

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 15-0578.01 Christy Chase x2008

HOUSE BILL 15-1258

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A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF A FAMILY AND MEDICAL LEAVE**
102 **INSURANCE PROGRAM, AND, IN CONNECTION THEREWITH,**
103 **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://www.leg.state.co.us/bills summaries>.)

The bill creates the family and medical leave insurance (FAMLI) program in the newly created division of family and medical leave insurance (division) in the department of labor and employment (department) to provide partial wage-replacement benefits to an eligible individual who takes leave from work to care for a new child or a family

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

member with a serious health condition or who is unable to work due to the individual's own serious health condition. Prior to implementing the program, the department is to conduct an actuarial analysis to determine the appropriate level of premiums and solvency surcharges, if necessary, to ensure the soundness of the program.

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. 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).

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 INSURANCE**

6 **8-13.3-301. Short title.** THIS PART 3 SHALL BE KNOWN AND MAY
7 BE CITED AS THE "FAMILY AND MEDICAL LEAVE INSURANCE ACT" OR
8 "FAMLI ACT".

9 **8-13.3-302. Definitions.** AS USED IN THIS PART 3, UNLESS THE
10 CONTEXT OTHERWISE REQUIRES:

11 (1) "ANNUAL MEAN WAGE" MEANS THE ESTIMATED TOTAL ANNUAL
12 WAGES OF ALL OCCUPATIONS IN COLORADO DIVIDED BY THE
13 OCCUPATIONS' ESTIMATED EMPLOYMENT, AS DETERMINED BY THE
14 FEDERAL BUREAU OF LABOR STATISTICS IN THE UNITED STATES
15 DEPARTMENT OF LABOR.

16 (2) "APPLICATION YEAR" MEANS THE TWELVE-MONTH PERIOD
17 BEGINNING ON THE FIRST DAY OF THE CALENDAR WEEK IN WHICH A

1 COVERED INDIVIDUAL APPLIES FOR FAMILY AND MEDICAL LEAVE
2 INSURANCE BENEFITS.

3 (3) "COVERED INDIVIDUAL" MEANS AN INDIVIDUAL WHO:

4 (a) HAS BEEN EMPLOYED BY AND WORKED FOR ONE OR MORE
5 EMPLOYERS FOR AT LEAST SIX HUNDRED EIGHTY HOURS DURING THE
6 PERSON'S QUALIFYING YEAR; AND

7 (b) HAS CONTRIBUTED PREMIUMS TO THE PROGRAM FOR AT LEAST
8 ONE CALENDAR YEAR.

9 (4) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND
10 EMPLOYMENT.

11 (5) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION.

12 (6) "DIVISION" MEANS THE DIVISION OF FAMILY AND MEDICAL
13 LEAVE INSURANCE CREATED IN SECTION 8-13.3-303.

14 (7) "ELIGIBLE INDIVIDUAL" MEANS AN INDIVIDUAL WHO SATISFIES
15 THE REQUIREMENTS OF SECTION 8-13.3-305 AND IS ELIGIBLE TO RECEIVE
16 FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS.

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

22 (b) "EMPLOYER" INCLUDES:

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

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

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

27 (9) "FAMILY AND MEDICAL LEAVE" MEANS FMLA LEAVE OR

1 LEAVE AUTHORIZED UNDER PART 2 OF THIS ARTICLE.

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

4 (11) "FAMILY MEMBER" MEANS A PERSON FOR WHOM AN
5 EMPLOYEE IS ENTITLED TO TAKE FAMILY AND MEDICAL LEAVE.

6 (12) "FMLA" MEANS THE FEDERAL "FAMILY AND MEDICAL LEAVE
7 ACT OF 1993", PUB.L. 103-3, AS AMENDED, 29 U.S.C. SEC. 2601, ET SEQ.

8 (13) "FMLA LEAVE" MEANS LEAVE FROM WORK AND ALL
9 BENEFITS AUTHORIZED BY THE FMLA.

10 (14) "HEALTH CARE PROVIDER" HAS THE SAME MEANING AS SET
11 FORTH IN THE FMLA.

12 (15) "PREMIUM" MEANS THE PAYMENTS AN INDIVIDUAL IS
13 REQUIRED BY THIS PART 3 TO PAY TO THE DIVISION FOR THE PROGRAM.

14 (16) "PROGRAM" MEANS THE FAMILY AND MEDICAL LEAVE
15 INSURANCE PROGRAM ESTABLISHED PURSUANT TO THIS PART 3.

16 (17) "QUALIFYING YEAR" MEANS THE FIRST FOUR OF THE LAST FIVE
17 COMPLETED CALENDAR QUARTERS OR THE LAST FOUR COMPLETED
18 CALENDAR QUARTERS IMMEDIATELY PRECEDING THE FIRST DAY OF A
19 COVERED INDIVIDUAL'S APPLICATION YEAR.

20 (18) "SERIOUS HEALTH CONDITION" HAS THE SAME MEANING AS
21 SET FORTH IN THE FMLA.

22 **8-13.3-303. Division of family and medical leave insurance -**
23 **creation as an enterprise - authority to issue bonds.** (1) THERE IS
24 HEREBY CREATED IN THE DEPARTMENT THE DIVISION OF FAMILY AND
25 MEDICAL LEAVE INSURANCE, THE HEAD OF WHICH IS THE DIRECTOR OF THE
26 DIVISION.

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

1 OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, AS LONG AS
2 THE DIVISION RETAINS AUTHORITY TO ISSUE REVENUE BONDS AND THE
3 DIVISION RECEIVES LESS THAN TEN PERCENT OF ITS TOTAL ANNUAL
4 REVENUES IN GRANTS, AS DEFINED IN SECTION 24-77-102 (7), C.R.S.,
5 FROM ALL COLORADO STATE AND LOCAL GOVERNMENTS COMBINED. FOR
6 AS LONG AS IT CONSTITUTES AN ENTERPRISE PURSUANT TO THIS SECTION,
7 THE DIVISION IS NOT SUBJECT TO SECTION 20 OF ARTICLE X OF THE STATE
8 CONSTITUTION.

9 (b) THE ENTERPRISE ESTABLISHED PURSUANT TO THIS SUBSECTION
10 (2) HAS ALL THE POWERS AND DUTIES AUTHORIZED BY THIS PART 3
11 PERTAINING TO FAMILY AND MEDICAL LEAVE INSURANCE. THE FAMILY
12 AND MEDICAL LEAVE INSURANCE FUND CREATED IN SECTION 8-13.3-308
13 CONSTITUTES PART OF THE ENTERPRISE ESTABLISHED PURSUANT TO THIS
14 SUBSECTION (2).

15 (c) NOTHING IN THIS SUBSECTION (2) LIMITS OR RESTRICTS THE
16 AUTHORITY OF THE DIVISION TO EXPEND ITS REVENUES CONSISTENT WITH
17 THIS PART 3.

18 (d) SUBJECT TO APPROVAL BY THE GENERAL ASSEMBLY, EITHER BY
19 BILL OR JOINT RESOLUTION, AND AFTER APPROVAL BY THE GOVERNOR
20 PURSUANT TO SECTION 39 OF ARTICLE V OF THE STATE CONSTITUTION, THE
21 FAMILY AND MEDICAL LEAVE INSURANCE DIVISION IS HEREBY AUTHORIZED
22 TO ISSUE REVENUE BONDS FOR THE EXPENSES OF THE DIVISION, WHICH
23 MAY BE SECURED BY ANY REVENUES OF THE DIVISION.

24 **8-13.3-304. Family and medical leave insurance program -**
25 **creation - division duties - applicant duties - outreach and education**
26 **- rules.** (1) (a) THE DIVISION SHALL ESTABLISH AND ADMINISTER A
27 FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM AND PAY FAMILY AND

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

3 (b) (I) BEFORE THE DIVISION ESTABLISHES THE PROGRAM, THE
4 DEPARTMENT SHALL CONDUCT AN ACTUARIAL EVALUATION TO
5 DETERMINE:

6 (A) THE PREMIUM AMOUNTS REQUIRED PURSUANT TO SECTION
7 8-13.3-308 (2) (a) TO SUFFICIENTLY FUND THE PROGRAM;

8 (B) THE BALANCE IN THE FAMILY AND MEDICAL LEAVE INSURANCE
9 FUND CREATED IN SECTION 8-13.3-308 THAT IS REQUIRED TO ASSURE
10 SOLVENCY OF THE FUND; AND

11 (C) THE BALANCE IN THE FUND THAT WOULD TRIGGER THE NEED
12 TO IMPOSE A SOLVENCY SURCHARGE ON EMPLOYEES PURSUANT TO
13 SECTION 8-13.3-308 (3) TO RESTORE FUND SOLVENCY.

14 (II) THE DEPARTMENT SHALL COMPLETE THE ACTUARIAL
15 EVALUATION NO LATER THAN JULY 1, 2016.

16 (III) IN ADDITION TO THE ACTUARIAL EVALUATION REQUIRED IN
17 THIS PARAGRAPH (b), BY JULY 1, 2016, THE DEPARTMENT SHALL
18 DETERMINE THE ANTICIPATED ADMINISTRATIVE AND TECHNOLOGY COSTS
19 TO ESTABLISH AND OPERATE THE PROGRAM.

20 (c) NO SOONER THAN JULY 1, 2016, THE DIVISION SHALL BEGIN TO
21 ESTABLISH THE PROGRAM, INCLUDING SETTING, BY RULE, PREMIUM AND
22 SOLVENCY SURCHARGE AMOUNTS TO BE IMPOSED ON EMPLOYEES BASED
23 ON THE ACTUARIAL EVALUATION CONDUCTED BY THE DEPARTMENT.

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

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

6 (4) INFORMATION CONTAINED IN THE FILES AND RECORDS
7 PERTAINING TO A COVERED INDIVIDUAL UNDER THIS PART 3 ARE
8 CONFIDENTIAL AND NOT OPEN TO PUBLIC INSPECTION, OTHER THAN TO
9 PUBLIC EMPLOYEES IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES;
10 EXCEPT THAT:

11 (a) A COVERED INDIVIDUAL OR A PERSON AUTHORIZED BY A
12 COVERED INDIVIDUAL, AS EVIDENCED BY A SIGNED AUTHORIZATION FROM
13 THE COVERED INDIVIDUAL, MAY REVIEW THE RECORDS OR RECEIVE
14 SPECIFIC INFORMATION FROM THE RECORDS;

15 (b) AN EMPLOYER OR THE EMPLOYER'S DULY AUTHORIZED
16 REPRESENTATIVE MAY REVIEW THE RECORDS OF A COVERED INDIVIDUAL
17 EMPLOYED BY THE EMPLOYER IN CONNECTION WITH A PENDING CLAIM;
18 AND

19 (c) AT THE DIVISION'S DISCRETION, OTHER PERSONS MAY REVIEW
20 RECORDS WHEN THE PERSONS ARE RENDERING ASSISTANCE TO THE
21 DIVISION AT ANY STAGE OF THE PROCEEDINGS ON ANY MATTER
22 PERTAINING TO THE ADMINISTRATION OF THIS PART 3.

23 (5) (a) By JANUARY 1, 2019, AND FOR AS LONG AS THE FAMILY
24 AND MEDICAL LEAVE INSURANCE PROGRAM CONTINUES, THE DIVISION
25 SHALL DEVELOP AND IMPLEMENT AN OUTREACH PROGRAM TO EDUCATE
26 THE PUBLIC ABOUT THE AVAILABILITY OF FAMILY AND MEDICAL LEAVE
27 INSURANCE BENEFITS UNDER THIS PART 3 FOR COVERED INDIVIDUALS.

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

4 (I) ELIGIBILITY REQUIREMENTS;

5 (II) THE CLAIMS PROCESS;

6 (III) WEEKLY BENEFIT AMOUNTS AND MAXIMUM BENEFITS
7 PAYABLE;

8 (IV) NOTICE AND MEDICAL CERTIFICATION REQUIREMENTS;

9 (V) REINSTATEMENT AND NONDISCRIMINATION RIGHTS;

10 (VI) CONFIDENTIALITY OF RECORDS;

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

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

17 (c) THE DIVISION SHALL DEVELOP A PROGRAM NOTICE THAT
18 DETAILS THE PROGRAM REQUIREMENTS, BENEFITS, CLAIMS PROCESS,
19 PAYROLL DEDUCTION REQUIREMENTS, AND OTHER PERTINENT PROGRAM
20 INFORMATION. EACH EMPLOYER SHALL POST THE PROGRAM NOTICE IN A
21 PROMINENT LOCATION IN THE WORKPLACE AND INFORM ITS EMPLOYEES OF
22 THE PROGRAM.

23 (d) THE DIVISION MAY USE A PORTION OF THE MONEYS IN THE
24 FAMILY AND MEDICAL LEAVE INSURANCE FUND TO DEVELOP, IMPLEMENT,
25 AND ADMINISTER THE OUTREACH PROGRAM.

26 **8-13.3-305. Family and medical leave insurance benefits -**
27 **application - eligibility.** (1) BEGINNING JULY 1, 2019, FAMILY AND

1 MEDICAL LEAVE INSURANCE BENEFITS ARE PAYABLE TO AN INDIVIDUAL
2 WHO:

3 (a) (I) HAS A SERIOUS HEALTH CONDITION THAT MAKES THE
4 INDIVIDUAL UNABLE TO PERFORM THE FUNCTIONS OF AT LEAST ONE OF HIS
5 OR HER JOBS;

6 (II) IS CARING FOR HIS OR HER NEW CHILD DURING THE FIRST YEAR
7 AFTER THE BIRTH OR ADOPTION OF THE CHILD OR THE PLACEMENT OF THE
8 CHILD THROUGH FOSTER CARE;

9 (III) IS CARING FOR A FAMILY MEMBER WHO HAS A SERIOUS
10 HEALTH CONDITION; OR

11 (IV) IS TAKING ANY OTHER LEAVE FROM WORK AUTHORIZED BY
12 THE FMLA;

13 (b) FILES A CLAIM FOR BENEFITS IN A FORM AND MANNER
14 REQUIRED BY THE DIRECTOR BY RULE;

15 (c) IS A COVERED INDIVIDUAL;

16 (d) CONSENTS TO THE DISCLOSURE OF INFORMATION OR RECORDS
17 DEEMED CONFIDENTIAL UNDER STATE LAW PURSUANT TO SECTION
18 8-13.3-304 (4); AND

19 (e) IF CURRENTLY EMPLOYED, ATTESTS, IN THE APPLICATION FOR
20 FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS, THAT THE INDIVIDUAL
21 NOTIFIED HIS OR HER EMPLOYER IN WRITING OF THE INTENT TO TAKE
22 LEAVE FROM WORK FOR ONE OF THE PURPOSES SPECIFIED IN PARAGRAPH
23 (a) OF THIS SUBSECTION (1).

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

27 (a) ATTEST THAT THE COVERED INDIVIDUAL:

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

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

6 (C) HAS A SERIOUS HEALTH CONDITION THAT RENDERS HIM OR HER
7 UNABLE TO PERFORM HIS OR HER REGULAR OR CUSTOMARY WORK AT ONE
8 OR MORE OF THE JOBS AT WHICH HE OR SHE IS WORKING;

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

14 (b) SUBMIT A CERTIFICATION FROM THE HEALTH CARE PROVIDER
15 PROVIDING HEALTH CARE TO THE COVERED INDIVIDUAL OR THE COVERED
16 INDIVIDUAL'S FAMILY MEMBER, AS APPLICABLE, SUPPORTING THE CLAIM
17 THAT THE COVERED INDIVIDUAL OR THE COVERED INDIVIDUAL'S FAMILY
18 MEMBER HAS A SERIOUS HEALTH CONDITION.

19 (3) A COVERED INDIVIDUAL WHO MEETS THE REQUIREMENTS OF
20 SUB-SUBPARAGRAPH (A), (B), OR (C) OF SUBPARAGRAPH (I) OF
21 PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION IS ELIGIBLE FOR
22 FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS REGARDLESS OF
23 WHETHER THE COVERED INDIVIDUAL IS CURRENTLY EMPLOYED OR IS
24 WORKING AT A SECOND JOB WHILE TAKING FAMILY AND MEDICAL LEAVE.

25 (4) IF THE DIVISION DENIES A CLAIM FOR BENEFITS SUBMITTED
26 PURSUANT TO THIS SECTION, THE COVERED INDIVIDUAL MAY APPEAL THAT
27 DECISION IN THE MANNER SPECIFIED IN ARTICLE 74 OF THIS TITLE.

1 **8-13.3-306. Duration of benefits - waiting period - payment**

2 **intervals.** (1) THE MAXIMUM NUMBER OF WEEKS DURING WHICH FAMILY
3 AND MEDICAL LEAVE INSURANCE BENEFITS ARE PAYABLE TO AN ELIGIBLE
4 INDIVIDUAL IN AN APPLICATION YEAR IS TWELVE WEEKS.

5 (2) (a) BENEFITS ARE NOT PAYABLE FOR THE FIRST SEVEN
6 CONSECUTIVE CALENDAR DAYS IN AN APPLICATION YEAR THAT AN
7 INDIVIDUAL MEETS THE ELIGIBILITY REQUIREMENTS OF SECTION
8 8-13.3-305. IF AN ELIGIBLE INDIVIDUAL USES TEN OR MORE DAYS OF
9 FAMILY AND MEDICAL LEAVE IN AN APPLICATION YEAR, THE DIVISION
10 SHALL PAY THE ELIGIBLE INDIVIDUAL BENEFITS FOR THE SEVEN-DAY
11 WAITING PERIOD; EXCEPT THAT, IF THE ELIGIBLE INDIVIDUAL RECEIVED
12 OTHER COMPENSATION FROM THE EMPLOYER FOR ALL OR A PORTION OF
13 THOSE SEVEN DAYS, THE DIVISION SHALL REDUCE THE BENEFITS PAYABLE
14 TO THE ELIGIBLE INDIVIDUAL BASED ON THE AMOUNT OF OTHER
15 COMPENSATION RECEIVED FROM THE EMPLOYER DURING THE WAITING
16 PERIOD.

17 (b) THE WAITING PERIOD DESCRIBED IN THIS SUBSECTION (2)
18 APPLIES ONLY ONCE IN EACH APPLICATION YEAR.

19 (c) FAILURE TO FILE AN APPLICATION FOR BENEFITS, FURNISH
20 NOTICE TO AN EMPLOYER, OR SUBMIT CERTIFICATION FROM A HEALTH
21 CARE PROVIDER IN THE MANNER SPECIFIED IN SECTION 8-13.3-305 DOES
22 NOT INVALIDATE A CLAIM FOR BENEFITS OR AN INDIVIDUAL'S ELIGIBILITY
23 FOR BENEFITS, BUT THE DIVISION IS NOT REQUIRED TO PAY BENEFITS FOR
24 A PERIOD OF MORE THAN TWO WEEKS PRIOR TO THE DATE ON WHICH THE
25 INDIVIDUAL FILES THE REQUIRED APPLICATION, FURNISHES NOTICE TO HIS
26 OR HER EMPLOYER, AND SUBMITS THE CERTIFICATION FROM THE HEALTH
27 CARE PROVIDER UNLESS THE INDIVIDUAL DEMONSTRATES TO THE

1 SATISFACTION OF THE DIVISION THAT IT WAS NOT REASONABLY POSSIBLE
2 TO SUBMIT THE APPLICATION OR CERTIFICATION OR FURNISH THE NOTICE
3 TO HIS OR HER EMPLOYER, AND THAT THE INDIVIDUAL SUBMITTED THE
4 APPLICATION AND CERTIFICATION, AND NOTIFIED HIS OR HER EMPLOYER,
5 AS SOON AS WAS POSSIBLE.

6 (3) THE DIVISION SHALL MAKE THE FIRST PAYMENT OF BENEFITS
7 TO AN ELIGIBLE INDIVIDUAL WITHIN TWO WEEKS AFTER THE INDIVIDUAL
8 FILES THE CLAIM FOR BENEFITS AND SHALL MAKE SUBSEQUENT PAYMENTS
9 BIWEEKLY.

10 **8-13.3-307. Amount of benefits - maximum weekly benefit.**

11 (1) (a) THE DIVISION SHALL DETERMINE THE WEEKLY BENEFIT AMOUNT,
12 SUBJECT TO PARAGRAPH (b) OF THIS SUBSECTION (1), AS FOLLOWS:

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

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

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

27 (IV) FOR AN ELIGIBLE INDIVIDUAL WHOSE YEARLY EARNINGS ARE

1 MORE THAN FIFTY PERCENT OF THE ANNUAL MEAN WAGE, THE DIVISION
2 SHALL PAY WEEKLY BENEFITS IN AN AMOUNT EQUAL TO SIXTY-SIX
3 PERCENT OF THE ELIGIBLE INDIVIDUAL'S WEEKLY WAGE.

4 (b) THE MAXIMUM WEEKLY BENEFIT AMOUNT DETERMINED UNDER
5 PARAGRAPH (a) OF THIS SUBSECTION (1) MUST NOT EXCEED ONE
6 THOUSAND DOLLARS PER WEEK. STARTING JANUARY 1, 2020, THE
7 DIVISION SHALL ANNUALLY ADJUST THE MAXIMUM WEEKLY BENEFIT
8 AMOUNT TO REFLECT CHANGES IN THE UNITED STATES BUREAU OF LABOR
9 STATISTICS CONSUMER PRICE INDEX FOR THE DENVER-BOULDER-GREELEY
10 CONSOLIDATED METROPOLITAN STATISTICAL AREA FOR ALL URBAN
11 CONSUMERS, ALL GOODS, OR ITS SUCCESSOR INDEX.

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

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

23 **8-13.3-308. Family and medical leave insurance fund -**
24 **creation - employee premiums.** (1) (a) THERE IS HEREBY CREATED IN
25 THE STATE TREASURY THE FAMILY AND MEDICAL LEAVE INSURANCE FUND,
26 REFERRED TO IN THIS SECTION AS THE "FUND". MONEYS IN THE FUND MAY
27 BE USED ONLY TO PAY BENEFITS UNDER AND TO ADMINISTER THE FAMILY

1 AND MEDICAL LEAVE INSURANCE PROGRAM PURSUANT TO THIS PART 3,
2 INCLUDING THE OUTREACH PROGRAM DEVELOPED UNDER SECTION
3 8-13.3-304(5). INTEREST EARNED ON THE INVESTMENT OF MONEYS IN THE
4 FUND AND ANY MONEYS REMAINING IN THE FUND AT THE END OF A FISCAL
5 YEAR REMAIN IN THE FUND AND DO NOT REVERT TO THE GENERAL FUND OR
6 ANY OTHER FUND.

7 (b) (I) THE DIVISION MAY APPLY FOR AND ACCEPT GIFTS, GRANTS,
8 AND DONATIONS TO CONDUCT THE ACTUARIAL EVALUATION AND
9 DETERMINE ANTICIPATED ADMINISTRATIVE AND TECHNOLOGY COSTS, AS
10 REQUIRED BY SECTION 8-13.3-304 (1) (b), AND FUND THE COSTS TO SET UP
11 THE PROGRAM. THE DIVISION MAY APPLY FOR ANY AVAILABLE FEDERAL
12 FUNDING TO CONDUCT THE ACTUARIAL EVALUATION AND DETERMINE
13 ANTICIPATED COSTS AND, NOTWITHSTANDING THE DEADLINES FOR
14 CONDUCTING THE EVALUATION AND COST DETERMINATION SPECIFIED IN
15 SECTION 8-13.3-304 (1) (b), SHALL NOT PERFORM EITHER TASK UNLESS
16 SUFFICIENT FEDERAL FUNDS OR OTHER GIFTS, GRANTS, OR DONATIONS ARE
17 RECEIVED TO PERFORM THOSE TASKS.

18 (II) THE DIVISION SHALL TRANSMIT ANY GIFTS, GRANTS,
19 DONATIONS, OR FEDERAL FUNDING IT RECEIVES TO THE STATE TREASURER
20 FOR DEPOSIT IN THE FUND.

21 (c) IF, PRIOR TO THE COLLECTION OF PREMIUMS PURSUANT TO
22 SUBSECTION (2) OF THIS SECTION, THE DIVISION DOES NOT RECEIVE
23 ADEQUATE GIFTS, GRANTS, DONATIONS, OR FEDERAL FUNDING TO COVER
24 ITS COSTS TO SET UP THE PROGRAM, THE DEPARTMENT MAY REQUEST, AS
25 PART OF ITS ANNUAL BUDGET REQUEST, AN APPROPRIATION TO COVER THE
26 DIVISION'S PROGRAM SET-UP COSTS.

27 (2) (a) (I) ON AND AFTER JULY 1, 2018, EVERY INDIVIDUAL

1 EMPLOYED BY AN EMPLOYER IN THIS STATE SHALL PAY A PREMIUM IN AN
2 AMOUNT DETERMINED BY THE DIRECTOR BY RULE IN ACCORDANCE WITH
3 THIS PARAGRAPH (a).

4 (II) THE DIRECTOR, BY RULE, SHALL:

5 (A) SET THE PREMIUM AMOUNT BASED ON A PERCENTAGE OF
6 YEARLY WAGES; AND

7 (B) ESTABLISH A MAXIMUM ANNUAL PREMIUM.

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

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

16 (3) ON AND AFTER JULY 1, 2018, IF THE DIRECTOR DETERMINES
17 THAT A SOLVENCY SURCHARGE IS REQUIRED TO ENSURE THE SOLVENCY OF
18 THE FUND, THE DIRECTOR, BY RULE, MAY ESTABLISH A SOLVENCY
19 SURCHARGE THAT EVERY INDIVIDUAL EMPLOYED BY AN EMPLOYER IN THIS
20 STATE SHALL PAY THROUGH A PAYROLL DEDUCTION IN THE MANNER
21 SPECIFIED IN PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION.

22 **8-13.3-309. Employment protection - discrimination**
23 **prohibited.** (1) AFTER A PERIOD IN WHICH AN ELIGIBLE INDIVIDUAL
24 RECEIVES FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS OR EARNS
25 WAITING-PERIOD CREDITS UNDER THIS PART 3, THE ELIGIBLE INDIVIDUAL
26 IS ENTITLED TO BE RESTORED TO AN EQUIVALENT POSITION OF
27 EMPLOYMENT WITH THE EMPLOYER FROM WHICH LEAVE WAS TAKEN, IN

1 THE SAME MANNER AS AN EMPLOYEE ENTITLED TO FAMILY AND MEDICAL
2 LEAVE, FOR THE TIME THAT THE ELIGIBLE INDIVIDUAL IS ABSENT FROM
3 WORK AND RECEIVING FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS.

4 (2) AT ANY TIME, INCLUDING DURING THE WAITING PERIOD OR THE
5 PERIOD IN WHICH AN INDIVIDUAL IS RECEIVING BENEFITS UNDER THIS PART
6 3, AN EMPLOYER SHALL NOT DISCHARGE, DEMOTE, OR OTHERWISE
7 DISCRIMINATE OR TAKE AN ADVERSE EMPLOYMENT ACTION AGAINST AN
8 INDIVIDUAL BECAUSE HE OR SHE:

9 (a) FILED FOR, APPLIED FOR, OR USED BENEFITS UNDER THIS PART
10 3;

11 (b) COMMUNICATED TO THE EMPLOYER AN INTENT TO FILE A
12 CLAIM FOR BENEFITS, A COMPLAINT, OR AN APPEAL; OR

13 (c) TESTIFIED, AGREED TO TESTIFY, OR OTHERWISE ASSISTED IN
14 ANY PROCEEDING UNDER THIS PART 3.

15 (3) (a) THE DIRECTOR MAY ASSESS A FINE OF NOT MORE THAN
16 THREE THOUSAND DOLLARS AGAINST A PERSON WHO VIOLATES THIS
17 SECTION. THE DIRECTOR SHALL TRANSFER ANY FINES COLLECTED
18 PURSUANT TO THIS SECTION TO THE STATE TREASURER FOR DEPOSIT IN THE
19 FAMILY AND MEDICAL LEAVE INSURANCE FUND CREATED IN SECTION
20 8-13.3-308 (1).

21 (b) IF AN EMPLOYER VIOLATES THIS SECTION, THE EMPLOYER IS
22 SUBJECT TO DAMAGES AND EQUITABLE RELIEF AS SPECIFIED IN THE FMLA.
23 AN AGGRIEVED EMPLOYEE MAY BRING AN ACTION IN STATE COURT
24 AGAINST THE EMPLOYER TO RECOVER DAMAGES OR EQUITABLE RELIEF.

25 **8-13.3-310. Coordination of benefits.** (1) (a) LEAVE TAKEN
26 UNDER THIS PART 3 RUNS CONCURRENTLY WITH ANY LEAVE TAKEN UNDER
27 THE FMLA OR PART 2 OF THIS ARTICLE.

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

8 (2) (a) THIS PART 3 DOES NOT DIMINISH AN EMPLOYER'S
9 OBLIGATION TO COMPLY WITH A COLLECTIVE BARGAINING AGREEMENT OR
10 EMPLOYER POLICY, AS APPLICABLE, THAT PROVIDES GREATER LEAVE THAN
11 FMLA LEAVE OR LEAVE PERMITTED UNDER PART 2 OF THIS ARTICLE.

12 (b) AFTER THE EFFECTIVE DATE OF THIS PART 3, A COLLECTIVE
13 BARGAINING AGREEMENT ENTERED INTO OR RENEWED OR AN EMPLOYER
14 POLICY ADOPTED OR RETAINED MUST NOT DIMINISH AN INDIVIDUAL'S
15 RIGHT TO BENEFITS UNDER THIS PART 3. ANY AGREEMENT BY AN
16 INDIVIDUAL TO WAIVE HIS OR HER RIGHTS UNDER THIS PART 3 IS VOID AS
17 AGAINST PUBLIC POLICY.

18 **8-13.3-311. Erroneous payments - disqualification for benefits.**

19 (1) A COVERED INDIVIDUAL IS DISQUALIFIED FROM FAMILY AND MEDICAL
20 LEAVE INSURANCE BENEFITS FOR ONE YEAR IF THE INDIVIDUAL, IN
21 CONNECTION WITH AN APPLICATION FOR BENEFITS UNDER THE PROGRAM,
22 WILLFULLY MAKES A FALSE STATEMENT OR MISREPRESENTATION
23 REGARDING A MATERIAL FACT OR WILLFULLY FAILS TO REPORT A
24 MATERIAL FACT.

25 (2) IF FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS ARE PAID
26 ERRONEOUSLY OR AS A RESULT OF WILLFUL MISREPRESENTATION, OR IF A
27 CLAIM FOR FAMILY AND MEDICAL LEAVE BENEFITS IS REJECTED AFTER

1 BENEFITS ARE PAID, THE DIVISION MAY SEEK REPAYMENT OF BENEFITS
2 FROM THE RECIPIENT. THE DIRECTOR SHALL EXERCISE HIS OR HER
3 DISCRETION TO WAIVE, IN WHOLE OR IN PART, THE AMOUNT OF ANY
4 REPAYMENTS WHERE THE RECOVERY WOULD BE AGAINST EQUITY AND
5 GOOD CONSCIENCE. THE DIRECTOR MAY ADOPT RULES TO DEVELOP A
6 PROCEDURE FOR RECOVERING ERRONEOUS PAYMENTS OF BENEFITS.

7 **8-13.3-312. Elective coverage - withdrawal from coverage -**
8 **rules.** (1) A SELF-EMPLOYED PERSON, INCLUDING A SOLE PROPRIETOR,
9 PARTNER, OR JOINT VENTURER, MAY ELECT COVERAGE UNDER THE
10 PROGRAM FOR AN INITIAL PERIOD OF NOT LESS THAN THREE YEARS OR A
11 SUBSEQUENT PERIOD OF NOT LESS THAN ONE YEAR IMMEDIATELY
12 FOLLOWING ANOTHER PERIOD OF COVERAGE. THE SELF-EMPLOYED PERSON
13 MUST FILE A NOTICE OF ELECTION IN WRITING WITH THE DIRECTOR, AS
14 REQUIRED BY THE DIVISION. THE ELECTION BECOMES EFFECTIVE ON THE
15 DATE THE NOTICE IS FILED.

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

22 **8-13.3-313. Federal income tax - state income tax.** (1) (a) IF
23 THE INTERNAL REVENUE SERVICE DETERMINES THAT FAMILY AND MEDICAL
24 LEAVE INSURANCE BENEFITS UNDER THIS PART 3 ARE SUBJECT TO FEDERAL
25 INCOME TAX, THE DIVISION SHALL INFORM AN INDIVIDUAL FILING A NEW
26 CLAIM FOR FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS, AT THE
27 TIME OF FILING, THAT:

1 (I) THE INTERNAL REVENUE SERVICE HAS DETERMINED THAT
2 BENEFITS ARE SUBJECT TO FEDERAL INCOME TAX;

3 (II) REQUIREMENTS EXIST PERTAINING TO ESTIMATED TAX
4 PAYMENTS;

5 (III) THE INDIVIDUAL MAY ELECT TO HAVE FEDERAL INCOME TAX
6 DEDUCTED AND WITHHELD FROM THE INDIVIDUAL'S PAYMENT OF BENEFITS
7 IN THE AMOUNT SPECIFIED IN THE FEDERAL INTERNAL REVENUE CODE; AND

8 (IV) THE INDIVIDUAL IS PERMITTED TO CHANGE A PREVIOUSLY
9 ELECTED WITHHOLDING STATUS.

10 (b) AMOUNTS DEDUCTED AND WITHHELD FROM BENEFITS MUST
11 REMAIN IN THE FAMILY AND MEDICAL LEAVE INSURANCE FUND UNTIL
12 TRANSFERRED TO THE FEDERAL TAXING AUTHORITY AS A PAYMENT OF
13 INCOME TAX.

14 (c) THE DIRECTOR SHALL FOLLOW ALL PROCEDURES SPECIFIED BY
15 THE FEDERAL INTERNAL REVENUE SERVICE PERTAINING TO DEDUCTING
16 AND WITHHOLDING INCOME TAX.

17 (2) FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS RECEIVED
18 PURSUANT TO THIS PART 3 ARE NOT SUBJECT TO STATE INCOME TAX
19 PURSUANT TO SECTION 39-22-104 (4) (u), C.R.S.

20 **8-13.3-314. Reports.** BY MARCH 1, 2019, AND BY EACH MARCH
21 1 THEREAFTER, THE DIVISION SHALL REPORT TO THE SENATE COMMITTEES
22 ON BUSINESS, LABOR, AND TECHNOLOGY AND HEALTH AND HUMAN
23 SERVICES AND THE HOUSE OF REPRESENTATIVES COMMITTEES ON HEALTH,
24 INSURANCE, AND ENVIRONMENT AND BUSINESS, LABOR, AND ECONOMIC
25 AND WORKFORCE DEVELOPMENT, OR THEIR SUCCESSOR COMMITTEES, ON
26 PROJECTED AND ACTUAL PROGRAM PARTICIPATION, SPECIFYING GENDER,
27 RACE, AND ETHNICITY OF PARTICIPANTS AND PURPOSE AND DURATION OF

1 LEAVE, PREMIUM RATES, FUND BALANCES, AND OUTREACH EFFORTS. THE
2 DIVISION SHALL POST THE REPORTS ON THE DEPARTMENT'S WEB SITE.
3 NOTWITHSTANDING SECTION 24-1-136 (11), C.R.S., THE REQUIREMENT
4 SPECIFIED IN THIS SECTION TO SUBMIT ANNUAL REPORTS TO COMMITTEES
5 OF THE GENERAL ASSEMBLY CONTINUES INDEFINITELY.

6 **8-13.3-315. Rules.** THE DIRECTOR MAY ADOPT RULES AS
7 NECESSARY FOR THE IMPLEMENTATION AND ADMINISTRATION OF THIS
8 PART 3.

9 **8-13.3-316. Severability.** IF ANY PROVISION OF THIS PART 3 OR ITS
10 APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE
11 INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF
12 THE PART THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION
13 OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS PART 3 ARE
14 SEVERABLE.

15 **SECTION 2.** In Colorado Revised Statutes, 39-22-104, **add** (4)
16 (u) as follows:

17 **39-22-104. Income tax imposed on individuals, estates, and**
18 **trusts - single rate - definitions - repeal.** (4) There shall be subtracted
19 from federal taxable income:

20 (u) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
21 1, 2019, AN AMOUNT EQUAL TO ANY AMOUNT RECEIVED BY A TAXPAYER
22 AS FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS PURSUANT TO PART
23 3 OF ARTICLE 13.3 OF TITLE 8, C.R.S.

24 **SECTION 3. Appropriation.** (1) For the 2015-16 state fiscal
25 year, \$367,908 is appropriated to the department of labor and
26 employment. This appropriation is from the family and medical leave
27 insurance fund created in section 8-13.3-308, C.R.S. To implement this

1 act, the department may use this appropriation as follows:

2 (a) \$175,674 for use by the division of family and medical leave
3 insurance for the family and medical leave program, which amount is
4 based on an assumption that the division will require an additional 1.3
5 FTE; and

6 (b) \$192,234 for the purchase of information technology services.

7 (2) For the 2015-16 state fiscal year, \$192,234 is appropriated to
8 the office of the governor for use by the office of information technology.
9 This appropriation is from reappropriated funds received from the
10 department of labor and employment under paragraph (b) of subsection
11 (1) of this section. To implement this act, the office may use this
12 appropriation to provide information technology services for the
13 department of labor and employment.

14 **SECTION 4. Act subject to petition - effective date.** This act
15 takes effect at 12:01 a.m. on the day following the expiration of the
16 ninety-day period after final adjournment of the general assembly (August
17 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a
18 referendum petition is filed pursuant to section 1 (3) of article V of the
19 state constitution against this act or an item, section, or part of this act
20 within such period, then the act, item, section, or part will not take effect
21 unless approved by the people at the general election to be held in
22 November 2016 and, in such case, will take effect on the date of the
23 official declaration of the vote thereon by the governor.