SB188_L.045

SENATE COMMITTEE OF REFERENCE AMENDMENT
Committee on Finance.

SB19-188 be amended as follows:

1 Strike the Business, Labor, and Technology Committee Report, dated March 13, 2019.

Amend printed bill, strike everything below the enacting clause and substitute:

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

PART 3

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

LLS: Yelana Love x2295
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;

(n) Paid family and medical leave keeps workers employed and saves employers money through improved retention, as replacing a worker typically costs at least one-fifth of that worker's annual salary;

(o) Research from states that have implemented paid family and medical leave programs has shown that employers benefit through improved worker productivity, performance, and morale;

(p) With access to paid family and medical leave, workers are able to recover from illness and return to full productivity more quickly, which in turn helps an employer's bottom line. When workers have to return to work before a chronic condition is stabilized or before they have healed from an injury, they are more likely to relapse or reinjure themselves.

(q) Without an insurance system, employers who provide paid family and medical leave may need to cover the full costs out of pocket, whereas an insurance system benefits employers by pooling costs and making it more affordable to provide paid family and medical leave to their workforce;

(r) Access to paid family and medical leave through an insurance program levels the playing field for small business owners, who often cannot afford to offer the same generous paid family and medical leave benefits as larger companies and therefore face a competitive disadvantage in hiring;

(s) As reported in 2014 by the council of economic advisers, an agency within the executive office of the president, "Paid leave policies can help business recruit talented workers who plan to stay with a firm after having children… paid leave has been shown to increase the probability that women continue in their job after having a child, rather than quitting permanently, saving employers the expense of recruiting and training additional employees." The report further finds, "[b]y enabling workers who would have otherwise dropped out of the labor force to instead take short-term leave, such policies could benefit their employer's long-term productivity by improving recruitment, retention, and worker motivation."

(t) A recent United States department of labor study found that lack of leave means that nearly five million women in the United States leave the workforce for family caregiving responsibilities and that if those women participated in the economy at the same rate as their peers in Canada, a country with generous paid family and medical leave benefits, economic
Activity in the United States would be five hundred billion dollars higher every year, a benefit to all companies;

(u) According to Pew Research Center, the percentage of mothers not in the workforce grew to twenty-nine percent in 2012, up from twenty-three percent in 1999. A majority of unemployed women reported that they were home to care for a family member, while only six percent said they were home because they could not find work. When women, who comprise forty-seven percent of the United States' workforce, leave the workforce, labor supply goes down and the cost of labor for business goes up. Access to paid leave increases labor supply and therefore decreases labor costs for businesses, particularly in tight competitive labor markets.

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, during the individual's qualifying year has:

(a) Elected coverage under section 8-13.3-313;

(b) Been employed by and worked for one or more employers for a combined total of at least six hundred eighty hours; or

(c) In the case of airline flight crew members, worked for, or been paid by, one or more employers for five hundred four hours.

(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 and, except as otherwise specified in this part 3, family and medical leave.

(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) A covered individual’s immediate family member, as
defined in section 2-4-401 (3.7);

(b) A child to whom the covered individual stands in loco
parentis or a person who stood in loco parentis to the covered
individual when the covered individual was a minor;

(c) A person for whom the covered individual is
responsible for providing unpaid physical, psychological,
health, legal, or financial assistance, as well as support, of the
type traditionally provided by family, with:

(I) Access to and administration of medical care;

(II) The activities of daily living as defined in section
25.5-6-104 (2)(a); or

(III) The instrumental activities of daily living as defined
in section 25.5-6-104 (2)(g); or

(d) A person with whom the covered individual is in a
committed relationship that includes:
(I) Shared financial interdependence or dependence;
(II) Responsibility for each other's common welfare; and
(III) Either:
   (A) The intent to marry or enter into a civil union in the future; or
   (B) The intent for the relationship to last indefinitely.
(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) "Local Government" has the same meaning as set forth in section 29-1-304.5 (3)(b).
(18) "Premium" means the payments an individual and employer are required by this Part 3 to pay to the Division for the Program.
(19) "Program" means the Family and Medical Leave Insurance Program established pursuant to Section 8-13.3-305.
(20) "Qualifying exigency" means a need arising out of a 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.
(21) "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.
(22) (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.

(23) "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.

(24) "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 DIVISION'S 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 JULY 1, 2022, 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 AND 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 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, 2024, EXCEPT AS PROVIDED IN SUBSECTION (4) 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) A SERIOUS HEALTH CONDITION;

(II) 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) CARING FOR A FAMILY MEMBER WHO HAS A SERIOUS HEALTH CONDITION; OR

(IV) 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) HAS A SERIOUS HEALTH CONDITION;
(B) 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;
(C) IS CARING FOR A FAMILY MEMBER WHO 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) SUBJECT TO LIMITATIONS ESTABLISHED BY THE DIRECTOR BY RULE, A COVERED INDIVIDUAL'S FAMILY MEMBER MAY, WHEN THE COVERED INDIVIDUAL IS UNABLE TO DO SO DUE TO A SERIOUS HEALTH CONDITION:

(I) FILE A CLAIM FOR BENEFITS ON BEHALF OF THE COVERED INDIVIDUAL PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION;
(II) NOTIFY THE COVERED INDIVIDUAL'S EMPLOYER ON BEHALF OF
THE COVERED INDIVIDUAL PURSUANT TO SUBSECTION (1)(e) OF THIS SECTION; OR

(III) SUBMIT CERTIFICATION FROM A HEALTH CARE PROVIDER ON BEHALF OF THE COVERED INDIVIDUAL PURSUANT TO SUBSECTION (2)(b) OF THIS SECTION.

(b) A COVERED INDIVIDUAL'S FAMILY MEMBER SHALL NOT FILE, NOTIFY, OR SUBMIT UNDER SUBSECTION (3)(a) OF THIS SECTION IF THE FAMILY MEMBER IS THE INDIVIDUAL ACCUSED OF DOMESTIC ABUSE, SEXUAL ASSAULT OR ABUSE, OR STALKING AGAINST THE COVERED INDIVIDUAL FOR WHICH THE COVERED INDIVIDUAL IS REQUESTING FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS.

(c) A COVERED INDIVIDUAL SHALL NOT BE ADVERSELY AFFECTED IF A FAMILY MEMBER FAILS TO ACT IN ACCORDANCE WITH SUBSECTION (3)(a) OF THIS SECTION.

(d) SECTION 8-13.3-307(2)(a) APPLIES IF A FAMILY MEMBER DOES NOT FILE A CLAIM, FURNISH NOTICE, OR SUBMIT CERTIFICATION ON BEHALF OF THE COVERED INDIVIDUAL UNDER SUBSECTION (3)(a) OF THIS SECTION.

(4) A COVERED INDIVIDUAL WHO OTHERWISE MEETS THE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION IS ELIGIBLE FOR FAMILY AND MEDICAL LEAVE AND 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)(a).

(5) (a) THE DIVISION SHALL APPROVE OR DENY A CLAIM FOR BENEFITS WITHIN FOURTEEN DAYS AFTER RECEIVING THE CLAIM.

(b) THE DIRECTOR SHALL ESTABLISH A SYSTEM FOR ADMINISTRATIVE REVIEW AND DETERMINATION OF CLAIMS IN THE SAME MANNER AS SECTION 8-74-102 AND PURSUANT TO ADDITIONAL RULES AS PRESCRIBED BY THE DIRECTOR.

(c) A COVERED INDIVIDUAL MAY APPEAL THE DETERMINATION OF THE DIVISION AND OBTAIN A HEARING IN THE SAME MANNER AS SPECIFIED IN SECTION 8-74-103. THE HEARING OFFICER'S DECISION MAY BE APPEALED IN THE SAME MANNER AS SPECIFIED IN SECTION 8-4-111.5(5).

(d) IF A COVERED INDIVIDUAL FILES A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION TO ENFORCE A JUDGMENT MADE UNDER THIS SECTION, ANY FILING FEE UNDER ARTICLE 32 OF TITLE 13 SHALL BE WAIVED.
8-13.3-307. Duration of benefits - payment intervals.

(1) (a) The maximum number of weeks for which an eligible individual may take family and medical leave and 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) 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 an eligible individual may take family and medical leave and 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 childbirth 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 SUBSECTION (2).

(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, 2025, 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.

(5) (a) An employer may pay family and medical leave insurance benefits directly to an eligible individual and seek reimbursement as provided in this subsection (5).

(b) Except as provided in subsection (5)(c) of this section, if an employer makes advance payments to an employee that are equal to or greater than the amount required under this part 3, during any period of family and medical leave for which the employee is entitled to the benefits provided by this part 3, the division shall reimburse the employer from the fund in an amount equal to any benefits due or to become due for the employee under this part 3 if the employer’s claim for reimbursement is filed with the division prior to the division’s payment of benefits to the employee.

(c) If an employer that provides family and medical leave insurance benefits through a private plan approved pursuant to section 8-13.3-315 makes advance payments to an employee that are equal to or greater than the amount required under this part 3, during any period of family and medical leave for which the employee is entitled to the benefits provided by this part 3, the entity that issued the private plan shall reimburse the employer in an amount equal to any benefits due or to become due for the existing family and medical leave, if the employer’s claim for reimbursement is filed with the entity that issued the private plan prior to payment of the benefits under the private plan to the employee.

(d) This subsection (5) does not diminish any rights or remedies for the employee under this part 3, including but not limited to all rights provided under section 8-13.3-310.
6. **THE DIVISION SHALL, IN A TIMELY MANNER, PROVIDE**
electronic data to the department of revenue with information regarding taxpayers to whom benefits have been paid in accordance with this part 3, including the beneficiary's tax identification number or social security number, the amount of benefits paid, and the tax year in which benefits were received.

### 8-13.3-309. Family and medical leave insurance fund - creation - employee premiums - rules.

1. **(1) (a) There is hereby created in the state treasury the family and medical leave insurance fund. The fund consists of premiums paid pursuant to subsection (2) of this section and revenues from revenue bonds issued in accordance with section 8-13.3-304 (2)(d). Money in the fund may be used only to pay revenue bonds; to reimburse employers who pay family and medical leave insurance benefits directly to employees in accordance with section 8-13.3-308 (5)(a); to reimburse members of the family and medical leave insurance advisory board in accordance with section 8-13.3-317 (4); 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.**

2. **(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 January 1, 2023, each individual employed by an employer in this state shall pay fifty percent and each employer in the state shall pay fifty percent of the premium amount determined in accordance with this subsection (2)(a); except that an employer that has four or fewer employees or is a local government shall pay twelve and one-half percent of the premium amount; and an employer that has five to ten employees or is a state government shall pay twenty-five percent of the premium amount. The director shall not apply the premium to wages that exceed eighty percent of 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) For the 2023 and 2024 calendar years, the premium amount is sixty-four one-hundredths of one percent of wages per employee.

(B) For the 2025 calendar year, 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. The premiums established in accordance with this subsection (2)(a)(II)(B) must not exceed ninety-nine one hundredths of one percent of wages per employee.

(C) For the 2026 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. The premiums established in accordance with this subsection (2)(a)(II)(C) must not exceed ninety-nine one hundredths of one percent of wages per employee.

(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.

(3) Notwithstanding subsection (2) of this section, if a local government has declined participation in the program in accordance with section 8-13.3-314:

(a) The local government is not required to pay the premiums imposed in this section or collect premiums from employees who have elected coverage pursuant to section 8-13.3-313.
b) An employee of the local government is not required to pay the premiums imposed in this section unless the employee has elected coverage pursuant to section 8-13.3-313.

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

(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 benefits that have accrued prior to the date on which the family and medical leave commenced based on the eligible individual’s conduct specified in subsection (2) of this section.

(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 division shall enforce this section, including establishing a system utilizing multiple means of communication to receive complaints regarding noncompliance with this section. Any individual aggrieved by a violation of this section may file a complaint with the division against an employer for a violation of this section.

(b) Upon receiving a complaint alleging a violation of this
SECTION, THE DIVISION SHALL INVESTIGATE THE COMPLAINT IN A TIMELY
MANNER AND MAY RESOLVE THE CLAIM THROUGH MEDIATION BETWEEN
THE AGGRIEVED INDIVIDUAL AND THE EMPLOYER IF THE AGGRIEVED
INDIVIDUAL AND THE EMPLOYER EACH AGREE TO MEDIATE AND AGREE TO
THE RESOLUTION.

(c) A CLAIM BROUGHT IN ACCORDANCE WITH THIS SECTION MUST
BE FILED WITHIN TWO YEARS AFTER THE DATE OF THE LAST EVENT
CONSTITUTING THE ALLEGED VIOLATION FOR WHICH THE ACTION IS
BROUGHT.

(d) THE DIVISION SHALL CONSULT WITH AND KEEP COMPLAINANTS
NOTIFIED REGARDING THE STATUS OF THEIR COMPLAINT, ANY RESULTING
INVESTIGATION, AND ANY NOTICE OF VIOLATION REGARDING THEIR CLAIM.
IF THE DIVISION RULES THAT A VIOLATION HAS OCCURRED, THE DIVISION
SHALL ISSUE TO THE OFFENDING EMPLOYER A NOTICE OF VIOLATION AND
ANY FINES PURSUANT TO SUBSECTION (5)(h) OF THIS SECTION. THE
DIRECTOR MAY GRANT A REASONABLE PERIOD OF TIME, BUT IN NO EVENT
LONGER THAN FOURTEEN DAYS AFTER THE DAY OF NOTIFICATION, FOR
CORRECTION OF THE VIOLATION. IF THE VIOLATION IS CORRECTED WITHIN
THAT PERIOD, NO FINE SHALL BE IMPOSED. THE DIRECTOR SHALL, BY RULE,
PROVIDE DETAILS REGARDING THE WAIVER OF FINES AND PRESCRIBE THE
FORM AND WORDING OF NOTICES OF VIOLATION, INCLUDING INFORMATION
ON APPEALING THE DECISION OF THE DIVISION.

(e) THE DIVISION SHALL RULE ON A CLAIM WITHIN ONE HUNDRED
EIGHTY DAYS AFTER THE CLAIM IS FILED.

(f) AN AGGRIEVED INDIVIDUAL SHALL NOT BRING A CIVIL ACTION
IN A COURT OF COMPETENT JURISDICTION UNTIL:

(i) A CLAIM BROUGHT UNDER THIS SECTION HAS BEEN RULED UPON
BY THE DIVISION;

(ii) MEDIATION IS COMPLETE AND THE CLAIM IS RESOLVED; OR

(iii) ONE HUNDRED EIGHTY DAYS HAVE ELAPSED FROM THE DATE
ON WHICH THE CLAIM WAS FILED.

(g) AN EMPLOYER WHO VIOLATES THIS SECTION IS SUBJECT TO THE
DAMAGES AND EQUITABLE RELIEF AVAILABLE UNDER 29 U.S.C. SEC. 2617
(a)(1), INCLUDING ECONOMIC DAMAGES, LIQUIDATED DAMAGES,
ATTORNEY FEES, AND EQUITABLE RELIEF INCLUDING, BUT NOT LIMITED TO,
REINSTATEMENT TO EMPLOYMENT. IF THE AGGRIEVED INDIVIDUAL FILES
A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION AFTER A FINDING
BY THE DIVISION THAT AN EMPLOYER HAS VIOLATED THIS SECTION, ANY
FILING FEE UNDER ARTICLE 32 OF TITLE 13 SHALL BE WAIVED.

(h) 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.
(6) Nothing in this section relieves an employer of any obligation under a collective bargaining agreement.

(7) This section does not apply to an employee of a local government that has elected coverage pursuant to Section 8-13.3-313.

8-13.3-311. Coordination of benefits - rules. (1) (a) Leave taken under this Part 3 runs concurrently with any FMLA leave or leave taken under Part 2 of this Article 13.3. 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) For a covered individual who is eligible for family and medical leave insurance benefits due to a serious health condition resulting from an accident, injury, or occupational
DISEASE FOR WHICH THE RIGHT OF COMPENSATION EXISTS UNDER SECTION 8-41-301, THE WEEKLY BENEFIT AMOUNT SHALL BE REDUCED, BUT NOT BELOW ZERO, BY AN AMOUNT EQUAL TO SEVENTY-FIVE PERCENT OF:

(I) ANY TEMPORARY DISABILITY BENEFITS PAID FOR THAT WEEK PURSUANT TO SECTION 8-42-105 OR 8-42-106; OR

(II) THE PERMANENT TOTAL DISABILITY BENEFITS PAID PURSUANT TO SECTION 8-42-111.

(b) NOTWITHSTANDING ANY OTHER LAW, BENEFITS PAID TO AN INDIVIDUAL PURSUANT TO THE "WORKERS' COMPENSATION ACT OF COLORADO", ARTICLES 40 TO 47 OF THIS TITLE 8, SHALL NOT BE REDUCED OR OFFSET BASED ON THE RECEIPT OF FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS PURSUANT TO THIS PART 3.

(c) COMBINED WORKERS' COMPENSATION BENEFITS AND FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS PAID IN ACCORDANCE WITH SUBSECTION (2)(a) OF THIS SECTION MUST NOT EXCEED A COVERED INDIVIDUAL'S WEEKLY WAGE. WHERE COMBINED BENEFITS WOULD OTHERWISE EXCEED THE COVERED INDIVIDUAL'S WEEKLY WAGE, THE OFFSET PROVIDED FOR IN SUBSECTION (2)(a) OF THIS SECTION SHALL BE INCREASED TO ENSURE COMBINED BENEFITS DO NOT EXCEED THE COVERED INDIVIDUAL'S WEEKLY WAGE.

(d) (I) WHERE BENEFITS HAVE BEEN PAID PRIOR TO A DETERMINATION OF ELIGIBILITY FOR TEMPORARY DISABILITY BENEFITS OR PERMANENT TOTAL DISABILITY BENEFITS UNDER THE "WORKERS' COMPENSATION ACT OF COLORADO", ARTICLES 40 TO 47 OF THIS TITLE 8, FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS MAY BE RETROACTIVELY REDUCED AS SET FORTH IN SUBSECTION (2)(a) OF THIS SECTION ONCE WORKERS' COMPENSATION BENEFITS HAVE BEEN PAID. THE DIRECTOR MAY ADOPT RULES TO DEVELOP A PROCEDURE FOR RECOVERING EXCESS BENEFITS, WHICH MAY INCLUDE THE ASSERTION OF A LIEN AGAINST ANY TEMPORARY DISABILITY BENEFITS OR PERMANENT TOTAL DISABILITY BENEFITS PAID PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE 8. IF A WORKERS' COMPENSATION CLAIM IS BROUGHT BY THE COVERED INDIVIDUAL, AND THE COVERED INDIVIDUAL INCURS A PERSONAL LIABILITY TO PAY ATTORNEY FEES AND COSTS, THE AMOUNT OF THE LIEN MUST NOT EXCEED THE FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS PAID, LESS THE AMOUNT OF THOSE ATTORNEY FEES AND COSTS.

(II) A LIEN OR RECOVERY OF EXCESS BENEFITS PURSUANT TO THIS SUBSECTION (2)(d) IS NOT A REDUCTION OR OFFSET OF BENEFITS PAID TO AN INDIVIDUAL FOR PURPOSES OF SUBSECTION (2)(a) OF THIS SECTION.

(e) WHERE INDIVIDUALS ARE CONCURRENTLY ELIGIBLE FOR BENEFITS DUE TO A SERIOUS HEALTH CONDITION RESULTING FROM AN ACCIDENT, INJURY, OR OCCUPATIONAL DISEASE FOR WHICH THE RIGHT OF COMPENSATION EXISTS UNDER SECTION 8-41-301 AND UNDER THIS PART
FOR A PURPOSE UNRELATED TO THAT SERIOUS HEALTH CONDITION, THE
FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS SHALL BE REDUCED BY
AN AMOUNT TO BE DETERMINED BY THE DIRECTOR BY RULE. COMBINED
WORKERS’ COMPENSATION BENEFITS AND FAMILY AND MEDICAL LEAVE
INSURANCE BENEFITS PAID IN ACCORDANCE WITH THIS SUBSECTION (2)(e)
MUST NOT EXCEED A COVERED INDIVIDUAL’S WEEKLY WAGE. The
DIRECTOR SHALL ADOPT RULES TO ESTABLISH THE PROCESS AND REQUIRED
DOCUMENTATION REQUIRED FOR CONCURRENT RECEIPT OF BENEFITS.

(3) (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) An employee of a local government that has declined
participation in the program pursuant to section 8-13.3-314 or 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 EMPLOYEE OF A LOCAL GOVERNMENT OR 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) AN EMPLOYEE OF A LOCAL GOVERNMENT OR 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) AN EMPLOYEE OF A LOCAL GOVERNMENT OR 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).

(4) AN EMPLOYEE OF A LOCAL GOVERNMENT OR A SELF-EMPLOYED PERSON WHO HAS ELECTED COVERAGE IN ACCORDANCE WITH THIS SECTION SHALL REMIT THE EMPLOYEE PORTION OF THE PREMIUM AMOUNT DIRECTLY TO THE DIVISION, IN THE FORM AND MANNER REQUIRED BY THE DIRECTOR BY RULE.

8-13.3-314. Local government employers' ability to decline participation in program - rules. (1) A LOCAL GOVERNMENT MAY DECLINE PARTICIPATION IN THE FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM IN THE FORM AND MANNER DETERMINED BY THE DIRECTOR BY RULE.

(2) AN EMPLOYEE OF A LOCAL GOVERNMENT THAT HASDECLINED PARTICIPATION IN THE PROGRAM IN ACCORDANCE WITH THIS SECTION MAY ELECT COVERAGE AS SPECIFIED IN SECTION 8-13.3-313.

(3) THE DIRECTOR SHALL PROMULGATE REASONABLE RULES FOR THE IMPLEMENTATION OF THIS SECTION. AT A MINIMUM, THE RULES MUST INCLUDE:

(a) THE PROCESS BY WHICH A LOCAL GOVERNMENT MAY DECLINE PARTICIPATION IN THE PROGRAM;

(b) THE PROCESS BY WHICH A LOCAL GOVERNMENT THAT HAS PREVIOUSLY DECLINED PARTICIPATION IN THE PROGRAM MAY SUBSEQUENTLY ELECT COVERAGE IN THE PROGRAM; AND

(c) THE NOTICE THAT A LOCAL GOVERNMENT IS REQUIRED TO PROVIDE ITS EMPLOYEES REGARDING WHETHER THE LOCAL GOVERNMENT IS PARTICIPATING IN THE PROGRAM, THE ABILITY OF THE EMPLOYEES OF A
LOCAL GOVERNMENT THAT HAS DECLINED PARTICIPATION TO ELECT COVERAGE PURSUANT TO SECTION 8-13.3-313, AND ANY OTHER NECESSARY REQUIREMENTS.

8-13.3-315. Employer option to provide family and medical leave benefits through a private plan - approval requirements - rules.

(1) AN EMPLOYER MAY APPLY TO THE DIVISION FOR APPROVAL TO PROVIDE ITS EMPLOYEES THE FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS TO WHICH THE EMPLOYEES ARE ENTITLED UNDER THIS PART 3 THROUGH A PRIVATE PLAN INSTEAD OF THROUGH THE FUND ESTABLISHED PURSUANT TO SECTION 8-13.3-309.

(2) THE DIVISION SHALL NOT APPROVE AN EMPLOYER'S REQUEST TO OFFER BENEFITS THROUGH A PRIVATE PLAN UNLESS THE PRIVATE PLAN:

(a) CONFERS ALL OF THE SAME RIGHTS, PROTECTIONS, AND BENEFITS PROVIDED TO COVERED INDIVIDUALS UNDER THIS PART 3, INCLUDING:

(I) PROVIDING BENEFITS TO A COVERED INDIVIDUAL FOR THE REASONS SET FORTH IN SECTION 8-13.3-306 (1)(a) FOR THE MAXIMUM NUMBER OF WEEKS REQUIRED IN SUBSECTIONS 8-13.3-307 (1)(a) AND (1)(b), IN A BENEFIT YEAR;

(II) ALLOWING FAMILY AND MEDICAL LEAVE TO BE TAKEN FOR ALL PURPOSES SPECIFIED IN SECTION 8-13.3-306(1)(a);

(III) ALLOWING FAMILY AND MEDICAL LEAVE UNDER SECTION 8-13.3-306 (1)(a) TO BE TAKEN TO CARE FOR ANY FAMILY MEMBER;

(IV) ALLOWING FAMILY AND MEDICAL LEAVE UNDER SECTION 8-13.3-306 (1)(a) TO BE TAKEN BY A COVERED INDIVIDUAL WITH A SERIOUS HEALTH CONDITION OR TO CARE FOR A FAMILY MEMBER WITH A SERIOUS HEALTH CONDITION;

(V) PROVIDING A WAGE REPLACEMENT RATE DURING ALL FAMILY AND MEDICAL LEAVE OF AT LEAST THE AMOUNT PROVIDED IN SECTION 8-13.3-308 (1)(a);

(VI) PROVIDING A MAXIMUM WEEKLY BENEFIT DURING ALL FAMILY AND MEDICAL LEAVE OF AT LEAST THE AMOUNT SPECIFIED IN SECTION 8-13.3-308 (1)(b);

(VII) ALLOWING FAMILY AND MEDICAL LEAVE TO BE TAKEN INTERMITTENTLY AS AUTHORIZED BY SECTION 8-13.3-308 (3);

(VIII) IMPOSING NO ADDITIONAL CONDITIONS OR RESTRICTIONS ON THE USE OF FAMILY AND MEDICAL LEAVE OR BENEFITS BEYOND THOSE EXPLICITLY AUTHORIZED BY THIS PART 3 OR RULES ISSUED PURSUANT TO THIS PART 3;

(IX) ALLOWING ANY INDIVIDUAL COVERED UNDER A PRIVATE PLAN WHO IS ELIGIBLE TO TAKE FAMILY AND MEDICAL LEAVE UNDER THIS PART 3 TO TAKE FAMILY AND MEDICAL LEAVE UNDER THE PRIVATE PLAN; AND
(X) Providing that the cost to a covered individual under a private plan is not greater than the cost charged to the covered individual if the covered individual were paying premiums into the fund created in section 8-13.3-309.

(b) Provides for all covered individuals throughout their period of employment; and

(c)(I) If the private plan is in the form of self-insurance, furnishes a bond to the state, with a surety company authorized to transact business in the state, in the form and amount required by the division; or

(II) If the private plan is in the form of a third party that provides for insurance, issues the forms of the policy by an insurer approved by the division.

(3) The division may withdraw the approval granted under this section for:

(a) Failure to pay benefits;

(b) Failure to pay benefits timely and in a manner consistent with the payment of benefits pursuant to section 8-13.3-307 and 8-13.3-308;

(c) Failure to maintain an adequate surety bond as required in subsection (2)(c)(I) of this section;

(d) Misuse of private plan money;

(e) Failure to submit reports or comply with audits or other compliance requirements established by the director by rule;

(f) Failure to comply with this part 3 or the rules promulgated pursuant to this part 3;

(g) Violation of the terms and conditions of the private plan; or

(h) Any other reason as may be determined by the director by rule.

(4) The director, by rule, shall establish a fine structure for employers and entities offering private plans that violate this section. The director shall transfer any fines collected pursuant to this subsection (4) to the state treasurer for deposit into the fund.

(5)(a) An employer offering family and medical leave and benefits through a private plan approved in accordance with this section shall comply with section 8-13.3-310 and 8-13.3-311 (1)(c).

(b) A covered individual under a private plan approved pursuant to this section retains all applicable rights and remedies under section 8-13.3-310.
(6) A denial of family and medical leave or benefits by an employer or an entity offering a private plan may be appealed as provided in Section 8-13.3-306 (5).

(7) A covered individual who is eligible to receive benefits from an employer through an approved private plan pursuant to this section is not eligible to receive benefits from the fund when taking family and medical leave from the employer covered by the private plan.

(8) The director shall annually determine the total amount expended by the division for costs arising out of the administration of private plans. Each entity offering a private plan pursuant to this section shall reimburse the division for the costs arising out of the private plans in the amount, form, and manner determined by the director by rule. The director shall transfer payments received pursuant to this section to the state treasury for deposit in the fund.

8-13.3-316. Department to perform actuarial and feasibility studies - report to the governor and the board - repeal. (1) The department shall contract for the services of a qualified private actuary to perform an actuarial study of the family and medical leave insurance program established pursuant to section 8-13.3-305.

(2) (a) The department shall study the feasibility of contracting with a third party to administer the program created in this part 3. In determining whether a third party should administer the 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.

(b) In fulfilling the requirements of this subsection (2), the department shall make a request for information from third parties that may be willing to administer the program.

(3) No later than March 1, 2020, the department shall provide the governor and the advisory board created in section 8-13.3-317 with the results of the studies.

(4) The executive director of the department, after receiving the recommendation of the advisory board, shall determine how to administer the program using the criteria specified in subsection (2)(a) of this section.

(5) This section is repealed, effective October 1, 2020.

8-13.3-317. Family and medical leave insurance program
advisory board - repeal. (1) There is hereby created in the division the family and medical leave insurance program advisory board, referred to in this section as the "board".

(2) (a) The board consists of the following members appointed by the governor:

(I) Three members who are workers or represent an organization that represent 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;

(II) 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 employees;

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

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

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

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

(VII) One member who is a representative of a state domestic violence and sexual assault organization;

(VIII) One member who is a representative of a state organization that has expertise with military family advocacy;

(IX) One member who is a representative of organized labor; and

(X) Two nonvoting members, one of whom must represent the department.

(b) The governor shall consider ethnicity, gender, and geographic representation in appointing the members of the board.

(c) The governor shall make the initial appointments to the board as soon as practicable after the effective date of this section.

(3) Each member of the board serves at the pleasure of the governor.

(4) Notwithstanding section 2-2-326, each member of the board serves without compensation but is entitled to receive
REIMBURSEMENT FROM MONEY IN THE FUND CREATED IN SECTION 8-13.3-309 OR APPROPRIATIONS FROM THE GENERAL ASSEMBLY FOR ACTUAL AND NECESSARY EXPENSES THE MEMBER INCURS IN THE PERFORMANCE OF THE MEMBER'S DUTIES AS A MEMBER OF THE BOARD.

(5) (a) The member representing the department shall call the first meeting of the board.

(b) The board shall elect a chair from among its members.

(c) The board shall meet at least four times every year. The chair may call such additional meetings as are necessary for the board to complete its duties.

(6) The board shall:

(a) No later than June 1, 2020, make recommendations to the executive director of the department based on the actuarial and feasibility studies provided to the board pursuant to section 8-13.3-316 (3), using the criteria specified in section 8-13.3-316 (2)(a);

(b) provide comment on department rule-making, policies, implementation of this part 3, utilization of benefits, and other initiatives;

(c) study issues the board determines to require its consideration; and

(d) review the report from the division submitted in accordance with section 8-13.3-319.

(7) Upon request by the board, the division shall provide office space, equipment, and staff services as may be necessary to implement this section.

(8) This section is repealed, effective September 1, 2026. Before the repeal, this section is scheduled for review in accordance with section 2-3-1203.

8-13.3-318. 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 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) Benefits received pursuant to this part 3 are not subject to state income tax pursuant to section 39-22-104 (4)(z).

8-13.3-319. Reports. (1) By September 1, 2024, and by each September 1 thereafter, the division shall submit a report 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 to:

(a) The senate committees on business, labor, and technology and health and human services, or their successor committees;

(b) The house of representatives committees on health and insurance and business affairs and labor, or their successor committees; and

(c) The family and medical leave insurance advisory board created in section 8-13.3-317.

(2) 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.

8-13.3-320. 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); and

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

(c) Providing guidance on the factors used to determine whether an individual is a covered individual’s family member;

(d) Establishing a fine structure pursuant to sections 8-13.3-310 (5)(h) and 8-13.3-315 (4);

(e) Implementing section 8-13.3-314; and

(f) Determining the total amount expended for costs arising out of private plans, appropriate reimbursement rates, and the form and manner for reimbursement pursuant to section 8-13.3-315 (8).
8-13.3-321. Benefits available regardless of citizenship or immigration status. NOTWITHSTANDING SECTION 24-76.5-103, FAMILY AND MEDICAL LEAVE AND 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, 2-3-1203, **add** (17)(a)(IV) as follows:

2-3-1203. Sunset review of advisory committees - legislative declaration - definition - repeal. (17) (a) The following statutory authorizations for the designated advisory committees will repeal on September 1, 2026:

(IV) THE FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM ADVISORY BOARD CREATED IN SECTION 8-13.3-317.

SECTION 3. 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:


SECTION 4. 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 5. 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, 2023, 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 6. 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.".

*** *** *** ***