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 and 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;
Because the eligible individual is unable to work due to the individual's own serious health condition or because the individual or a family member is the victim of abusive behavior; or

Due to certain needs arising from a family member's active duty service.

Each employee and employer in the state will pay one-half the cost of a premium as specified in the bill, which premium is based on a percentage of the employee's yearly wages. The premiums are deposited into the family and medical leave insurance fund, and family and medical leave benefits are paid to eligible individuals from 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. 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. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Colorado is a family-friendly state, and providing the workers of Colorado with family and medical leave insurance will encourage an entrepreneurial atmosphere and economic growth and promote a healthy business climate;

(b) The United States is the only industrialized nation in the world that does not mandate access to paid leave benefits. Simultaneously, nearly half of Americans live paycheck to paycheck and are unable to access two thousand dollars in the
EVENT OF AN EMERGENCY.

(c) Leave under the federal "Family and Medical Leave Act of 1993", as amended, Pub.L. 103-3, codified at 29 U.S.C. sec. 2601 et seq., is both unpaid and unavailable to more than forty percent of private sector workers in the United States. This part 3, known as the state "Family and Medical Leave Insurance Act" or "FAML Act", provides a necessary safety net for all Colorado workers, as paid family and medical leave allows workers to remain in the workforce, stay safe, seek necessary medical treatment, and provide care to loved ones at critical times.

(d) Every worker at some point in his or her life will need to take time off work for family or health reasons, making this an issue that affects all workers. When workers need leave but cannot take it, economic and social costs accumulate.

(e) Paid leave benefits employers by improving recruitment opportunities and reducing turnover. Therefore, it benefits the public to provide family and medical leave insurance for Colorado workers.

(f) The premiums collected under this part 3 are used exclusively for the payment of family and medical leave insurance benefits and the administration of the program. The division of family and medical leave insurance is created as an enterprise for purposes of section 20 of article X of the state constitution, operating as a government-run business that provides family and medical leave insurance services.

(g) Employee and employer contributions are collected
AT RATES REASONABLY CALCULATED TO PROVIDE THE PROGRAM’S LEAVE
BENEFITS AND SUPPORTING ADMINISTRATION OF THE PROGRAM, AND THE
FISCAL APPROACH IN THIS PART 3 WAS INFORMED BY THE EXPERIENCE OF
OTHER STATE FAMILY AND MEDICAL LEAVE INSURANCE PROGRAMS,
MODELING BASED ON THE COLORADO WORKFORCE, AND INPUT FROM A
VARIETY OF STAKEHOLDERS IN COLORADO;

(h) WORKERS NEED COMPREHENSIVE PAID FAMILY AND MEDICAL
LEAVE TO ADDRESS DOMESTIC ABUSE, SEXUAL ASSAULT OR ABUSE, AND
STALKING, WHICH POSE SERIOUS HEALTH AND SAFETY CONCERNS.
DOMESTIC ABUSE, SEXUAL ASSAULT OR ABUSE, AND STALKING ARE
QUALIFYING PURPOSES FOR FAMILY AND MEDICAL LEAVE UNDER THIS PART
3.

(i) THIS PART 3 REFLECTS THE REALITY AND DIVERSITY OF
COLORADO FAMILIES BY ALLOWING WORKERS TO CARE FOR A RANGE OF
FAMILY MEMBERS AND CLOSE LOVED ONES WHEN THEY ARE DEALING WITH
A SERIOUS HEALTH CONDITION;

(j) JOB PROTECTION IS ESSENTIAL TO ENSURING WORKERS CAN
TAKE THE LEAVE THEY NEED WITHOUT RISKING THEIR JOBS OR THEIR
ECONOMIC SECURITY;

(k) COMPREHENSIVE, UNIVERSAL PAID FAMILY AND MEDICAL
LEAVE IS ESPECIALLY IMPORTANT FOR LOW-INCOME WORKERS LIVING
PAYCHECK TO PAYCHECK. WITHOUT THE LEGAL RIGHTS THEY NEED, THESE
WORKERS ARE DISPROPORTIONATELY MORE LIKELY TO LACK ACCESS TO
PAID LEAVE AND ARE LEAST ABLE TO AFFORD TO TAKE UNPAID LEAVE.

(l) THIS PART 3 OFFERS PORTABLE BENEFITS THAT WORKERS CAN
TAKE WITH THEM AS THEY MOVE FROM JOB TO JOB OR COMBINE MULTIPLE
SOURCES OF INCOME. PORTABLE BENEFITS ARE ESSENTIAL IN A CHANGING
ECONOMY, WHERE MORE AND MORE WORKERS FIND THEMSELVES RELYING ON INSECURE JOBS OR PIECING TOGETHER MULTIPLE TYPES OF JOBS TO MAKE ENDS MEET.

(m) RECOGNIZING THAT MANY PEOPLE NOW WORK OUTSIDE THE TRADITIONAL EMPLOYER-EMPLOYEE STRUCTURE, THIS PART 3 ALSO ALLOWS SELF-EMPLOYED WORKERS TO PARTICIPATE IN THE PROGRAM IF THEY CHOOSE, PROVIDING ACCESS TO NEEDED BENEFITS AND ADDED SECURITY.

8-13.3-303. Definitions. As used in this Part 3, unless the context otherwise requires:

(1) "Average weekly wage" means the average weekly wage determined in accordance with section 8-47-106.

(2) "Covered individual" means an individual who has elected coverage under section 8-13.3-313 or who has been employed by and worked for one or more employers for a combined total of at least six hundred eighty hours, or five hundred four hours in the case of airline flight crew members, during the individual’s qualifying year.

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

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

(5) "Division" means the division of family and medical leave insurance created in section 8-13.3-304.

(6) "Domestic abuse" means any act described in section 13-14-101 (2) or any other crime, the underlying factual basis of which has been found by a court on the record to include an act of domestic violence, as defined in section 18-6-800.3 (1).
(7) "ELIGIBLE INDIVIDUAL" MEANS AN INDIVIDUAL WHO SATISFIES THE REQUIREMENTS OF SECTION 8-13.3-306 AND IS ELIGIBLE TO RECEIVE FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS.

(8) "EMPLOYEE" MEANS ANY INDIVIDUAL, INCLUDING A MIGRATORY LABORER, PERFORMING LABOR OR SERVICES FOR THE BENEFIT OF ANOTHER, IRRESPECTIVE OF WHETHER THE COMMON-LAW RELATIONSHIP OF MASTER AND SERVANT EXISTS. FOR THE PURPOSES OF THIS PART 3, AN INDIVIDUAL PRIMARILY FREE FROM CONTROL AND DIRECTION IN THE PERFORMANCE OF THE LABOR OR SERVICES, BOTH UNDER THE INDIVIDUAL'S CONTRACT FOR THE PERFORMANCE OF THE LABOR OR SERVICES AND IN FACT, AND WHO IS CUSTOMARILY ENGAGED IN AN INDEPENDENT TRADE, OCCUPATION, PROFESSION, OR BUSINESS RELATED TO THE LABOR OR SERVICES PERFORMED IS NOT AN "EMPLOYEE".

(9) (a) "EMPLOYER" MEANS ANY PERSON ENGAGED IN COMMERCE OR AN INDUSTRY OR ACTIVITY AFFECTING COMMERCE THAT:

(I) 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; OR

(II) PAID WAGES OF ONE THOUSAND FIVE HUNDRED DOLLARS OR MORE DURING ANY CALENDAR QUARTER IN THE 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 THAT ACQUIRES ALL OF THE ORGANIZATION, TRADE, OR BUSINESS OR SUBSTANTIALLY ALL
OF THE ASSETS OF ONE OR MORE EMPLOYERS; AND

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

(10) "FAMILY AND MEDICAL LEAVE" MEANS LEAVE FROM WORK UNDER THIS PART 3.

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

(12) "FAMILY MEMBER" MEANS A COVERED INDIVIDUAL'S IMMEDIATE FAMILY MEMBER, AS DEFINED IN SECTION 2-4-401 (3.7), A COVERED INDIVIDUAL'S DOMESTIC PARTNER, AS DEFINED IN SECTION 24-50-603 (6.5), AND ANY OTHER INDIVIDUAL WITH WHOM THE COVERED INDIVIDUAL HAS A SIGNIFICANT PERSONAL BOND THAT IS LIKE A FAMILY RELATIONSHIP, REGARDLESS OF BIOLOGICAL OR LEGAL RELATIONSHIP.


(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" MEANS ANY PERSON LICENSED, CERTIFIED, OR REGISTERED UNDER FEDERAL OR STATE LAW TO PROVIDE MEDICAL OR EMERGENCY SERVICES. THE TERM INCLUDES PHYSICIANS, DOCTORS, NURSES, AND MIDWIVES.

(17) "PREMIUM" MEANS THE PAYMENTS AN INDIVIDUAL AND EMPLOYER ARE 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 SECTION 8-13.3-305.

(19) "QUALIFYING EXIGENCY" MEANS A NEED ARISING OUT OF A COVERED INDIVIDUAL'S FAMILY MEMBER'S ACTIVE DUTY SERVICE OR NOTICE OF AN IMPENDING CALL OR ORDER TO ACTIVE DUTY IN THE ARMED FORCES, INCLUDING, BUT NOT LIMITED TO, PROVIDING FOR THE CARE OR OTHER NEEDS OF THE MILITARY MEMBER'S CHILD OR OTHER FAMILY MEMBER, MAKING FINANCIAL OR LEGAL ARRANGEMENTS FOR THE MILITARY MEMBER, ATTENDING COUNSELING, ATTENDING MILITARY EVENTS OR CEREMONIES, SPENDING TIME WITH THE MILITARY MEMBER DURING A REST AND RECUPERATION LEAVE OR FOLLOWING RETURN FROM DEPLOYMENT, OR MAKING ARRANGEMENTS FOLLOWING THE DEATH OF THE MILITARY MEMBER.

(20) "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.

(21) (a) "SERIOUS HEALTH CONDITION" MEANS AN ILLNESS, INJURY, IMPAIRMENT, OR PHYSICAL OR MENTAL CONDITION THAT INVOLVES:

(I) INPATIENT CARE IN A HOSPITAL, HOSPICE, OR RESIDENTIAL MEDICAL CARE FACILITY; OR

(II) CONTINUING TREATMENT BY A HEALTH CARE PROVIDER.

(b) "SERIOUS HEALTH CONDITION" INCLUDES DOMESTIC ABUSE, SEXUAL ASSAULT OR ABUSE, AND STALKING.

(22) "SEXUAL ASSAULT OR ABUSE" MEANS ANY ACT, ATTEMPTED ACT, OR THREATENED ACT OF UNLAWFUL SEXUAL BEHAVIOR, AS DESCRIBED IN SECTION 16-11.7-102 (3), OR SEXUAL ASSAULT, AS
DESCRIBED IN SECTION 18-3-402, COMMITTED BY ANY PERSON AGAINST
ANOTHER PERSON REGARDLESS OF THE RELATIONSHIP BETWEEN THE
ACTOR AND THE VICTIM.

(23) "STALKING" MEANS ANY ACT, ATTEMPTED ACT, OR
THREATENED ACT OF STALKING, AS DESCRIBED IN SECTION 18-3-602.

8-13.3-304. 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 BENEFITS. 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. Revenue from the bonds issued pursuant to this subsection (2) shall be deposited into the fund.

8-13.3-305. Family and medical leave insurance program - creation - division duties - outreach and education - rules. (1) (a) The division shall establish and administer a family and medical leave insurance program to grant family and medical leave to eligible individuals and pay family and medical leave insurance benefits to eligible individuals as specified in this part 3.

(b) Starting July 1, 2020, 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 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 8-13.3-306.

(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 FILES AND RECORDS OR RECEIVE SPECIFIC INFORMATION FROM THE FILES AND 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, 2021, 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 documentation requirements;

(V) Reinstatement and nondiscrimination rights;

(VI) Confidentiality of files and 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

---

-11-  SB19-188
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 AN EVENT THAT TRIGGERS ELIGIBILITY PURSUANT TO SECTION 8-13.3-306.

(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.

8-13.3-306. Family and medical leave insurance benefits - application - eligibility - rules. (1) BEGINNING JANUARY 1, 2022, EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, AN INDIVIDUAL IS ELIGIBLE TO TAKE FAMILY AND MEDICAL LEAVE AND TO RECEIVE FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS IF THE INDIVIDUAL:

(a) IS TAKING FAMILY AND MEDICAL LEAVE FOR ONE OF THE FOLLOWING PURPOSES:

(I) BECAUSE THE INDIVIDUAL HAS A SERIOUS HEALTH CONDITION;

(II) BECAUSE THE INDIVIDUAL IS CARING FOR A 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 THE INDIVIDUAL IS CARING FOR A FAMILY MEMBER WHO HAS A SERIOUS HEALTH CONDITION; OR

(IV) FOR A QUALIFYING EXIGENCY;
(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 8-13.3-305 (4); and

e) (I) If currently employed, attests, in the application for family and medical leave insurance benefits, that the individual notified the individual's employer of the intent to take family and medical leave from work for one of the purposes specified in subsection (1)(a) of this section.

(II) In any case in which the necessity for family and medical leave is foreseeable, the individual shall provide the individual's employer with not less than thirty days' notice before the date the leave is to begin of the individual's intention to take leave under this part 3. If the necessity for leave is not foreseeable or providing thirty days' notice is not possible, the individual shall provide the notice as soon as practicable.

(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 to the need for leave and 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;

(II) IS NOT RECEIVING UNEMPLOYMENT INSURANCE BENEFITS; 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 AND ESTIMATING THE FREQUENCY AND DURATION OF LEAVE NEEDED. TO PROVIDE EVIDENCE THAT THE COVERED INDIVIDUAL OR THE COVERED INDIVIDUAL’S FAMILY MEMBER HAS A SERIOUS HEALTH CONDITION RELATED TO DOMESTIC ABUSE, SEXUAL ASSAULT OR ABUSE, OR STALKING, THE COVERED INDIVIDUAL MAY PROVIDE DOCUMENTS, INCLUDING, BUT NOT LIMITED TO:

(I) A POLICE REPORT WRITTEN WITHIN THE PRIOR SIXTY DAYS;

(II) A VALID PROTECTION ORDER; OR

(III) A WRITTEN STATEMENT ESTIMATING THE FREQUENCY AND DURATION OF LEAVE NEEDED FROM A HEALTH CARE PROVIDER OR APPLICATION ASSISTANT, AS DEFINED IN SECTION 24-30-2103 (4), WHO EXAMINED OR CONSULTED WITH THE COVERED INDIVIDUAL OR COVERED INDIVIDUAL’S FAMILY MEMBER.

(3) A COVERED INDIVIDUAL WHO MEETS THE REQUIREMENTS OF SUBSECTION (1) 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 the individual's 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.

8-13.3-307. Duration of benefits - payment intervals.

(1)(a) The maximum number of weeks for which family and medical leave insurance benefits are payable to an eligible individual for a purpose specified in section 8-13.3-306 (1)(a) of this section in any consecutive fifty-two-week period is twelve weeks; except that benefits are payable up to an additional four weeks to an eligible individual with a serious health condition related to pregnancy complications or childbirth complications.

(b) The maximum number of total weeks for which family and medical leave insurance benefits are payable to an eligible individual in aggregate for separate purposes specified in section 8-13.3-306 (1)(a) in any consecutive fifty-two-week period is fourteen weeks; except that benefits are payable up to an additional two weeks to an eligible individual with a serious health condition related to pregnancy complications or
CHILD BIRTH COMPLICATIONS.

(c) For purposes of this subsection (1), caring for a new child is a separate qualifying event from a serious health condition related to and including pregnancy and recovery from childbirth.

(2) (a) Failure by a covered individual who is otherwise eligible under section 8-13.3-306 to file a claim for benefits pursuant to section 8-13.3-306 (1)(b), furnish notice to an employer pursuant to section 8-13.3-306 (1)(e), or submit certification from a health care provider in the manner specified in section 8-13.3-306 (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 the individual's employer, or submits the certification from the health care provider, as applicable, unless the eligible individual demonstrates to the satisfaction of the division that:

(I) Good cause exists, as determined by the division, for the eligible individual's failure to timely submit the application or certification or furnish the notice to the individual's employer; and

(II) The eligible individual submitted the application and certification and notified the individual's employer as soon as possible.

(b) The division shall notify the eligible individual's employer of the division's determination made pursuant to this
(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 weekly or biweekly.

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

(1) (a) The division shall determine an eligible individual's weekly benefit amount, subject to subsection (1)(b) of this section, as follows:

(I) Ninety percent of the eligible individual's weekly wage for all wages that are less than fifty percent of the average weekly wage; and

(II) Fifty percent of the eligible individual's weekly wage for all wages that equal or exceed fifty percent of the average 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, 2023, the division shall annually adjust the maximum weekly benefit amount to an amount equal to ninety percent of the average weekly wage.

(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 an additional job where the individual is not taking leave while taking family and medical leave, the division shall not consider the eligible individual's weekly wage
EARNED FROM THE ADDITIONAL JOB WHEN CALCULATING THE ELIGIBLE INDIVIDUAL'S WEEKLY BENEFIT AMOUNT.

(2) FOR PURPOSES OF CALCULATING AN ELIGIBLE INDIVIDUAL'S WEEKLY BENEFIT IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION, THE ELIGIBLE INDIVIDUAL'S WEEKLY WAGE IS ONE-THIRTEENTH OF THE WAGES PAID DURING THE QUARTER OF THE ELIGIBLE INDIVIDUAL'S BASE PERIOD, AS DEFINED IN SECTION 8-70-103 (2), OR ALTERNATIVE BASE PERIOD, AS DEFINED IN SECTION 8-70-103 (1.5), IN WHICH THE TOTAL WAGES WERE HIGHEST. FOR PURPOSES OF THIS SUBSECTION (2), WAGES INCLUDE, BUT ARE NOT LIMITED TO, SALARY, WAGES, TIPS, COMMISSIONS, AND OTHER COMPENSATION AS DETERMINED BY THE DIRECTOR BY RULE.

(3) AN ELIGIBLE INDIVIDUAL MAY TAKE INTERMITTENT LEAVE IN INCREMENTS OF ONE HOUR OR SHORTER IF CONSISTENT WITH THE INCREMENTS THE EMPLOYER TYPICALLY USES TO MEASURE EMPLOYEE LEAVE; EXCEPT THAT BENEFITS ARE NOT PAYABLE UNTIL THE ELIGIBLE INDIVIDUAL ACCUMULATES AT LEAST ONE DAY OR EIGHT HOURS OF FAMILY AND MEDICAL LEAVE.

(4) THE DIVISION SHALL NOT REDUCE THE WEEKLY BENEFIT AMOUNT BY THE AMOUNT OF WAGE REPLACEMENT THAT AN ELIGIBLE INDIVIDUAL RECEIVES WHILE ON FAMILY AND MEDICAL LEAVE UNDER ANY OF THE FOLLOWING CONDITIONS, UNLESS THE AGGREGATE AMOUNT AN ELIGIBLE INDIVIDUAL WOULD RECEIVE WOULD EXCEED THE ELIGIBLE INDIVIDUAL'S WEEKLY WAGE:

(a) A TEMPORARY DISABILITY POLICY OR PROGRAM OF AN EMPLOYER;

(b) A PAID FAMILY OR MEDICAL LEAVE POLICY OF AN EMPLOYER; OR
(c) ACCRUED PAID LEAVE, INCLUDING, BUT NOT LIMITED TO, SICK,
VACATION, OR PERSONAL TIME, THAT AN ELIGIBLE INDIVIDUAL
VOLUNTARILY ELECTS TO TAKE.

8-13.3-309. Family and medical leave insurance fund -
creation - employee premiums - rules. (1) (a) THERE IS HEREBY
CREATED IN THE STATE TREASURY THE FAMILY AND MEDICAL LEAVE
INSURANCE FUND. THE FUND CONSISTS OF PREMIUMS, REVENUES FROM
REVENUE BONDS ISSUED IN ACCORDANCE WITH SECTION 8-13.3-304 (2)(d),
AND FINES COLLECTED UNDER SECTION 8-13.3-310 (5). MONEY IN THE
FUND MAY BE USED ONLY TO PAY REVENUE BONDS AND TO PAY BENEFITS
UNDER, AND TO ADMINISTER, THE PROGRAM PURSUANT TO THIS PART 3,
INCLUDING TECHNOLOGY COSTS TO ADMINISTER THE PROGRAM AND
OUTREACH SERVICES DEVELOPED UNDER SECTION 8-13.3-305 (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. STATE MONEY IN THE FUND IS
CONTINUOUSLY APPROPRIATED TO THE DIVISION FOR THE PURPOSE OF THIS
SECTION. THE GENERAL ASSEMBLY SHALL NOT APPROPRIATE MONEY FROM
THE FUND FOR THE GENERAL EXPENSES OF THE STATE.

(b) THE DIVISION MAY SEEK, ACCEPT, AND EXPEND GIFTS, GRANTS,
AND DONATIONS, INCLUDING PROGRAM-RELATED INVESTMENTS AND
COMMUNITY REINVESTMENT FUNDS, TO FINANCE THE COSTS OF
ESTABLISHING AND IMPLEMENTING THE PROGRAM.

(2) (a) (I) EFFECTIVE JULY 1, 2021, EACH EMPLOYER AND EACH
INDIVIDUAL EMPLOYED BY AN EMPLOYER IN THIS STATE SHALL PAY
ONE-HALF OF THE PREMIUM AMOUNT DETERMINED IN ACCORDANCE WITH
THIS SUBSECTION (2)(a). The director shall not apply the premium to wages that exceed the contribution and benefit base limit established annually by the United States Social Security Administration for purposes of the federal "Old-Age, Survivors, and Disability Insurance Amendments of 1965", as amended, Pub.L. 89-97. Premiums established in accordance with this subsection (2) are fees and not taxes.

(II) (A) From July 1, 2021, through December 31, 2022, the premium amount is sixty-four one-hundredths of one percent of wages per employee.

(B) For the 2023 and 2024 calendar years, the director shall set the premium based on a percent of employee wages and at the rate necessary to obtain a total amount of premium contributions equal to one hundred fifty percent of the benefits paid during the immediately preceding calendar year plus an amount equal to one hundred percent of the cost of administration of the payment of those benefits during the immediately preceding calendar year, less the amount of net assets remaining in the fund as of December 31 of the immediately preceding calendar year.

(C) For the 2025 calendar year, and each calendar year thereafter, the director shall set the premium based on a percent of employee wages and at the rate necessary to obtain a total amount of premium contributions equal to between one hundred twenty-five and one hundred fifty percent of the benefits paid during the immediately preceding calendar year plus an amount equal to one hundred percent of the cost of
ADMINISTRATION OF THE PAYMENT OF THOSE BENEFITS DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR, LESS THE AMOUNT OF NET ASSETS REMAINING IN THE FUND AS OF DECEMBER 31 OF THE IMMEDIATELY PRECEDING CALENDAR YEAR.

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


(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 THE 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 A SEASONAL WORKER, AS DEFINED IN SECTION 8-73-106, IF THE EMPLOYER CAN SHOW THAT THE SEASONAL WORKER RETURNED FROM LEAVE AFTER THE CONCLUSION OF THE SEASON FOR WHICH THE SEASONAL WORKER WAS HIRED AND THAT THE EMPLOYER NOTIFIED THE SEASONAL WORKER OF THE SEASONAL NATURE OF THE POSITION AT THE TIME OF HIRING.
(2) An employer shall not discharge, demote, or otherwise discriminate or take any adverse employment action against an individual because the individual:

(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 the 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 a civil action in a court of competent jurisdiction.

-22- SB19-188
8-13.3-311. Coordination of benefits. (1) (a) Leave taken under this Part 3 runs concurrently with any leave taken under the FMLA, Part 2 of this Article 13.3, or Section 24-34-402.7. If a period of family and medical leave received by an 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 employee of the designation and shall also provide the employee with the notice required under 29 CFR 825.300 (d).

(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 an employer policy or employment contract, 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 or exhaust 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.

(d) Subject to the limitations under Section 8-13.3-308 (4),
AN EMPLOYEE MAY SUPPLEMENT THE FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS THE EMPLOYEE IS RECEIVING THROUGH THE PROGRAM, THROUGH VACATION, SICK, OR OTHER PAID TIME OFF, TO ENSURE THAT THE EMPLOYEE IS RECEIVING ONE HUNDRED PERCENT OF THE EMPLOYEE'S WEEKLY WAGE. NOTHING IN THIS SUBSECTION (1)(d) REQUIRES AN EMPLOYEE TO RECEIVE OR USE, OR AN EMPLOYER TO PROVIDE, ADDITIONAL PAID TIME OFF AS DESCRIBED THIS SUBSECTION (1)(d).

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

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

(II) AN EMPLOYER'S OBLIGATION TO COMPLY WITH A COLLECTIVE BARGAINING AGREEMENT, EMPLOYER POLICY, OR EMPLOYMENT CONTRACT, 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 AN EMPLOYEE'S RIGHT TO BENEFITS UNDER THIS PART 3. ANY AGREEMENT BY AN EMPLOYEE TO WAIVE THE EMPLOYEE'S RIGHTS UNDER THIS PART 3 IS VOID AS AGAINST PUBLIC POLICY.

8-13.3-312. Erroneous payments - disqualification for benefits - penalties - rules. (1) A COVERED INDIVIDUAL WHO, 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 IS DISQUALIFIED FROM FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS
FOR ONE YEAR FROM THE DATE THE DIVISION DISCOVERS THE FALSE STATEMENT, MISREPRESENTATION, OR WILLFUL FAILURE TO REPORT A MATERIAL FACT.

(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 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 AN INDEPENDENT CONTRACTOR, 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 IN THE FORM AND MANNER 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.

(3) A SELF-EMPLOYED PERSON WHO HAS ELECTED COVERAGE
SHALL PAY ONLY THE EMPLOYEE PORTION OF THE PREMIUM AMOUNT
ESTABLISHED PURSUANT TO SECTION 8-13.3-309 (2)(a).

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 FEDERAL 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 OF
1986", AS AMENDED; 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)(z).

8-13.3-315. Reports. By September 1, 2022, 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 and insurance 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 report on the Department's website. Notwithstanding section 24-1-136 (11)(a)(I), the report required in this section continues indefinitely.

8-13.3-316. Rules. (1) The director may adopt rules as necessary or as specified in this part 3 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 8-13.3-306 (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. Benefits available regardless of citizenship or immigration status. Notwithstanding section 24-76.5-103, family and medical leave insurance benefits are available to all
ELIGIBLE INDIVIDUALS REGARDLESS OF THEIR CITIZENSHIP OR IMMIGRATION STATUS.

SECTION 2. In Colorado Revised Statutes, 24-1-121, add (3)(k) 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:

(k) 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 2 transfer.

SECTION 3. In Colorado Revised Statutes, 24-34-402.7, add (5) as follows:

24-34-402.7. Unlawful action against employees seeking protection - notice to revisor of statutes - repeal. (5) This section will be repealed when the first family and medical leave insurance benefit payment is made to an eligible individual in accordance with part 3 of article 13.3 of title 8. The director of the division of family and medical leave insurance in the department of labor and employment shall notify the revisor of statutes in writing of the date on which the condition specified in this subsection (5) has occurred by e-mailing the notice to revisorofstatutes.ga@state.co.us. This section is repealed, effective upon the date identified in the notice that the payment
OF BENEFITS OCCURRED OR, IF THE NOTICE DOES NOT SPECIFY THAT DATE,
UPON THE DATE OF THE NOTICE TO THE REVISOR OF STATUTES.

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

39-22-104. Income tax imposed on individuals, estates, and
trusts - single rate - legislative declaration - definitions - repeal.
(4) There shall be subtracted from federal taxable income:
(z) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
1, 2022, AN AMOUNT EQUAL TO ANY AMOUNT RECEIVED BY A TAXPAYER
AS FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS PURSUANT TO PART
3 OF ARTICLE 13.3 OF TITLE 8.

SECTION 5. Safety clause. The general assembly hereby finds,
determines, and declares that this act is necessary for the immediate
preservation of the public peace, health, and safety.