SENATE BILL 19-188

A BILL FOR AN ACT

CONCERNING THE CREATION OF A FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM, AND, IN CONNECTION THEREWITH, CREATING AN IMPLEMENTATION PLAN FOR A FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM AND MAKING AN APPROPRIATION.

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).

---

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

2 SECTION 1. In Colorado Revised Statutes, add part 3 to article
3 13.3 of title 8 as follows:

4 PART 3

5 FAMILY AND MEDICAL LEAVE IMPLEMENTATION

6 8-13.3-301. Legislative declaration. (1) The General
7 Assembly hereby finds and declares that:

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

12 (b) The United States is the only industrialized nation in
13 the world that does not mandate access to paid leave benefits,
14 simultaneously, nearly half of Americans live
15 paycheck-to-paycheck and are unable to access two thousand

-2-
DOLLARS IN THE EVENT OF AN EMERGENCY.

(c) This Part 3 prepares for the implementation of a paid family and medical leave program in the state by completing a thorough analysis of paid family and medical leave programs by experts in the field, the establishment of a family and medical leave implementation task force, and actuarial and third-party studies.

(d) As specified in this Part 3:

(I) The timeline for the analysis and implementation of a statewide paid family and medical leave program is as follows:

(A) By July 1, 2019, appointing authorities are required to make their appointments to the task force;

(B) By October 1, 2019, the department is required to provide the task force with the results of a third-party study and paid family and medical leave plan recommendations from the experts in the field; and the task force is required to accept and consider public comment regarding the administration and establishment of a paid family and medical leave program;

(C) By November 1, 2019, the task force shall make its initial recommendation on a family and medical leave program for employees in the state and provide the recommendation to an actuary contracted by the department;

(D) By December 1, 2019, an independent actuarial analysis must be completed and submitted to the task force;

(E) By January 8, 2020, the task force shall report its final recommendation on a paid family and medical leave program for all employees in the state;
(II) The timeline may also be assumed as follows:

(A) By July 1, 2020, the family and medical leave program will be established;

(B) By January 1, 2022, the public education and outreach campaign will begin;

(C) By January 1, 2023, the family and medical leave program funding will begin; and

(D) By January 1, 2024, the family and medical leave program will start paying benefits.

(e) The intent of this Part 3 is to assist in the preparation of legislation in the 2020 legislative session establishing a paid family and medical leave program in the state.

8-13.3-302. Definitions. As used in this Part 3, unless the context otherwise requires:

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

(2) "Executive director" means the executive director of the department.

(3) "Task force" means the family and medical leave implementation task force created in section 8-13.3-304 (1).

8-13.3-303. Department to perform analyses. (1) (a) The department shall analyze the feasibility of contracting with a third party to administer parts of a paid family and medical leave program for all employees in the state as an alternative to state administration of all aspects of such a program. In determining whether a third party should administer parts of a paid family and medical leave program, the department shall
CONSIDER WHETHER DOING SO WOULD BE COST-EFFECTIVE, IN THE SHORT TERM AND IN THE LONG TERM FOR BOTH THE STATE AND COVERED INDIVIDUALS, AND LEAD TO MORE EFFICIENT PROGRAM ADMINISTRATION AND BENEFIT MANAGEMENT WHILE ASSURING QUALITY, WORKER EXPERIENCE, AFFORDABILITY, COVERAGE, AND PROGRAM ACCOUNTABILITY, AS COMPARED TO IF THE STATE ADMINISTERS ALL ASPECTS OF THE PROGRAM.

(b) IN FULFILLING THE REQUIREMENTS OF THIS SUBSECTION (1), THE DEPARTMENT SHALL MAKE A REQUEST FOR INFORMATION FROM THIRD PARTIES THAT MAY BE WILLING TO ADMINISTER SINGLE OR MULTIPLE PARTS OF A PAID FAMILY AND MEDICAL LEAVE PROGRAM. THE REQUESTS FOR INFORMATION PURSUANT TO THIS SUBSECTION (1)(b) MUST SOLICIT INFORMATION FROM THIRD PARTIES THAT INCLUDES, BUT IS NOT LIMITED TO, THE THIRD PARTY’S:

(I) PRIOR EXPERIENCE WITH PAID FAMILY AND MEDICAL LEAVE INSURANCE OR PROVIDING MONETARY BENEFITS IN COLORADO RELATED TO EMPLOYEES TAKING LEAVE FROM WORK DUE TO SERIOUS HEALTH CONDITIONS, PARENTAL BONDING, OR OTHER FAMILY AND MEDICAL LEAVE PURPOSES;

(II) COMMITMENT TO AFFIRMATIVE ACTION, DIVERSITY, EQUITY, AND INCLUSION POLICIES;

(III) LANGUAGE ACCESS EXPERIENCE AND CULTURAL COMPETENCY; AND

(IV) CURRENT OR EXPECTED EMPLOYEE PAY RATES AND BENEFITS.

c) ANY STUDY PURSUANT TO THIS SECTION MUST CONSIDER:

(I) THE ESTIMATED DIFFERENCE IN ADMINISTRATIVE COSTS CHARGED BY THIRD PARTIES AS COMPARED TO A STATE-RUN PAID FAMILY
AND MEDICAL LEAVE PROGRAM;

(II) THE ESTIMATED DIFFERENCE IN CLAIMS PROCESSING SPEEDS;

(III) THE STATE’S COSTS TO OVERSEE ANY THIRD PARTY ADMINISTRATION, INCLUDING COSTS TO CONDUCT ANNUAL AUDITS AND REVIEW REGULAR REPORTS FROM THE THIRD PARTY;

(IV) THE ABILITY OF A THIRD PARTY TO SATISFY NECESSARY WORKER PRIVACY AND CONFIDENTIALITY REQUIREMENTS;

(V) THE ABILITY OF A THIRD PARTY TO ACCESS EXISTING STATE DATA OR TO EFFECTIVELY INTERFACE WITH THE DEPARTMENT’S SYSTEMS AND INFORMATION;

(VI) THE POTENTIAL COSTS AND CHALLENGES ASSOCIATED WITH TERMINATING A THIRD-PARTY CONTRACT DUE TO QUALITY OR COMPLIANCE CONCERNS FOLLOWING IMPLEMENTATION OF THE PROGRAM, AS WELL AS THE FEASIBILITY OF TIMELY SUBSTITUTE ADMINISTRATION BY THE STATE OR A DIFFERENT THIRD PARTY WITHOUT A DISRUPTION IN BENEFITS AND ADMINISTRATION; AND

(VII) A TIMELINE THAT PRESUMES A PAID FAMILY AND MEDICAL LEAVE PROGRAM THAT IS ESTABLISHED BY JULY 1, 2020; BEGINS PUBLIC EDUCATION AND OUTREACH ON JANUARY 1, 2022; ESTABLISHES THE FUNDING STREAM ON JANUARY 1, 2023; AND STARTS PAYING BENEFITS ON JANUARY 1, 2024.

(d) THE DEPARTMENT’S STUDY MUST SPECIFICALLY ADDRESS THE EFFECT OF USING A THIRD-PARTY ADMINISTRATOR ON THE FOLLOWING ASPECTS OF A PAID FAMILY AND MEDICAL LEAVE PROGRAM:

(I) CLAIMS APPEALS AND ADMINISTRATIVE ENFORCEMENT;

(II) PREMIUM RATES SETTING AND COLLECTION OF PREMIUMS;

(III) APPROVAL AND OVERSIGHT OF PRIVATE PLANS, IF
APPLICABLE; AND

(IV) MANAGEMENT OF ELECTIVE COVERAGE OF EMPLOYEES WHO
MAY NOT BE INCLUDED IN THE PROGRAM.

(2) (a) (I) THE DEPARTMENT SHALL CONTRACT WITH AT LEAST
THREE EXPERTS IN THE FIELD OF PAID FAMILY AND MEDICAL LEAVE
SELECTED BY THE TASK FORCE. THE EXPERTS MUST BE LOCAL AND
NATIONAL EXPERTS:

(A) WITH DEMONSTRATED EXPERIENCE STUDYING THE HEALTH,
ECONOMIC, AND SOCIAL BENEFITS OF ACCESS TO PAID LEAVE; THE COST
AND ECONOMIC IMPACT OF PAID LEAVE; AND THE DRAFTING AND
IMPLEMENTATION OF PAID FAMILY AND MEDICAL LEAVE PROGRAMS AT
THE STATE LEVEL; AND

(B) WHO HAVE SOME FAMILIARITY WITH CROSS-STATE
COMPARISONS.

(II) THE DEPARTMENT SHALL COMMISSION A REPORT FROM THE
EXPERTS UNDER CONTRACT WITH THE DEPARTMENT PURSUANT TO THIS
SUBSECTION (2)(a) ON THE ESTABLISHMENT OF A PAID FAMILY AND
MEDICAL LEAVE PROGRAM FOR EMPLOYEES IN THE STATE. THE
RECOMMENDATIONS MUST SPECIFY THE PARAMETERS THAT ENSURE THAT
A PROGRAM:

(A) IS AFFORDABLE FOR THE LOWEST WAGE WORKERS;

(B) IS EQUITABLE ACROSS WORKERS OF ALL INCOMES AND
CLASSIFICATIONS;

(C) IS ACCESSIBLE PARTICULARLY TO WORKERS LEAST LIKELY TO
HAVE ACCESS TO PAID LEAVE TODAY;

(D) IS ADEQUATE; AND

(E) INCLUDES A MINIMUM DURATION OF LEAVE THAT MEETS
EVIDENCE-BASED STANDARDS AND WAGE REPLACEMENT THAT IS SUFFICIENT TO ALLOW THE LOWEST WAGE WORKERS TO PARTICIPATE.

(b) The recommendations must review, evaluate, and assess at least the following elements, without limitation:

(I) The purposes of the leave, including serious illness, caring for a loved one with a serious illness, bonding with a new child, and needs arising from military deployment and the effects of domestic violence, stalking, and sexual assault;

(II) Self-employed workers' access to paid family and medical leave and a mechanism to allow self-employed workers to participate;

(III) Eligibility to take leave;

(IV) The definition of family or family member for whom an individual may take leave for purposes of providing care;

(V) Job protection and other employment protections, including their effect on an individual's ability to take leave;

(VI) The duration of leave;

(VII) The amount of the wage replacement;

(VIII) The maximum weekly wage replacement amount;

(IX) The program funding structure;

(X) Program implementation;

(XI) The role of third-party vendors on program sustainability;

(XII) The solvency of a paid family and medical leave fund under various models;

(XIII) The portability of paid family and medical leave benefits;
(XIV) The sustainability of a paid family and medical leave program;

(XV) How a paid family and medical leave program would interact with other benefits; and

(XVI) A timeline that presumes a paid family and medical leave program that is established by July 1, 2020; begins education and outreach on January 1, 2022; establishes the funding stream on January 1, 2023; and starts paying benefits on January 1, 2024.

(3) No later than October 1, 2019:

(a) The department shall provide the task force created in section 8-13.3-304 with:

(I) The results of the third-party study conducted pursuant to subsection (1) of this section; and

(II) The paid family and medical leave plan report from experts commissioned in accordance with subsection (2) of this section; and

(b) The department of public health and environment shall provide the task force with a report detailing the health benefits related to paid family and medical leave.

(4) The department shall contract for the services of a qualified private actuary to perform an actuarial study of the initial recommendation for a family and medical leave program created by the task force pursuant to section 8-13.3-304 (8)(b). The actuarial study shall be provided to the task force no later than December 1, 2019.
force. (1) There is hereby created in the department the family and medical leave implementation task force.

(2) The task force consists of the following members:

(a) Three members who are workers or represent an organization that represents workers' interests in paid family and medical leave, each of whom shall be appointed from a list of at least three names submitted by a recognized statewide organization that promotes workers' rights;

(b) Three members who are private employers with a range of business size and experience in providing employees with paid family and medical leave, each of whom shall be appointed from a list of at least three names submitted by a recognized statewide organization of employers;

(c) One member who is a representative of a state policy organization that works on issues of economic opportunity;

(d) One member who is a private insurer with experience in administering temporary disability or family and medical leave insurance benefits;

(e) One member who represents a state policy organization that works on health advocacy;

(f) One labor economist with demonstrated research or expertise in studying paid family and medical leave and labor standards, and the data necessary to do so;

(g) One member who is a representative of a statewide domestic violence organization;

(h) One member who is a professional from a recognized institution of higher education and who has expertise in
STUDYING PAID FAMILY AND MEDICAL LEAVE;

(i) ONE MEMBER WHO IS A REPRESENTATIVE OF ORGANIZED LABOR;

AND

(j) TWO NONVOTING MEMBERS, ONE OF WHOM MUST REPRESENT

THE DEPARTMENT.

(3) THE MEMBERS OF THE TASK FORCE ARE APPOINTED AS

FOLLOWS:

(a) THE GOVERNOR SHALL APPOINT ONE MEMBER;

(b) THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL

APPOINT FOUR MEMBERS;

(c) THE PRESIDENT OF THE SENATE SHALL APPOINT FOUR

MEMBERS;

(d) THE HOUSE MINORITY LEADER SHALL APPOINT TWO MEMBERS;

(e) THE SENATE MINORITY LEADER SHALL APPOINT TWO MEMBERS;

(f) THE EXECUTIVE DIRECTOR SHALL APPOINT ONE NONVOTING

MEMBER; AND

(g) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL

SHALL APPOINT ONE NONVOTING MEMBER.

(4) (a) THE APPOINTING AUTHORITIES SHALL MAKE THE

APPOINTMENTS TO THE TASK FORCE NO LATER THAN JULY 1, 2019.

(b) IN MAKING THE APPOINTMENTS, THE APPOINTING AUTHORITIES

SHALL ENSURE THAT THE APPOINTMENTS REFLECT COMMUNITIES OF

COLOR, RURAL COMMUNITIES, AND HISTORICALLY UNDERUTILIZED

BUSINESSES, AS DEFINED IN SECTION 24-49.5-105 (4).

(c) THE DEPARTMENT SHALL ASSIST AND COORDINATE THE

APPOINTING AUTHORITIES TO ENSURE THAT MEMBERS APPOINTED TO THE

TASK FORCE PURSUANT TO SUBSECTION (3) OF THIS SECTION MEET THE
MEMBERSHIP REQUIREMENTS SPECIFIED IN SUBSECTION (2) OF THIS
SECTION.

(5) EACH MEMBER OF THE TASK FORCE SERVES AT THE PLEASURE
OF THE APPOINTING AUTHORITY.

(6) EACH MEMBER OF THE TASK FORCE SERVES WITHOUT
COMPENSATION BUT IS ENTITLED TO RECEIVE REIMBURSEMENT FOR
ACTUAL AND NECESSARY EXPENSES THE MEMBER INCURS IN THE
PERFORMANCE OF THE MEMBER’S DUTIES AS A MEMBER OF THE TASK
FORCE.

(7) (a) THE MEMBER APPOINTED BY THE EXECUTIVE DIRECTOR
SHALL CALL THE FIRST MEETING OF THE TASK FORCE.

(b) THE TASK FORCE SHALL ELECT A CHAIR FROM AMONG ITS
VOTING MEMBERS.

(8) (a) NO LATER THAN SEPTEMBER 1, 2019, THE TASK FORCE
SHALL ACCEPT AND CONSIDER PUBLIC COMMENT REGARDING THE
ADMINISTRATION AND ESTABLISHMENT OF A PAID FAMILY AND MEDICAL
LEAVE PROGRAM IN THE STATE. THE TASK FORCE SHALL RECEIVE PUBLIC
COMMENT FOR A MINIMUM OF THIRTY DAYS.

(b) NO LATER THAN NOVEMBER 1, 2019, THE TASK FORCE SHALL
MAKE AN INITIAL RECOMMENDATION ON A FAMILY AND MEDICAL LEAVE
PROGRAM FOR EMPLOYEES IN THE STATE AND PROVIDE THE
RECOMMENDATION TO THE ACTUARY CONTRACTED BY THE DEPARTMENT
Pursuant to Section 8-13.3-303 (4). IN MAKING THE RECOMMENDATION,
THE TASK FORCE SHALL CONSIDER THE INFORMATION IT RECEIVES
Pursuant to Section 8-13.3-303 (3).

(c) NO LATER THAN JANUARY 8, 2020, AFTER CONSIDERATION OF
THE ACTUARIAL ANALYSIS PERFORMED ON THE TASK FORCE’S INITIAL
RECOMMENDATION, THE TASK FORCE SHALL REPORT ITS FINAL
RECOMMENDATION ON A PAID FAMILY AND MEDICAL LEAVE PROGRAM FOR
ALL EMPLOYEES IN THE STATE, ALONG WITH THE THIRD-PARTY
ADMINISTRATION STUDY MADE PURSUANT TO SECTION 8-13.3-303 (1), AND
THE ACTUARIAL STUDY MADE PURSUANT TO SECTION 8-13.3-303 (4) TO;

(I) THE SENATE COMMITTEES ON FINANCE AND BUSINESS, LABOR,
AND TECHNOLOGY, OR THEIR SUCCESSOR COMMITTEES;

(II) THE HOUSE OF REPRESENTATIVES COMMITTEES ON FINANCE
AND BUSINESS AFFAIRS AND LABOR, OR THEIR SUCCESSOR COMMITTEES;

AND

(III) THE GOVERNOR.

(d) RECOMMENDATIONS MADE BY THE TASK FORCE PURSUANT TO
THIS SUBSECTION (8) SHOULD ATTEMPT TO MEET A TIMELINE THAT
PRESUMES A PAID FAMILY AND MEDICAL LEAVE PROGRAM THAT IS
ESTABLISHED BY JULY 1, 2020; BEGINS EDUCATION AND OUTREACH ON
JANUARY 1, 2022; ESTABLISHES THE FUNDING STREAM ON JANUARY 1,
2023; AND STARTS PAYING BENEFITS ON JANUARY 1, 2024.

(9) UPON REQUEST BY THE TASK FORCE, THE DEPARTMENT SHALL
PROVIDE OFFICE SPACE, EQUIPMENT, AND STAFF SERVICES AS MAY BE
NECESSARY TO IMPLEMENT THIS SECTION.

8-13.3-305. Paid family and medical leave program
implementation authorization. The department shall not
IMPLEMENT THE RECOMMENDED PLAN FOR A PAID FAMILY AND MEDICAL
LEAVE PROGRAM UNLESS THE GENERAL ASSEMBLY, ACTING BY BILL,
DIRECTS THE DEPARTMENT TO IMPLEMENT THE PROGRAM. IF THE
DEPARTMENT IS DIRECTED TO IMPLEMENT THE PLAN, IT SHALL BEGIN
IMPLEMENTATION BY A DATE SPECIFIED BY THE GENERAL ASSEMBLY
SECTION 2. Appropriation. (1) For the 2019-20 state fiscal year, $165,487 is appropriated to the department of labor and employment for use by executive director's office. This appropriation is from the general fund and is based on an assumption that the office will require an additional 0.5 FTE. To implement this act, the office may use this appropriation for activities related to developing an implementation plan for a family and medical leave insurance program.

(2) For the 2019-20 state fiscal year, $17,004 is appropriated to the department of public health and environment for use by the prevention services division. This appropriation is from the general fund and is based on an assumption that the division will require an additional 0.1 FTE. To implement this act, the division may use this appropriation to develop a report on health benefits related to paid family leave.

SECTION 3. 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.