Proposition ?: Paid Family and Medical Leave Insurance Program

Proposition ? proposes amending the <u>Colorado statutes</u> to:

- create a paid family and medical leave insurance program for Colorado employees administered by the Colorado Department of Labor and Employment;
- require employers and employees in Colorado to pay a payroll premium to finance paid family and medical leave insurance benefits beginning January 1, 2023;
- allow eligible employees up to 12 weeks of paid family and medical leave insurance benefits annually beginning January 1, 2024; and
- create job protections for employees who take paid family and medical leave.

What Your Vote Means

YES A 'yes' vote on Proposition ? means the state will create an insurance program to provide paid family and medical leave benefits to eligible employees in Colorado funded by premiums paid by employers and employees.

NO A 'no' vote on Proposition ? means the state will not create a paid family and medical leave insurance program.

Summary and Analysis for Proposition ?

What happens if Proposition ? passes?

Proposition ? creates a state-run paid family and medical leave (PFML) insurance program in Colorado that allows employees to take up to 12 weeks of leave and keep their job. An eligible employee may take leave for the following reasons:

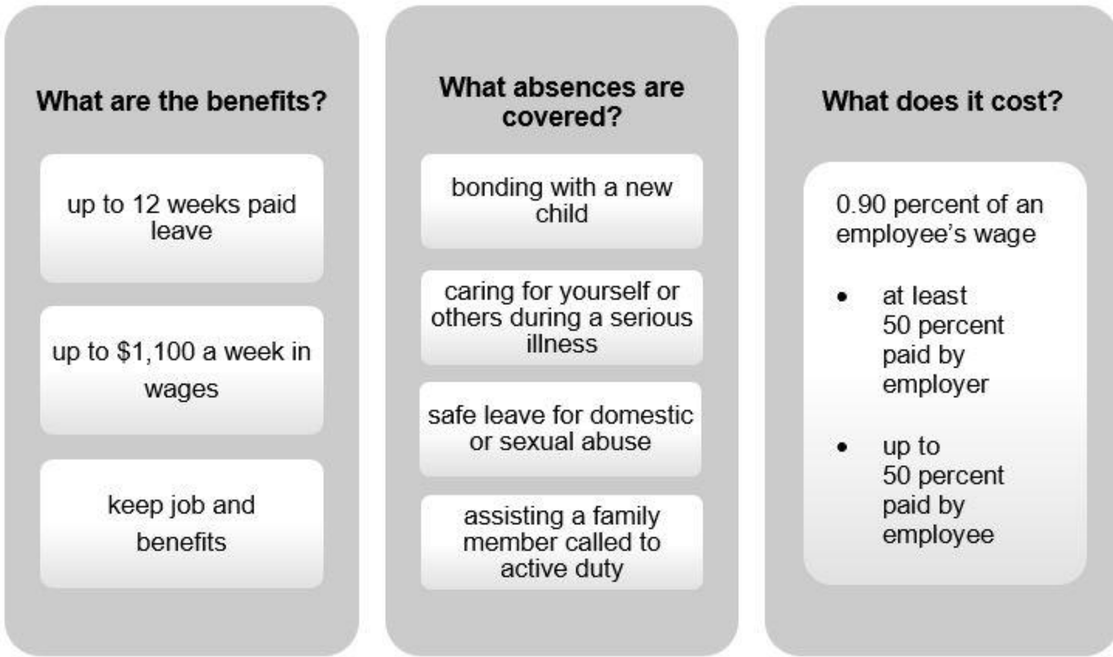
- to care for their own serious health condition;
- to care for a new child during the first year after the birth, adoption, or placement through foster care of that child;
- to care for a family member with a serious health condition;
- when a family member is on active duty military service or being called to active duty military service; and
- when the individual or the individual’s family member is a victim of domestic violence, stalking, or sexual assault.

"Family member" is defined in the measure as the eligible employee’s child, parent, spouse, domestic partner, grandparent, grandchild, sibling, or any individual with whom the employee has a significant personal bond that is like a family relationship. The maximum number of weeks an eligible employee may take paid leave in a year is 12 weeks, except that employees with a serious health condition related to pregnancy or childbirth complications may take up to an additional 4 weeks (16 weeks in total). Employees are not required to take leave consecutively.

Both employers and employees will pay into a new Family and Medical Leave Insurance Fund (fund). The state will use money in the fund to pay wage benefits to employees during their leave, similar to unemployment insurance. The amount an employee will receive during leave is based on the employee’s average weekly wage (AWW). Most employees become eligible to take paid leave after they have earned at least $2,500 in wages and eligible for certain job protections after being employed with their current employer for at least 180 days.

Figure 1 below highlights the major components of the new PFML insurance program.

Figure 1
Paid Family and Medical Leave Program



What are the current paid and unpaid leave requirements for businesses in Colorado?

Both federal and state leave requirements apply to Colorado businesses. The federal Family and Medical Leave Act of 1993 (FMLA) allows eligible employees to take up to 12 weeks of unpaid leave per year for specified circumstances. A new state law enacted in 2020, and effective for employers with 16 or more employees on January 1, 2021, and all employers on January 1, 2022, requires employers in Colorado to provide one hour of paid sick leave to each employee for every 30 hours worked, up to a maximum of 48 hours per year. See Table 1 for a detailed comparison of the existing provisions of the FMLA and Colorado's mandated sick leave law with the provisions of Proposition ?.

In addition, Colorado law permits an eligible employee to take up to three days of leave in any 12-month period if the employee is a victim of domestic abuse, stalking, sexual assault, or another crime. The leave may be paid or unpaid and must be used to seek a civil protection order, obtain medical care or mental health counseling, secure the employee's home, or seek legal assistance.

Table 1
Comparison of Leave Provisions in Current Law and Proposition ?

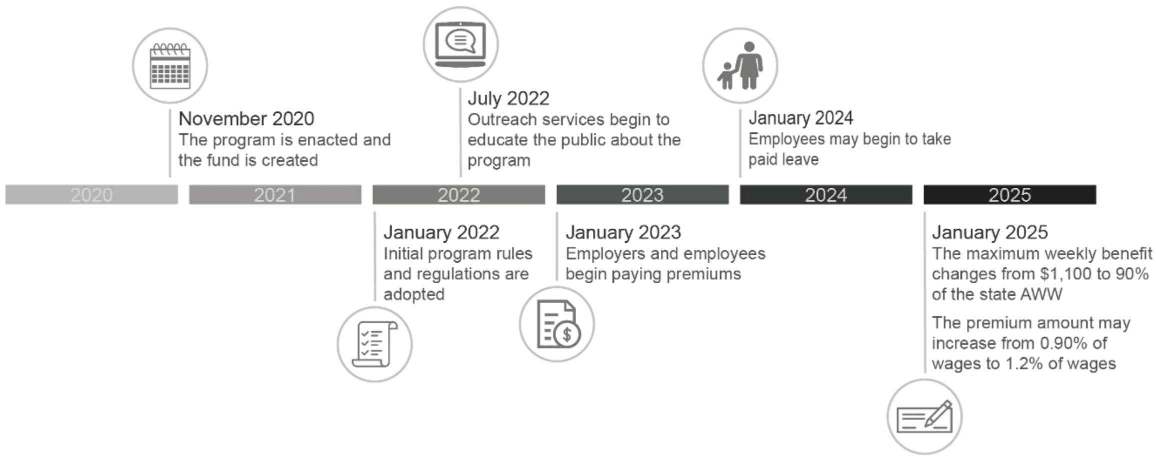
Proposition ?	FMLA	State Mandated Sick Leave
Type of Leave		
Family and medical	Family and medical	Medical
Length of Leave		
Up to 12 weeks	Up to 12 weeks	Up to 6 days
Paid or Unpaid		
Paid	Unpaid	Paid
Time until Employee Eligibility		
Employee must make $2,500 in wages subject to premium	Employee must work for 12 months	Employees receive 1 hour paid sick leave per 30 hours worked up to 48 hours per year
Job Protection		
Yes, if an employee has worked for their employer at least 180 days	Yes	N/A
Employer Size		
• All employer sizes, with a few exceptions	• Private sector with 50 or more employees • All public agencies • All elementary and secondary schools	• Employers with 16 or more employees as of 1/1/2021, and all employers beginning 1/1/2022
Qualifying Reasons for Leave		
• Birth or adoption of child • Care for self or family member* with serious health condition • For circumstances related to a family member's active duty military service • Safe leave for domestic abuse, sexual assault or abuse, and stalking	• Birth or adoption of child • Care for self or family member with serious health condition • For circumstances related to a family member's active duty military service	• Care for an employee's health or safety • Care for a person for whom the employee is responsible for providing or arranging health or safety related care

*Family member includes someone with whom the employee has a significant personal bond.

How will the program be implemented?

In calendar year 2023, employers and employees will start paying into the program. After the program has been collecting payments from employers and employees for one year, employees can begin receiving up to $1,100 each week for up to 12 weeks while taking leave. A new paid family and medical leave division in the Colorado Department of Labor and Employment (CDLE) will oversee the new program and create rules and regulations to govern the program. Figure 2 shows the effective dates for various provisions of the program.

Figure 2
PFML Program Timeline



How will the program be funded?

Employers and employees must contribute a certain percentage of each employee's wages to fund the program, known as a premium. The initial premium rate is set in the measure at 0.90 percent of wages per employee in the program's first two years. The employer must pay at least 50 percent of the premium, but may choose to contribute a larger percentage. The employee is responsible for up to 50 percent of the premium, depending on the employer's contribution. The premium is calculated based on the employee's taxable wages. The maximum amount of wages to which the premium can be charged for calendar year 2023 is estimated to be $161,700 per person, which limits the maximum annual premium to $1,455. Table 2 shows examples of weekly and annual premiums for different wages and assumes that the employer and employee will split the premium equally. Beginning in calendar year 2025, the program director can set the premium up to 1.2 percent of an employee's taxable wages for an estimated maximum annual premium of $2,092.

Table 2
Weekly and Annual PFML Premium Scenarios
For Calendar Year 2023

Weekly Wages	Employer Weekly Premium	Employee Weekly Premium	Annual Wages	Employer Annual Premium	Employee Annual Premium
$500	$2.25	$2.25	$26,000	$117	$117
$1,000	$4.50	$4.50	$52,000	$234	$234
$1,500	$6.75	$6.75	$78,000	$351	$351
$2,000	$9.00	$9.00	$104,000	$468	$468
$3,000	$13.50	$13.50	$156,000	$702	$702

Will all employers in Colorado participate in the program and pay premiums?

Most employers are required to participate in the program and pay premiums. The individuals and organizations that are not required to pay the entire premium include:

- employers with nine or fewer employees;
- self-employed individuals;
- local governments that decline participation in the program; and
- employers that already offer approved paid leave benefits.

Employers with nine or fewer employees are not required to pay the employer portion of the premium, but are required to withhold and forward an employee's portion of the premium. Local governments that choose not to participate in the program do not pay the employer portion or collect premiums from employees. Local government employees whose employer has declined to participate and self-employed individuals may choose to opt in and pay only the employee portion of the premium. Finally, an employer with an approved private family and medical leave plan already in place is not required to pay premiums. Table 3 below illustrates premium responsibilities.

Table 3
Premium Responsibilities under Proposition ?

Employer Type	Employer Premium	Employee Premium	No Premium
9 or fewer employees		√	
10 or more employees	√	√	
Participating self-employed		√	
Participating local government employee		√	
Nonparticipating local government			√
Nonparticipating self-employed			√
Employer with private plan			√

How much will employees receive in benefit payments while on paid leave?

The amount of benefits an eligible employee can receive is based on the individual's AWW, compared to the state average weekly wage (SAWW) set annually by the CDLE. Wages include salary, wages, tips, commission, and other forms of compensation. An eligible employee will receive 90 percent of their AWW for the portion of his or her wages that are less than or equal to 50 percent of the SAWW, and 50 percent of the portion of wages that exceed 50 percent of the SAWW. The maximum weekly benefit that an individual can receive is $1,100 for leave taken in 2024. Table 4 provides examples of benefit payments for different weekly wages in 2024 based on an estimated SAWW of $1,340. For leave beginning on or after January 1, 2025, the maximum weekly benefit that an individual may receive is 90 percent of the SAWW, which is estimated to be

$1,392 per week for a maximum benefit of $1,253 per week. To the extent that the SAWW differs from these estimates, the maximum benefit will vary accordingly.

Table 4
PFML Benefit Payment Scenarios
Based on 2024 SAWW of $1,340

Weekly Wage	Weekly Benefit	Maximum Annual Benefit	Percent of Weekly Wage*
$500	$450	$5,400	90%
$1,000	$768	$9,216	77%
$1,500	$1,018	$12,216	68%
$2,000	$1,100	$13,200	55%
$3,000	$1,100	$13,200	37%

*The weekly benefit as a percentage of the weekly wage declines as income increases and the maximum benefit is reached.

What are the job protection requirements?

Participating employers may not discipline or take retaliatory actions against employees for requesting or using paid leave. Job protections are available to employees who have been employed for at least 180 days with their current employer prior to taking leave. This means that eligible employees who return from leave are entitled to return to the same position or a position with equal seniority, status, employment benefits, and pay. Employees are entitled to their health benefits during their leave, but are required to pay their portion of the health premium.

For information on those issue committees that support or oppose the measures on the ballot at the November 3, 2020, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html

Arguments For Proposition ?

1) Paid leave has a positive impact on the health of Colorado families, especially new parents and those with health issues. Research has shown that offering paid leave to expectant and new mothers decreases the risk of infant mortality, and allowing parents time to bond with their children will positively affect child development. Most individuals will need to take leave to care for themselves or a loved one at some point during their careers, and this measure allows employees to do so with some financial support and job protection. The measure ensures that Coloradans will not be forced to choose between their health and their livelihood.

2) Paid leave will increase employment opportunities for Coloradans, and benefit the state's economy. Only 18 percent of U.S. workers currently have access to paid leave. Employees without paid leave risk being demoted or even losing

their jobs if they have to take off work due to serious illnesses or to care for family members. This measure allows caretakers and those with chronic health issues to join and remain in the workforce, which will strengthen Colorado's economy. All workers deserve paid leave benefits, no matter their income level, the type of work they do, or the size of their employer.

Arguments Against Proposition ?

1) This measure places a financial and regulatory burden on employers to navigate the program's complex requirements. Businesses face increased costs to accommodate paid leave and new state-mandated sick leave obligations. The measure unfairly requires large businesses, but not certain small businesses or local governments, to pay premiums to fund the program. In addition, small businesses may be discouraged from growing in order to avoid premium costs. In the end, it will be up to employers and employees to bear the cost of an uncertain and expensive new government program.

2) This measure requires employees to pay into a program that they may never benefit from using. Employees are already faced with job uncertainty in the current economy, and cannot afford to lose part of their salary or other benefits. If the demand for the benefit is higher than anticipated, employees will be expected to contribute an even larger percentage of wages in the future or sacrifice other workplace gains.

Estimate of Fiscal Impact for Proposition ?

State revenue. Proposition ? is expected to increase state revenue from PFML premiums by approximately $575.4 million in state budget year 2022-23 (half-year impact) and $1.2 billion in state budget year 2023-24 (full-year impact). Because of higher-than-usual economic uncertainty, the amount of premiums collected may differ from this estimate. The measure may also increase state revenue from bond proceeds and potentially gifts, grants, or donations to cover program start-up costs beginning in state budget year 2021-22. The timing of when this additional revenue is received will depend on final budget estimates for the program and when revenue bonds are issued.

State spending. Proposition ? will increase state spending by $3.2 million in state budget year 2021-22 and $48.6 million in state budget year 2022-23 to create and administer the PFML insurance program. In state budget year 2023-24, state spending will increase by $523.9 million to administer the PFML program, pay the employer share of premiums for state employees, and pay PFML benefits to eligible employees in the second half of the year.

Local government spending. Beginning January 1, 2023, local governments that participate in the PFML insurance program, school districts, and other public entities will have increased spending to pay the employer share of premiums for their employees. Local governments will also be required to process payroll deductions, and coordinate leave and benefits for employees. Local governments that decline to participate will not pay premiums, but may still be required to handle premium deductions and coordinate leave and benefits for employees if they have employees that elect to participate in the PFML insurance program.

Proposition ?: Paid Family and Medical Leave Insurance Program

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Summary and Analysis for Proposition ?

What happens if Proposition ? passes?

Proposition ? creates a state-run paid family and medical leave (PFML) insurance program in Colorado that allows employees to take up to 12 weeks of leave and keep their job. An eligible employee may take leave for the following reasons:

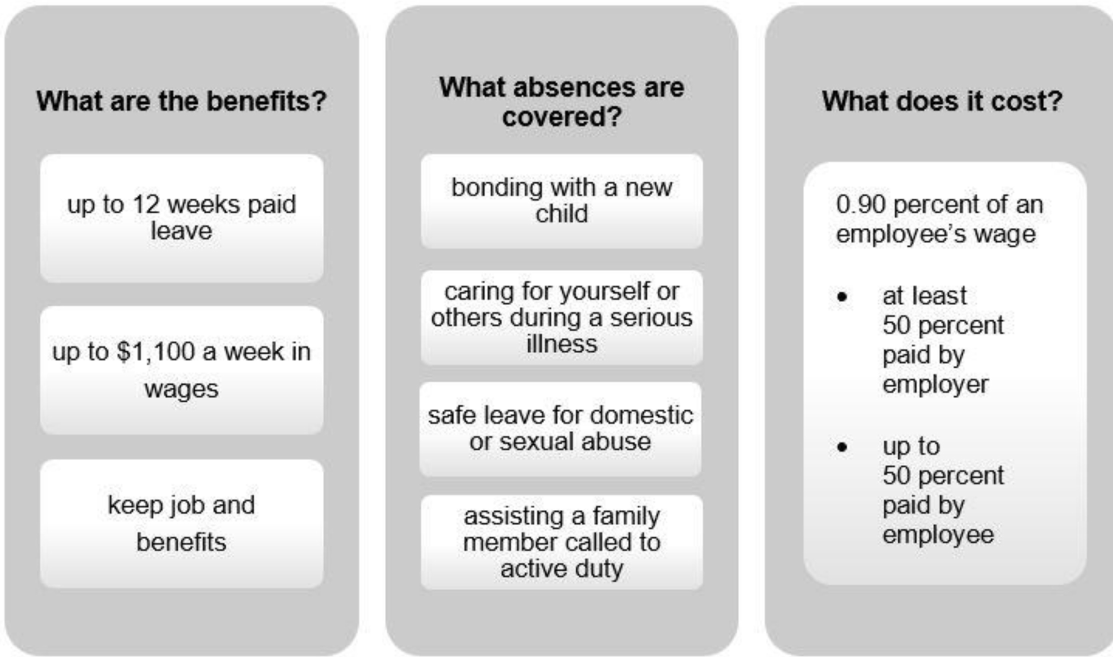
- to care for their own serious health condition;
- to care for a new child during the first year after the birth, adoption, or placement through foster care of that child;
- to care for a family member with a serious health condition;
- when a family member is on active duty military service or being called to active duty military service; and
- when the individual or the individual's family member is a victim of domestic violence, stalking, or sexual assault.

"Family member" is defined in the measure as the eligible employee's child, parent, spouse, domestic partner, grandparent, grandchild, sibling, or any individual with whom the employee has a significant personal bond that is like a family relationship. The maximum number of weeks an eligible employee may take paid leave in a year is 12 weeks, except that employees with a serious health condition related to pregnancy or childbirth complications may take up to an additional 4 weeks (16 weeks in total). Employees are not required to take leave consecutively.

Both employers and employees will pay into a new Family and Medical Leave Insurance Fund (fund). The state will use money in the fund to pay wage benefits to employees during their leave, similar to unemployment insurance. The amount an employee will receive during leave is based on the employee's average weekly wage (AWW). Most employees become eligible to take paid leave after they have earned at least $2,500 in wages and eligible for certain job protections after being employed with their current employer for at least 180 days.

Figure 1 below highlights the major components of the new PFML insurance program.

Figure 1
Paid Family and Medical Leave Program



What are the current paid and unpaid leave requirements for businesses in Colorado?

Both federal and state leave requirements apply to Colorado businesses. The federal Family and Medical Leave Act of 1993 (FMLA) allows employees to take up to 12 weeks of unpaid leave per year for specified circumstances. A new state law enacted in 2020, and effective for employers with 16 or more employees on January 1, 2021, and all employers on January 1, 2022, requires employers in Colorado to provide one hour of paid sick leave to each employee for every 30 hours worked, up to a maximum of 48 hours per year. See Table 1 for a detailed comparison of the existing provisions of the FMLA and Colorado's mandated sick leave law with the provisions of Proposition ?.

In addition, Colorado law permits an eligible employee to take up to three days of leave in any 12-month period if the employee is a victim of domestic abuse, stalking, sexual assault, or another crime. The leave may be paid or unpaid and must be used to seek a civil protection order, obtain medical care or mental health counseling, secure the employee's home, or seek legal assistance.

Table 1
Comparison of Leave Provisions in Current Law and Proposition ?

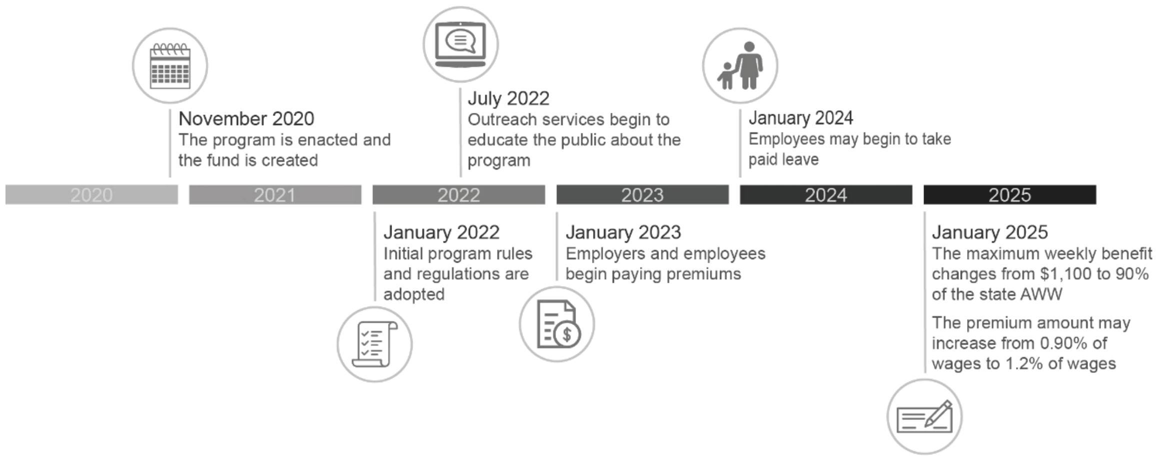
Proposition ?	FMLA	State Mandated Sick Leave
Type of Leave		
Family and medical	Family and medical	Medical
Length of Leave		
Up to 12 weeks	Up to 12 weeks	Up to 6 days
Paid or Unpaid		
Paid	Unpaid	Paid
Time until Employee Eligibility		
Employee must make $2,500 in wages subject to premium.	Employee must work for 12 months.	Employees receive 1 hour paid sick leave per 30 hours worked up to 48 hours per year.
Job Protection		
Yes, if an employee has worked for their employer at least 180 days.	Yes	N/A
Employer Size		
• All employer sizes, with a few exceptions	• Private sector with 50 or more employees • All public agencies • All elementary and secondary schools	• Employer with 16 or more employees as of 1/1/2021, and all employers beginning 1/1/2022
Qualifying Reasons for Leave		
• Birth or adoption of child • Care for self or family member* with serious health condition • For circumstances related to a family member's active duty military service • Safe leave for domestic abuse, sexual assault or abuse, and stalking	• Birth or adoption of child • Care for self or family member with serious health condition • For circumstances related to a family member's active duty military service.	• Care for an employee's health or safety • Care for a person for whom the employee is responsible for providing or arranging health or safety related care

*Family member includes someone with whom the employee has a significant personal bond.

How will the program be implemented?

In calendar year 2023, employers and employees will start paying into the program. After the program has been collecting payments from employers and employees for one year, employees can begin receiving up to $1,100 each week for up to 12 weeks while taking leave. A new paid family and medical leave division in the Colorado Department of Labor and Employment (CDLE) will oversee the new program and create rules and regulations to govern the program. Figure 2 shows the effective dates for various provisions of the program.

Figure 2
PFML Program Timeline



How will the program be funded?

Employers and employees must contribute a certain percentage of each employee's wages to fund the program, known as a premium. The initial premium rate is set in the measure at 0.90 percent of wages per employee in the program's first two years. The employer must pay at least 50 percent of the premium, but may choose to contribute a larger percentage. The employee is responsible for up to 50 percent of the premium, depending on the employer's contribution. The premium is calculated based on the employee's taxable wages. The maximum amount of wages to which the premium can be charged for calendar year 2023 is estimated to be $153,600 per person, which limits the maximum annual premium to $1,382. Table 2 shows examples of weekly and annual premiums for different wages and assumes that the employer and employee will split the premium equally. Beginning in calendar year 2025, the program director can set the premium up to 1.2 percent of an employee's taxable wages for an estimated maximum annual premium of $1,991.

Table 2
Weekly and Annual PFML Premium Scenarios
For Calendar Year 2023

Weekly Wages	Employer Weekly Premium	Employee Weekly Premium	Annual Wages	Employer Annual Premium	Employee Annual Premium
$500	$2.25	$2.25	$26,000	$117	$117
$1,000	$4.50	$4.50	$52,000	$234	$234
$1,500	$6.75	$6.75	$78,000	$351	$351
$2,000	$9.00	$9.00	$104,000	$468	$468
$3,000	$13.50	$13.50	$156,000	$691	$691

Will all employers in Colorado participate in the program and pay premiums?

Most employers are required to participate in the program and pay premiums. The individuals and organizations that are not required to pay the entire premium include:

- employers with nine or fewer employees;
- self-employed individuals;
- local governments that decline participation in the program; and
- employers that already offer approved paid leave benefits.

Employers with nine or fewer employees are not required to pay the employer portion of the premium, but are required to withhold and forward an employee's portion of the premium. Local governments that choose not to participate in the program do not pay the employer portion or collect premiums from employees. Local government employees whose employer has declined to participate and self-employed individuals may choose to opt in and pay only the employee portion of the premium. Finally, an employer with an approved private family and medical leave plan already in place is not required to pay premiums. Table 3 below illustrates premium responsibilities.

Table 3
Premium Responsibilities under Proposition ?

Employer Type	Employer Premium	Employee Premium	No Premium
9 or fewer employees		√	
10 or more employees	√	√	
Participating self-employed		√	
Participating local government employee		√	
Nonparticipating local government			√
Nonparticipating self-employed			√
Employer with private plan			√

How much will employees receive in benefit payments while on paid leave?

The amount of benefits an eligible individual can receive is based on the individual's AWW, compared to the state average weekly wage (SAWW) set annually by the CDLE. Wages include salary, wages, tips, commission, and other forms of compensation. An eligible individual will receive 90 percent of their AWW for the portion of his or her wages that are less than or equal to 50 percent of the SAWW, and 50 percent of the portion of wages that exceed 50 percent of the SAWW. The maximum weekly benefit that an individual can receive is $1,100 for the first two years of the program. Table 4 provides examples of benefit payments for different weekly wages in 2024 based on an estimated SAWW of $1,247. After January 1, 2025, the maximum weekly benefit that an individual may receive is 90 percent of the SAWW, which is estimated to be $1,294 per week for a maximum benefit of $1,165 per week.

Table 4
PFML Benefit Payment Scenarios
Based on 2024 SAWW of $1,247

Weekly Wage	Weekly Benefit	Maximum Annual Benefit	Percent of Weekly Wage*
$500	$450	$5,400	90%
$1,000	$749	$8,993	75%
$1,500	$999	$11,993	67%
$2,000	$1,100	$13,200	55%
$3,000	$1,100	$13,200	37%

*The weekly benefit as a percentage of the weekly wage declines as income increases and the maximum benefit is reached.

What are the job protection requirements?

Participating employers may not discipline or take retaliatory actions against employees for requesting or using paid leave. Job protections are available to employees who have been employed for at least 180 days with their current employer prior to taking leave. This means that eligible employees who return from leave are entitled to return to the same position or a position with equal seniority, status, employment benefits, and pay. Employees are entitled to their health benefits during their leave, but are required to pay their portion of the health premium.

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Arguments For Proposition ?

1) Paid leave has a positive impact on the health of Colorado families, especially new parents and those with health issues. Research has shown that offering paid leave to expectant and new mothers decreases the risk of infant mortality, and allowing parents time to bond with their children will positively affect child development. Most individuals will need to take leave to care for themselves or a loved one at some point during their careers, and this measure allows employees to do so with some financial support and job protection. The measure ensures that Coloradans will not be forced to choose between their health and their livelihood.

2) Paid leave will increase employment opportunities for Coloradans, and benefit the state's economy. Only 18 percent of U.S. workers currently have access to paid leave. Employees without paid leave risk being demoted or even losing their jobs if they have to take off work due to serious illnesses or to care for family members. This measure allows caretakers and those with chronic health

issues to join and remain in the workforce, which will strengthen Colorado's economy. All workers deserve paid leave benefits, no matter their income level, the type of work they do, or the size of their employer.

Arguments Against Proposition ?

1) This measure places a financial and regulatory burden on employers to navigate the program's complex requirements. Businesses face increased costs to accommodate paid leave and new sick leave obligations. The measure may also discourage local small businesses with nine or fewer employees from growing in order to avoid premium costs. In the end, it will be up to employers and employees to bear the cost of an uncertain and expensive new government program.

2) This measure requires employees to pay into a program that they may never benefit from using. Employees are already faced with job uncertainty in the current economy, and cannot afford to lose part of their salary or other benefits. If the demand for the benefit is higher than anticipated, employees will be expected to contribute an even larger percentage of wages in the future or sacrifice other workplace gains.

Estimate of Fiscal Impact for Proposition ?

State revenue. Proposition ? is expected to increase state revenue from PFML premiums by $626.0 million in state budget year 2022-23 (half-year impact) and $1.3 billion in state budget year 2023-24 (full-year impact). Because of higher-than-usual economic uncertainty, the amount of premiums collected may differ from this estimate. The measure may also increase state revenue from bond proceeds and potentially gifts, grants, or donations to cover program start-up costs beginning in state budget year 2021-22. The timing of when this additional revenue is received will depend on final budget estimates for the program and when revenue bonds are issued.

State spending. Proposition ? will increase state spending by $3.2 million in state budget year 2021-22 and $48.6 million in state budget year 2022-23 to create and administer the PFML insurance program. In state budget year 2023-24, state spending will increase by $276.7 million to administer the PFML program, pay the employer share of premiums for state employees, and pay PFML benefits to eligible employees in the second half of the year.

Local government spending. Beginning January 1, 2023, local governments that participate in the PFML insurance program, school districts, and other public entities will have increased spending to pay the employer share of premiums for their employees. Local governments will also be required to process payroll deductions, and coordinate leave and benefits for employees. Local governments that decline to participate will not pay premiums, but may still be required to handle premium deductions and coordinate leave and benefits for employees if they have employees that elect to participate in the PFML insurance program.

Last Draft Comments from Interested Parties

Initiative 283
Paid Family and Medical Leave Insurance Program

Richard Brown, representing himself:

I think this draft is fair and objective. This measure is quite complex which makes it difficult to succinctly summarize for the voters.

I like the tables, they will be helpful to the average voter who does not have the depth of background on this very complicated and multi-faceted issue.

Doug Bruce, representing himself:

THIRD DRAFT (I don't get line 20 of summary.)

Staff decided this proposed welfare handout was worthy of two arguments for, two against, but saving thousands of babies from death each year was worth only one.

1. The text is 15 pages in small type. Read it carefully before voting. It is another legal evasion of the Taxpayer's Bill of Rights (TABOR). It sets up another welfare program funded by "fees" to avoid the ballot title requirement to disclose to voters this $1.3 billion yearly tax increase. SEE comment #9.

2. It is another cost of doing business in Colorado. In this economic/health crisis, we should be making it easier to give people jobs. This "benefit" should be left to negotiation by employers and workers. This will encourage false claims of health problems. Replacement workers will be hired, then laid off when the prior worker finally returns to work.

3. It is another program to pay people for NOT working. We already have paid vacations, holidays, unemployment, sick leave, lifetime pensions, etc. This makes work less productive and workers less efficient. Adding twelve weeks (one-fourth the work year) of pay for not working discourages hiring anyone and increases lawsuits to demand this newly-invented "right." It raises greatly the cost to produce anything, which raises prices to consumers. A husband and wife can work half the year, and collect a check the other half. The boss will pay them for being sick, then raise prices or close up shop.

4. The loopholes are wide. "Family member" includes"domestic partner" and anyone with a "significant personal bond that is like a family relationship." That can be your drinking buddy at the corner bar. Twelve weeks paid leave can be 16 weeks a year when pregnant. People can earn $500 per week for five weeks, then get 16 weeks pay for not working. If

Doug Bruce, representing himself (Cont.):

that is the last 16 weeks of one year, it can extend to the first weeks of the next year. They can adopt a child to become eligible, getting paid for adoptions (on paper) without limit. Think of all the government investigators coming to your house.

5. $1,100 weekly checks won't equal your annual salary. You can sue your boss to keep your job. The cost is 9/10ths of one percent. The boss has to pay half or more that sum. The program will go broke quickly. Read all the costs of these "free" benefits politicians are offering to bankrupt Colorado during the Covid 19 pandemic and beyond. How many tens of thousands will file claims? They can collect on both federal and state claims for not working, while their former employer is driven to bankruptcy and the federal deficit increases many TRILLIONS of dollars, leading to hyperinflation.

6. You start paying the tax in January 2023 but no benefits are paid for another year. The maximum annual tax in 2023 is $1382; in 2025, it is $1,991. Would you rather have another welfare program for someone who isn't working, or would you rather than the $1,991 in your pocket?

7. Local governments can opt out of this scheme; they can see it as a hammock for those who want to game the system. Private businesses with nine or fewer workers can opt out of this burden, but not businesses with 10+ workers.

8. Arg FOR #2 says at the end "All workers deserve paid leave benefits." That is not true. We can't find deep pockets to compensate us for being sick or choosing to have a child (and not aborting it!) That is a argument that is worthy of the Tooth Fairy. Stop treating voters like children.

9. A yearly tax increase of $1.3 BILLION is disguised as a premium when it is a TAX imposed on hundreds of thousands of citizens. It should not be buried on the last page of an 8-page "analysis."   That is why my first comment is vital. Since the staff and title board are participating in this swindle, depriving people of their legal right to disclosure because of the illegal ballot title, you have a legal and moral duty to make up for this official state dishonesty. Put the true cost of this program in the FIRST bullet point of the "analysis," which is where the disclosure would be in the ballot title, had staff decided to obey the constitution.

Last Draft Comments from Interested Parties

Lynea Hansen, representing Colorado Families First as a proponent:

Thank you very much for all of your work on the drafts so far. We have one factual inaccuracy that arose from some of the changes and then a few misleading statements.

Factual Inaccuracy

1) On page 6 in table 3
    a. For non-participating local governments, the employee can still choose to participate.
    b. 8-13.3-407 of the ballot initiative

    > (b) AN EMPLOYEE OF A LOCAL GOVERNMENT WHO ELECTS COVERAGE UNDER SECTION 8-13.3-414 SHALL PAY ONLY 50 PERCENT OF THE PREMIUM REQUIRED FOR AN EMPLOYEE BY SECTION 8-13.3-407(3) ON THAT EMPLOYEE'S INCOME FROM THAT LOCAL GOVERNMENT EMPLOYMENT.

    c. We suggest changing the table to include:
        i. Participating local government – check employee and employer
        ii. Non-participating local government, employee opts-in – check employee
        iii. Non-participating local government, employee doesn't opt-in – check no premium

Misleading Statements

1) Page 1, lines 2-11
    a. We believe the bullets need to be reorganized to reflect the reality that the premium to fund the program is contingent on the benefit and therefore should follow the explanation of the benefit. In other words, the benefit should come before the explanation of funding because it is the establishment of the benefit that necessitates the creation of the premium. Furthermore, this change has the added benefit of mirroring the same logic and layout that the title board followed when establishing their ordering of the explanation and avoid disagreement between the title and summary and the Blue Book summary. We suggest the order bullet 1, 3, 4 and then 2
2) Page 2, line 24
    a. There is a cap on the benefit that should be added to let high earners know they don't get all of their AWW.

    > (b) THE MAXIMUM WEEKLY BENEFIT IS 90 PERCENT OF THE STATE AVERAGE WEEKLY WAGE, EXCEPT THAT FOR PAID FAMILY AND MEDICAL LEAVE BEGINNING BEFORE JANUARY 1, 2025, THE MAXIMUM WEEKLY BENEFIT IS 1,100 DOLLARS.

    b. Add "The amount an employee will receive during leave is based on the employee's average weekly wage (AWW) capped at 90% of the state average weekly wage.
3) Page 3, line 4
    a. Federal FMLA isn't available to many employees
    b. We suggest adding the word eligible to "The federal Family and Medical Leave Act of 1993 (FMLA) allows <u>eligible</u> employees…"
4) Page 7, line 20

Lynea Hansen, representing Colorado Families First as a proponent (Cont.):

a. We think it is important for Coloradans to know how many Coloradans don't have access to leave and not just Americans in general.
b. Substitute "This measure would allow 2.6 million Coloradans access to paid family and medical leave." Source

5) Page 8, line
    a. Delete the word "uncertain" from the last sentence as that isn't accurate, paid leave is operating in 8 other states and DC. Additionally, there was an extensive Colorado task force study in late 2019 about the fiscal solvency that concluded the program was sound. The premium and usage rates in our policy are more conservative than the numbers in the task force study.

Thanks!
Lynea Hansen
On behalf of Colorado Families First

Terra McKinnish, representing herself:

The actuarial study commissioned by CDLE as part of the FAMLI task force process, and produced by AMI Risk Consultants, forecast $1.17 billion in premium payments in 2024 for a *less* generous program design than the one analyzed here (8 weeks of benefits for that analysis compared to 12 weeks of benefits for the program analyzed here). Based on that study, it would be reasonable to expect about $550 million in premium payments for the first half of 2024.

This document states that:
In state budget year 2023-24, state spending will increase by $276.7 million to administer the PFML program, pay the employer share of premiums for state employees, and pay PFML benefits to eligible employees in the second half of the year.
If $276.7 million will cover the premium payments, plus program administration, plus premium payments for state employees, this document is forecasting that the program will only be half as expensive as the actuarial study submitted to CDLE and the FAMLI task force. This is a very large discrepancy.

Terra McKinnish
Professor of Economics, University of Colorado
Director, Center to Advance Research and Teaching in the Social Sciences (CARTSS)
Editor, Journal of Population Economics
Research Fellow, IZA

Kristi Pollard, representing herself:

Good afternoon,

Last Draft Comments from Interested Parties

Thank you for the opportunity to provide comments on Initiative 283. Attached, please find a few suggestions for revision.

Thank you.

--Kristi

Ms. Pollard submitted comments contained in Attachment A.

Proposition ?: Paid Family and Medical Leave Insurance Program

Proposition ? proposes amending the <u>Colorado statutes</u> to:

- create a paid family and medical leave insurance program for Colorado employees administered by the Colorado Department of Labor and Employment;
- require employers and employees in Colorado to pay a payroll premium to finance paid family and medical leave insurance benefits beginning January 1, 2023;
- allow eligible employees up to 12 weeks of paid family and medical leave insurance benefits annually beginning January 1, 2024; and
- create job protections for employees who take paid family and medical leave.

What Your Vote Means

YES A 'yes' vote on Proposition ? means the state will create an insurance program to provide paid family and medical leave benefits to eligible employees in Colorado funded by premiums paid by employers and employees.

NO A 'no' vote on Proposition ? means the state will not create a paid family and medical leave insurance program.

Summary and Analysis for Proposition ?

What happens if Proposition ? passes?

Proposition ? creates a state-run paid family and medical leave (PFML) insurance program in Colorado that allows employees to take up to 12 weeks of leave and keep their job. An eligible employee may take leave for the following reasons:

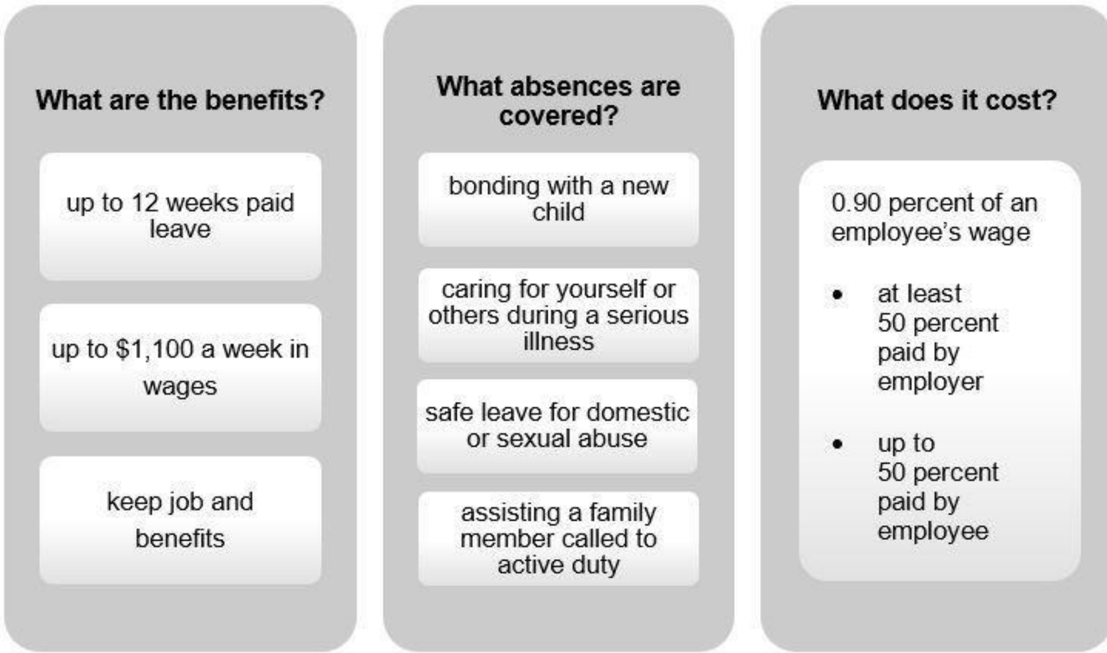
- to care for their own serious health condition;
- to care for a new child during the first year after the birth, adoption, or placement through foster care of that child;
- to care for a family member or a person with whom they have a special bond has a serious health condition;
- when a family member is on active duty military service or being called to active duty military service; and
- when the individual, the individual's family member or a person with whom they have a special bond is a victim of domestic violence, stalking, or sexual assault.

"Family member" is defined in the measure as the eligible employee's child, parent, spouse, domestic partner, grandparent, grandchild, sibling, or any individual with whom the employee has a significant personal bond that is like a family relationship. The maximum number of weeks an eligible employee may take paid leave in a year is 12 weeks, except that employees with a serious health condition related to pregnancy or childbirth complications may take up to an additional 4 weeks (16 weeks in total). Employees are not required to take leave consecutively.

Both employers and employees will pay into a new Family and Medical Leave Insurance Fund (fund). The state will use money in the fund to pay wage benefits to employees during their leave, similar to unemployment insurance. The amount an employee will receive during leave is based on the employee's average weekly wage (AWW). Most employees become eligible to take paid leave after they have earned at least $2,500 in wages and eligible for certain job protections after being employed with their current employer for at least 180 days.

Figure 1 below highlights the major components of the new PFML insurance program.

Figure 1
Paid Family and Medical Leave Program



What are the current paid and unpaid leave requirements for businesses in Colorado?

Both federal and state leave requirements apply to Colorado businesses. The federal Family and Medical Leave Act of 1993 (FMLA) allows employees to take up to 12 weeks of unpaid leave per year for specified circumstances. A new state law enacted in 2020, and effective for employers with 16 or more employees on January 1, 2021, and all employers on January 1, 2022, requires employers in Colorado to provide one hour of paid sick leave to each employee for every 30 hours worked, up to a maximum of 48 hours per year. See Table 1 for a detailed comparison of the existing provisions of the FMLA and Colorado's mandated sick leave law with the provisions of Proposition ?.

In addition, Colorado law permits an eligible employee to take up to three days of leave in any 12-month period if the employee is a victim of domestic abuse, stalking, sexual assault, or another crime. The leave may be paid or unpaid and must be used to seek a civil protection order, obtain medical care or mental health counseling, secure the employee's home, or seek legal assistance.

Table 1
Comparison of Leave Provisions in Current Law and Proposition ?

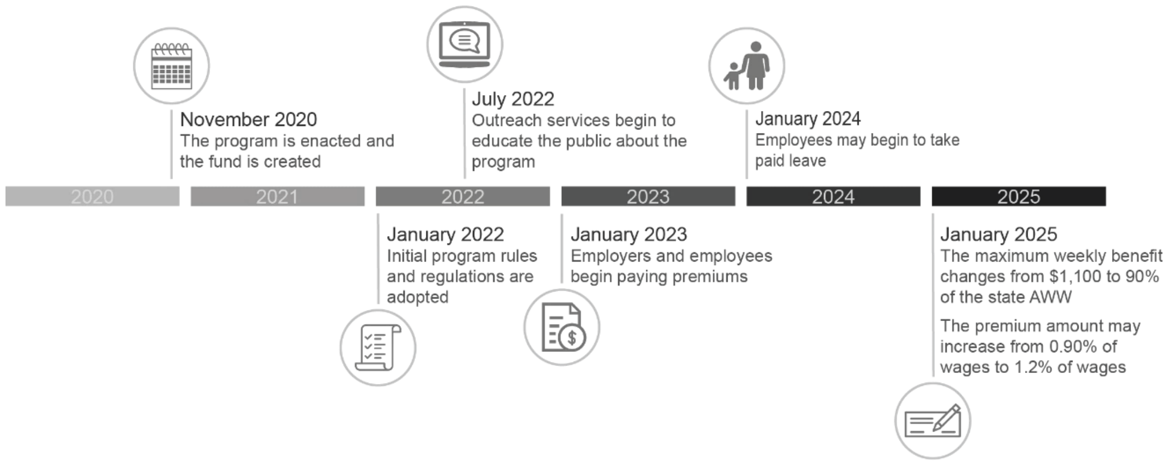
Proposition ?	FMLA	State Mandated Sick Leave
Type of Leave		
Family and medical	Family and medical	Medical
Length of Leave		
Up to 12 weeks	Up to 12 weeks	Up to 6 days
Paid or Unpaid		
Paid	Unpaid	Paid
Time until Employee Eligibility		
Employee must make $2,500 in wages subject to premium.	Employee must work for 12 months.	Employees receive 1 hour paid sick leave per 30 hours worked up to 48 hours per year.
Job Protection		
Yes, if an employee has worked for their employer at least 180 days.	Yes	N/A
Employer Size		
• All employer sizes, with a few exceptions	• Private sector with 50 or more employees • All public agencies • All elementary and secondary schools	• Employer with 16 or more employees as of 1/1/2021, and all employers beginning 1/1/2022
Qualifying Reasons for Leave		
• Birth or adoption of child • Care for self or family member* with serious health condition • For circumstances related to a family member's active duty military service • Safe leave for domestic abuse, sexual assault or abuse, and stalking	• Birth or adoption of child • Care for self or family member with serious health condition • For circumstances related to a family member's active duty military service.	• Care for an employee's health or safety • Care for a person for whom the employee is responsible for providing or arranging health or safety related care

*Family member includes someone with whom the employee has a significant personal bond.

How will the program be implemented?

In calendar year 2023, employers and employees will start paying into the program. After the program has been collecting payments from employers and employees for one year, employees can begin receiving up to $1,100 each week for up to 12 weeks while taking leave. A new paid family and medical leave division in the Colorado Department of Labor and Employment (CDLE) will oversee the new program and create rules and regulations to govern the program. Figure 2 shows the effective dates for various provisions of the program.

Figure 2
PFML Program Timeline



How will the program be funded?

Employers and employees must contribute a certain percentage of each employee's wages to fund the program, known as a premium. The initial premium rate is set in the measure at 0.90 percent of wages per employee in the program's first two years. The employer must pay at least 50 percent of the premium, but may choose to contribute a larger percentage. The employee is responsible for up to 50 percent of the premium, depending on the employer's contribution. The premium is calculated based on the employee's taxable wages. The maximum amount of wages to which the premium can be charged for calendar year 2023 is estimated to be $153,600 per person, which limits the maximum annual premium to $1,382. Table 2 shows examples of weekly and annual premiums for different wages and assumes that the employer and employee will split the premium equally. Beginning in calendar year 2025, the program director can set the premium up to 1.2 percent of an employee's taxable wages for an estimated maximum annual premium of $1,991.

Table 2
Weekly and Annual PFML Premium Scenarios
For Calendar Year 2023

Weekly Wages	Employer Weekly Premium	Employee Weekly Premium	Annual Wages	Employer Annual Premium	Employee Annual Premium
$500	$2.25	$2.25	$26,000	$117	$117
$1,000	$4.50	$4.50	$52,000	$234	$234
$1,500	$6.75	$6.75	$78,000	$351	$351
$2,000	$9.00	$9.00	$104,000	$468	$468
$3,000	$13.50	$13.50	$156,000	$691	$691

Will all employers in Colorado participate in the program and pay premiums?

Most employers are required to participate in the program and pay premiums. The individuals and organizations that are not required to pay the entire premium include:

- employers with nine or fewer employees;
- self-employed individuals;
- local governments that decline participation in the program; and
- employers that already offer approved paid leave benefits.

Employers with nine or fewer employees are not required to pay the employer portion of the premium, but are required to withhold and forward an employee's portion of the premium. Local governments that choose not to participate in the program do not pay the employer portion or collect premiums from employees. Local government employees whose employer has declined to participate and self-employed individuals may choose to opt in and pay only the employee portion of the premium. Finally, an employer with an approved private family and medical leave plan already in place is not required to pay premiums. Table 3 below illustrates premium responsibilities.

Table 3
Premium Responsibilities under Proposition ?

Employer Type	Employer Premium	Employee Premium	No Premium
9 or fewer employees		√	
10 or more employees	√	√	
Participating self-employed		√	
Participating local government employee		√	
Nonparticipating local government			√
Nonparticipating self-employed			√
Employer with private plan			√

How much will employees receive in benefit payments while on paid leave?

The amount of benefits an eligible individual can receive is based on the individual's AWW, compared to the state average weekly wage (SAWW) set annually by the CDLE. Wages include salary, wages, tips, commission, and other forms of compensation. An eligible individual will receive 90 percent of their AWW for the portion of his or her wages that are less than or equal to 50 percent of the SAWW, and 50 percent of the portion of wages that exceed 50 percent of the SAWW. The maximum weekly benefit that an individual can receive is $1,100 for the first two years of the program. Table 4 provides examples of benefit payments for different weekly wages in 2024 based on an estimated SAWW of $1,247. After January 1, 2025, the maximum weekly benefit that an individual may receive is 90 percent of the SAWW, which is estimated to be $1,294 per week for a maximum benefit of $1,165 per week.

Table 4
PFML Benefit Payment Scenarios
Based on 2024 SAWW of $1,247

Weekly Wage	Weekly Benefit	Maximum Annual Benefit	Percent of Weekly Wage*
$500	$450	$5,400	90%
$1,000	$749	$8,993	75%
$1,500	$999	$11,993	67%
$2,000	$1,100	$13,200	55%
$3,000	$1,100	$13,200	37%

*The weekly benefit as a percentage of the weekly wage declines as income increases and the maximum benefit is reached.

What are the job protection requirements?

Participating employers may not discipline or take retaliatory actions against employees for requesting or using paid leave. Job protections are available to employees who have been employed for at least 180 days with their current employer prior to taking leave. This means that eligible employees who return from leave are entitled to return to the same position or a position with equal seniority, status, employment benefits, and pay. Employees are entitled to their health benefits during their leave, but are required to pay their portion of the health premium.

For information on those issue committees that support or oppose the measures on the ballot at the November 3, 2020, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html

Arguments For Proposition ?

1) Paid leave has a positive impact on the health of Colorado families, especially new parents and those with health issues. Research has shown that offering paid leave to expectant and new mothers decreases the risk of infant mortality, and allowing parents time to bond with their children will positively affect child development. Most individuals will need to take leave to care for themselves or a loved one at some point during their careers, and this measure allows employees to do so with some financial support and job protection. The measure ensures that Coloradans will not be forced to choose between their health and their livelihood.

2) Paid leave will increase employment opportunities for Coloradans, and benefit the state's economy. Only 18 percent of U.S. workers currently have access to paid leave. Employees without paid leave risk being demoted or even losing their jobs if they have to take off work due to serious illnesses or to care for family members. This measure allows caretakers and those with chronic health

issues to join and remain in the workforce, which will strengthen Colorado's economy. All workers deserve paid leave benefits, no matter their income level, the type of work they do, or the size of their employer.

Arguments Against Proposition ?

1) Proposition XX represents a $1.3 billion tax increase on large and small businesses and all Colorado employees.

2) This measure creates a new and expensive bureaucracy with little accountability

3) With so many other unmet needs in Colorado like teacher pay and transportation, this is a program we cannot afford.

4) This ballot measure imposes a costly tax on small businesses but offers exemptions to cities, counties, school districts, towns and other local government entities. If workers have to pay an expensive tax, so should government.

5) This measure creates one of the most generous benefits programs in the nation, and based on the experience of other states, it may go bankrupt in a few short years.

6) This measure places a financial and regulatory burden on employers to navigate the program's complex requirements. Businesses face increased costs to accommodate paid leave and new sick leave obligations. The measure may also discourage local small businesses with nine or fewer employees from growing in order to avoid premium costs. In the end, it will be up to employers and employees to bear the cost of an uncertain and expensive new government program.

7) This measure requires employees to pay into a program that they may never benefit from using. Employees are already faced with job uncertainty in the current economy, and cannot afford to lose part of their salary or other benefits. If the demand for the benefit is higher than anticipated, employees will be expected to contribute an even larger percentage of wages in the future or sacrifice other workplace gains.

Estimate of Fiscal Impact for Proposition ?

State revenue. Proposition ? is expected to increase state revenue from PFML premiums by $626.0 million in state budget year 2022-23 (half-year impact) and $1.3 billion in state budget year 2023-24 (full-year impact). Because of higher-than-usual economic uncertainty, the amount of premiums collected may differ from this estimate. The measure may also increase state revenue from bond proceeds and potentially gifts, grants, or donations to cover program start-up costs beginning in state budget year 2021-22. The timing of when this additional revenue is received will depend on final budget estimates for the program and when revenue bonds are issued.

State spending. Proposition ? will increase state spending by $3.2 million in state budget year 2021-22 and $48.6 million in state budget year 2022-23 to create and administer the PFML insurance program. In state budget year 2023-24, state spending will increase by $276.7 million to administer the PFML program, pay the employer share of premiums for state employees, and pay PFML benefits to eligible employees in the second half of the year.

Local government spending. Beginning January 1, 2023, local governments that participate in the PFML insurance program, school districts, and other public entities will have increased spending to pay the employer share of premiums for their employees. Local governments will also be required to process payroll deductions, and coordinate leave and benefits for employees. Local governments that decline to participate will not pay premiums, but may still be required to handle premium deductions and coordinate leave and benefits for employees if they have employees that elect to participate in the PFML insurance program.

Initiative 283
Paid Family and Medical Leave Insurance Program
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Paid Family and Medical Leave Insurance Program
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Paid Family and Medical Leave Insurance Program
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Proposition ?
Paid Family and Medical Leave Insurance Program

Ballot Title:

Shall there be a change to the Colorado Revised Statutes concerning the creation of a paid family and medical leave program in Colorado, and, in connection therewith, authorizing paid family and medical leave for a covered employee who has a serious health condition, is caring for a new child or for a family member with a serious health condition, or has a need for leave related to a family member's military deployment or for safe leave; establishing a maximum of 12 weeks of family and medical leave, with an additional 4 weeks for pregnancy or childbirth complications, with a cap on the weekly benefit amount; requiring job protection for and prohibiting retaliation against an employee who takes paid family and medical leave; allowing a local government to opt out of the program; permitting employees of such a local government and self-employed individuals to participate in the program; exempting employers who offer an approved private paid family and medical leave plan; to pay for the program, requiring a premium of 0.9% of each employee's wages, up to a cap, through December 31, 2024, and as set thereafter, up to 1.2% of each employee's wages, by the director of the division of family and medical leave insurance; authorizing an employer to deduct up to 50% of the premium amount from an employee's wages and requiring the employer to pay the remainder of the premium, with an exemption for employers with fewer than 10 employees; creating the division of family and medical leave insurance as an enterprise within the department of labor and employment to administer the program; and establishing an enforcement and appeals process for retaliation and denied claims?

Text of Measure:

Be it Enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** part 4 to article 13.3 of title 8 as follows:

8-13.3-401. Short title. THIS PART 4 SHALL BE KNOWN AND MAY BE CITED AS THE "PAID FAMILY AND MEDICAL LEAVE INSURANCE ACT".

8-13.3-402. Purposes and findings. THE PEOPLE OF THE STATE OF COLORADO HEREBY FIND AND DECLARE THAT:

(1) WORKERS IN COLORADO EXPERIENCE A VARIETY OF PERSONAL AND FAMILY CAREGIVING OBLIGATIONS, BUT IT CAN BE DIFFICULT OR IMPOSSIBLE TO ADEQUATELY RESPOND TO THOSE NEEDS WITHOUT ACCESS TO PAID LEAVE.

(2) ACCESS TO PAID FAMILY AND MEDICAL LEAVE INSURANCE HELPS EMPLOYERS IN COLORADO BY REDUCING TURNOVER, RECRUITING WORKERS, AND PROMOTING A HEALTHY BUSINESS CLIMATE, WHILE ALSO ENSURING THAT SMALLER EMPLOYERS CAN COMPETE WITH LARGER EMPLOYERS BY PROVIDING PAID LEAVE BENEFITS TO THEIR WORKERS THROUGH AN AFFORDABLE INSURANCE PROGRAM.

(3) PAID FAMILY AND MEDICAL LEAVE INSURANCE WILL ALSO PROVIDE A NECESSARY SAFETY NET FOR ALL COLORADO WORKERS WHEN THEY HAVE PERSONAL OR FAMILY CAREGIVING NEEDS, INCLUDING LOW-INCOME WORKERS LIVING PAYCHECK TO PAYCHECK WHO ARE DISPROPORTIONATELY MORE LIKELY TO LACK ACCESS TO PAID LEAVE AND LEAST ABLE TO AFFORD UNPAID LEAVE.

(4) DUE TO THE NEED TO PROVIDE PAID TIME OFF TO COLORADO WORKERS TO ADDRESS FAMILY AND MEDICAL NEEDS, SUCH AS THE ARRIVAL OF A NEW CHILD, MILITARY FAMILY NEEDS, AND A PERSONAL OR A FAMILY MEMBER'S SERIOUS HEALTH CONDITION, INCLUDING THE EFFECTS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT, IT IS NECESSARY TO CREATE A STATEWIDE PAID FAMILY AND MEDICAL LEAVE INSURANCE ENTERPRISE AND TO AUTHORIZE THE ENTERPRISE TO:

(a) COLLECT INSURANCE PREMIUMS FROM EMPLOYERS AND EMPLOYEES AT RATES REASONABLY CALCULATED TO DEFRAY THE COSTS OF PROVIDING THE PROGRAM'S LEAVE BENEFITS TO WORKERS; AND

(b) RECEIVE AND EXPEND REVENUES GENERATED BY THE PREMIUMS AND OTHER MONEYS, ISSUE REVENUE BONDS AND OTHER OBLIGATIONS, EXPEND REVENUES GENERATED BY THE PREMIUMS TO PAY FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS AND ASSOCIATED ADMINISTRATIVE AND PROGRAM COSTS, AND EXERCISE OTHER POWERS NECESSARY AND APPROPRIATE TO CARRY OUT ITS PURPOSES.

(5) THE FISCAL APPROACH OF THIS PART 4 HAS BEEN 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.

(6) THE CREATION OF A STATEWIDE PAID FAMILY AND MEDICAL LEAVE INSURANCE ENTERPRISE IS IN THE PUBLIC INTEREST AND WILL PROMOTE THE HEALTH, SAFETY, AND WELFARE OF ALL COLORADANS, WHILE ALSO ENCOURAGING AN ENTREPRENEURIAL ATMOSPHERE AND ECONOMIC GROWTH.

8-13.3-403. Definitions. AS USED IN THIS PART 4, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "APPLICATION YEAR" MEANS THE 12-MONTH PERIOD BEGINNING ON THE FIRST DAY OF THE CALENDAR WEEK IN WHICH AN INDIVIDUAL FILES AN APPLICATION FOR FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS.

(2) "AVERAGE WEEKLY WAGE" MEANS ONE-THIRTEENTH OF THE WAGES PAID DURING THE QUARTER OF THE COVERED 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 CALCULATING AVERAGE WEEKLY WAGE, WAGES INCLUDE, BUT ARE NOT LIMITED TO, SALARY, WAGES, TIPS, COMMISSIONS, AND OTHER COMPENSATION AS DETERMINED BY THE DIRECTOR BY RULE.

(3) "COVERED INDIVIDUAL" MEANS ANY PERSON WHO:

(a)(I) EARNED AT LEAST $2,500 IN WAGES SUBJECT TO PREMIUMS UNDER THIS PART 4 DURING THE PERSON'S BASE PERIOD, AS DEFINED IN SECTION 8-70-103 (2), OR ALTERNATIVE BASE PERIOD, AS DEFINED IN SECTION 8-70-103 (1.5); OR

(II) ELECTS COVERAGE AND MEETS THE REQUIREMENTS OF SECTION 8-13.3-414;

(b) MEETS THE ADMINISTRATIVE REQUIREMENTS OUTLINED IN THIS PART 4 AND IN REGULATIONS; AND

(c) SUBMITS AN APPLICATION WITH A CLAIM FOR BENEFITS PURSUANT TO SECTION 8-13.3-416(6)(d).

(4) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION.

(5) "DIVISION" MEANS THE DIVISION OF FAMILY AND MEDICAL LEAVE INSURANCE CREATED IN SECTION 8-13.3-408.

(6) "DOMESTIC VIOLENCE" MEANS ANY CONDUCT THAT CONSTITUTES "DOMESTIC VIOLENCE" AS SET FORTH IN SECTION 18-6-800.3(1) OR SECTION 14-10-124 (1.3)(a) OR "DOMESTIC ABUSE" AS SET FORTH IN SECTION 13-14-101(2).

(7) "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 4, 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." "EMPLOYEE" DOES NOT INCLUDE AN "EMPLOYEE" AS DEFINED BY 45 U.S.C. SECTION 351(d) WHO IS SUBJECT TO THE FEDERAL "RAILROAD UNEMPLOYMENT INSURANCE ACT," 45 U.S.C. SECTION 351 ET SEQ.

(8)(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.

(c) "EMPLOYER" DOES NOT INCLUDE THE FEDERAL GOVERNMENT.

(9) "FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS" OR "BENEFITS" MEANS THE BENEFITS PROVIDED UNDER THE TERMS OF THIS PART 4.

(10) "FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM" OR "PROGRAM" MEANS THE PROGRAM CREATED IN SECTION 8-13.3-416.

(11) "FAMILY MEMBER" MEANS:

(a) REGARDLESS OF AGE, A BIOLOGICAL, ADOPTED OR FOSTER CHILD, STEPCHILD OR LEGAL WARD, A CHILD OF A DOMESTIC PARTNER, A CHILD TO WHOM THE COVERED INDIVIDUAL STANDS IN LOCO PARENTIS, OR A PERSON TO WHOM THE COVERED INDIVIDUAL STOOD IN LOCO PARENTIS WHEN THE PERSON WAS A MINOR;

(b) A BIOLOGICAL, ADOPTIVE OR FOSTER PARENT, STEPPARENT OR LEGAL GUARDIAN OF A COVERED INDIVIDUAL OR COVERED INDIVIDUAL'S SPOUSE OR DOMESTIC PARTNER OR A PERSON WHO STOOD IN LOCO PARENTIS WHEN THE COVERED INDIVIDUAL OR COVERED INDIVIDUAL'S SPOUSE OR DOMESTIC PARTNER WAS A MINOR CHILD;

(c) A PERSON TO WHOM THE COVERED INDIVIDUAL IS LEGALLY MARRIED UNDER THE LAWS OF ANY STATE, OR A DOMESTIC PARTNER OF A COVERED INDIVIDUAL AS DEFINED IN SECTION 24-50-603 (6.5);

(d) A GRANDPARENT, GRANDCHILD OR SIBLING (WHETHER A BIOLOGICAL, FOSTER, ADOPTIVE OR STEP RELATIONSHIP) OF THE COVERED INDIVIDUAL OR COVERED INDIVIDUAL'S SPOUSE OR DOMESTIC PARTNER; OR

(e) AS SHOWN BY THE COVERED INDIVIDUAL, ANY OTHER INDIVIDUAL WITH WHOM THE COVERED INDIVIDUAL HAS A SIGNIFICANT PERSONAL BOND THAT IS OR IS LIKE A FAMILY RELATIONSHIP, REGARDLESS OF BIOLOGICAL OR LEGAL RELATIONSHIP.

(12) "FUND" MEANS THE FAMILY AND MEDICAL LEAVE INSURANCE FUND CREATED IN SECTION 8-13.3-418.

(13) "HEALTH CARE PROVIDER" MEANS ANY PERSON LICENSED, CERTIFIED, OR REGISTERED UNDER FEDERAL OR COLORADO LAW TO PROVIDE MEDICAL OR EMERGENCY SERVICES, INCLUDING, BUT NOT LIMITED TO, PHYSICIANS, DOCTORS, NURSES, EMERGENCY ROOM PERSONNEL, AND MIDWIVES.

(14) "LOCAL GOVERNMENT" HAS THE SAME MEANING AS SET FORTH IN SECTION 29-1-304.5(3)(b).

(15) "PAID FAMILY AND MEDICAL LEAVE" MEANS LEAVE TAKEN FROM EMPLOYMENT IN CONNECTION WITH FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS UNDER THIS PART 4.

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

(17) "RETALIATORY PERSONNEL ACTION" MEANS DENIAL OF ANY RIGHT GUARANTEED UNDER THIS PART 4, INCLUDING, BUT NOT LIMITED TO, ANY THREAT, DISCHARGE, SUSPENSION, DEMOTION, REDUCTION OF HOURS, OR ANY OTHER ADVERSE ACTION AGAINST AN EMPLOYEE FOR THE EXERCISE OF ANY RIGHT GUARANTEED IN THIS PART 4. "RETALIATORY PERSONNEL ACTION" ALSO INCLUDES INTERFERENCE WITH OR PUNISHMENT FOR IN ANY MANNER PARTICIPATING IN OR ASSISTING AN INVESTIGATION, PROCEEDING, OR HEARING UNDER THIS PART 4.

(18) "SAFE LEAVE" MEANS ANY LEAVE BECAUSE THE COVERED INDIVIDUAL OR THE COVERED INDIVIDUAL'S FAMILY MEMBER IS THE VICTIM OF DOMESTIC VIOLENCE, THE VICTIM OF STALKING, OR THE VICTIM OF SEXUAL ASSAULT OR ABUSE. SAFE LEAVE UNDER THIS PART 4 APPLIES IF THE COVERED INDIVIDUAL IS USING THE LEAVE FROM WORK TO PROTECT THE COVERED INDIVIDUAL OR THE COVERED INDIVIDUAL'S FAMILY MEMBER BY:

(a) SEEKING A CIVIL PROTECTION ORDER TO PREVENT DOMESTIC VIOLENCE PURSUANT TO SECTIONS 13-14-104.5, 13-14-106, OR 13-14-108;

(b) OBTAINING MEDICAL CARE OR MENTAL HEALTH COUNSELING OR BOTH FOR HIMSELF OR HERSELF OR FOR HIS OR HER CHILDREN TO ADDRESS PHYSICAL OR PSYCHOLOGICAL INJURIES RESULTING FROM THE ACT OF DOMESTIC VIOLENCE, STALKING, OR SEXUAL ASSAULT OR ABUSE;

(c) MAKING HIS OR HER HOME SECURE FROM THE PERPETRATOR OF THE ACT OF DOMESTIC VIOLENCE, STALKING, OR SEXUAL ASSAULT OR ABUSE, OR SEEKING NEW HOUSING TO ESCAPE SAID PERPETRATOR; OR

(d) SEEKING LEGAL ASSISTANCE TO ADDRESS ISSUES ARISING FROM THE ACT OF DOMESTIC VIOLENCE, STALKING, OR SEXUAL ASSAULT OR ABUSE, OR ATTENDING AND PREPARING FOR COURT- RELATED PROCEEDINGS ARISING FROM SAID ACT OR CRIME.

(19) "SERIOUS HEALTH CONDITION" IS AN ILLNESS, INJURY, IMPAIRMENT, PREGNANCY, RECOVERY FROM CHILDBIRTH, OR PHYSICAL OR MENTAL CONDITION THAT INVOLVES INPATIENT CARE IN A HOSPITAL, HOSPICE OR RESIDENTIAL MEDICAL CARE FACILITY, OR CONTINUING TREATMENT BY A HEALTH CARE PROVIDER.

(20) "SEXUAL ASSAULT OR ABUSE" MEANS ANY OFFENSE 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.

(21) "STALKING" MEANS ANY ACT AS DESCRIBED IN SECTION 18-3-602.

(22) "STATE AVERAGE WEEKLY WAGE" MEANS THE STATE AVERAGE WEEKLY WAGE DETERMINED IN ACCORDANCE WITH SECTION 8-47-106.

8-13.3-404. Eligibility. BEGINNING JANUARY 1, 2024, AN INDIVIDUAL HAS THE RIGHT TO TAKE PAID FAMILY AND MEDICAL LEAVE, AND TO RECEIVE FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS WHILE TAKING PAID FAMILY AND MEDICAL LEAVE, IF THE INDIVIDUAL:

(1) MEETS THE DEFINITION OF "COVERED INDIVIDUAL" UNDER SECTION 8-13.3-403 (3); AND

(2) MEETS ONE OF THE FOLLOWING REQUIREMENTS:

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

(b) IS CARING FOR A FAMILY MEMBER WITH A SERIOUS HEALTH CONDITION;

(c) HAS A SERIOUS HEALTH CONDITION;

(d) BECAUSE OF ANY QUALIFYING EXIGENCY LEAVE;

(e) HAS A NEED FOR SAFE LEAVE.

8-13.3-405. Duration. (1) THE MAXIMUM NUMBER OF WEEKS FOR WHICH A COVERED INDIVIDUAL MAY TAKE PAID FAMILY AND MEDICAL LEAVE AND FOR WHICH FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS ARE PAYABLE FOR ANY PURPOSE, OR PURPOSES IN AGGREGATE, UNDER SECTION 8-13.3-404 (2) IN AN APPLICATION YEAR IS 12 WEEKS; EXCEPT THAT BENEFITS ARE PAYABLE UP TO AN ADDITIONAL FOUR WEEKS TO A COVERED INDIVIDUAL WITH A SERIOUS HEALTH CONDITION RELATED TO PREGNANCY COMPLICATIONS OR CHILDBIRTH COMPLICATIONS.

(2) THE FIRST PAYMENT OF BENEFITS SHALL BE MADE TO AN INDIVIDUAL WITHIN TWO WEEKS AFTER THE CLAIM IS FILED, AND SUBSEQUENT PAYMENTS SHALL BE MADE EVERY TWO WEEKS THEREAFTER.

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

(4) THE COVERED INDIVIDUAL SHALL MAKE A REASONABLE EFFORT TO SCHEDULE PAID FAMILY AND MEDICAL LEAVE UNDER THIS PART 4 SO AS NOT TO UNDULY DISRUPT THE OPERATIONS OF THE EMPLOYER.

(5) IN ANY CASE IN WHICH THE NECESSITY FOR LEAVE UNDER THIS PART 4 IS FORESEEABLE, AN EMPLOYEE SHALL PROVIDE NOTICE TO THE INDIVIDUAL'S EMPLOYER WITH NOT LESS THAN 30 DAYS' NOTICE BEFORE THE DATE THE LEAVE IS TO BEGIN OF THE INDIVIDUAL'S INTENTION TO TAKE LEAVE UNDER THIS PART 4. IF THE NECESSITY FOR LEAVE IS NOT FORESEEABLE OR PROVIDING 30 DAYS' NOTICE IS NOT POSSIBLE, THE INDIVIDUAL SHALL PROVIDE THE NOTICE AS SOON AS PRACTICABLE.

(6) NOTHING IN THIS SECTION ENTITLES A COVERED INDIVIDUAL TO MORE LEAVE THAN REQUIRED UNDER THIS SECTION.

8-13.3-406. Amount of benefits. (1) THE AMOUNT OF FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS SHALL BE DETERMINED AS FOLLOWS:

(a) THE WEEKLY BENEFIT SHALL BE DETERMINED AS FOLLOWS:

(I) THE PORTION OF THE COVERED INDIVIDUAL'S AVERAGE WEEKLY WAGE THAT IS EQUAL TO OR LESS THAN 50 PERCENT OF THE STATE AVERAGE WEEKLY WAGE SHALL BE REPLACED AT A RATE OF 90 PERCENT; AND

(II) THE PORTION OF THE COVERED INDIVIDUAL'S AVERAGE WEEKLY WAGE THAT IS MORE THAN 50 PERCENT OF THE STATE AVERAGE WEEKLY WAGE SHALL BE REPLACED AT A RATE OF 50 PERCENT.

(b) THE MAXIMUM WEEKLY BENEFIT IS 90 PERCENT OF THE STATE AVERAGE WEEKLY WAGE, EXCEPT THAT FOR PAID FAMILY AND MEDICAL LEAVE BEGINNING BEFORE JANUARY 1, 2025, THE MAXIMUM WEEKLY BENEFIT IS 1,100 DOLLARS.

(2) THE DIVISION SHALL CALCULATE A COVERED INDIVIDUAL'S WEEKLY BENEFIT AMOUNT BASED ON THE COVERED INDIVIDUAL'S AVERAGE WEEKLY WAGE EARNED FROM THE JOB OR JOBS FROM WHICH THE COVERED INDIVIDUAL IS TAKING PAID FAMILY AND MEDICAL LEAVE, UP TO THE MAXIMUM TOTAL BENEFIT ESTABLISHED IN SECTION 8-13.3-406 (1)(b). IF A COVERED INDIVIDUAL TAKING PAID FAMILY AND MEDICAL LEAVE FROM A JOB CONTINUES WORKING AT AN ADDITIONAL JOB OR JOBS DURING THIS TIME, THE DIVISION SHALL NOT CONSIDER THE COVERED INDIVIDUAL'S AVERAGE WEEKLY WAGE EARNED FROM THE ADDITIONAL JOB OR JOBS WHEN CALCULATING THE COVERED INDIVIDUAL'S WEEKLY BENEFIT AMOUNT. A COVERED INDIVIDUAL WITH MULTIPLE JOBS MAY ELECT WHETHER TO TAKE LEAVE FROM ONE JOB OR MULTIPLE JOBS.

8-13.3-407. Premiums. (1) PAYROLL PREMIUMS SHALL BE AUTHORIZED IN ORDER TO FINANCE THE PAYMENT OF FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS UNDER THIS PART 4, AND ADMINISTRATION OF THE FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.

(2) BEGINNING ON JANUARY 1, 2023, FOR EACH EMPLOYEE, AN EMPLOYER SHALL REMIT TO THE FUND ESTABLISHED UNDER SECTION 8-13.3-418 PREMIUMS IN THE FORM AND MANNER DETERMINED BY THE DIVISION.

(3) (a) FROM JANUARY 1, 2023, THROUGH DECEMBER 31, 2024, THE PREMIUM AMOUNT IS NINE-TENTHS OF ONE PERCENT OF WAGES PER EMPLOYEE.

(b) FOR THE 2025 CALENDAR YEAR, AND EACH CALENDAR YEAR THEREAFTER, THE DIRECTOR SHALL SET THE PREMIUM BASED ON A PERCENT OF EMPLOYEE WAGES AND AT THE RATE NECESSARY TO OBTAIN A TOTAL AMOUNT OF PREMIUM CONTRIBUTIONS EQUAL TO ONE HUNDRED THIRTY-FIVE PERCENT OF THE BENEFITS PAID DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR PLUS AN AMOUNT EQUAL TO ONE HUNDRED PERCENT OF THE COST OF ADMINISTRATION OF THE PAYMENT OF THOSE BENEFITS DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR, LESS THE AMOUNT OF NET ASSETS REMAINING IN THE FUND AS OF DECEMBER 31 OF THE IMMEDIATELY PRECEDING CALENDAR YEAR. THE PREMIUM SHALL NOT EXCEED ONE AND TWO TENTHS OF A PERCENT OF WAGES PER EMPLOYEE. THE DIVISION SHALL PROVIDE PUBLIC NOTICE IN ADVANCE OF JANUARY FIRST OF ANY CHANGES TO THE PREMIUM.

(4) (a) A SELF-EMPLOYED INDIVIDUAL WHO ELECTS COVERAGE UNDER SECTION 8-13.3-414 SHALL PAY ONLY 50 PERCENT OF THE PREMIUM REQUIRED FOR AN EMPLOYEE BY SECTION 8-13.3-407(3) ON THAT INDIVIDUAL'S INCOME FROM SELF-EMPLOYMENT.

(b) AN EMPLOYEE OF A LOCAL GOVERNMENT WHO ELECTS COVERAGE UNDER SECTION 8-13.3-414 SHALL PAY ONLY 50 PERCENT OF THE PREMIUM REQUIRED FOR AN EMPLOYEE BY SECTION 8-13.3-407(3) ON THAT EMPLOYEE'S INCOME FROM THAT LOCAL GOVERNMENT EMPLOYMENT.

(c) AN EMPLOYEE OF A LOCAL GOVERNMENT OR A SELF-EMPLOYED PERSON WHO ELECTS COVERAGE UNDER SECTION 8-13.3-414 SHALL REMIT THE PREMIUM AMOUNT REQUIRED BY THIS SUBSECTION DIRECTLY TO THE DIVISION, IN THE FORM AND MANNER REQUIRED BY THE DIRECTOR BY RULE.

(5) AN EMPLOYER WITH 10 OR MORE EMPLOYEES MAY DEDUCT UP TO 50 PERCENT OF THE PREMIUM REQUIRED FOR AN EMPLOYEE BY SECTION 8-13.3-407 (3) FROM THAT EMPLOYEE'S WAGES AND SHALL REMIT 100 PERCENT OF THE PREMIUM REQUIRED BY SECTION 8-13.3-407(3) TO THE FUND. AN EMPLOYER WITH FEWER THAN 10 EMPLOYEES MAY DEDUCT UP TO 50 PERCENT OF THE PREMIUM REQUIRED FOR AN EMPLOYEE BY SECTION 8-13.3-407(3) FROM THAT EMPLOYEE'S WAGES AND SHALL REMIT 50 PERCENT OF THE PREMIUM REQUIRED BY SECTION 8-13.3-407(3) TO THE FUND.

(6) PREMIUMS SHALL NOT BE REQUIRED FOR EMPLOYEES' WAGES ABOVE THE CONTRIBUTION AND BENEFIT BASE LIMIT ESTABLISHED ANNUALLY BY THE FEDERAL SOCIAL SECURITY ADMINISTRATION FOR PURPOSES OF THE FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM LIMITS PURSUANT TO 42 U.S.C. SECTION 430.

(7) THE PREMIUMS COLLECTED UNDER THIS PART 4 ARE USED EXCLUSIVELY FOR THE PAYMENT OF FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS AND THE ADMINISTRATION OF THE PROGRAM. PREMIUMS ESTABLISHED UNDER THIS SECTION ARE FEES AND NOT TAXES.

(8) AN EMPLOYER WITH AN APPROVED PRIVATE PLAN UNDER SECTION 8-13.3-421 SHALL NOT BE REQUIRED TO REMIT PREMIUMS UNDER THIS SECTION TO THE FUND.

(9) NOTWITHSTANDING SECTION 8-13.3-407(2), IF A LOCAL GOVERNMENT HAS DECLINED PARTICIPATION IN THE PROGRAM IN ACCORDANCE WITH SECTION 8-13.3-422:

(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 8-13.3-414; AND

(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- 414.

8-13.3-408. Division of family and medical leave insurance. (1) THERE IS HEREBY CREATED IN THE DEPARTMENT OF LABOR AND EMPLOYMENT 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 COLORADO 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 COLORADO CONSTITUTION.

(b) THE ENTERPRISE ESTABLISHED PURSUANT TO THIS SECTION HAS ALL THE POWERS AND DUTIES AUTHORIZED BY THIS PART 4 PERTAINING TO FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS. THE FUND CONSTITUTES PART OF THE ENTERPRISE ESTABLISHED PURSUANT TO THIS SECTION.

(c) NOTHING IN THIS SECTION LIMITS OR RESTRICTS THE AUTHORITY OF THE DIVISION TO EXPEND ITS REVENUES CONSISTENT WITH THIS PART 4.

(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 SHALL BE DEPOSITED INTO THE FUND.

8-13.3-409. Leave and employment protection. (1) ANY COVERED INDIVIDUAL WHO HAS BEEN EMPLOYED WITH THE COVERED INDIVIDUAL'S CURRENT EMPLOYER FOR AT LEAST 180 DAYS PRIOR TO THE COMMENCEMENT OF THE COVERED INDIVIDUAL'S PAID FAMILY AND MEDICAL LEAVE WHO EXERCISES THE COVERED INDIVIDUAL'S RIGHT TO FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS SHALL BE ENTITLED, UPON RETURN FROM THAT LEAVE, TO BE RESTORED BY THE EMPLOYER TO THE POSITION HELD BY THE COVERED INDIVIDUAL WHEN THE LEAVE COMMENCED, OR TO BE RESTORED TO AN EQUIVALENT POSITION WITH EQUIVALENT EMPLOYMENT BENEFITS, PAY AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT. NOTHING IN THIS SECTION ENTITLES ANY RESTORED EMPLOYEE TO:

(a) THE ACCRUAL OF ANY SENIORITY OR EMPLOYMENT BENEFITS DURING ANY PERIOD OF LEAVE; OR

(b) ANY RIGHT, BENEFIT, OR POSITION OF EMPLOYMENT OTHER THAN ANY RIGHT, BENEFIT, OR POSITION TO WHICH THE EMPLOYEE WOULD HAVE BEEN ENTITLED HAD THE EMPLOYEE NOT TAKEN THE LEAVE. NOTHING IN THIS SECTION RELIEVES AN EMPLOYER OF ANY OBLIGATION UNDER A COLLECTIVE BARGAINING AGREEMENT.

(2) DURING ANY PAID FAMILY AND MEDICAL LEAVE TAKEN PURSUANT TO THIS PART 4, THE EMPLOYER SHALL MAINTAIN ANY HEALTH CARE BENEFITS THE COVERED INDIVIDUAL HAD PRIOR TO TAKING SUCH LEAVE FOR THE DURATION OF THE LEAVE AS IF THE COVERED INDIVIDUAL HAD CONTINUED IN EMPLOYMENT CONTINUOUSLY FROM THE DATE THE INDIVIDUAL COMMENCED THE LEAVE UNTIL THE DATE THE FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS TERMINATE. THE COVERED INDIVIDUAL

SHALL CONTINUE TO PAY THE COVERED INDIVIDUAL'S SHARE OF THE COST OF HEALTH BENEFITS AS REQUIRED PRIOR TO THE COMMENCEMENT OF THE LEAVE.

(3) IT IS UNLAWFUL FOR AN EMPLOYER OR ANY OTHER PERSON TO INTERFERE WITH, RESTRAIN, OR DENY THE EXERCISE OF, OR THE ATTEMPT TO EXERCISE, ANY RIGHT PROTECTED UNDER THIS PART 4.

(4) AN EMPLOYER, EMPLOYMENT AGENCY, EMPLOYEE ORGANIZATION OR OTHER PERSON SHALL NOT TAKE RETALIATORY PERSONNEL ACTION OR OTHERWISE DISCRIMINATE AGAINST A PERSON BECAUSE THE INDIVIDUAL EXERCISED RIGHTS PROTECTED UNDER THIS PART 4. SUCH RIGHTS INCLUDE, BUT ARE NOT LIMITED TO, THE RIGHT TO: REQUEST, FILE FOR, APPLY FOR OR USE BENEFITS PROVIDED FOR UNDER THIS PART 4; TAKE PAID FAMILY AND MEDICAL LEAVE FROM WORK UNDER THIS PART 4; COMMUNICATE TO THE EMPLOYER OR ANY OTHER PERSON OR ENTITY AN INTENT TO FILE A CLAIM, A COMPLAINT WITH THE DIVISION OR COURTS, OR AN APPEAL; TESTIFY OR ASSIST IN ANY INVESTIGATION, HEARING OR PROCEEDING UNDER THIS PART 4, AT ANY TIME, INCLUDING DURING THE PERIOD IN WHICH THE PERSON RECEIVES FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS UNDER THIS PART 4; INFORM ANY PERSON ABOUT ANY EMPLOYER'S ALLEGED VIOLATION OF THIS PART 4; AND INFORM ANY PERSON OF HIS OR HER RIGHTS UNDER THIS PART 4.

(5) IT IS UNLAWFUL FOR AN EMPLOYER TO COUNT PAID FAMILY AND MEDICAL LEAVE TAKEN UNDER THIS PART 4 AS AN ABSENCE THAT MAY LEAD TO OR RESULT IN DISCIPLINE, DISCHARGE, DEMOTION, SUSPENSION OR ANY OTHER ADVERSE ACTION.

(6) (a) AN AGGRIEVED INDIVIDUAL UNDER THIS SECTION MAY BRING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION.

(b) AN EMPLOYER WHO VIOLATES THIS SECTION IS SUBJECT TO THE DAMAGES AND EQUITABLE RELIEF AVAILABLE UNDER 29 U.S.C. SECTION 2617(a)(1).

(c) EXCEPT AS PROVIDED IN SECTION 8-13.3-409 (6)(d), 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) IN THE CASE OF SUCH ACTION BROUGHT FOR A WILLFUL VIOLATION OF THIS SECTION, SUCH ACTION MAY BE BROUGHT WITHIN 3 YEARS OF THE DATE OF THE LAST EVENT CONSTITUTING THE ALLEGED VIOLATION FOR WHICH SUCH ACTION IS BROUGHT.

(7) THE DIRECTOR, BY RULE, SHALL ESTABLISH A FINE STRUCTURE FOR EMPLOYERS WHO VIOLATE THIS SECTION, WITH A MAXIMUM FINE OF $500 PER VIOLATION. THE DIRECTOR SHALL TRANSFER ANY FINES COLLECTED PURSUANT TO THIS SECTION TO THE STATE TREASURER FOR DEPOSIT IN THE FUND. THE DIRECTOR, BY RULE, SHALL ESTABLISH A PROCESS FOR THE DETERMINATION, ASSESSMENT, AND APPEAL OF FINES UNDER THIS SUBSECTION.

(8) THIS SECTION DOES NOT APPLY TO AN EMPLOYEE OF A LOCAL GOVERNMENT THAT HAS ELECTED COVERAGE PURSUANT TO SECTION 8-13.3-414.

8-13.3-410. Coordination of benefits. (1)(a) LEAVE TAKEN WITH WAGE REPLACEMENT UNDER THIS PART 4 THAT ALSO QUALIFIES AS LEAVE UNDER THE "FAMILY AND MEDICAL LEAVE ACT," AS AMENDED, PUB. L. 103-3, CODIFIED AT 29 U.S.C. SEC. 2601 ET. SEQ., OR PART 2 OF ARTICLE 13.3 OF TITLE 8 RUNS CONCURRENTLY WITH LEAVE TAKEN UNDER THE "FAMILY AND MEDICAL LEAVE ACT" OR PART 2 OF ARTICLE 13.3 OF TITLE 8, AS APPLICABLE.

(b) AN EMPLOYER MAY REQUIRE THAT PAYMENT MADE OR PAID FAMILY AND MEDICAL LEAVE TAKEN UNDER THIS PART 4 BE MADE OR TAKEN CONCURRENTLY OR OTHERWISE COORDINATED WITH PAYMENT MADE OR LEAVE ALLOWED UNDER THE TERMS OF A DISABILITY POLICY, INCLUDING A DISABILITY POLICY CONTAINED WITHIN AN EMPLOYMENT CONTRACT, OR A SEPARATE BANK OF TIME OFF SOLELY FOR THE PURPOSE OF PAID FAMILY AND MEDICAL LEAVE UNDER THIS PART 4, AS APPLICABLE. THE EMPLOYER SHALL GIVE ITS EMPLOYEES WRITTEN NOTICE OF THIS REQUIREMENT.

(c) NOTWITHSTANDING SECTION 8-13.3-410 (1)(b), UNDER NO CIRCUMSTANCES SHALL AN EMPLOYEE BE REQUIRED TO USE OR EXHAUST ANY ACCRUED VACATION LEAVE, SICK LEAVE, OR OTHER PAID TIME OFF PRIOR TO OR WHILE RECEIVING FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS UNDER THIS PART 4. HOWEVER, AN EMPLOYEE AND AN EMPLOYER MAY MUTUALLY AGREE THAT THE EMPLOYEE MAY USE ANY ACCRUED VACATION LEAVE, SICK LEAVE, OR OTHER PAID TIME OFF WHILE RECEIVING FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS UNDER THIS PART 4, UNLESS THE AGGREGATE AMOUNT A COVERED INDIVIDUAL WOULD RECEIVE WOULD EXCEED THE COVERED INDIVIDUAL'S AVERAGE WEEKLY WAGE. NOTHING IN THIS SUBSECTION REQUIRES AN EMPLOYEE TO RECEIVE OR USE, OR AN EMPLOYER TO PROVIDE, ADDITIONAL PAID TIME OFF AS DESCRIBED IN THIS SUBSECTION.

(2)(a) THIS PART 4 DOES NOT DIMINISH:

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

(II) AN EMPLOYER'S OBLIGATION TO COMPLY WITH A COLLECTIVE BARGAINING AGREEMENT, EMPLOYER POLICY, OR EMPLOYMENT CONTRACT, AS APPLICABLE, THAT PROVIDES GREATER LEAVE THAN PROVIDED UNDER THIS PART 4; OR

(III) ANY LAW THAT PROVIDES GREATER LEAVE THAN PROVIDED UNDER THIS PART 4.

(b) AFTER THE EFFECTIVE DATE OF THIS PART 4, AN EMPLOYER POLICY ADOPTED OR RETAINED SHALL NOT DIMINISH AN EMPLOYEE'S RIGHT TO BENEFITS UNDER THIS PART 4. ANY AGREEMENT BY AN EMPLOYEE TO WAIVE THE EMPLOYEE'S RIGHTS UNDER THIS PART 4 IS VOID AS AGAINST PUBLIC POLICY.

(3) THE DIRECTOR SHALL DETERMINE BY RULE THE INTERACTION OF BENEFITS OR COORDINATION OF LEAVE WHEN A COVERED INDIVIDUAL IS CONCURRENTLY ELIGIBLE FOR PAID FAMILY AND MEDICAL LEAVE AND BENEFITS UNDER THIS PART 4 WITH:

(a) LEAVE PURSUANT TO SECTION 24-34-402.7; OR

(b) WORKERS' COMPENSATION BENEFITS UNDER ARTICLE 42 OF TITLE 8.

8-13.3-411. Notice. THE DIVISION SHALL DEVELOP A PROGRAM NOTICE THAT DETAILS THE PROGRAM REQUIREMENTS, BENEFITS, CLAIMS PROCESS, PAYROLL DEDUCTION REQUIREMENTS, THE RIGHT TO JOB PROTECTION AND BENEFITS CONTINUATION UNDER SECTION 8-13.3-409, PROTECTION AGAINST RETALIATORY PERSONNEL ACTIONS OR OTHER DISCRIMINATION, 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 8-13.3-404. THE DIVISION SHALL PROVIDE THE INFORMATION REQUIRED BY THIS SECTION IN A MANNER THAT IS CULTURALLY COMPETENT AND LINGUISTICALLY APPROPRIATE.

8-13.3-412. Appeals. (1) THE DIRECTOR SHALL ESTABLISH A SYSTEM FOR ADMINISTRATIVE REVIEW AND DETERMINATION OF CLAIMS, AND APPEAL OF SUCH DETERMINATIONS, INCLUDING DENIAL OF FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS. IN ESTABLISHING SUCH SYSTEM, THE DIRECTOR MAY UTILIZE ANY AND ALL PROCEDURES AND APPEALS MECHANISMS ESTABLISHED UNDER SECTIONS 8-4-111.5(5), 8-74-102, AND 8-74-103.

(2) JUDICIAL REVIEW OF ANY DECISION WITH RESPECT TO FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS UNDER THIS SECTION IS PERMITTED IN A COURT OF COMPETENT JURISDICTION AFTER A COVERED INDIVIDUAL AGGRIEVED THEREBY HAS EXHAUSTED ALL ADMINISTRATIVE REMEDIES ESTABLISHED BY THE DIRECTOR. 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.

8-13.3-413. Erroneous payments and disqualification for benefits. (1) A COVERED INDIVIDUAL IS DISQUALIFIED FROM FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS FOR ONE YEAR IF THE INDIVIDUAL IS DETERMINED BY THE DIRECTOR TO HAVE WILLFULLY MADE A FALSE STATEMENT OR MISREPRESENTATION REGARDING A MATERIAL FACT, OR WILLFULLY FAILED TO REPORT A MATERIAL FACT, TO OBTAIN BENEFITS UNDER THIS PART 4.

(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 HIS OR HER DISCRETION TO WAIVE, IN WHOLE OR IN PART, THE AMOUNT OF ANY SUCH PAYMENTS WHERE THE RECOVERY WOULD BE AGAINST EQUITY AND GOOD CONSCIENCE.

8-13.3-414. Elective coverage. (1) AN EMPLOYEE OF A LOCAL GOVERNMENT THAT HAS DECLINED PARTICIPATION IN THE PROGRAM PURSUANT TO SECTION 8-13.3-422 OR A SELF-EMPLOYED PERSON, INCLUDING AN INDEPENDENT CONTRACTOR, SOLE PROPRIETOR, PARTNER OR JOINT VENTURER, MAY ELECT COVERAGE UNDER THIS PART 4 FOR AN INITIAL PERIOD OF NOT LESS THAN THREE YEARS. THE SELF-EMPLOYED PERSON OR EMPLOYEE OF A LOCAL GOVERNMENT MUST FILE A NOTICE OF ELECTION IN WRITING WITH THE DIRECTOR, AS REQUIRED BY THE DIVISION. THE ELECTION BECOMES EFFECTIVE ON THE DATE OF FILING THE NOTICE. AS A CONDITION OF ELECTION, THE SELF-EMPLOYED PERSON OR EMPLOYEE OF A LOCAL GOVERNMENT MUST AGREE TO SUPPLY ANY INFORMATION CONCERNING INCOME THAT THE DIVISION DEEMS NECESSARY.

(2) A SELF-EMPLOYED PERSON OR AN EMPLOYEE OF A LOCAL GOVERNMENT WHO HAS ELECTED COVERAGE MAY WITHDRAW FROM COVERAGE WITHIN 30 DAYS AFTER THE END OF THE THREE-YEAR PERIOD OF COVERAGE, OR AT SUCH OTHER TIMES AS THE DIRECTOR MAY PRESCRIBE BY RULE, BY FILING WRITTEN NOTICE WITH THE DIRECTOR, SUCH WITHDRAWAL TO TAKE EFFECT NOT SOONER THAN 30 DAYS AFTER FILING THE NOTICE.

8-13.3-415. Reimbursement of advance payments. (1) EXCEPT AS PROVIDED IN SECTION 8-13.3-415 (2), IF AN EMPLOYER HAS MADE ADVANCE PAYMENTS TO AN EMPLOYEE THAT ARE EQUAL TO OR GREATER THAN THE AMOUNT REQUIRED UNDER THIS PART 4, DURING ANY PERIOD OF PAID FAMILY AND MEDICAL LEAVE FOR WHICH SUCH EMPLOYEE IS ENTITLED TO THE BENEFITS PROVIDED BY THIS PART 4, THE EMPLOYER IS ENTITLED TO BE REIMBURSED BY THE FUND OUT OF ANY BENEFITS DUE OR TO BECOME DUE FOR THE EXISTING PAID FAMILY AND MEDICAL LEAVE, IF THE CLAIM FOR REIMBURSEMENT IS FILED WITH THE FUND PRIOR TO THE FUND'S PAYMENT OF THE BENEFITS TO THE EMPLOYEE.

(2) IF AN EMPLOYER THAT PROVIDES FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS THROUGH A PRIVATE PLAN APPROVED PURSUANT TO SECTION 8-13.3-421 MAKES ADVANCE PAYMENTS TO AN EMPLOYEE THAT ARE EQUAL TO OR GREATER THAN THE AMOUNT REQUIRED UNDER THIS PART 4, DURING ANY PERIOD OF PAID FAMILY AND MEDICAL LEAVE FOR WHICH SUCH EMPLOYEE IS ENTITLED TO THE BENEFITS PROVIDED BY THIS PART 4, THE ENTITY THAT ISSUED THE PRIVATE PLAN SHALL REIMBURSE THE EMPLOYER OUT OF ANY BENEFITS DUE OR TO BECOME DUE FOR THE EXISTING PAID FAMILY AND MEDICAL LEAVE, IF THE CLAIM FOR REIMBURSEMENT IS FILED WITH THE ENTITY THAT ISSUED THE PRIVATE PLAN PRIOR TO THE PRIVATE PLAN'S PAYMENT OF THE BENEFITS UNDER THE PRIVATE PLAN TO THE EMPLOYEE.

(3) THE DIRECTOR, BY RULE, SHALL ESTABLISH A PROCESS FOR REIMBURSEMENTS UNDER THIS SECTION.

8-13.3-416. Family and medical leave insurance program. (1) BY JANUARY 1, 2023, THE DIVISION SHALL ESTABLISH AND ADMINISTER A FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM AND BEGIN COLLECTING PREMIUMS AS SPECIFIED IN THIS PART 4. BY JANUARY 1, 2024, THE DIVISION SHALL START RECEIVING CLAIMS FROM AND PAYING FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS TO COVERED INDIVIDUALS.

(2) THE DIVISION SHALL ESTABLISH REASONABLE PROCEDURES AND FORMS FOR FILING CLAIMS FOR BENEFITS UNDER THIS PART 4 AND SHALL SPECIFY WHAT SUPPORTING DOCUMENTATION IS NECESSARY TO SUPPORT A CLAIM FOR BENEFITS, INCLUDING ANY DOCUMENTATION REQUIRED FROM A HEALTH CARE PROVIDER FOR PROOF OF A SERIOUS HEALTH CONDITION AND ANY DOCUMENTATION REQUIRED BY THE DIVISION WITH REGARDS TO A CLAIM FOR SAFE LEAVE.

(3) THE DIVISION SHALL NOTIFY THE EMPLOYER WITHIN FIVE BUSINESS DAYS OF A CLAIM BEING FILED PURSUANT TO THIS PART 4.

(4) THE DIVISION SHALL USE INFORMATION SHARING AND INTEGRATION TECHNOLOGY TO FACILITATE THE DISCLOSURE OF RELEVANT INFORMATION OR RECORDS SO LONG AS AN INDIVIDUAL CONSENTS TO THE DISCLOSURE AS REQUIRED UNDER STATE LAW.

(5) INFORMATION CONTAINED IN THE FILES AND RECORDS PERTAINING TO AN INDIVIDUAL UNDER THIS PART 4 ARE CONFIDENTIAL AND NOT OPEN TO PUBLIC INSPECTION, OTHER THAN TO PUBLIC EMPLOYEES IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES. HOWEVER, THE INDIVIDUAL OR AN AUTHORIZED REPRESENTATIVE OF AN INDIVIDUAL MAY REVIEW THE RECORDS OR RECEIVE SPECIFIC INFORMATION FROM THE RECORDS UPON THE PRESENTATION OF THE INDIVIDUAL'S SIGNED AUTHORIZATION.

(6) THE DIRECTOR SHALL ADOPT RULES AS NECESSARY OR AS SPECIFIED IN THIS PART 4 TO IMPLEMENT AND ADMINISTER THIS PART 4. THE DIRECTOR SHALL ADOPT RULES INCLUDING, BUT NOT LIMITED TO:

(a) CONFIDENTIALITY OF INFORMATION RELATED TO CLAIMS FILED OR APPEALS TAKEN;

(b) GUIDANCE ON THE FACTORS USED TO DETERMINE WHETHER AN INDIVIDUAL IS A COVERED INDIVIDUAL'S FAMILY MEMBER;

(c) THE FORM AND MANNER OF FILING CLAIMS FOR BENEFITS AND PROVIDING RELATED DOCUMENTATION PURSUANT TO SECTION 8-13.3-416 (2); AND

(d) THE FORM AND MANNER OF SUBMITTING AN APPLICATION WITH A CLAIM FOR BENEFITS TO THE DIVISION OR TO THE ENTITY THAT ISSUED A PRIVATE PLAN APPROVED PURSUANT TO SECTION 8-13.3-421.

(7) INITIAL RULES AND REGULATIONS NECESSARY FOR IMPLEMENTATION OF THIS PART 4 SHALL BE ADOPTED BY THE DIRECTOR AND PROMULGATED BY JANUARY 1, 2022.

8-13.3-417. Income Tax. (1) IF THE INTERNAL REVENUE SERVICE DETERMINES THAT FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS UNDER THIS PART 4 ARE SUBJECT TO FEDERAL INCOME TAX, THE DIVISION OR A PRIVATE PLAN APPROVED UNDER SECTION 8-13.3-421 SHALL INFORM AN INDIVIDUAL FILING A NEW CLAIM FOR FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS, AT THE TIME OF FILING SUCH CLAIM, THAT:

(a) THE INTERNAL REVENUE SERVICE HAS DETERMINED THAT BENEFITS ARE SUBJECT TO FEDERAL INCOME TAX; AND

(b) REQUIREMENTS EXIST PERTAINING TO ESTIMATED TAX PAYMENTS.

(2) BENEFITS RECEIVED PURSUANT TO THIS PART 4 ARE NOT SUBJECT TO STATE INCOME TAX.

(3) THE DIRECTOR, IN CONSULTATION WITH THE DEPARTMENT OF REVENUE, SHALL ISSUE RULES REGARDING TAX TREATMENT AND RELATED PROCEDURES REGARDING FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS, AS WELL AS THE SHARING OF NECESSARY INFORMATION BETWEEN THE DIVISION AND THE DEPARTMENT OF REVENUE.

8-13.3-418. Family and medical leave insurance fund – establishment and investment. (1) THERE IS HEREBY CREATED IN THE STATE TREASURY THE FAMILY AND MEDICAL LEAVE INSURANCE FUND. THE FUND CONSISTS OF PREMIUMS PAID PURSUANT TO SECTION 8-13.3-407 AND REVENUES FROM REVENUE BONDS ISSUED IN ACCORDANCE WITH SECTION 8-13.3-408(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 8-13.3-415(1); AND TO PAY BENEFITS UNDER, AND TO ADMINISTER, THE PROGRAM PURSUANT TO THIS PART 4, INCLUDING TECHNOLOGY COSTS TO ADMINISTER THE PROGRAM AND OUTREACH SERVICES DEVELOPED UNDER SECTION 8-13.3-420. 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) 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.

8-13.3-419. Reports. NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), BEGINNING JANUARY 1, 2025, THE DIVISION SHALL SUBMIT A REPORT TO THE LEGISLATURE BY APRIL 1 OF EACH YEAR THAT INCLUDES, BUT IS NOT LIMITED TO, PROJECTED AND ACTUAL PROGRAM PARTICIPATION BY SECTION 8-13.3-404(2) PURPOSE, GENDER OF BENEFICIARY, AVERAGE WEEKLY WAGE OF BENEFICIARY, OTHER DEMOGRAPHICS OF BENEFICIARY AS DETERMINED BY THE DIVISION, PREMIUM RATES, FUND BALANCES, OUTREACH EFFORTS, AND, FOR LEAVES TAKEN UNDER SECTION 8-13.3-404(2)(b), FAMILY MEMBERS FOR WHOM LEAVE WAS TAKEN TO PROVIDE CARE.

8-13.3-420. Public education. 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 FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM AND AVAILABILITY OF PAID FAMILY AND MEDICAL LEAVE AND BENEFITS UNDER THIS PART 4 FOR COVERED INDIVIDUALS. THE DIVISION SHALL PROVIDE THE INFORMATION REQUIRED BY THIS SECTION IN A MANNER THAT IS CULTURALLY COMPETENT AND LINGUISTICALLY APPROPRIATE. 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.

8-13.3-421. Substitution of private plans. (1) EMPLOYERS MAY APPLY TO THE DIVISION FOR APPROVAL TO MEET THEIR OBLIGATIONS UNDER THIS PART 4 THROUGH A PRIVATE PLAN. IN ORDER TO BE APPROVED, A PRIVATE PLAN MUST CONFER ALL OF THE SAME RIGHTS, PROTECTIONS AND BENEFITS PROVIDED TO EMPLOYEES UNDER THIS PART 4, INCLUDING, BUT NOT LIMITED TO:

(a) ALLOWING FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS TO BE TAKEN FOR ALL PURPOSES SPECIFIED IN SECTION 8-13.3-404(2);

(b) PROVIDING FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS TO A COVERED INDIVIDUAL FOR ANY OF THE PURPOSES, INCLUDING MULTIPLE PURPOSES IN THE AGGREGATE, AS SET FORTH IN SECTION 8-13.3-404(2), FOR THE MAXIMUM NUMBER OF WEEKS REQUIRED IN SECTION 8-13.3-405(1) IN A BENEFIT YEAR;

(c) ALLOWING FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS UNDER SECTION 8-13.3-404(2)(b) TO BE TAKEN TO CARE FOR ANY FAMILY MEMBER;

(d) ALLOWING FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS UNDER SECTION 8-13.3-404(2)(c) TO BE TAKEN BY A COVERED INDIVIDUAL WITH ANY SERIOUS HEALTH CONDITION;

(e) ALLOWING FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS UNDER SECTION 8-13.3-404(2)(e) TO BE TAKEN FOR ANY SAFE LEAVE PURPOSES;

(f) PROVIDING A WAGE REPLACEMENT RATE FOR ALL FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS OF AT LEAST THE AMOUNT REQUIRED BY SECTION 8-13.3-406(1)(a);

(g) PROVIDING A MAXIMUM WEEKLY BENEFIT FOR ALL FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS OF AT LEAST THE AMOUNT SPECIFIED IN SECTION 8-13.3-406(1)(b);

(h) ALLOWING A COVERED INDIVIDUAL TO TAKE INTERMITTENT LEAVE AS AUTHORIZED BY SECTION 8-13.3-405(3);

(i) IMPOSING NO ADDITIONAL CONDITIONS OR RESTRICTIONS ON FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS, OR PAID FAMILY AND MEDICAL LEAVE TAKEN IN CONNECTION THEREWITH, BEYOND THOSE EXPLICITLY AUTHORIZED BY THIS PART 4 OR REGULATIONS ISSUED PURSUANT TO THIS PART 4;

(j) ALLOWING ANY EMPLOYEE COVERED UNDER THE PRIVATE PLAN WHO IS ELIGIBLE FOR FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS UNDER THIS PART 4 TO RECEIVE BENEFITS AND TAKE PAID FAMILY AND MEDICAL LEAVE UNDER THE PRIVATE PLAN; AND

(k) PROVIDING THAT THE COST TO EMPLOYEES COVERED BY A PRIVATE PLAN SHALL NOT BE GREATER THAN THE COST CHARGED TO EMPLOYEES UNDER THE STATE PLAN UNDER SECTION 8-13.3-407.

(2) IN ORDER TO BE APPROVED AS MEETING AN EMPLOYER'S OBLIGATIONS UNDER THIS PART 4, A PRIVATE PLAN MUST ALSO COMPLY WITH THE FOLLOWING PROVISIONS:

(a) IF THE PRIVATE PLAN IS IN THE FORM OF SELF-INSURANCE, THE EMPLOYER MUST FURNISH A BOND TO THE STATE, WITH SOME SURETY COMPANY AUTHORIZED TO TRANSACT BUSINESS IN THE STATE, IN THE FORM, AMOUNT, AND MANNER REQUIRED BY THE DIVISION;

(b) THE PLAN MUST PROVIDE FOR ALL ELIGIBLE EMPLOYEES THROUGHOUT THEIR PERIOD OF EMPLOYMENT; AND

(c) IF THE PLAN IS IN THE FORM OF A THIRD PARTY THAT PROVIDES FOR INSURANCE, THE FORMS OF THE POLICY MUST BE ISSUED BY AN INSURER APPROVED BY THE STATE.

(3) THE DIVISION SHALL WITHDRAW APPROVAL FOR A PRIVATE PLAN GRANTED UNDER SECTION 8-13.3-421(1) WHEN TERMS OR CONDITIONS OF THE PLAN HAVE BEEN VIOLATED. CAUSES FOR PLAN TERMINATION SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

(a) FAILURE TO PAY BENEFITS;

(b) FAILURE TO PAY BENEFITS TIMELY AND IN A MANNER CONSISTENT WITH THIS PART 4;

(c) FAILURE TO MAINTAIN AN ADEQUATE SURETY BOND UNDER SECTION 8-13.3-421(2)(a);

(d) MISUSE OF PRIVATE PLAN MONEY;

(e) FAILURE TO SUBMIT REPORTS OR COMPLY WITH OTHER COMPLIANCE REQUIREMENTS AS REQUIRED BY THE DIRECTOR BY RULE; OR

(f) FAILURE TO COMPLY WITH THIS PART 4 OR THE REGULATIONS PROMULGATED PURSUANT TO THIS PART 4.

(4) AN EMPLOYEE COVERED BY A PRIVATE PLAN APPROVED UNDER THIS SECTION SHALL RETAIN ALL APPLICABLE RIGHTS UNDER SECTION 8-13.3-409.

(5) A CONTESTED DETERMINATION OR DENIAL OF FAMILY AND MEDICAL LEAVE INSURANCE BENEFITS BY A PRIVATE PLAN IS SUBJECT TO APPEAL BEFORE THE DIVISION AND ANY COURT OF COMPETENT JURISDICTION AS PROVIDED BY SECTION 8-13.3-412.

(6) THE DIRECTOR, BY RULE, SHALL ESTABLISH A FINE STRUCTURE FOR EMPLOYERS AND ENTITIES OFFERING PRIVATE PLANS THAT VIOLATE THIS SECTION, WITH A MAXIMUM FINE OF $500 PER VIOLATION. THE DIRECTOR SHALL TRANSFER ANY FINES COLLECTED PURSUANT TO THIS SUBSECTION TO THE STATE TREASURER FOR DEPOSIT INTO THE FUND. THE DIRECTOR, BY RULE, SHALL ESTABLISH A PROCESS FOR THE DETERMINATION, ASSESSMENT, AND APPEAL OF FINES UNDER THIS SUBSECTION.

(7) 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.

8-13.3-422. 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 HAS DECLINED PARTICIPATION IN THE PROGRAM IN ACCORDANCE WITH THIS SECTION MAY ELECT COVERAGE AS SPECIFIED IN SECTION 8-13.3-414.

(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 8-13.3-414, AND ANY OTHER NECESSARY REQUIREMENTS.

8-13.3-423. Severability. IF ANY PROVISION OF THIS PART 4 OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE REMAINDER OF PART 4 OR THE APPLICATION OF THE PROVISION TO OTHER PERSONS OR CIRCUMSTANCES IS NOT AFFECTED.

8-13.3-424. Effective date. THIS PART 4 TAKES EFFECT UPON OFFICIAL DECLARATION OF THE GOVERNOR AND IS SELF-EXECUTING.