMPLOYMENT CONTRACT; OR

(II) AN EMPLOYER'S OBLIGATION TO COMPLY WITH A COLLECTIVE BARGAINING AGREEMENT OR EMPLOYER POLICY, AS APPLICABLE, THAT PROVIDES GREATER LEAVE THAN FMLA LEAVE OR FAMILY AND MEDICAL LEAVE.

(b) AFTER THE EFFECTIVE DATE OF THIS PART 3, AN EMPLOYER POLICY ADOPTED OR RETAINED MUST NOT DIMINISH A COVERED INDIVIDUAL'S RIGHT TO BENEFITS UNDER THIS PART 3. ANY AGREEMENT BY A COVERED INDIVIDUAL TO WAIVE HIS OR HER RIGHTS UNDER THIS PART 3 IS VOID AS AGAINST PUBLIC POLICY.
8-13.3-312. Erroneous payments - disqualification for benefits
- rules. (1) A COVERED INDIVIDUAL IS DISQUALIFIED FROM FAMILY AND
MEDICAL LEAVE INSURANCE BENEFITS FOR ONE YEAR IF THE COVERED
INDIVIDUAL, IN CONNECTION WITH AN APPLICATION FOR BENEFITS UNDER
THE PROGRAM, WILLFULLY MAKES A FALSE STATEMENT OR
MISREPRESENTATION REGARDING A MATERIAL FACT OR WILLFULLY FAILS
TO REPORT A MATERIAL FACT. A COVERED INDIVIDUAL WHO WILLFULLY
MAKES A FALSE STATEMENT OR MISREPRESENTATION REGARDING A
MATERIAL FACT OR WILLFULLY FAILS TO REPORT A MATERIAL FACT
COMMENTS A MISDEMEANOR AND SHALL BE PUNISHED BY A FINE OF ONE
THOUSAND DOLLARS.

(2) IF FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS ARE PAID
ERRONEOUSLY OR AS A RESULT OF WILLFUL MISREPRESENTATION, OR IF A
CLAIM FOR FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS IS REJECTED
AFTER BENEFITS ARE PAID, THE DIVISION MAY SEEK REPAYMENT OF
BENEFITS FROM THE RECIPIENT. THE DIRECTOR SHALL EXERCISE HIS OR
HER DISCRETION TO WAIVE, IN WHOLE OR IN PART, THE AMOUNT OF ANY
REPAYMENTS WHERE THE RECOVERY WOULD BE AGAINST EQUITY AND
GOOD CONSCIENCE. THE DIRECTOR MAY ADOPT RULES TO DEVELOP A
PROCEDURE FOR RECOVERING ERRONEOUS PAYMENTS OF BENEFITS.

8-13.3-313. Elective coverage - withdrawal from coverage -
rules. (1) A SELF-EMPLOYED PERSON, INCLUDING A SOLE PROPRIETOR,
PARTNER, OR JOINT VENTURER, MAY ELECT COVERAGE UNDER THE
PROGRAM FOR AN INITIAL PERIOD OF NOT LESS THAN THREE YEARS OR A
SUBSEQUENT PERIOD OF NOT LESS THAN ONE YEAR IMMEDIATELY
FOLLOWING ANOTHER PERIOD OF COVERAGE. THE SELF-EMPLOYED PERSON
MUST FILE A NOTICE OF ELECTION IN WRITING WITH THE DIRECTOR, AS
REQUIRED BY THE DIVISION. THE ELECTION BECOMES EFFECTIVE ON THE DATE THE NOTICE IS FILED.

(2) A SELF-EMPLOYED PERSON WHO HAS ELECTED COVERAGE MAY WITHDRAW FROM COVERAGE BY FILING WRITTEN NOTICE WITH THE DIRECTOR WITHIN THIRTY DAYS AFTER THE END OF THE THREE-YEAR PERIOD OF COVERAGE OR AT OTHER TIMES THE DIRECTOR MAY PRESCRIBE BY RULE. THE WITHDRAWAL FROM COVERAGE TAKES EFFECT NO SOONER THAN THIRTY DAYS AFTER THE SELF-EMPLOYED PERSON FILES THE NOTICE.

8-13.3-314. Federal income tax - state income tax. (1) (a) If the federal internal revenue service determines that family and medical leave insurance benefits under this part 3 are subject to federal income tax, the division shall inform an individual filing a new claim for family and medical leave insurance benefits, at the time of filing, that:

(I) The internal revenue service has determined that benefits are subject to federal income tax;

(II) Requirements exist pertaining to estimated tax payments;

(III) The individual may elect to have federal income tax deducted and withheld from the individual's payment of benefits in the amount specified in the federal internal revenue code; and

(IV) The individual is permitted to change a previously elected withholding status.

(b) Amounts deducted and withheld from benefits under this section must remain in the fund until transferred to the federal internal revenue service as a payment of income tax.

(c) The director shall follow all procedures specified by
THE FEDERAL INTERNAL REVENUE SERVICE PERTAINING TO DEDUCTING
AND WITHHOLDING INCOME TAX.

(2) FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS RECEIVED
PURSUANT TO THIS PART 3 ARE NOT SUBJECT TO STATE INCOME TAX
PURSUANT TO SECTION 39-22-104 (4)(y).

8-13.3-315. Reports. By September 1, 2021, and by each
September 1 thereafter, the Division shall report to the Senate
Committees on Business, Labor, and Technology and Health and
Human Services and the House of Representatives Committees on
Health, Insurance, and Environment and Business Affairs and
Labor, or their successor Committees, on projected and actual
program participation, specifying income level, gender, race, and
ethnicity of participants and purpose and duration of leave,
premium rates, fund balances, and outreach efforts. The Division
shall post the reports on the Department's website.

Notwithstanding section 24-1-136 (11)(a)(I), the requirement
specified in this section to submit annual reports to Committees
of the General Assembly continues indefinitely.

8-13.3-316. Rules. (1) The Director may adopt rules as
necessary for the implementation and administration of this
part 3.

(2) The Director shall adopt rules:

(a) Establishing the form and manner of filing a claim for
benefits pursuant to section 8-13.3-305 (1)(b);

(b) Setting premium amounts pursuant to section
8-13.3-309 (2)(a); and

(c) Establishing a fine structure pursuant to section
8-13.3-310 (5)(a).

8-13.3-317. Severability. If any provision of this part 3 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the part that can be given effect without the invalid provision or application, and to this end the provisions of this part 3 are severable.

SECTION 3. In Colorado Revised Statutes, 24-1-121, add (3)(j) as follows:

24-1-121. Department of labor and employment - creation.

(3) The department of labor and employment consists of the following divisions and programs:

(j) The Division of Family and Medical Leave Insurance, the head of which is the Director of the Division of Family and Medical Leave Insurance. The division, created in part 3 of article 13.3 of title 8, and the Director of the Division shall exercise their powers, duties, and functions under the Department of Labor and Employment as if transferred by a type transfer.

SECTION 4. In Colorado Revised Statutes, 39-22-104, add (4)(y) as follows:

39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - definitions - repeal. (4) There shall be subtracted from federal taxable income:

(y) For income tax years commencing on or after January 1, 2021, an amount equal to any amount received by a taxpayer as Family and Medical Leave Insurance benefits pursuant to part
SECTION 5. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.