



**Colorado
Legislative
Council
Staff**

HB17-1307

**REVISED
FISCAL NOTE**

(replaces fiscal note dated April 10, 2017)

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 17-0034
Prime Sponsor(s): Rep. Winter

Date: April 18, 2017
Bill Status: House Finance
Fiscal Analyst: Erin Reynolds (303-866-4146)

BILL TOPIC: FAMLI INSURANCE PROGRAM WAGE REPLACEMENT

Fiscal Impact	FY 2017-2018	FY 2018-2019	FY 2019-2020
State Revenue	See State Revenue section.		
General Fund		(\$6.9 to \$20.8 million)	(\$20.6 to \$62.5 million)
Cash Funds	Increase: gifts, grants, or donations.	Increase: bonding; gifts, grants, or donations.	at least \$593 million
State Expenditures	<u>\$470,435</u>	<u>\$19 million</u>	<u>at least \$545 million</u>
Cash Funds	470,435	19 million	at least 545 million
TABOR Impact		(\$6.9 to \$20.8 million)	(\$20.6 to \$62.5 million)
FTE Position Change	2.7 FTE	57.2 FTE	222.8 FTE
Appropriation Required: None.			
Future Year Impacts: Ongoing revenue and expenditure increase.			

Summary of Legislation

Conditional on the success of an initial working group convening to assess program costs and plan revenue bond issuance, the bill, **as amended by the House Business Affairs and Labor Committee**, creates the Division of Family and Medical Leave Insurance (FAMLI division) as an enterprise in the Colorado Department of Labor and Employment (CDLE). The purpose of the FAMLI division is to provide wage-replacement benefits for up to 12 weeks per year to eligible employees. Paid leave must be taken concurrently with the unpaid, job-secured Family and Medical Leave Act (FMLA) leave available under current federal law. The FAMLI division will pay benefits through a premium deducted from all employees' payroll, paid to the newly created FAMLI enterprise fund, which is TABOR-exempt. The division will set the premium by rule based on an employee's annual wages, not to exceed 0.99 percent of annual taxable wages.

Applicability and definitions. The bill requires a premium payment to be deducted from the wages of all public and private sector employees and agricultural workers. Sole proprietors may opt in to the program. Family member is defined as a person who is related by blood, marriage, civil union, or adoption, and up to one additional person designated annually by the employee. Qualifying events include an individual's serious health condition; caring for a newborn, an adopted child, or a child placed through foster care for the first year; caring for a family member with a serious health condition; events related to a family member's active military duty; or any other leave authorized by the FMLA.

Eligibility. An employee is eligible to participate in the program after working 680 hours (504 in the case of an airline flight crew member) during the employee's qualifying year, and at least 90 days for his or her current employer.

Elective coverage. Self-employed individuals may elect coverage for an initial period of not less than three years or a subsequent period of not less than one year. The individual opts in by filing a notice of election in writing with the director, which becomes effective on the day the notice is filed. Notice must be provided to the division in advance of withdrawal from the program.

Premiums and benefits. The division director must determine the premium amount, not to exceed 0.99 percent of total annual taxable wages, and may adjust the premium amount annually to ensure actuarial fund soundness and to avoid an excessive fund balance. If necessary, the division director may later establish a solvency surcharge by rule.

Table 1 shows the benefit amount in relation to the individual's annual salary amount as a percentage of the annual mean wage, as determined by the Bureau of Labor Statistics, for all occupations in Colorado. Benefits are capped at \$1,000 per week. The \$1,000 cap will be adjusted each year in relation to the personal income growth rate.

Individual's Income Compared to State Annual Mean Wage	Percentage of Weekly Wage Eligible for Benefit
not more than 20%	95%
20% to 30%	90%
30% to 50%	85%
50% or more	66%

The division must make the first benefit payment to a claimant within two weeks after the claim is filed, and bi-weekly thereafter, for up to 12 weeks. The division must adjust the maximum weekly benefit according to a formula outlined in the bill annually beginning January 1, 2020.

Proof of eligibility. The division director will set rules related to claim forms and the manner in which claims are filed; however, the bill makes several requirements related to claims, including that an employee prove eligibility, meet certain hourly thresholds of employment per year, disclose relevant medical records, and attest that his or her employer was notified in writing. The division may also require additional attestations from employees.

Employer requirements. Employers must collect premiums through a payroll deduction and remit the funds to the division. Employers can choose to establish a designated person selection process and allow employees to annually update their designated person; if no process is set up by the employer, the employee designates upon making a claim. Employers may not require employees to take any other form of leave during an employee's FAML I leave. If an employer has a disability or family leave policy already in place, this leave can be taken concurrent to FAML I leave. Finally, employers must post notices related to and notify new hires of the FAML I benefit program.

Employer assistance. The CDLE must determine the nominal and reasonable assistance to provide to employers to offset initial costs of creating the payroll deduction from the FAML I Fund.

FAMLI Fund. The FAMLI Fund is an enterprise fund within the State Treasury. The fund may be used only to repay revenue bonds issued to cover start-up costs; collect employee FAMLI premiums; pay FAMLI benefits to employees; and cover program administration and outreach costs. The fund may receive any gifts, grants, or donations accepted by the division. The fund is continuously appropriated to the FAMLI division.

Claim denial and appeals process. The division may deny a FAMLI leave claim, and the employee may appeal the division's decision using the same process in law for unemployment insurance appeals. An employee has 20 calendar days to submit his or her appeal in writing. Upon receipt, the division must schedule a hearing.

Employer penalties. While an employee is on leave, an employer must maintain the employee's benefits and may not discriminate against the employee in response to the employee's actual or requested leave. The division director will create a fine structure for employers who violate these requirements.

Employee fraud. An employee who commits FAMLI leave fraud commits an unclassified misdemeanor punished by an unwaivable fine of \$1,000. The director may also develop a procedure for recovering erroneous benefit payments, and may exercise discretion to partially or wholly waive repayment amounts under certain circumstances.

Other division responsibilities. The director must follow federal tax withholding policies and may establish any other rules as necessary to establish the program. The division must report to the General Assembly by September 1, 2020, and each year thereafter, on program participation, including demographics, as well as premium rates, fund balances, and outreach efforts.

Income tax deduction. The bill creates an individual income tax deduction for FAMLI benefits.

Timeline. The bill requires the following implementation schedule:

- program implementation begins July 1, 2018;
- outreach program implemented by January 1, 2019;
- employee premium collection begins July 1, 2019; and
- benefits available as of January 1, 2020.

Background and Data

Federal Family and Medical Leave Act. The federal FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave for specified family and medical reasons, with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Employees may use sick time, vacation time, or other accrued leave time along with FMLA leave in order to continue being paid. The employer must have at least 50 employees within 75 miles of an employee's worksite for the employer to be subject to FMLA requirements.

Paid family leave in other states. Three states — California, New Jersey, and Rhode Island — currently have paid family leave programs; California's began in 2002, New Jersey's in 2008, and Rhode Island's in 2013. The family leave programs operate in conjunction with each state's temporary disability insurance program. The programs are funded through employee

contributions. Washington passed a paid family leave program in 2007 that has not yet been funded. New York and Washington D.C. have also recently passed paid family leave programs, effective 2018 and 2020, respectively. The utilization rate in these states has varied between 1.5 and 5 percent.

Colorado employment data. Table 2 shows the number of Colorado employees by employer type. As a point of reference, under current federal law, the only employee group currently covered under FMLA are those who work for a private employer that employs 50 or more individuals. The bill covers all but federal employees, and coverage is mandatory for all but sole proprietors, who may opt in to the benefit program.

Table 2. Colorado Employees by Category	
Type of Employer	Number of Employees
Private Employer Employing ≥ 50 Employees	1,084,744
Private Employer Employing < 50 Employees	1,081,773
Agricultural Sector	18,127
Sole Proprietor	138,700
State Government	97,784
Local Government	257,330
Federal Government	54,860
Total Employees in Colorado	2,733,318
Total Employees Estimated in Fiscal Note*	2,539,758

Source: Quarterly Census of Employment Wages (2016, 3rd Quarter), CDLE.

* This fiscal note has not included sole proprietors (who may opt in under the bill) or federal employees in the number of total employees participating in the program.

Comparable crime. Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. The bill creates an unclassified misdemeanor for employee FAML I fraud. A similar offense exists for Unemployment Insurance fraud. In the past three years, there have been 16,632 fraud cases received by CDLE, for an average of 3 percent of all UI claims. No demographic information is available. The CDLE handles these cases through a District Attorney's office, and cases are heard in District Court. Based on this proxy, the fiscal note assumes 1 percent of FAML I claims will be fraudulent, or 875 claims per year. See State Revenue– Fine revenue section for more information.

State Revenue

Conditional on the procurement of gifts, grants, and donations, and the successful convening of a working group, the bill will impact state revenue as follows:

- FAML I Fund increase from gifts, grants, or donations in FY 2017-18;
- FAML I Fund increase from bond proceeds in FY 2018-19;
- General Fund reduction from individual income taxes beginning in FY 2018-19; and
- FAML I Fund increase from premiums and fines beginning in FY 2019-20.

Bonding and gifts, grants, and donations. In advance of premium revenue collection, a combination of bonding and gifts, grants, and donations is required to cover start-up costs for the enterprise, which cannot be funded by the state. The amount of revenue to the FAML I division will depend on many factors that have not been estimated for this fiscal note, but at a minimum will cover the costs outlined in Table 4 for FY 2017-18 and FY 2018-19. No source of gifts, grants, or donations has been identified at this time.

Pre-tax treatment of FAML I premium payments. Depending on how the IRS treats employee FAML I premiums for purposes of federal income tax, and depending on the premium collected, the bill will reduce General Fund revenue from individual income taxes **by between \$6.9 and \$20.8 million in FY 2018-19 and between \$20.6 and \$62.5 million in FY 2019-20**. If the IRS allows these premium payments to occur on a pre-tax basis for determining an employee's wages for federal income tax purposes, federal taxable income will be reduced by the amount of the premium. This will, in turn, reduce Colorado taxable income. This revenue reduction assumes the range of premiums shown in Table 3, and a 4.63 percent income tax rate. Because premiums will be collected for the second half of tax year 2019, a partial-year impact is expected to be accrued into FY 2018-19. Depending on how employees spend the money they would have otherwise received as wages under current law, state revenue from sales, use, and other excise taxes may be affected; however, this amount is unknown and not estimated.

Income tax deduction for FAML I benefits. The income tax deduction in the bill for individuals who utilize FAML I benefits is not expected to affect state revenue, because the benefit is not part of taxable income under current law.

FAML I Fund. The division will begin collecting premiums on July 1, 2019, for deposit into the FAML I Fund which will increase cash fund revenue by **at least \$592 million** per year beginning in FY 2019-20. The premium rate is to be set administratively by the FAML I division, which will rely on the findings of an actuarial analysis before setting the rate. Under the bill, the maximum premium is 0.99 percent. A minimal amount of fine revenue related to employer penalties is also expected beginning in FY 2019-20. The fiscal note shows a range of premium revenue between 0.33 percent and 0.99 percent in Table 3.

Data and assumptions. This fiscal note applies the wage growth rate from the March 2017 Legislative Council Staff Economic and Revenue Forecast to the 2016 Colorado wage and salary income from the Bureau of Economic Analysis. It assumes that in the first fiscal year of premium collections (FY 2019-20), 2018 wage information will be used to estimate the premium.

Premium Rate Range		Total Estimated Taxable Wages	Low Range of Premium Collection	Maximum Premium Collection
Low	Max			
0.33%	0.99%	\$179 billion	\$592 million	\$1.8 billion

Fine revenue. Beginning in FY 2019-20, assuming that 1 percent of individuals commit and are fined for FAML I fraud per year, fine revenue to the FAML I fund will increase by **at least \$875,000 per year** from the \$1,000 fine, in addition to restitution payments, which have not been estimated for this fiscal note.

TABOR Impact

This bill reduces state revenue from the General Fund, which will reduce the amount of money required to be refunded under TABOR for FY 2018-19. TABOR refunds are paid out of the General Fund. TABOR refund obligations have not been estimated for FY 2019-20. This bill is expected to reduce the TABOR surplus by \$6.2 million in FY 2017-18 and \$18.5 million in FY 2018-19, reducing the amount of revenue refunded through the Six Tier Sales Tax Refund by equal amounts. Since the bill reduces both revenue to the General Fund and the refund obligation by equal amounts, there is no net impact on the amount of money available in the General Fund for the budget. However, the bill will reduce money available for the General Fund budget in the future during years the state does not collect money above the TABOR limit.

State Expenditures

Conditional on initial funding and working group success, the bill will increase state expenditures by:

- **\$470,435 and 2.7 FTE in FY 2017-18**, paid for by gifts, grants, or donations;
- **\$19 million and 57.2 FTE in FY 2018-19**, paid for by bond proceeds; and
- and at least **\$545 million and 222.8 FTE in FY 2019-20**, paid for by FAML I premiums.

All expenditures are to be paid from the FAML I Fund. These amounts are shown in Tables 4 and 5 and discussed below.

Assumptions. The costs in this fiscal note are based on the following assumptions:

- a 3.5 percent utilization rate and 2.5 million eligible employees, which results in an estimated 87,500 individuals who will utilize the program annually;
- the state's Unemployment Insurance (UI) program processed an average of 179,000 claims in the past two fiscal years; as a result, the fiscal note assumes that the FAML I program will require approximately half of the resources dedicated to UI (the UI program currently employs 458 FTE); and
- because of essential differences between UI benefits and the FAML I benefit created under the bill, the fiscal note assumes approximately one-quarter of the hearings staff currently dedicated to the UI program will be required for the FAML I program.

Division of Family and Medical Leave Insurance — CDLE. The newly created FAML I division will ramp up in the first two implementation years and bring on approximately half of the number of staff currently allocated to the UI program in FY 2019-20. An exception to the one-half staff rule is the hearings division, which is assumed to need one-quarter of the UI program staff, as explained in the Assumptions section above. Staff includes:

- a program director, deputy director, and director's assistant beginning in FY 2017-18;
- claim clerks, appeal clerks, research analysts, auditors, and file clerks, as well as additional executive director staff beginning in FY 2018-19; and
- hearings officers and assistants beginning in FY 2019-20.

Additionally, beginning in FY 2018-19, the FAML I division will have costs for actuarial analysis, third-party program outreach, mailings, legal services, a phone system, an electronic content management system, and a banking interface. The division will also rely on the Office of Information Technology (OIT) to implement a technology platform, and require approximately

285 hours of legal services per year provided by the Department of Law. Beginning in FY 2019-20, the Department of Revenue (DOR) will require computer programming and taxpayer service division staff to manage the new income tax deduction created by the bill. These costs are outlined in Table 4 below, and OIT costs are discussed further below.

Table 4. Conditional Administrative Expenditures Under HB17-1307			
CDLE Cost Components	FY 2017-18	FY 2018-19	FY 2019-20
Personal Services	\$206,642	\$2,680,827	\$10,837,614
FTE	2.7 FTE	47.0 FTE	209.0 FTE
Operating Expenses and Capital Outlay Costs	16,674	251,582	960,436
Actuarial Analysis		50,000	20,000
Outreach		500,000	
Mailings		155,000	
Legal Services		27,089	27,089
FTE		0.2 FTE	0.2 FTE
Call Center		350,000	87,500
Scanning		56,000	
Accounting Interface		487,685	
Indirect Costs*	54,879	844,219	3,655,149
CDLE Subtotal	\$278,195	\$5,402,402	\$15,587,788
OIT Cost Components	FY 2017-18	FY 2018-19	FY 2019-20
Personal Services		828,602	828,602
FTE		10.0 FTE	10.0 FTE
Operating Expenses and Capital Outlay Costs		37,718	9,500
Cell Phones		400	400
Training		5,000	5,000
Hardware and Software		12,500,000	12,500,000
Temporary Contractors	192,240		
Indirect Costs*		159,389	159,389
OIT Subtotal	\$192,240	\$13,531,109	\$13,502,891
DOR Cost Components	FY 2017-18	FY 2018-19	FY 2019-20
Personal Services			\$75,665
FTE			1.8 FTE
Operating Expenses and Capital Outlay Costs			11,116
Computer Programming			2,900
Centrally Appropriated Costs			29,300
DOR Subtotal			\$118,981
FAMLI Benefit Payments**			\$516,000,000
TOTAL	\$470,435	\$18,933,511	\$545,209,660
TOTAL FTE*	2.7 FTE	57.2 FTE	222.8 FTE

* Indirect costs will be paid from the FAMLI Fund.

** More information about the FAMLI benefit payment calculation is shown in Table 5.

Office of Information Technology. OIT will begin its requirements and approval work in FY 2017-18 with contract staff paid for with gifts, grants, or donations. The creation of the technology solution will take place from FY 2018-19 through FY 2019-20, to be paid for through bond proceeds. Costs shown are estimates based on the UI technology solution, but may change depending on many factors, including OIT's use of an open source code and actual system requirements, all of which will be determined during the initial start-up year. Ongoing maintenance costs, which are not shown in Table 4, are estimated at approximately \$5 million per year beginning in FY 2021-22.

Department of Revenue. DOR's Taxpayer services division will require 1.8 FTE beginning in FY 2019-20 to handle refund approvals, inventory management, protest correspondence, and increased call center volume. Computer programming is also required at the rate of \$200 per hour for 9 hours to update the GenTax system. Finally, imaging costs estimated at \$1,200 will be reappropriated to the Department of Personnel and Administration to update one tax form change.

FAMLI benefits. Beginning January 1, 2020, this bill will increase expenditures for FAMLI benefit payments. Table 5 shows the estimated benefits for FY 2020-21, the first full implementation year of the benefit program. The fiscal note uses \$56,720 as the annual mean wage (AMW) for 2020, which applies the employment growth rate from the March 2017 Legislative Council Staff Economic and Revenue Forecast to the 2016 Occupational Employment Statistics from the Bureau of Labor Statistics.

A minimum and maximum weekly benefit range is shown to indicate the dollar amounts relative to the income, percentage income compared to the annual mean wage, and FAMLI benefit under the bill. For the final column, which indicates an estimate of the annual FAMLI benefits the division will pay out in FY 2020-21, the fiscal note makes a basic estimate that each income group represents one-quarter (21,875) of the estimated 87,500 individuals that will utilize this benefit per year (2.5 million employees, 3.5 percent utilization rate), and shows the expenditure based on the 12-week maximum benefit.

Individual Income Compared to AMW	Individual Annual Wage Range	Individual Weekly Wage Range	FAMLI Benefit	Weekly Income-based Benefit Range	12-week Maximum Benefit*	Estimated Annual FAMLI Benefit Paid
up to 20%	up to \$11,344	up to \$218	95%	up to \$207	\$2,487	\$54 million
20% to 30%	11,344 to	218 to 327	90%	196 to 295	3,534	77 million
30% to 50%	17,016 to	327 to 545	85%	278 to 464	5,563	122 million
50% or more	28,260 or more	545 or more	66%	360 to 1,000	12,000	263 million
TOTAL						\$516 million

* Under the bill, the maximum weekly benefit amount will be adjusted annually according to personal income growth.

Indirect costs to CDLE and OIT. Certain costs associated with this bill are typically addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. However, because the bill will be funded by the FAMLI Fund, which is an enterprise, CDLE and OIT costs are shown as indirect costs in Table 6. Leased space is included to show the impact of additional FTE at CDLE, and calculated at CDLE's rate of 250 square feet per FTE at \$21 per square foot.

Table 6. Indirect Costs Under HB17-1307			
Cost Components	FY 2017-18	FY 2018-19	FY 2019-20
Employee Insurance (Health, Life, Dental, and STD)	\$51,287	\$442,393	\$1,671,928
Supplemental Employee Retirement Payments	46,470	314,465	1,045,360
Leased Space	15,750	246,750	1,097,250
TOTAL	\$113,507	\$1,003,608	\$3,814,538

Centrally appropriated costs for DOR. Pursuant to a Joint Budget Committee policy, DOR costs are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. Leased space for DOR is included to show the incremental impact of the additional FTE, and calculated at DOR's rate of 200 square feet per FTE at a rate of \$27 per square foot. The centrally appropriated costs subject to this policy begin in FY 2019-20, and include \$13,340 for employee insurance, \$6,780 for supplemental PERA, and \$9,180 for leased space, as shown in Table 4.

All state agencies. Workload will increase in all state agencies to perform employee outreach and to track and administer time, leave, and short-term disability (STD) claims. Tracking of the FMLA, STD, Workers' Compensation, and PERA STD can be administratively complex.

Increased utilization of leave. Additionally, the bill allows employees who have worked for at least 680 hours during their qualifying year to receive benefits. This is a lower threshold than the state's current eligibility requirements that require permanent state employees to perform one year of service before utilizing family and medical leave, and temporary state employees to have worked for at least 1250 hours in the qualifying year. This may have a significant fiscal and operational impact to departments that hire temporary employees, especially in round-the-clock departments such as the Departments of Corrections and Human Services.

To the extent additional resources are required related to these two issues, these will be requested during the annual budget process beginning in FY 2019-20.

Department of Personnel and Administration. The Department of Personnel and Administration (DPA) will set up the new deduction. It will also perform outreach to the state personnel system and update rules, technical guidance, and existing documentation to include information about the FAMLI benefit program. These workload increases can be accomplished within existing appropriations.

Short-term disability benefits. The bill may result in a reduction in the amount of STD benefits paid to employees, which may result in a cost savings through a reduction of the STD premium. If this occurs, this adjustment will be addressed through the total compensation analysis included in the annual budget process.

Judicial Department. Beginning in FY 2019-20, district courts are expected to see an increase in employee FAMLI fraud cases, and trial courts may see a minimal increase in discrimination cases against employers for violating the employment protection provisions of the bill. To the extent that these workload increases require additional resources, these will be requested during the annual budget process.

Local Government, School District, and Statutory Public Entity Impact

Like the state, local governments, school districts, and statutory public entities will be required to implement payroll deductions for employees and coordinate sick leave, FMLA, and STD benefits when an employee applies for family and medical leave.

District attorneys. District attorneys may require additional resources to manage the FAMLFI fraud cases under the bill.

Effective Date

The bill takes effect August 9, 2017, if the General Assembly adjourns on May 10, 2017, as scheduled, and no referendum petition is filed.

State and Local Government Contacts

Information Technology
Law
Regulatory Agencies

Judicial
Municipalities
Revenue

Labor
Personnel
Treasury

Research Note Available

An LCS Research Note for HB17-1307 is available online and through the iLegislate app. Research notes provide additional policy and background information about the bill and summarize action taken by the General Assembly concerning the bill.