

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

DRAFT
2.24.17

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LLS NO. 17-0034.01 Yelana Love x2295

HOUSE BILL

HOUSE SPONSORSHIP

Winter,

SENATE SPONSORSHIP

(None),

BILL TOPIC: "FAMLI Insurance Program Wage Replacement"

DEADLINES: File by: 3/1/2017

A BILL FOR AN ACT

101 CONCERNING THE CREATION OF A FAMILY AND MEDICAL LEAVE
102 INSURANCE PROGRAM.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

The bill creates the family and medical leave insurance (FAMLI) program in the 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 member with a serious health condition or who is unable to work due to the individual's

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

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

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

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

7 (4) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND
8 EMPLOYMENT.

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

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

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

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

20 (b) "EMPLOYER" INCLUDES:

21 (I) A PERSON WHO ACTS, DIRECTLY OR INDIRECTLY, IN THE
22 INTEREST OF AN EMPLOYER WITH REGARD TO ANY OF THE EMPLOYEES OF
23 THE EMPLOYER;

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

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

26 (9) "FAMILY AND MEDICAL LEAVE" MEANS FMLA LEAVE OR
27 LEAVE AUTHORIZED UNDER PART 2 OF THIS ARTICLE 13.3.

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

3 (11) "FAMILY MEMBER" MEANS AN EMPLOYEE'S IMMEDIATE
4 FAMILY MEMBER FOR WHOM AN EMPLOYEE IS ENTITLED TO TAKE FAMILY
5 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) "IMMEDIATE FAMILY MEMBER" MEANS A PERSON WHO IS
13 RELATED TO THE EMPLOYEE BY BLOOD, MARRIAGE, CIVIL UNION, OR
14 ADOPTION.

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

17 (17) "PROGRAM" MEANS THE FAMILY AND MEDICAL LEAVE
18 INSURANCE PROGRAM ESTABLISHED PURSUANT TO THIS PART 3.

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

23 (19) "SERIOUS HEALTH CONDITION" HAS THE SAME MEANING AS
24 SET FORTH IN THE FMLA.

25 **8-13.3-303. Division of family and medical leave insurance -**
26 **creation as an enterprise - authority to issue bonds.** (1) THERE IS
27 HEREBY CREATED IN THE DEPARTMENT THE DIVISION OF FAMILY AND

1 MEDICAL LEAVE INSURANCE, THE HEAD OF WHICH IS THE DIRECTOR OF THE
2 DIVISION.

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

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

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

21 (d) THE FAMILY AND MEDICAL LEAVE INSURANCE DIVISION IS
22 HEREBY AUTHORIZED TO ISSUE REVENUE BONDS FOR THE EXPENSES OF THE
23 DIVISION, WHICH BONDS MAY BE SECURED BY ANY REVENUES OF THE
24 DIVISION.

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

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

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

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

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

12 (C) THE BALANCE IN THE FUND THAT WOULD TRIGGER THE NEED
13 TO IMPOSE A SOLVENCY SURCHARGE TO RESTORE FUND SOLVENCY.

14 (II) THE DEPARTMENT SHALL COMPLETE THE ACTUARIAL
15 EVALUATION NO LATER THAN JULY 1, 2018.

16 (c) STARTING JULY 1, 2018, THE DIVISION SHALL ESTABLISH AND
17 IMPLEMENT THE PROGRAM, INCLUDING SETTING PREMIUM AND SOLVENCY
18 SURCHARGE AMOUNTS BY RULE BASED ON THE ACTUARIAL EVALUATION
19 CONDUCTED BY THE DEPARTMENT.

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

24 (3) THE DIVISION SHALL USE INFORMATION SHARING AND
25 INTEGRATION TECHNOLOGY TO FACILITATE THE DISCLOSURE OF RELEVANT
26 INFORMATION OR RECORDS PERTAINING TO A COVERED INDIVIDUAL IF THE
27 COVERED INDIVIDUAL CONSENTS TO THE DISCLOSURE IN ACCORDANCE

1 WITH THIS PART 3.

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

7 (a) A COVERED INDIVIDUAL OR A PERSON AUTHORIZED BY A
8 COVERED INDIVIDUAL, AS EVIDENCED BY A SIGNED AUTHORIZATION FROM
9 THE COVERED INDIVIDUAL, MAY REVIEW THE RECORDS OR RECEIVE
10 SPECIFIC INFORMATION FROM THE RECORDS;

11 (b) AN EMPLOYER OR THE EMPLOYER'S DULY AUTHORIZED
12 REPRESENTATIVE MAY REVIEW THE RECORDS OF A COVERED INDIVIDUAL
13 EMPLOYED BY THE EMPLOYER IN CONNECTION WITH A PENDING CLAIM;
14 AND

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

19 (5) (a) BY JULY 1, 2020, AND FOR AS LONG AS THE FAMILY AND
20 MEDICAL LEAVE INSURANCE PROGRAM CONTINUES, THE DIVISION SHALL
21 DEVELOP AND IMPLEMENT AN OUTREACH PROGRAM TO EDUCATE THE
22 PUBLIC ABOUT THE AVAILABILITY OF FAMILY AND MEDICAL LEAVE
23 INSURANCE BENEFITS UNDER THIS PART 3 FOR COVERED INDIVIDUALS.

24 (b) THE DIVISION SHALL ENSURE THAT THE OUTREACH
25 INFORMATION EXPLAINS, IN AN EASY-TO-UNDERSTAND FORMAT, AT LEAST
26 THE FOLLOWING:

27 (I) ELIGIBILITY REQUIREMENTS;

- 1 (II) THE CLAIMS PROCESS;
- 2 (III) WEEKLY BENEFIT AMOUNTS AND MAXIMUM BENEFITS
- 3 PAYABLE;
- 4 (IV) NOTICE AND MEDICAL CERTIFICATION REQUIREMENTS;
- 5 (V) REINSTATEMENT AND NONDISCRIMINATION RIGHTS;
- 6 (VI) CONFIDENTIALITY OF RECORDS;
- 7 (VII) THE RELATIONSHIP BETWEEN EMPLOYMENT PROTECTION,
- 8 LEAVE FROM EMPLOYMENT, AND WAGE REPLACEMENT BENEFITS UNDER
- 9 THIS PART 3 AND OTHER LAWS, COLLECTIVE BARGAINING AGREEMENTS,
- 10 AND EMPLOYER POLICIES; AND
- 11 (VIII) ANY OTHER DETAILS OR INFORMATION ABOUT THE
- 12 PROGRAM THE DIVISION DEEMS APPROPRIATE.

13 (c) THE DIVISION SHALL DEVELOP A PROGRAM NOTICE THAT

14 DETAILS THE PROGRAM REQUIREMENTS, BENEFITS, CLAIMS PROCESS,

15 PAYROLL DEDUCTION REQUIREMENTS, AND OTHER PERTINENT PROGRAM

16 INFORMATION. EACH EMPLOYER SHALL POST THE PROGRAM NOTICE IN A

17 PROMINENT LOCATION IN THE WORKPLACE AND INFORM ITS EMPLOYEES OF

18 THE PROGRAM.

19 (d) THE DIVISION MAY USE A PORTION OF THE MONEY IN THE

20 FAMILY AND MEDICAL LEAVE INSURANCE FUND TO DEVELOP, IMPLEMENT,

21 AND ADMINISTER THE OUTREACH PROGRAM.

22 **8-13.3-305. Family and medical leave insurance benefits -**

23 **application - eligibility.** (1) BEGINNING JANUARY 1, 2019, FAMILY AND

24 MEDICAL LEAVE INSURANCE BENEFITS ARE PAYABLE TO AN INDIVIDUAL

25 WHO:

26 (a) (I) HAS A SERIOUS HEALTH CONDITION THAT MAKES THE

27 INDIVIDUAL UNABLE TO PERFORM THE FUNCTIONS OF AT LEAST ONE OF HIS

1 OR HER JOBS;

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

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

7 (IV) IS TAKING ANY OTHER LEAVE FROM WORK AUTHORIZED BY
8 THE FMLA;

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

11 (c) IS A COVERED INDIVIDUAL;

12 (d) CONSENTS TO THE DISCLOSURE OF INFORMATION OR RECORDS
13 DEEMED CONFIDENTIAL UNDER STATE LAW PURSUANT TO SECTION
14 8-13.3-304 (4); AND

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

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

23 (a) ATTEST THAT THE COVERED INDIVIDUAL:

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

27 (B) IS CARING FOR A FAMILY MEMBER WHO HAS A SERIOUS HEALTH

1 CONDITION; OR

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

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

10 (b) SUBMIT A CERTIFICATION FROM THE HEALTH CARE PROVIDER
11 PROVIDING HEALTH CARE TO THE COVERED INDIVIDUAL OR THE COVERED
12 INDIVIDUAL'S FAMILY MEMBER, AS APPLICABLE, SUPPORTING THE CLAIM
13 THAT THE COVERED INDIVIDUAL OR THE COVERED INDIVIDUAL'S FAMILY
14 MEMBER HAS A SERIOUS HEALTH CONDITION.

15 (3) A COVERED INDIVIDUAL WHO MEETS THE REQUIREMENTS OF
16 SUBSECTION (2)(a)(I) OF THIS SECTION IS ELIGIBLE FOR FAMILY AND
17 MEDICAL LEAVE INSURANCE BENEFITS REGARDLESS OF WHETHER THE
18 COVERED INDIVIDUAL IS CURRENTLY EMPLOYED OR IS WORKING AT A
19 SECOND JOB WHILE TAKING FAMILY AND MEDICAL LEAVE.

20 (4) IF THE DIVISION DENIES A CLAIM FOR BENEFITS SUBMITTED
21 PURSUANT TO THIS SECTION, THE COVERED INDIVIDUAL MAY APPEAL THAT
22 DECISION IN THE MANNER SPECIFIED IN ARTICLE 74 OF THIS TITLE 8.

23 **8-13.3-306. Duration of benefits - waiting period - payment**
24 **intervals.** (1) THE MAXIMUM NUMBER OF WEEKS DURING WHICH FAMILY
25 AND MEDICAL LEAVE INSURANCE BENEFITS ARE PAYABLE TO AN ELIGIBLE
26 INDIVIDUAL IN AN APPLICATION YEAR IS TWELVE WEEKS.

27 (2) (a) BENEFITS ARE NOT PAYABLE FOR THE FIRST SEVEN

1 CONSECUTIVE CALENDAR DAYS IN AN APPLICATION YEAR THAT AN
2 INDIVIDUAL MEETS THE ELIGIBILITY REQUIREMENTS OF SECTION
3 8-13.3-305. IF AN ELIGIBLE INDIVIDUAL USES TEN OR MORE DAYS OF
4 FAMILY AND MEDICAL LEAVE IN AN APPLICATION YEAR, THE DIVISION
5 SHALL PAY THE ELIGIBLE INDIVIDUAL BENEFITS FOR THE SEVEN-DAY
6 WAITING PERIOD; EXCEPT THAT, IF THE ELIGIBLE INDIVIDUAL RECEIVED
7 OTHER COMPENSATION FROM THE EMPLOYER FOR ALL OR A PORTION OF
8 THOSE SEVEN DAYS, THE DIVISION SHALL REDUCE THE BENEFITS PAYABLE
9 TO THE ELIGIBLE INDIVIDUAL BASED ON THE AMOUNT OF OTHER
10 COMPENSATION RECEIVED FROM THE EMPLOYER DURING THE WAITING
11 PERIOD.

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

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

1 (3) THE DIVISION SHALL MAKE THE FIRST PAYMENT OF BENEFITS
2 TO AN ELIGIBLE INDIVIDUAL WITHIN TWO WEEKS AFTER THE INDIVIDUAL
3 FILES THE CLAIM FOR BENEFITS AND SHALL MAKE SUBSEQUENT PAYMENTS
4 BIWEEKLY.

5 **8-13.3-307. Amount of benefits - maximum weekly benefit.**

6 (1) (a) THE DIVISION SHALL DETERMINE THE WEEKLY BENEFIT AMOUNT,
7 SUBJECT TO SUBSECTION (1)(b) OF THIS SECTION, AS FOLLOWS:

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

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

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

22 (IV) FOR AN ELIGIBLE INDIVIDUAL WHOSE YEARLY EARNINGS ARE
23 MORE THAN FIFTY PERCENT OF THE ANNUAL MEAN WAGE, THE DIVISION
24 SHALL PAY WEEKLY BENEFITS IN AN AMOUNT EQUAL TO SIXTY-SIX
25 PERCENT OF THE ELIGIBLE INDIVIDUAL'S WEEKLY WAGE.

26 (b) THE MAXIMUM WEEKLY BENEFIT AMOUNT DETERMINED UNDER
27 SUBSECTION (1)(a) OF THIS SECTION MUST NOT EXCEED ONE THOUSAND

1 DOLLARS PER WEEK. STARTING JANUARY 1, 2020, THE DIVISION SHALL
2 ANNUALLY ADJUST THE MAXIMUM WEEKLY BENEFIT AMOUNT TO REFLECT
3 CHANGES IN THE UNITED STATES BUREAU OF LABOR STATISTICS
4 CONSUMER PRICE INDEX FOR THE DENVER-BOULDER-GREELEY
5 CONSOLIDATED METROPOLITAN STATISTICAL AREA FOR ALL URBAN
6 CONSUMERS, ALL GOODS, OR ITS SUCCESSOR INDEX.

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

15 (2) BENEFITS ARE NOT PAYABLE FOR LESS THAN ONE DAY OR EIGHT
16 CONSECUTIVE HOURS OF FAMILY AND MEDICAL LEAVE TAKEN IN ONE
17 WORKWEEK.

18 **8-13.3-308. Family and medical leave insurance fund -**
19 **creation - employee premiums.** (1) (a) THERE IS HEREBY CREATED IN
20 THE STATE TREASURY THE FAMILY AND MEDICAL LEAVE INSURANCE FUND,
21 REFERRED TO IN THIS SECTION AS THE "FUND". MONEY IN THE FUND MAY
22 BE USED ONLY TO PAY REVENUE BONDS ISSUED IN ACCORDANCE WITH
23 SECTION 8-13.3-303 (2)(d) AND TO PAY BENEFITS UNDER, AND TO
24 ADMINISTER, THE FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM
25 PURSUANT TO THIS PART 3, INCLUDING THE OUTREACH PROGRAM
26 DEVELOPED UNDER SECTION 8-13.3-304 (5). INTEREST EARNED ON THE
27 INVESTMENT OF MONEY IN THE FUND REMAINS IN THE FUND. ANY MONEY

1 REMAINING IN THE FUND AT THE END OF A FISCAL YEAR REMAINS IN THE
2 FUND AND DOES NOT REVERT TO THE GENERAL FUND OR ANY OTHER FUND.

3 (b) THE DIVISION MAY APPLY FOR AND ACCEPT GIFTS, GRANTS,
4 AND DONATIONS TO CONDUCT THE ACTUARIAL EVALUATION REQUIRED BY
5 SECTION 8-13.3-304 (1) AND TO FINANCE THE COSTS OF SETTING UP THE
6 PROGRAM. THE DIVISION SHALL TRANSMIT ANY GIFTS, GRANTS, AND
7 DONATIONS IT RECEIVES TO THE STATE TREASURER FOR DEPOSIT IN THE
8 FUND.

9 (2) (a) (I) ON AND AFTER JANUARY 1, 2020, EVERY INDIVIDUAL
10 EMPLOYED BY AN EMPLOYER IN THIS STATE SHALL PAY A PREMIUM IN AN
11 AMOUNT DETERMINED BY THE DIRECTOR BY RULE IN ACCORDANCE WITH
12 THIS SUBSECTION (2)(a).

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

14 (A) SET THE PREMIUM AMOUNT BASED ON A PERCENTAGE OF
15 YEARLY WAGES; AND

16 (B) ESTABLISH A MAXIMUM ANNUAL PREMIUM.

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

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

25 (3) ON AND AFTER JANUARY 1, 2020, IF THE DIRECTOR
26 DETERMINES THAT A SOLVENCY SURCHARGE IS REQUIRED TO ENSURE THE
27 SOLVENCY OF THE FUND, THE DIRECTOR, BY RULE, MAY ESTABLISH A

1 SOLVENCY SURCHARGE THAT EVERY INDIVIDUAL EMPLOYED BY AN
2 EMPLOYER IN THIS STATE SHALL PAY THROUGH A PAYROLL DEDUCTION IN
3 THE MANNER SPECIFIED IN SUBSECTION (2)(b) OF THIS SECTION.

4 **8-13.3-309. Employment protection - discrimination**
5 **prohibited.** (1) AFTER A PERIOD IN WHICH AN ELIGIBLE INDIVIDUAL
6 RECEIVES FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS OR EARNS
7 WAITING PERIOD CREDITS UNDER THIS PART 3, THE ELIGIBLE INDIVIDUAL
8 IS ENTITLED TO BE RESTORED TO AN EQUIVALENT POSITION OF
9 EMPLOYMENT WITH THE EMPLOYER FROM WHICH LEAVE WAS TAKEN, IN
10 THE SAME MANNER AS AN EMPLOYEE ENTITLED TO FAMILY AND MEDICAL
11 LEAVE, FOR THE TIME THAT THE ELIGIBLE INDIVIDUAL IS ABSENT FROM
12 WORK AND RECEIVING FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS.

13 (2) AT ANY TIME, INCLUDING DURING THE WAITING PERIOD OR THE
14 PERIOD IN WHICH AN INDIVIDUAL IS RECEIVING BENEFITS UNDER THIS PART
15 3, AN EMPLOYER SHALL NOT DISCHARGE, DEMOTE, OR OTHERWISE
16 DISCRIMINATE OR TAKE AN ADVERSE EMPLOYMENT ACTION AGAINST AN
17 INDIVIDUAL BECAUSE HE OR SHE:

18 (a) FILED FOR, APPLIED FOR, OR USED BENEFITS UNDER THIS PART
19 3;

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

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

24 (3) (a) THE DIRECTOR MAY ASSESS A FINE OF NOT MORE THAN
25 THREE THOUSAND DOLLARS AGAINST A PERSON WHO VIOLATES THIS
26 SECTION. THE DIRECTOR SHALL TRANSFER ANY FINES COLLECTED
27 PURSUANT TO THIS SECTION TO THE STATE TREASURER FOR DEPOSIT IN THE

1 FAMILY AND MEDICAL LEAVE INSURANCE FUND CREATED IN SECTION
2 8-13.3-308 (1).

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

7 (4) THIS SECTION DOES NOT APPLY TO SEASONAL WORKERS, AS
8 DEFINED IN SECTION 8-73-106.

9 **8-13.3-310. Coordination of benefits.** (1) (a) LEAVE TAKEN
10 UNDER THIS PART 3 RUNS CONCURRENTLY WITH ANY LEAVE TAKEN UNDER
11 THE FMLA OR PART 2 OF THIS ARTICLE 13.3.

12 (b) AN EMPLOYER MAY REQUIRE THAT PAYMENT MADE OR LEAVE
13 TAKEN UNDER THIS PART 3 BE MADE OR TAKEN CONCURRENTLY OR
14 OTHERWISE COORDINATED WITH PAYMENT MADE OR LEAVE ALLOWED
15 UNDER THE TERMS OF DISABILITY OR FAMILY CARE LEAVE UNDER A
16 COLLECTIVE BARGAINING AGREEMENT OR EMPLOYER POLICY, AS
17 APPLICABLE. THE EMPLOYER SHALL GIVE ITS EMPLOYEES WRITTEN NOTICE
18 OF THIS REQUIREMENT.

19 (2) (a) THIS PART 3 DOES NOT DIMINISH AN EMPLOYER'S
20 OBLIGATION TO COMPLY WITH A COLLECTIVE BARGAINING AGREEMENT OR
21 EMPLOYER POLICY, AS APPLICABLE, THAT PROVIDES GREATER LEAVE THAN
22 FMLA LEAVE OR LEAVE PERMITTED UNDER PART 2 OF THIS ARTICLE 13.3.

23 (b) AFTER THE EFFECTIVE DATE OF THIS PART 3, A COLLECTIVE
24 BARGAINING AGREEMENT ENTERED INTO OR RENEWED OR AN EMPLOYER
25 POLICY ADOPTED OR RETAINED MUST NOT DIMINISH AN INDIVIDUAL'S
26 RIGHT TO BENEFITS UNDER THIS PART 3. ANY AGREEMENT BY AN
27 INDIVIDUAL TO WAIVE HIS OR HER RIGHTS UNDER THIS PART 3 IS VOID AS

1 AGAINST PUBLIC POLICY.

2 **8-13.3-311. Erroneous payments - disqualification for benefits.**

3 (1) A COVERED INDIVIDUAL IS DISQUALIFIED FROM FAMILY AND MEDICAL
4 LEAVE INSURANCE BENEFITS FOR ONE YEAR IF THE INDIVIDUAL, IN
5 CONNECTION WITH AN APPLICATION FOR BENEFITS UNDER THE PROGRAM,
6 WILLFULLY MAKES A FALSE STATEMENT OR MISREPRESENTATION
7 REGARDING A MATERIAL FACT OR WILLFULLY FAILS TO REPORT A
8 MATERIAL FACT.

9 (2) IF FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS ARE PAID
10 ERRONEOUSLY OR AS A RESULT OF WILLFUL MISREPRESENTATION, OR IF A
11 CLAIM FOR FAMILY AND MEDICAL LEAVE BENEFITS IS REJECTED AFTER
12 BENEFITS ARE PAID, THE DIVISION MAY SEEK REPAYMENT OF BENEFITS
13 FROM THE RECIPIENT. THE DIRECTOR SHALL EXERCISE HIS OR HER
14 DISCRETION TO WAIVE, IN WHOLE OR IN PART, THE AMOUNT OF ANY
15 REPAYMENTS WHERE THE RECOVERY WOULD BE AGAINST EQUITY AND
16 GOOD CONSCIENCE. THE DIRECTOR MAY ADOPT RULES TO DEVELOP A
17 PROCEDURE FOR RECOVERING ERRONEOUS PAYMENTS OF BENEFITS.

18 **8-13.3-312. Elective coverage - withdrawal from coverage -**

19 **rules.** (1) A SELF-EMPLOYED PERSON, INCLUDING A SOLE PROPRIETOR,
20 PARTNER, OR JOINT VENTURER, MAY ELECT COVERAGE UNDER THE
21 PROGRAM FOR AN INITIAL PERIOD OF NOT LESS THAN THREE YEARS OR A
22 SUBSEQUENT PERIOD OF NOT LESS THAN ONE YEAR IMMEDIATELY
23 FOLLOWING ANOTHER PERIOD OF COVERAGE. THE SELF-EMPLOYED PERSON
24 MUST FILE A NOTICE OF ELECTION IN WRITING WITH THE DIRECTOR, AS
25 REQUIRED BY THE DIVISION. THE ELECTION BECOMES EFFECTIVE ON THE
26 DATE THE NOTICE IS FILED.

27 (2) A SELF-EMPLOYED PERSON WHO HAS ELECTED COVERAGE MAY

1 WITHDRAW FROM COVERAGE BY FILING WRITTEN NOTICE WITH THE
2 DIRECTOR WITHIN THIRTY DAYS AFTER THE END OF THE THREE-YEAR
3 PERIOD OF COVERAGE OR AT OTHER TIMES THE DIRECTOR MAY PRESCRIBE
4 BY RULE. THE WITHDRAWAL FROM COVERAGE TAKES EFFECT NO SOONER
5 THAN THIRTY DAYS AFTER THE SELF-EMPLOYED PERSON FILES THE NOTICE.

6 **8-13.3-313. Federal income tax - state income tax.** (1) (a) If
7 THE FEDERAL INTERNAL REVENUE SERVICE DETERMINES THAT FAMILY AND
8 MEDICAL LEAVE INSURANCE BENEFITS UNDER THIS PART 3 ARE SUBJECT TO
9 FEDERAL INCOME TAX, THE DIVISION SHALL INFORM AN INDIVIDUAL FILING
10 A NEW CLAIM FOR FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS, AT
11 THE TIME OF FILING, THAT:

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

14 (II) REQUIREMENTS EXIST PERTAINING TO ESTIMATED TAX
15 PAYMENTS;

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

19 (IV) THE INDIVIDUAL IS PERMITTED TO CHANGE A PREVIOUSLY
20 ELECTED WITHHOLDING STATUS.

21 (b) AMOUNTS DEDUCTED AND WITHHELD FROM BENEFITS UNDER
22 THIS SECTION MUST REMAIN IN THE FAMILY AND MEDICAL LEAVE
23 INSURANCE FUND UNTIL TRANSFERRED TO THE FEDERAL TAXING
24 AUTHORITY AS A PAYMENT OF INCOME TAX.

25 (c) THE DIRECTOR SHALL FOLLOW ALL PROCEDURES SPECIFIED BY
26 THE FEDERAL INTERNAL REVENUE SERVICE PERTAINING TO DEDUCTING
27 AND WITHHOLDING INCOME TAX.

1 (2) FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS RECEIVED
2 PURSUANT TO THIS PART 3 ARE NOT SUBJECT TO STATE INCOME TAX
3 PURSUANT TO SECTION 39-22-104 (4)(u).

4 **8-13.3-314. Reports.** BY SEPTEMBER 1, 2020, AND BY EACH
5 SEPTEMBER 1 THEREAFTER, THE DIVISION SHALL REPORT TO THE SENATE
6 COMMITTEES ON BUSINESS, LABOR, AND TECHNOLOGY AND HEALTH AND
7 HUMAN SERVICES AND THE HOUSE OF REPRESENTATIVES COMMITTEES ON
8 HEALTH, INSURANCE, AND ENVIRONMENT AND BUSINESS, LABOR, AND
9 ECONOMIC AND WORKFORCE DEVELOPMENT, OR THEIR SUCCESSOR
10 COMMITTEES, ON PROJECTED AND ACTUAL PROGRAM PARTICIPATION,
11 SPECIFYING GENDER, RACE, AND ETHNICITY OF PARTICIPANTS AND
12 PURPOSE AND DURATION OF LEAVE, PREMIUM RATES, FUND BALANCES,
13 AND OUTREACH EFFORTS. THE DIVISION SHALL POST THE REPORTS ON THE
14 DEPARTMENT'S WEBSITE. NOTWITHSTANDING SECTION 24-1-136(11), THE
15 REQUIREMENT SPECIFIED IN THIS SECTION TO SUBMIT ANNUAL REPORTS TO
16 COMMITTEES OF THE GENERAL ASSEMBLY CONTINUES INDEFINITELY.

17 **8-13.3-315. Rules.** THE DIRECTOR MAY ADOPT RULES AS
18 NECESSARY FOR THE IMPLEMENTATION AND ADMINISTRATION OF THIS
19 PART 3.

20 **8-13.3-316. Severability.** IF ANY PROVISION OF THIS PART 3 OR ITS
21 APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE
22 INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF
23 THE PART THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION
24 OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS PART 3 ARE
25 SEVERABLE.

26 **SECTION 2.** In Colorado Revised Statutes, 39-22-104, **add**
27 (4)(x) as follows:

1 **39-22-104. Income tax imposed on individuals, estates, and**
2 **trusts - single rate - definitions - repeal.** (4) There shall be subtracted
3 from federal taxable income:

4 (x) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
5 1, 2020, AN AMOUNT EQUAL TO ANY AMOUNT RECEIVED BY A TAXPAYER
6 AS FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS PURSUANT TO PART
7 3 OF ARTICLE 13.3 OF TITLE 8.

8 **SECTION 3. Act subject to petition - effective date.** This act
9 takes effect at 12:01 a.m. on the day following the expiration of the
10 ninety-day period after final adjournment of the general assembly (August
11 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
12 referendum petition is filed pursuant to section 1 (3) of article V of the
13 state constitution against this act or an item, section, or part of this act
14 within such period, then the act, item, section, or part will not take effect
15 unless approved by the people at the general election to be held in
16 November 2018 and, in such case, will take effect on the date of the
17 official declaration of the vote thereon by the governor.