

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

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LLS NO. 20-0218.02 Yelana Love x2295

SENATE BILL

SENATE SPONSORSHIP

Winter and Williams,

HOUSE SPONSORSHIP

Duran and Gray,

BILL TOPIC: "Paid Family & Medical Leave"

A BILL FOR AN ACT

101 CONCERNING PAID FAMILY AND MEDICAL LEAVE FOR COLORADO
102 WORKERS.

Bill Summary

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

Beginning July 1, 2022, the bill requires an employer to provide paid family and medical leave to its employees. The employer may satisfy this requirement through a self-funded plan or by obtaining a paid family and medical leave insurance plan from an insurer.

Paid family and medical leave is available to employees who require leave due to:

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

- Their own serious health condition;
- Caring for their new child during the first year after the birth or adoption of the child or the placement of the child through foster care;
- Caring for a family member who has a serious health condition;
- A qualifying exigency; and
- Any additional purpose approved in the federal "Family and Medical Leave Act of 1993" (FMLA).

Certain employers are required to provide job protection to an employee who takes paid family and medical leave. The amount of paid family and medical leave and whether an employer is required to offer job protection varies based on the year and the size of the employer.

An employer that is also a local government may opt out of the requirements of the bill through an affirmative vote of the local government's governing body.

The bill establishes requirements for insurers that choose to offer paid family and medical leave plans in the state.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 4 to article
3 13.3 of title 8 as follows:

4 **PART 4**

5 **PAID FAMILY AND MEDICAL LEAVE**

6 **8-13.3-401. Short title.** THE SHORT TITLE OF THIS PART 4 IS THE
7 "FAIR FAMILY AND MEDICAL LEAVE ACT".

8 **8-13.3-402. Definitions.** AS USED IN THIS PART 4, UNLESS THE
9 CONTEXT OTHERWISE REQUIRES:

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

12
13 (2) "COVERED INDIVIDUAL" MEANS AN INDIVIDUAL WHO, DURING
14 THE INDIVIDUAL'S QUALIFYING YEAR:

15 (a) FOR EMPLOYEES WHO DO NOT WORK FOR AN EMPLOYER

1 REQUIRED TO PROVIDE PAID FAMILY AND MEDICAL LEAVE BENEFITS, HAS
2 ELECTED COVERAGE THROUGH THE PURCHASE OF A PAID FAMILY AND
3 MEDICAL LEAVE INSURANCE PLAN OFFERED PURSUANT TO ARTICLE 24 OF
4 TITLE 10;

5 (b) FOR EMPLOYEES WHO WORK FOR AN EMPLOYER REQUIRED TO
6 PROVIDE PAID FAMILY AND MEDICAL LEAVE BENEFITS, BEEN EMPLOYED BY
7 AND WORKED FOR AN EMPLOYER FOR AT LEAST ONE HUNDRED EIGHTY
8 DAYS; OR

9 (c) IN THE CASE OF AIRLINE FLIGHT CREW MEMBERS, WORKED FOR,
10 OR BEEN PAID BY, ONE OR MORE EMPLOYERS FOR FIVE HUNDRED FOUR
11 HOURS.

12 (3) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND
13 EMPLOYMENT.

14 (4) "DIRECTOR" MEANS THE DIRECTOR OF THE OFFICE OF PAID
15 FAMILY AND MEDICAL LEAVE IN THE DEPARTMENT.

16 (5) "DOMESTIC ABUSE" MEANS ANY ACT DESCRIBED IN SECTION
17 13-14-101 (2) OR ANY OTHER CRIME, THE UNDERLYING FACTUAL BASIS OF
18 WHICH HAS BEEN FOUND BY A COURT ON THE RECORD TO INCLUDE AN ACT
19 OF DOMESTIC VIOLENCE, AS DEFINED IN SECTION 18-6-800.3 (1).

20 (6) "ELIGIBLE INDIVIDUAL" MEANS AN INDIVIDUAL WHO SATISFIES
21 THE REQUIREMENTS OF SECTION 8-13.3-405 AND IS ELIGIBLE TO RECEIVE
22 PAID FAMILY AND MEDICAL LEAVE.

23 (7) "EMPLOYEE" MEANS AN INDIVIDUAL DESCRIBED IN SECTION 8-
24 4-101 (5) OR 24-50-603 (7).

25 (8) (a) "EMPLOYER" MEANS ANY PERSON ENGAGED IN COMMERCE
26 OR AN INDUSTRY OR ACTIVITY AFFECTING COMMERCE THAT:

27 (I) EMPLOYS AT LEAST ONE PERSON FOR EACH WORKING DAY

1 DURING EACH OF TWENTY OR MORE CALENDAR WORKWEEKS IN THE
2 CURRENT OR IMMEDIATELY PRECEDING CALENDAR YEAR; OR

3 (II) PAID WAGES OF ONE THOUSAND FIVE HUNDRED DOLLARS OR
4 MORE DURING ANY CALENDAR QUARTER IN THE PRECEDING CALENDAR
5 YEAR.

6 (b) "EMPLOYER" INCLUDES:

7 (I) A PERSON WHO ACTS, DIRECTLY OR INDIRECTLY, IN THE
8 INTEREST OF AN EMPLOYER WITH REGARD TO ANY OF THE EMPLOYEES OF
9 THE EMPLOYER;

10 (II) A SUCCESSOR IN INTEREST OF AN EMPLOYER THAT ACQUIRES
11 ALL OF THE ORGANIZATION, TRADE, OR BUSINESS OR SUBSTANTIALLY ALL
12 OF THE ASSETS OF ONE OR MORE EMPLOYERS; AND

13 (III) THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCHES OF
14 THE STATE OR A POLITICAL SUBDIVISION OF THE STATE.

15 (c) "EMPLOYER" DOES NOT INCLUDE A PERSON DESCRIBED IN
16 SUBSECTION (9)(a) OR (9)(b) OF THIS SECTION THAT IS A CARRIER AS
17 DEFINED IN 45 U.S.C. SEC. 151.

18 (9) "FAMILY MEMBER" MEANS:

19 (a) A COVERED INDIVIDUAL'S IMMEDIATE FAMILY MEMBER, AS
20 DEFINED IN SECTION 2-4-401 (3.7);

21 (b) A CHILD TO WHOM THE COVERED INDIVIDUAL STANDS IN LOCO
22 PARENTIS OR A PERSON WHO STOOD IN LOCO PARENTIS TO THE COVERED
23 INDIVIDUAL WHEN THE COVERED INDIVIDUAL WAS A MINOR; AND

24 (c) A PERSON WITH WHOM THE COVERED INDIVIDUAL HAS A
25 BLOOD-LIKE RELATIONSHIP THAT SHOWS FINANCIAL SUPPORT OR
26 OBLIGATION TO EACH OTHER AS DEFINED BY THE DIRECTOR BY RULE.

27 (10) "FMLA" MEANS THE FEDERAL "FAMILY AND MEDICAL LEAVE

1 ACT OF 1993", AS AMENDED, PUB.L. 103-3, CODIFIED AT 29 U.S.C. SEC.
2 2601 ET SEQ.

3 (11) "FMLA LEAVE" MEANS LEAVE FROM WORK AND ALL
4 BENEFITS AUTHORIZED BY THE FMLA.

5 (12) "HEALTH CARE PROVIDER" HAS THE SAME MEANING AS SET
6 FORTH IN SECTION 10-16-102 (56).

7 (13) (a) "INSURER" HAS THE SAME MEANING AS SET FORTH IN
8 SECTION 10-1-102.

9 (b) "INSURER" INCLUDES AN EMPLOYER OFFERING SELF-FUNDED
10 PAID FAMILY AND MEDICAL LEAVE BENEFITS CERTIFIED PURSUANT TO
11 SECTION 8-13.3-401.

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

14 (15) "OFFICE" MEANS THE OFFICE OF PAID FAMILY AND MEDICAL
15 LEAVE IN THE DEPARTMENT OF LABOR AND EMPLOYMENT CREATED IN
16 SECTION 8-13.3-403.

17 (16) "PAID FAMILY AND MEDICAL LEAVE" OR "LEAVE" MEANS
18 LEAVE FROM WORK UNDER THIS PART 4.

19 (17) "PAID FAMILY AND MEDICAL LEAVE BENEFITS" OR "BENEFITS"
20 MEANS AN ELIGIBLE INDIVIDUAL'S WAGE REPLACEMENT PAID PURSUANT
21 TO SECTION 8-13.3-807 AND PAID FAMILY AND MEDICAL LEAVE.

22 (18) "QUALIFYING EXIGENCY" MEANS A NEED ARISING OUT OF A
23 FAMILY MEMBER'S ACTIVE DUTY SERVICE OR NOTICE OF AN IMPENDING
24 CALL OR ORDER TO ACTIVE DUTY IN THE ARMED FORCES, INCLUDING, BUT
25 NOT LIMITED TO, PROVIDING FOR THE CARE OR OTHER NEEDS OF THE
26 MILITARY MEMBER'S CHILD OR OTHER FAMILY MEMBER, MAKING
27 FINANCIAL OR LEGAL ARRANGEMENTS FOR THE MILITARY MEMBER,

1 ATTENDING COUNSELING, ATTENDING MILITARY EVENTS OR CEREMONIES,
2 SPENDING TIME WITH THE MILITARY MEMBER DURING A REST AND
3 RECUPERATION LEAVE OR FOLLOWING RETURN FROM DEPLOYMENT, OR
4 MAKING ARRANGEMENTS FOLLOWING THE DEATH OF THE MILITARY
5 MEMBER.

6 (19) "QUALIFYING YEAR" MEANS THE FIRST FOUR OF THE LAST FIVE
7 COMPLETED CALENDAR QUARTERS OR THE LAST FOUR COMPLETED
8 CALENDAR QUARTERS IMMEDIATELY PRECEDING THE FIRST DAY OF A
9 COVERED INDIVIDUAL'S APPLICATION YEAR.

10 (20) (a) "SERIOUS HEALTH CONDITION" MEANS AN ILLNESS,
11 INJURY, IMPAIRMENT, OR PHYSICAL OR MENTAL CONDITION THAT
12 INVOLVES:

13 (I) INPATIENT CARE IN A HOSPITAL OR RESIDENTIAL MEDICAL CARE
14 FACILITY;

15 (II) HOSPICE CARE IN ANY SETTING; OR

16 (III) CONTINUING TREATMENT OR ONGOING CARE BY A HEALTH
17 CARE PROVIDER.

18 (b) "SERIOUS HEALTH CONDITION" INCLUDES DOMESTIC ABUSE,
19 SEXUAL ASSAULT OR ABUSE, AND STALKING.

20 (21) "SEXUAL ASSAULT OR ABUSE" MEANS ANY ACT, ATTEMPTED
21 ACT, OR THREATENED ACT OF UNLAWFUL SEXUAL BEHAVIOR, AS
22 DESCRIBED IN SECTION 16-11.7-102 (3), OR SEXUAL ASSAULT, AS
23 DESCRIBED IN SECTION 18-3-402, COMMITTED BY ANY PERSON AGAINST
24 ANOTHER PERSON REGARDLESS OF THE RELATIONSHIP BETWEEN THE
25 ACTOR AND THE VICTIM.

26 (22) "STALKING" MEANS ANY ACT, ATTEMPTED ACT, OR
27 THREATENED ACT OF STALKING, AS DESCRIBED IN SECTION 18-3-602.

1 **8-13.3-403. Office of paid family and medical leave - creation**
2 **- enterprise - outreach.** (1) THERE IS HEREBY CREATED IN THE
3 DEPARTMENT THE OFFICE OF PAID FAMILY AND MEDICAL LEAVE, THE HEAD
4 OF WHICH IS THE DIRECTOR.

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

13 (b) THE ENTERPRISE ESTABLISHED PURSUANT TO THIS SUBSECTION
14 (2) HAS ALL THE POWERS AND DUTIES AUTHORIZED BY THIS PART 4
15 PERTAINING TO PAID FAMILY AND MEDICAL LEAVE BENEFITS. THE LEAVE
16 PROTECTION FUND CREATED IN SECTION 8-13.3-409 CONSTITUTES PART OF
17 THE ENTERPRISE ESTABLISHED PURSUANT TO THIS SUBSECTION (2).

18 (c) THE OFFICE IS CREATED FOR THE BUSINESS PURPOSE OF
19 DEVELOPING AND OVERSEEING A PAID FAMILY AND MEDICAL LEAVE
20 PROGRAM IN THE STATE IN ACCORDANCE WITH THIS PART 4. THE OFFICE
21 SHALL COLLECT MINIMAL FEES FOR EACH COVERED EMPLOYEE TO CREATE
22 AND ADMINISTER EDUCATIONAL MATERIALS, DEVELOP AN APPEALS
23 PROCESS FOR THE DENIAL FOR PAID FAMILY AND MEDICAL LEAVE
24 BENEFITS, AND CREATE A LEAVE PROTECTION FUND TO PROVIDE
25 EMPLOYEES WITH UP TO TWO WEEKS OF PAID FAMILY AND MEDICAL LEAVE
26 BENEFITS DURING THE PENDENCY OF THE APPEAL OF A DENIED CLAIM.

27 (d) NOTHING IN THIS SUBSECTION (2) LIMITS OR RESTRICTS THE

1 AUTHORITY OF THE OFFICE TO EXPEND ITS REVENUES CONSISTENT WITH
2 THIS PART 4.

3 (e) THE OFFICE IS HEREBY AUTHORIZED TO ISSUE REVENUE BONDS
4 FOR THE EXPENSES OF THE OFFICE, WHICH BONDS MAY BE SECURED BY ANY
5 REVENUES OF THE OFFICE. REVENUE FROM THE BONDS ISSUED PURSUANT
6 TO THIS SUBSECTION (2) SHALL BE DEPOSITED INTO THE FUND.

7 (3) THE STATE TREASURER MAY TRANSFER MONEY FROM THE
8 GENERAL FUND TO THE OFFICE FOR THE PURPOSE OF DEFRAYING EXPENSES
9 INCURRED BY THE OFFICE PRIOR TO THE RECEIPT OF BOND PROCEEDS OR
10 REVENUES BY THE OFFICE. THE OFFICE MAY ACCEPT AND EXPEND ANY
11 MONEY SO TRANSFERRED, AND, NOTWITHSTANDING ANY STATE FISCAL
12 RULE OR GENERALLY ACCEPTED ACCOUNTING PRINCIPLE THAT COULD
13 OTHERWISE BE INTERPRETED TO REQUIRE A CONTRARY CONCLUSION, SUCH
14 A TRANSFER SHALL CONSTITUTE A LOAN FROM THE STATE TREASURER TO
15 THE OFFICE AND SHALL NOT BE CONSIDERED A GRANT FOR PURPOSES OF
16 SECTION 20 (2)(d) OF ARTICLE X OF THE STATE CONSTITUTION. AS THE
17 OFFICE RECEIVES SUFFICIENT REVENUES IN EXCESS OF EXPENSES, THE
18 OFFICE SHALL REIMBURSE THE GENERAL FUND FOR THE PRINCIPAL AMOUNT
19 OF ANY LOAN FROM THE GENERAL FUND MADE BY THE STATE TREASURER
20 PLUS INTEREST AT A RATE SET BY THE STATE TREASURER. ANY MONEY
21 LOANED FROM THE GENERAL FUND TO THE OFFICE PURSUANT TO THIS
22 SUBSECTION (3) SHALL BE DEPOSITED INTO A SEPARATE ACCOUNT WITHIN
23 THE LEAVE PROTECTION FUND.

24 (4) (a) BY JULY 1, 2021, AND FOR AS LONG AS EMPLOYERS ARE
25 REQUIRED TO OFFER PAID FAMILY AND MEDICAL LEAVE BENEFITS, THE
26 OFFICE SHALL DEVELOP AND IMPLEMENT MARKETING AND OUTREACH
27 SERVICES TO EDUCATE THE PUBLIC ABOUT THE AVAILABILITY OF PAID

1 FAMILY AND MEDICAL LEAVE BENEFITS UNDER THIS PART 4 FOR COVERED
2 INDIVIDUALS. THE OFFICE SHALL DETAIL THE OUTREACH PLAN IN RULE.

3 (b) THE OFFICE SHALL ENSURE THAT THE OUTREACH INFORMATION
4 EXPLAINS, IN AN EASY-TO-UNDERSTAND FORMAT, AT LEAST THE
5 FOLLOWING:

6 (I) ELIGIBILITY REQUIREMENTS;

7 (II) WEEKLY BENEFIT AMOUNTS AND MAXIMUM BENEFITS
8 PAYABLE;

9 (III) NOTICE AND DOCUMENTATION REQUIREMENTS;

10 (IV) REINSTATEMENT AND NONDISCRIMINATION RIGHTS;

11 (V) CONFIDENTIALITY OF FILES AND RECORDS;

12 (VI) THE RELATIONSHIP BETWEEN EMPLOYMENT PROTECTION,
13 LEAVE FROM EMPLOYMENT, AND WAGE REPLACEMENT BENEFITS UNDER
14 THIS PART 4 AND OTHER LAWS, COLLECTIVE BARGAINING AGREEMENTS,
15 AND EMPLOYER POLICIES;

16 (VII) INFORMATION ABOUT APPLYING FOR BENEFITS AND THE
17 RIGHT TO APPEAL, INCLUDING INFORMATION ABOUT THE DIVISION OF
18 INSURANCE AS A RESOURCE FOR EMPLOYEE COMPLAINTS; AND

19 (VIII) ANY OTHER DETAILS OR INFORMATION ABOUT PAID FAMILY
20 AND MEDICAL LEAVE THE OFFICE DEEMS APPROPRIATE.

21 (c) THE OFFICE SHALL DEVELOP A NOTICE THAT DETAILS THE
22 REQUIREMENTS, BENEFITS, CLAIMS PROCESS, APPEAL RIGHTS, AND OTHER
23 PERTINENT INFORMATION. EACH EMPLOYER SHALL POST THE NOTICE IN A
24 PROMINENT LOCATION IN THE WORKPLACE AND NOTIFY ITS EMPLOYEES OF
25 PAID FAMILY AND MEDICAL LEAVE BENEFITS, IN WRITING, UPON HIRING
26 AND UPON LEARNING OF AN EMPLOYEE EXPERIENCING AN EVENT THAT
27 TRIGGERS ELIGIBILITY PURSUANT TO SECTION 8-13.3-405.

1 (d) THE OFFICE SHALL PROVIDE THE INFORMATION REQUIRED BY
2 THIS SUBSECTION (2) IN A MANNER THAT IS CULTURALLY COMPETENT AND
3 LINGUISTICALLY APPROPRIATE.

4 **8-13.3-404. Employers required to provide paid family and**
5 **medical leave.** (1) STARTING JULY 1, 2022, EACH EMPLOYER IN THE
6 STATE SHALL PROVIDE PAID FAMILY AND MEDICAL LEAVE AND
7 CORRESPONDING JOB PROTECTION TO EACH OF ITS EMPLOYEES IN
8 ACCORDANCE WITH THIS PART 4.

9 (2) AN EMPLOYER MAY COMPLY WITH THE REQUIREMENTS OF THIS
10 PART 4 BY:

11 (a) CERTIFYING THAT THE EMPLOYER OFFERS SELF-FUNDED PAID
12 FAMILY AND MEDICAL LEAVE BENEFITS TO ITS EMPLOYEES IN
13 ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION; OR

14 (b) OBTAINING A PAID FAMILY AND MEDICAL LEAVE INSURANCE
15 PLAN ISSUED BY AN INSURER THAT MEETS THE REQUIREMENTS OF ARTICLE
16 24 OF TITLE 10.

17 (3) THE DEPARTMENT SHALL DETERMINE THE PROCESS BY WHICH
18 AN EMPLOYER MAY CERTIFY THAT THE EMPLOYER OFFERS SELF-FUNDED
19 PAID FAMILY AND MEDICAL LEAVE BENEFITS TO ITS EMPLOYEES
20 CONSISTENT WITH THIS PART 4.

21 (4) AN EMPLOYER SHALL MAINTAIN RECORDS RELATED TO
22 COMPLIANCE WITH THIS PART 4 FOR FIVE YEARS. THE OFFICE MAY
23 PERIODICALLY INSPECT EMPLOYER RECORDS TO ENSURE COMPLIANCE
24 WITH THIS PART 4.

25 (5) NOTHING IN THIS PART 4 PROHIBITS AN EMPLOYER FROM
26 OFFERING PAID FAMILY AND MEDICAL LEAVE BENEFITS OR JOB PROTECTION
27 THAT IS MORE GENEROUS THAN THE PAID FAMILY AND MEDICAL LEAVE

1 BENEFITS AND JOB PROTECTION PROVIDED IN THIS PART 4.

2 **8-13.3-405. Paid family and medical leave - eligibility -**

3 **rules.** (1) BEGINNING JULY 1, 2022, EXCEPT AS PROVIDED IN SUBSECTION
4 (4) OF THIS SECTION AND SUBJECT TO SECTION 8-13.3-406 (1), AN
5 INDIVIDUAL IS ELIGIBLE TO TAKE PAID FAMILY AND MEDICAL LEAVE IF THE
6 INDIVIDUAL:

7 (a) IS TAKING FAMILY AND MEDICAL LEAVE FOR ONE OF THE
8 FOLLOWING PURPOSES:

9 (A) FOR A PURPOSE AUTHORIZED BY FMLA;

10 (B) THEIR OWN SERIOUS HEALTH CONDITION;

11 (C) CARING FOR THEIR NEW CHILD DURING THE FIRST YEAR AFTER
12 THE BIRTH OR ADOPTION OF THE CHILD OR THE PLACEMENT OF THE CHILD
13 THROUGH FOSTER CARE;

14 (D) CARING FOR A FAMILY MEMBER WHO HAS A SERIOUS HEALTH
15 CONDITION; OR

16 (E) A QUALIFYING EXIGENCY;

17 (b) IS A COVERED INDIVIDUAL;

18 (c) WORKS FOR AN EMPLOYER WHO IS REQUIRED TO OFFER PAID
19 FAMILY AND MEDICAL LEAVE BENEFITS PURSUANT TO SECTION 8-13.3-406
20 OR HAS INDEPENDENTLY PURCHASED A PAID FAMILY AND MEDICAL LEAVE
21 INSURANCE PLAN IN ACCORDANCE WITH ARTICLE 24 OF TITLE 10; AND

22 (d) (I) NOTIFIES THE INDIVIDUAL'S EMPLOYER OF THE INTENT TO
23 TAKE PAID FAMILY AND MEDICAL LEAVE FROM WORK FOR ONE OF THE
24 PURPOSES SPECIFIED IN SUBSECTION (1)(a) OF THIS SECTION.

25 (II) IN ANY CASE IN WHICH THE NECESSITY FOR PAID FAMILY AND
26 MEDICAL LEAVE IS FORESEEABLE, THE INDIVIDUAL SHALL PROVIDE THE
27 INDIVIDUAL'S EMPLOYER WITH NOT LESS THAN THIRTY DAYS' NOTICE

1 BEFORE THE DATE THE LEAVE IS TO BEGIN OF THE INDIVIDUAL'S INTENTION
2 TO TAKE LEAVE UNDER THIS PART 4. IF THE NECESSITY FOR LEAVE IS NOT
3 FORESEEABLE OR PROVIDING THIRTY DAYS' NOTICE IS NOT POSSIBLE, THE
4 INDIVIDUAL SHALL PROVIDE THE NOTICE AS SOON AS PRACTICABLE.

5 (III) IN ADVANCE OF OR DURING ANY APPLICATION FOR PAID
6 FAMILY AND MEDICAL LEAVE BENEFITS, AN EMPLOYEE MAY DESIGNATE
7 ONE OR MORE ADULTS AS A FAMILY AND MEDICAL LEAVE PROXY
8 EMPOWERED TO PURSUE AND SUPPORT THE EMPLOYEE'S CLAIM TO PAID
9 FAMILY AND MEDICAL LEAVE BENEFITS. THE FAMILY AND MEDICAL LEAVE
10 PROXY MAY ACT FOR THE EMPLOYEE BY NOTIFYING, COMMUNICATING
11 WITH, MAKING REQUESTS TO, AND MAKING FILINGS WITH THE EMPLOYEE'S
12 EMPLOYER, THE INSURER OFFERING THE PAID FAMILY AND MEDICAL LEAVE
13 PLAN, ANY APPLICABLE GOVERNMENT ENTITY, AND ANY OTHER PERSON OR
14 ENTITY THE PROXY OR EMPLOYEE DEEMS NECESSARY. IF AN EMPLOYER
15 PROVIDES EMPLOYEES A HANDBOOK, A MANUAL, OR POLICIES PERTAINING
16 TO EMPLOYMENT WITH THE EMPLOYER OR HAS AN INTERNAL WEBSITE FOR
17 EMPLOYEES, THE EMPLOYER MUST INCLUDE IN THOSE DOCUMENTS OR ON
18 THE EMPLOYER'S INTERNAL WEBSITE A COPY OF A FAMILY AND MEDICAL
19 LEAVE PROXY FORM THAT EMPLOYEES MAY COMPLETE AND SUBMIT TO
20 THE EMPLOYER.

21 (IV) THE COMMISSIONER OF THE DIVISION OF INSURANCE IN THE
22 DEPARTMENT OF REGULATORY AGENCIES SHALL PROMULGATE RULES TO
23 DEVELOP POLICIES REGARDING THE FORM AND MANNER IN WHICH AN
24 EMPLOYEE IS REQUIRED TO NOTIFY AN INSURER OF THE EMPLOYEE'S
25 INTENT TO TAKE PAID FAMILY AND MEDICAL LEAVE THE RULES MUST
26 INCLUDE A REQUIREMENT OF WRITTEN NOTICE AND PROOF OF NEED. IN
27 PROMULGATING THE RULES, THE COMMISSIONER SHALL CONSIDER THE

1 EMPLOYEE'S RIGHT TO PRIVACY.

2 (2) (a) SUBJECT TO LIMITATIONS ESTABLISHED BY THE DIRECTOR
3 BY RULE, REGARDLESS OF WHETHER THE INDIVIDUAL IS DESIGNATED AS A
4 PROXY PURSUANT TO SECTION (1)(c)(III) OF THIS SECTION, WHEN A
5 COVERED INDIVIDUAL IS UNABLE TO NOTIFY THE EMPLOYER DUE TO A
6 SERIOUS HEALTH CONDITION, THE COVERED INDIVIDUAL'S FAMILY MEMBER
7 MAY NOTIFY THE COVERED INDIVIDUALS' EMPLOYER ON BEHALF OF THE
8 COVERED INDIVIDUAL PURSUANT TO SUBSECTION (1)(c) OF THIS SECTION.

9 (b) NOTWITHSTANDING SUBSECTION (2)(a) OF THIS SECTION, IF A
10 COVERED INDIVIDUAL IS TAKING OR PLANNING TO TAKE PAID FAMILY AND
11 MEDICAL LEAVE BECAUSE OF DOMESTIC ABUSE, SEXUAL ASSAULT OR
12 ABUSE, OR STALKING, AN EMPLOYER SHALL NOT ACCEPT A NOTIFICATION
13 OF INTENT TO TAKE LEAVE FROM THE INDIVIDUAL ACCUSED OF DOMESTIC
14 ABUSE, SEXUAL ASSAULT OR ABUSE, OR STALKING IF THE EMPLOYER
15 KNOWS THE INDIVIDUAL SUBMITTING THE NOTIFICATION OF INTENT TO
16 TAKE LEAVE IS THE INDIVIDUAL ACCUSED.

17 **8-13.3-406. Duration of benefits - reports.** (1) (a) FOR LEAVE
18 BEGINNING ON OR AFTER JULY 1, 2022, AND ON OR BEFORE JUNE 30, 2025,
19 EMPLOYERS WITH TWENTY OR MORE EMPLOYEES SHALL PROVIDE AN
20 ELIGIBLE INDIVIDUAL WITH AT LEAST EIGHT WEEKS OF PAID FAMILY AND
21 MEDICAL LEAVE IN ANY CONSECUTIVE FIFTY-TWO-WEEK PERIOD.

22 (b) FOR LEAVE BEGINNING ON OR AFTER JULY 1, 2025, AND ON OR
23 BEFORE JUNE 30, 2027, EMPLOYERS WITH TEN OR MORE EMPLOYEES SHALL
24 PROVIDE AN ELIGIBLE INDIVIDUAL WITH AT LEAST TEN WEEKS OF PAID
25 FAMILY AND MEDICAL LEAVE IN ANY CONSECUTIVE FIFTY-TWO-WEEK
26 PERIOD.

27 (c) FOR LEAVE BEGINNING ON OR AFTER JULY 1, 2027, EACH

1 EMPLOYER SHALL PROVIDE AN ELIGIBLE INDIVIDUAL WITH AT LEAST
2 TWELVE WEEKS OF PAID FAMILY AND MEDICAL LEAVE IN ANY
3 CONSECUTIVE FIFTY-TWO-WEEK PERIOD.

4 (2) NO LATER THAN JANUARY 1, 2025, JANUARY 1, 2027, AND
5 JANUARY 1, 2029, THE DIRECTOR SHALL REPORT TO THE GOVERNOR, THE
6 HOUSE OF REPRESENTATIVE COMMITTEES ON BUSINESS AFFAIRS AND
7 LABOR, PUBLIC HEALTH CARE AND HUMAN SERVICES, AND HEALTH AND
8 INSURANCE, AND THE SENATE COMMITTEES ON BUSINESS, LABOR, AND
9 TECHNOLOGY AND HEALTH AND HUMAN SERVICES, OR THEIR SUCCESSOR
10 COMMITTEES, REGARDING THE FEASIBILITY OF AND THE STEPS NECESSARY
11 FOR EXPANDING PAID FAMILY AND MEDICAL LEAVE TO SEASONAL
12 WORKERS, AS DEFINED IN SECTION 8-73-106.

13 **8-13.3-407. Amount of benefits - maximum weekly benefit -**
14 **rules.** (1) (a) FOR LEAVE TAKEN PURSUANT TO THIS PART 4, AN EMPLOYER
15 SHALL PAY AN ELIGIBLE INDIVIDUAL AN AMOUNT THAT IS AT LEAST EQUAL
16 TO THE INDIVIDUAL'S WEEKLY BENEFIT AMOUNT, CALCULATED AS
17 FOLLOWS:

18 (I) NINETY PERCENT OF THE ELIGIBLE INDIVIDUAL'S WEEKLY WAGE
19 FOR ALL WAGES THAT ARE LESS THAN FIFTY PERCENT OF THE AVERAGE
20 WEEKLY WAGE; AND

21 (II) FIFTY PERCENT OF THE ELIGIBLE INDIVIDUAL'S WEEKLY WAGE
22 FOR ALL WAGES THAT EQUAL OR EXCEED FIFTY PERCENT OF THE AVERAGE
23 WEEKLY WAGE.

24 (b) NOTWITHSTANDING SUBSECTION (1)(a) OF THIS SECTION, AN
25 EMPLOYER IS NOT REQUIRED TO PAY AN ELIGIBLE INDIVIDUAL MORE THAN
26 EIGHTY PERCENT OF THE AVERAGE WEEKLY WAGE.

27 (2) FOR PURPOSES OF CALCULATING AN ELIGIBLE INDIVIDUAL'S
28 WEEKLY BENEFIT IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION,

1 THE ELIGIBLE INDIVIDUAL'S WEEKLY WAGE IS ONE-THIRTEENTH OF THE
2 WAGES PAID DURING THE QUARTER OF THE ELIGIBLE INDIVIDUAL'S BASE
3 PERIOD, AS DEFINED IN SECTION 8-70-103 (2), OR ALTERNATIVE BASE
4 PERIOD, AS DEFINED IN SECTION 8-70-103 (1.5), IN WHICH THE TOTAL
5 WAGES WERE HIGHEST. FOR PURPOSES OF THIS SUBSECTION (2), WAGES
6 INCLUDE , BUT ARE NOT LIMITED TO, SALARY, WAGES, TIPS, COMMISSIONS,
7 AND OTHER COMPENSATION AS DETERMINED BY THE DIRECTOR BY RULE.

8 (3) AN ELIGIBLE INDIVIDUAL MAY TAKE INTERMITTENT LEAVE IN
9 INCREMENTS OF ONE HOUR OR SHORTER IF CONSISTENT WITH THE
10 INCREMENTS THE EMPLOYER TYPICALLY USES TO MEASURE EMPLOYEE
11 LEAVE; EXCEPT THAT BENEFITS ARE NOT PAYABLE UNTIL THE ELIGIBLE
12 INDIVIDUAL ACCUMULATES AT LEAST ONE DAY OR EIGHT HOURS OF LEAVE.

13 (4) THE INSURER SHALL NOT REDUCE THE WEEKLY BENEFIT
14 AMOUNT BY THE AMOUNT OF WAGE REPLACEMENT THAT AN ELIGIBLE
15 INDIVIDUAL RECEIVES WHILE ON PAID FAMILY AND MEDICAL LEAVE UNDER
16 ANY OF THE FOLLOWING CONDITIONS, UNLESS THE AGGREGATE AMOUNT
17 AN ELIGIBLE INDIVIDUAL WOULD RECEIVE WOULD EXCEED THE ELIGIBLE
18 INDIVIDUAL'S WEEKLY WAGE:

19 (a) A TEMPORARY DISABILITY POLICY OR PROGRAM OF AN
20 EMPLOYER; OR

21 (b) ACCRUED PAID LEAVE, INCLUDING, BUT NOT LIMITED TO, SICK,
22 VACATION, OR PERSONAL TIME, THAT AN ELIGIBLE INDIVIDUAL
23 VOLUNTARILY ELECTS TO TAKE.

24 **8-13.3-408. Denials of claims by an employer or insurer -**
25 **appeals - rules - report.** (1) (a) WITHIN SEVEN CALENDAR DAYS AFTER
26 RECEIVING A CLAIM, AN INSURER, INCLUDING A SELF-INSURED EMPLOYER
27 OFFERING SELF-FUNDED PAID FAMILY AND MEDICAL LEAVE BENEFITS
28 CERTIFIED PURSUANT TO SECTION 8-13.3-401, SHALL SEND THE EMPLOYEE

1 EITHER:

2 (I) A DECISION ON THE CLAIM, WHICH, IN THE CASE OF A DENIAL,

3 MUST INCLUDE A WRITTEN EXPLANATION OF THE REASONS AND BASIS FOR

4 THE DENIAL; OR

5 (II) A REQUEST FOR ADDITIONAL INFORMATION THAT THE INSURER

6 REASONABLY BELIEVES IS NECESSARY TO DECIDE THE CLAIM, INCLUDING

7 A DEADLINE TO PROVIDE THE REQUESTED INFORMATION. AN INSURER

8 THAT RECEIVES ADDITIONAL INFORMATION PURSUANT TO THIS

9 SUBSECTION (1)(a)(II) SHALL MAKE A DECISION ON THE CLAIM WITHIN

10 SEVEN CALENDAR DAYS AFTER THE SOONER OF EITHER RECEIVING THE

11 REQUESTED INFORMATION OR THE EXPIRATION OF THE EMPLOYEE'S

12 DEADLINE TO PROVIDE THE REQUESTED INFORMATION.

13 (b) IF AN INSURER OR EMPLOYER FAILS TO COMPLY WITH THE

14 SEVEN-CALENDAR-DAY TIMELINE IN SUBSECTION (1)(a) OF THIS SECTION,

15 THE CLAIM IS AUTOMATICALLY APPROVED.

16 (2) (a) ANY EMPLOYEE, OR THE EMPLOYEE'S APPOINTED PROXY OR

17 ATTORNEY, MAY APPEAL A CLAIM DENIAL TO THE OFFICE WITHIN

18 THIRTY-FIVE CALENDAR DAYS AFTER THE NOTICE OF THE CLAIM DENIAL.

19 THE APPEAL MUST INCLUDE THE DENIAL FROM THE INSURER, EXPLAIN WHY

20 THE EMPLOYEE BELIEVES THE DENIAL IS INCORRECT, AND ANY

21 ADDITIONAL DOCUMENTS THE EMPLOYEE BELIEVES SUPPORT THE APPEAL.

22 THE INSURER MAY SUBMIT A REPLY WITHIN FIVE CALENDAR DAYS AFTER

23 THE CLAIM APPEAL.

24 (b) THE DIRECTOR SHALL:

25 (I) PROMULGATE RULES FOR THE APPEAL OF DENIED CLAIMS;

26 (II) CREATE AND MAINTAIN A WEB-BASED SYSTEM FOR FILING AND

27 MANAGING CLAIM APPEALS; AND

28 (III) DESIGNATE A HEARING OFFICER UPON RECEIVING A CLAIM

1 APPEAL.

2 (c) THE OFFICE, HEARING OFFICERS, PARTIES, AND COURTS HAVE
3 ALL POWERS, RIGHTS, AND RESPONSIBILITIES GRANTED BY SECTION
4 8-4-111.5 AS TO CLAIM APPEALS AND ENFORCEMENT POWERS, WITH THE
5 EXCEPTION THAT DECISIONS ON APPEALS MAY BE BASED ON THE INSURER'S
6 DENIAL, THE EMPLOYEE'S APPEAL FILING, AND ANY SUBSEQUENT
7 SUBMISSIONS THAT MAY BE PERMITTED, WITHOUT A REQUIREMENT OF A
8 HEARING. HOWEVER, ANY PARTY MAY FILE WITH THE OFFICE, EITHER WITH
9 THE APPEAL OR WITHIN FIVE CALENDAR DAYS AFTER FILING THE APPEAL,
10 A REQUEST FOR A HEARING, WHICH REQUEST MUST INCLUDE AN
11 EXPLANATION OF WHY THE PARTY BELIEVES THE WRITTEN SUBMISSIONS
12 ARE INSUFFICIENT TO ADJUDICATE THE APPEAL. REGARDLESS OF WHETHER
13 A PARTY REQUESTS A HEARING, THE HEARING OFFICER MAY ORDER A
14 HEARING OR REQUIRE ADDITIONAL SUBMISSIONS FROM EITHER PARTY.

15 (d) ANY PARTY TO THE CLAIM APPEAL MAY APPEAL THE HEARING
16 OFFICER'S DECISION ONLY BY COMMENCING AN ACTION FOR JUDICIAL
17 REVIEW IN THE DISTRICT COURT OF COMPETENT JURISDICTION WITHIN
18 THIRTY-FIVE CALENDAR DAYS AFTER THE DATE OF MAILING OF THE
19 DECISION BY THE OFFICE. THE HEARING OFFICER'S DECISION CONSTITUTES
20 A FINAL AGENCY ACTION PURSUANT TO SECTION 24-4-106. JUDICIAL
21 REVIEW IS LIMITED TO APPEAL BRIEFS AND THE RECORD DESIGNATED ON
22 APPEAL.

23 (3) (a) IF THE HEARING OFFICER REVERSES A CLAIM DENIAL, THE
24 HEARING OFFICER MUST ORDER THE INSURER OR EMPLOYER TO PAY, IN
25 ADDITION TO THE AMOUNT OF PAID FAMILY AND MEDICAL LEAVE BENEFITS
26 OWED:

27 (I) TO THE EMPLOYEE, THE GREATER OF EITHER:

28 (A) AN ADDITIONAL TWENTY-FIVE PERCENT OF THE PAY OWED

1 THROUGH THE DATE THE INSURER MAKES PAYMENT FOLLOWING THE
2 APPEAL DECISION, OR A MAXIMUM PERIOD OF FOUR WEEKS, WHICHEVER IS
3 SHORTER; OR

4 (B) AN ADDITIONAL FIVE HUNDRED DOLLARS.

5 (II) TO THE OFFICE FOR DEPOSIT INTO THE LEAVE PROTECTION
6 FUND CREATED IN SECTION 8-13.3-409, FIVE HUNDRED DOLLARS TO
7 COMPENSATE FOR THE COST OF THE DENIAL; AND

8 (III) TO THE EMPLOYEE, REASONABLE ATTORNEY FEES, UP TO
9 THREE THOUSAND DOLLARS, AND OUT-OF-POCKET COSTS INCURRED BY
10 THE EMPLOYEE IN PURSUING THE APPEAL. BEGINNING JANUARY 1, 2024,
11 THE OFFICE SHALL ADJUST THE AMOUNT OF REASONABLE ATTORNEY FEES
12 EVERY EVEN-NUMBERED YEAR THEREAFTER BASED ON CUMULATIVE
13 CHANGES IN THE UNITED STATES DEPARTMENT OF LABOR'S BUREAU OF
14 LABOR STATISTICS CONSUMER PRICE INDEX FOR
15 DENVER-AURORA-LAKEWOOD FOR ALL ITEMS AND ALL URBAN
16 CONSUMERS, OR ITS SUCCESSOR INDEX, OVER THE TWO-YEAR PERIOD.

17 (b) IF THE HEARING OFFICER FINDS THE DENIAL TO BE
18 SUBSTANTIALLY UNJUSTIFIED BY FACT OR LAW, THE AWARD MUST
19 INCLUDE AN ORDER TO PAY:

20 (I) TO THE EMPLOYEE, EITHER AN ADDITIONAL ONE HUNDRED
21 PERCENT OF THE AMOUNT OF PAID FAMILY AND MEDICAL LEAVE OWED
22 THROUGH THE DATE THE INSURER MAKES PAYMENT FOLLOWING THE
23 APPEAL DECISION, OR AN ADDITIONAL ONE THOUSAND DOLLARS,
24 WHICHEVER IS GREATER; AND

25 (II) TO THE OFFICE FOR DEPOSIT INTO THE LEAVE PROTECTION
26 FUND, ONE THOUSAND DOLLARS TO COMPENSATE FOR THE COST OF THE
27 DENIAL.

28 (c) IF A HEARING OFFICER DECISION GRANTING BENEFITS RELIES

1 UPON NEW INFORMATION THAT THE INSURER DID NOT POSSESS OR HAVE
2 ACCESS TO WHEN IT DENIED THE CLAIM, THE HEARING OFFICER SHALL
3 ORDER WAGE REPLACEMENT, BUT SHALL NOT ORDER THE ADDITIONAL
4 PAYMENTS SPECIFIED IN SUBSECTION (3)(a) AND (3)(b) OF THIS SECTION.

5 (4) (a) DURING THE PENDENCY OF AN APPEAL OF A CLAIM DENIAL,
6 THE OFFICE SHALL PAY THE EMPLOYEE TWO WEEKS OF PAID FAMILY AND
7 MEDICAL LEAVE BENEFITS, CALCULATED PURSUANT TO SECTION 8-13.3-
8 407 FROM THE LEAVE PROTECTION FUND, UNLESS THE DIRECTOR
9 DETERMINES THAT PAYMENT FOR A SHORTER PERIOD OF TIME IS
10 NECESSARY FOR THE LEAVE PROTECTION FUND TO REMAIN SOLVENT.

11 (b) IF THE DENIAL IS REVERSED ON APPEAL, THE HEARING OFFICER
12 SHALL ORDER THE INSURER OR EMPLOYER THAT DENIED THE CLAIM TO
13 REIMBURSE THE FUND THE AMOUNT PAID THE EMPLOYEE PURSUANT TO
14 SUBSECTION (4)(a) OF THIS SECTION.

15 (5) NO LATER THAN AUGUST 31, 2023, AND EVERY AUGUST 31
16 THEREAFTER, THE DIRECTOR SHALL SUBMIT A REPORT TO THE
17 COMMISSIONER OF INSURANCE DETAILING STATISTICS AND OUTCOMES
18 RELATED TO THE APPEAL PROCESS PROVIDED IN THIS SECTION.

19 **8-13.3-409. Leave protection fund - creation - rules.** THERE IS
20 HEREBY CREATED IN THE STATE TREASURY THE LEAVE PROTECTION FUND.
21 THE FUND CONSISTS OF A FEE PAID BY EACH EMPLOYER THAT OFFERS PAID
22 FAMILY AND MEDICAL LEAVE IN AN AMOUNT DETERMINED BY THE
23 DIRECTOR BY RULE AND DEPOSITS INTO THE FUND MADE PURSUANT TO
24 SECTIONS 8-13.3-408 (3)(a)(II) AND (3)(b)(II), 8-13.3-410 (4)(h), AND
25 10-16-223 (4). MONEY IN THE FUND MAY BE USED ONLY TO REIMBURSE
26 EMPLOYEES FOR CLAIMS APPEALED PURSUANT TO SECTION 8-13.3-408 AND
27 TO PAY FOR THE CLAIMS APPEAL PROCESS. INTEREST EARNED ON THE
28 INVESTMENT OF MONEY IN THE FUND REMAINS IN THE FUND. MONEY IN

1 THE FUND IS CONTINUOUSLY APPROPRIATED TO THE OFFICE FOR THE
2 PURPOSE OF THIS SECTION.

3 **8-13.3-410. Employer to provide employment protection for**
4 **employees taking paid family and medical leave - rules - complaints**
5 **- fines - damages.** (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS
6 SECTION, AN ELIGIBLE INDIVIDUAL WHO TAKES PAID FAMILY AND MEDICAL
7 LEAVE UNDER FMLA OR THIS PART 4 FOR THE INTENDED PURPOSE OF THE
8 LEAVE IS ENTITLED, ON RETURN FROM THE LEAVE:

9 (a) TO BE RESTORED BY THE EMPLOYER TO THE POSITION OF
10 EMPLOYMENT HELD BY THE ELIGIBLE INDIVIDUAL WHEN THE LEAVE
11 COMMENCED WITH THE SAME BENEFITS, PAY, AND OTHER TERMS AND
12 CONDITIONS OF EMPLOYMENT; OR

13 (b) TO BE RESTORED TO AN EQUIVALENT POSITION WITH
14 EQUIVALENT EMPLOYMENT BENEFITS, PAY, AND OTHER TERMS AND
15 CONDITIONS OF EMPLOYMENT.

16 (2) SUBSECTION (1) OF THIS SECTION APPLIES ONLY TO:

17 (a) EMPLOYERS WITH TWENTY OR MORE EMPLOYEES, FOR LEAVE
18 BEGINNING ON OR AFTER JULY 1, 2022, AND ON OR BEFORE JUNE 30, 2025;

19 (b) EMPLOYERS WITH TEN OR MORE EMPLOYEES, FOR LEAVE
20 BEGINNING ON OR AFTER JULY 1, 2025.

21 (3) (a) AN EMPLOYER SHALL NOT INTERFERE WITH, RESTRAIN, OR
22 DENY THE EXERCISE OF OR THE ATTEMPT TO EXERCISE ANY RIGHT
23 PROVIDED UNDER THIS PART 4.

24 (b) AN EMPLOYER SHALL NOT DISCHARGE OR IN ANY OTHER
25 MANNER DISCRIMINATE AGAINST ANY INDIVIDUAL FOR OPPOSING ANY
26 PRACTICE MADE UNLAWFUL BY THIS SECTION.

27 (c) AN EMPLOYER SHALL NOT DISCHARGE OR IN ANY OTHER
28 MANNER DISCRIMINATE AGAINST ANY INDIVIDUAL BECAUSE THE

1 INDIVIDUAL HAS:

2 (I) FILED ANY CHARGE, OR HAS INSTITUTED OR CAUSED TO BE
3 INSTITUTED ANY PROCEEDING, UNDER OR RELATED TO THIS SECTION;

4 (II) GIVEN, OR IS ABOUT TO GIVE, ANY INFORMATION IN
5 CONNECTION WITH ANY INQUIRY OR PROCEEDING RELATING TO ANY RIGHT
6 PROVIDED UNDER THIS PART 4; OR

7 (III) TESTIFIED, OR IS ABOUT TO TESTIFY, IN ANY INQUIRY OR
8 PROCEEDING RELATING TO ANY RIGHT PROVIDED UNDER THIS PART 4.

9 (4) (a) THE OFFICE SHALL ENFORCE THIS SECTION, INCLUDING
10 ESTABLISHING A SYSTEM USING MULTIPLE MEANS OF COMMUNICATION TO
11 RECEIVE COMPLAINTS REGARDING NONCOMPLIANCE WITH THIS PART 4.
12 ANY INDIVIDUAL AGGRIEVED BY A VIOLATION OF THIS PART 4 MAY FILE A
13 COMPLAINT WITH THE OFFICE AGAINST AN EMPLOYER FOR A VIOLATION OF
14 THIS PART 4.

15 (b) UPON RECEIVING A COMPLAINT ALLEGING A VIOLATION OF THIS
16 PART 4, THE OFFICE SHALL INVESTIGATE THE COMPLAINT IN A TIMELY
17 MANNER AND MAY RESOLVE THE COMPLAINT THROUGH MEDIATION
18 BETWEEN THE AGGRIEVED INDIVIDUAL AND THE EMPLOYER IF THE
19 AGGRIEVED INDIVIDUAL AND THE EMPLOYER EACH AGREE TO MEDIATE
20 AND AGREE TO THE RESOLUTION.

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

25 (d) THE OFFICE SHALL CONSULT WITH AND KEEP COMPLAINANTS
26 NOTIFIED REGARDING THE STATUS OF THEIR COMPLAINT, ANY RESULTING
27 INVESTIGATION, AND ANY NOTICE OF VIOLATION REGARDING THEIR
28 COMPLAINT. IF THE OFFICE RULES THAT A VIOLATION HAS OCCURRED, THE

1 OFFICE SHALL ISSUE TO THE OFFENDING EMPLOYER A NOTICE OF
2 VIOLATION AND MAY IMPOSE FINES DETERMINED PURSUANT TO
3 SUBSECTION (4)(h) OF THIS SECTION. THE DIRECTOR MAY GRANT A
4 REASONABLE PERIOD OF TIME, BUT NOT LONGER THAN FOURTEEN DAYS
5 AFTER THE DATE OF NOTIFICATION, FOR CORRECTION OF THE VIOLATION.
6 IF THE EMPLOYER CORRECTS THE VIOLATION WITHIN THAT PERIOD, THE
7 DIRECTOR SHALL NOT IMPOSE A FINE. THE DIRECTOR SHALL, BY RULE,
8 PROVIDE DETAILS REGARDING THE WAIVER OF FINES AND PRESCRIBE THE
9 FORM AND MANNER OF ISSUING NOTICES OF VIOLATION, INCLUDING
10 INFORMATION ON APPEALING THE DECISION OF THE OFFICE.

11 (e) THE OFFICE SHALL RULE ON A COMPLAINT WITHIN ONE
12 HUNDRED EIGHTY DAYS AFTER THE COMPLAINT IS FILED.

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

15 (I) A COMPLAINT BROUGHT UNDER THIS SECTION HAS BEEN RULED
16 UPON BY THE OFFICE;

17 (II) MEDIATION IS COMPLETE AND THE COMPLAINT IS RESOLVED;

18 OR

19 (III) ONE HUNDRED EIGHTY DAYS HAVE ELAPSED FROM THE DATE
20 THE COMPLAINT WAS FILED.

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

1 (h) THE DIRECTOR, BY RULE, SHALL ESTABLISH A FINE STRUCTURE
2 FOR EMPLOYERS WHO VIOLATE THIS SECTION. THE DIRECTOR SHALL
3 TRANSFER ANY FINES COLLECTED PURSUANT TO THIS SECTION TO THE
4 STATE TREASURER FOR DEPOSIT IN THE LEAVE PROTECTION FUND CREATED
5 IN SECTION 8-13.3-409.

6 (5) NOTHING IN THIS SECTION RELIEVES AN EMPLOYER OF ANY
7 OBLIGATION UNDER A COLLECTIVE BARGAINING OR PARTNERSHIP
8 AGREEMENT.

9 **8-13.3-411. Local government may opt out.** AN EMPLOYER THAT
10 IS A LOCAL GOVERNMENT MAY OPT OUT OF THE REQUIREMENTS OF THIS
11 PART 4 THROUGH AN AFFIRMATIVE VOTE OF THE MAJORITY OF THE
12 MEMBERS OF A GOVERNING BODY OF THE LOCAL GOVERNMENT, ACTING
13 THROUGH ORDINANCE OR RESOLUTION.

14 **8-13.3-412. Coordination of benefits - rules.** (1) (a) LEAVE
15 TAKEN UNDER THIS PART 4 RUNS CONCURRENTLY WITH ANY FMLA LEAVE
16 OR LEAVE TAKEN UNDER PART 2 OF THIS ARTICLE 13.3. IF A PERIOD OF
17 FAMILY AND MEDICAL LEAVE RECEIVED BY AN EMPLOYEE UNDER THIS
18 PART 4 IS CONCURRENTLY DESIGNATED AS LEAVE PURSUANT TO THE
19 FMLA OR PART 2 OF THIS ARTICLE 13.3, THE EMPLOYER SHALL NOTIFY
20 THE EMPLOYEE OF THE DESIGNATION AND SHALL ALSO PROVIDE THE
21 EMPLOYEE WITH THE NOTICE REQUIRED UNDER 29 CFR 825.300 (d).

22 (b) AN EMPLOYER MAY REQUIRE THAT PAYMENT MADE OR LEAVE
23 TAKEN UNDER THIS PART 4 BE MADE OR TAKEN CONCURRENTLY OR
24 OTHERWISE COORDINATED WITH PAYMENT MADE OR LEAVE ALLOWED
25 UNDER THE TERMS OF DISABILITY OR FAMILY CARE LEAVE UNDER AN
26 EMPLOYER POLICY OR EMPLOYMENT CONTRACT, AS APPLICABLE. THE
27 EMPLOYER SHALL GIVE ITS EMPLOYEES WRITTEN NOTICE OF THIS
28 REQUIREMENT.

1 (c) NOTWITHSTANDING SUBSECTIONS (1)(a) AND (1)(b) OF THIS
2 SECTION, AN EMPLOYER SHALL NOT REQUIRE AN EMPLOYEE TO USE OR
3 EXHAUST TIME OFF UNDER AN EMPLOYER POLICY, INCLUDING PAID TIME
4 OFF, VACATION TIME, OR SICK TIME, PRIOR TO USE OF LEAVE UNDER THIS
5 PART 4. IN ADDITION, AN EMPLOYER SHALL NOT REQUIRE AN EMPLOYEE TO
6 CHARGE ALL OR PART OF THE EMPLOYEE'S LEAVE UNDER THIS PART 4 TO
7 UNUSED ACCRUALS OR OTHER PAID TIME OFF, INCLUDING VACATION TIME
8 AND SICK TIME, EXCEPT WHERE THE EMPLOYER MAINTAINS A SEPARATE
9 BANK OF PAID TIME SOLELY FOR THE PURPOSE OF LEAVE UNDER THIS PART
10 4.

11 (d) SUBJECT TO THE LIMITATIONS UNDER SECTION 8-13.3-407 (4),
12 AN EMPLOYEE MAY SUPPLEMENT THE PAID FAMILY AND MEDICAL LEAVE
13 THE EMPLOYEE IS RECEIVING, THROUGH VACATION, SICK, OR OTHER PAID
14 TIME OFF, TO ENSURE THAT THE EMPLOYEE IS RECEIVING ONE HUNDRED
15 PERCENT OF THE EMPLOYEE'S WEEKLY WAGE. NOTHING IN THIS
16 SUBSECTION (1)(d) REQUIRES AN EMPLOYEE TO RECEIVE OR USE, OR AN
17 EMPLOYER TO PROVIDE, ADDITIONAL PAID TIME OFF AS DESCRIBED IN THIS
18 SUBSECTION (1)(d).

19 (2) (a) FOR A COVERED INDIVIDUAL WHO IS ELIGIBLE FOR PAID
20 FAMILY AND MEDICAL LEAVE DUE TO A SERIOUS HEALTH CONDITION
21 RESULTING FROM AN ACCIDENT, INJURY, OR OCCUPATIONAL DISEASE FOR
22 WHICH THE RIGHT OF COMPENSATION EXISTS UNDER SECTION 8-41-301,
23 THE WEEKLY BENEFIT AMOUNT SHALL BE REDUCED, BUT NOT BELOW ZERO,
24 BY AN AMOUNT EQUAL TO SEVENTY-FIVE PERCENT OF:

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

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

1 (b) NOTWITHSTANDING ANY OTHER LAW, BENEFITS PAID TO AN
2 INDIVIDUAL PURSUANT TO THE "WORKERS' COMPENSATION ACT OF
3 COLORADO", ARTICLES 40 TO 47 OF THIS TITLE 8, SHALL NOT BE REDUCED
4 OR OFFSET BASED ON THE RECEIPT OF PAID FAMILY AND MEDICAL LEAVE
5 PURSUANT TO THIS PART 4.

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

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

1 ATTORNEY FEES AND COSTS.

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

5 (e) WHERE INDIVIDUALS ARE CONCURRENTLY ELIGIBLE FOR
6 BENEFITS DUE TO A SERIOUS HEALTH CONDITION RESULTING FROM AN
7 ACCIDENT, INJURY, OR OCCUPATIONAL DISEASE FOR WHICH THE RIGHT OF
8 COMPENSATION EXISTS UNDER SECTION 8-41-301 AND UNDER THIS PART
9 4 FOR A PURPOSE UNRELATED TO THAT SERIOUS HEALTH CONDITION, THE
10 PAID FAMILY AND MEDICAL LEAVE SHALL BE REDUCED BY AN AMOUNT TO
11 BE DETERMINED BY THE DIRECTOR BY RULE. COMBINED WORKERS'
12 COMPENSATION BENEFITS AND PAID FAMILY AND MEDICAL LEAVE
13 BENEFITS PAID IN ACCORDANCE WITH THIS SUBSECTION (2)(e) MUST NOT
14 EXCEED A COVERED INDIVIDUAL'S WEEKLY WAGE. THE DIRECTOR SHALL
15 ADOPT RULES TO ESTABLISH THE PROCESS AND REQUIRED
16 DOCUMENTATION REQUIRED FOR CONCURRENT RECEIPT OF BENEFITS.

17 (3) (a) THIS PART 4 DOES NOT DIMINISH:

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

21 (II) AN EMPLOYER'S OBLIGATION TO COMPLY WITH A COLLECTIVE
22 BARGAINING OR PARTNERSHIP AGREEMENT, EMPLOYER POLICY, OR
23 EMPLOYMENT CONTRACT, AS APPLICABLE, THAT PROVIDES GREATER
24 LEAVE THAN FMLA LEAVE OR PAID FAMILY AND MEDICAL LEAVE.

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

1 PUBLIC POLICY.

2 **8-13.3-413. Erroneous payments - disqualification for benefits**

3 **- penalties - rules.** (1) A COVERED INDIVIDUAL WHO, IN CONNECTION
4 WITH AN APPLICATION FOR BENEFITS UNDER THIS PART 4, WILLFULLY
5 MAKES A FALSE STATEMENT OR MISREPRESENTATION REGARDING A
6 MATERIAL FACT OR WILLFULLY FAILS TO REPORT A MATERIAL FACT IS
7 DISQUALIFIED FROM:

8 (a) PAID FAMILY AND MEDICAL LEAVE FOR ONE YEAR FROM THE
9 DATE THE OFFICE DISCOVERS THE FALSE STATEMENT,
10 MISREPRESENTATION, OR WILLFUL FAILURE TO REPORT A MATERIAL FACT;
11 AND

12 (b) EMPLOYMENT PROTECTION, AS PROVIDED IN SECTION
13 8-13.3-410 (1).

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

23 **8-13.3-414. Rules.** THE DIRECTOR MAY ADOPT RULES AS
24 NECESSARY OR AS SPECIFIED IN THIS PART 4 FOR THE IMPLEMENTATION
25 AND ADMINISTRATION OF THIS PART 4.

26 **8-13.3-415. State personnel director's authority for family and**
27 **medical leave for state employees.** BEGINNING ON JULY 1, 2020, THE
28 STATE PERSONNEL DIRECTOR SHALL ADMINISTER PAID FAMILY AND

1 MEDICAL LEAVE FOR STATE EMPLOYEES. SUCH PAID FAMILY AND MEDICAL
2 LEAVE MUST BE CONSISTENT WITH THE PAID FAMILY AND MEDICAL LEAVE
3 BENEFITS PROVIDED BY THIS PART 4.

4 **SECTION 2.** In Colorado Revised Statutes, **add** article 24 to title
5 10 as follows:

6 **ARTICLE 24**
7 **Paid Family and Medical Leave Insurance**

8 **10-24-101. Definitions.** AS USED IN THIS SECTION, UNLESS THE
9 CONTEXT OTHERWISE REQUIRES:

10 (1) "COMMUNITY-RATED" MEANS A RATING METHODOLOGY IN
11 WHICH THE PREMIUM FOR ALL PERSONS COVERED BY A POLICY OR
12 CONTRACT IS THE SAME BASED ON THE EXPERIENCE OF THE ENTIRE POOL
13 OF RISKS COVERED BY THAT POLICY OR CONTRACT FORM WITH REGARD TO
14 GEOGRAPHY, INDUSTRY, OR PERSONAL CHARACTERISTICS SUCH AS AGE,
15 SEX, GENDER, HEALTH STATUS, OR OCCUPATION.

16 (2) "PAID FAMILY AND MEDICAL LEAVE INSURANCE PLAN" OR
17 "PLAN" MEANS A PLAN TO PAY WAGE REPLACEMENT BENEFITS FOR AN
18 ELIGIBLE INDIVIDUAL WHO TAKES PAID FAMILY AND MEDICAL LEAVE
19 PURSUANT TO PART 4 OF ARTICLE 13.3 OF TITLE 8.

20 (3) "PROGRAM" MEANS THE PAID FAMILY AND MEDICAL LEAVE
21 INSURANCE PROGRAM CREATED IN SUBSECTION (2) OF THIS SECTION.

22 (4) "RISK ADJUSTMENT MECHANISM" MEANS THE PROCESS USED
23 TO EQUALIZE THE PER MEMBER, PER MONTH CLAIM AMOUNTS AMONG
24 INSURERS IN ORDER TO PROTECT INSURERS FROM DISPROPORTIONATE
25 ADVERSE RISKS.

26 **10-24-102. Family and medical leave insurance program -**
27 **created - powers and duties.** (1) THERE IS HEREBY CREATED IN THE

1 DIVISION THE PAID FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM TO
2 MONITOR AND ENFORCE INSURER COMPLIANCE WITH THIS SECTION,
3 ADMINISTER THE RISK ADJUSTMENT MECHANISM SPECIFIED IN SECTION 10-
4 24-108, ASSIST WITH CONSUMER COMPLAINTS RELATED TO INSURERS,
5 COLLECT DATA, AND AUDIT INSURERS.

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

15 (3) THE ENTERPRISE ESTABLISHED PURSUANT TO THIS SECTION HAS
16 ALL THE POWERS AND DUTIES AUTHORIZED BY THIS SECTION PERTAINING
17 TO THE ADMINISTRATION OF PAID FAMILY AND MEDICAL LEAVE INSURANCE
18 PLANS AND THE REGULATION OF INSURERS OFFERING PAID FAMILY AND
19 MEDICAL LEAVE INSURANCE PLANS.

20 (4) THE PROGRAM IS CREATED FOR THE BUSINESS PURPOSE OF
21 DEVELOPING A REGULATED AND STABLE INSURANCE MARKETPLACE THAT
22 MINIMIZES BARRIERS TO ENTRY AND ALLOWS INSURERS TO OFFER
23 AFFORDABLE PAID FAMILY AND MEICAL LEAVE INSURANCE PLANS THAT
24 MEET THE REQUIREMENTS OF THIS ARTICLE 24.

- 25 (5) THE PROGRAM SHALL:
- 26 (a) SET PREMIUM RATES FOR PLANS;
 - 27 (b) MONITOR AND ENFORCE INSURER COMPLIANCE TO PROTECT
 - 28 INSURANCE CONSUMERS AND POLICYHOLDERS;

1 (c) ADMINISTER THE RISK ADJUSTMENT MECHANISM TO ENSURE A
2 FAIR AND EFFICIENT MARKETPLACE;

3 (d) ASSIST WITH CONSUMER COMPLAINS RELATED TO INSURERS TO
4 PROTECT CONSUMER RIGHTS;

5 (e) COLLECT DATA TO ENSURE THE PROGRAM IS WORKING
6 EFFICIENTLY AND EFFECTIVELY; AND

7 (f) CONDUCT AUDITS OF INSURERS TO ENSURE APPROPRIATE
8 MARKETPLACE CONDUCT.

9 (6) NOTHING IN THIS SECTION LIMITS OR RESTRICTS THE
10 AUTHORITY OF THE PROGRAM TO EXPEND ITS REVENUES CONSISTENT WITH
11 THIS SECTION.

12 (7) THE PROGRAM IS HEREBY AUTHORIZED TO ISSUE REVENUE
13 BONDS FOR THE EXPENSES OF THE PROGRAM, WHICH BONDS MAY BE
14 SECURED BY ANY REVENUES OF THE PROGRAM.

15 (8) THE STATE TREASURER MAY TRANSFER MONEY FROM THE
16 GENERAL FUND TO THE PROGRAM FOR THE PURPOSE OF DEFRAYING
17 EXPENSES INCURRED BY THE PROGRAM PRIOR TO THE RECEIPT OF BOND
18 PROCEEDS OR REVENUES BY THE PROGRAM. THE PROGRAM MAY ACCEPT
19 AN EXPEND ANY MONEY SO TRANSFERRED, AND, NOTWITHSTANDING ANY
20 STATE FISCAL RULE OR GENERALLY ACCEPTED ACCOUNTING PRINCIPLE
21 THAT COULD OTHERWISE BE INTERPRETED TO REQUIRE A CONTRARY
22 CONCLUSION, SUCH A TRANSFER SHALL CONSTITUTE A LOAN FROM THE
23 STATE TREASURER TO THE PROGRAM AND SHALL NOT BE CONSIDERED A
24 GRANT FOR PURPOSES OF SECTION 20 (2)(d) OF ARTICLE X OF THE STATE
25 CONSTITUTION. AS THE PROGRAM RECEIVES SUFFICIENT REVENUES IN
26 EXCESS OF EXPENSES, THE PROGRAM SHALL REIMBURSE THE GENERAL
27 FUND FOR THE PRINCIPAL AMOUNT OF ANY LOAN FROM THE GENERAL
28 FUND MADE BY THE STATE TREASURER PLUS INTEREST AT A RATE SET BY

1 THE STATE TREASURER.

2 **10-24-103. Paid family and medical leave insurance plans -**

3 **requirements - insurer fees.** (1) AN INSURER MAY OFFER A PAID

4 FAMILY AND MEDICAL LEAVE INSURANCE PLAN IN THE STATE. AT A

5 MINIMUM, AN INSURER OFFERING A PLAN IN ACCORDANCE WITH THIS

6 SECTION SHALL:

7 (a) PROVIDE WAGE REPLACEMENT FOR PAID FAMILY AND MEDICAL

8 LEAVE TAKEN IN ACCORDANCE WITH PART 4 OF ARTICLE 13.3 OF TITLE 8

9 IN AN AMOUNT THAT MEETS OR EXCEEDS THE AMOUNTS REQUIRED IN PART

10 4 OF ARTICLE 13.3 OF TITLE 8;

11 (b) COMPLY WITH THE APPLICABLE REQUIREMENTS OF PART 4 OF

12 ARTICLE 13.3 OF TITLE 8;

13 (c) OFFER THE PLAN TO SEASONAL WORKERS, AS DEFINED IN

14 SECTION 8-73-106, SELF-EMPLOYED WORKERS, AND ANY OTHER

15 INTERESTED EMPLOYERS AND EMPLOYEES;

16 (d) COMPLY WITH THE RATES ESTABLISHED BY THE

17 COMMISSIONER;

18 (e) PAY THE REQUIRED INSURER FEES AS ESTABLISHED BY THE

19 COMMISSIONER BY RULE IN ACCORDANCE WITH SUBSECTION (2) OF THIS

20 SECTION;

21 (f) PARTICIPATE AS A MEMBER INSURER IN THE LIFE AND HEALTH

22 INSURANCE PROTECTION ASSOCIATION CREATED IN ARTICLE 20 OF TITLE

23 10.

24 (g) COMPLY WITH ANY OTHER REQUIREMENTS ESTABLISHED BY

25 THE COMMISSIONER BY RULE.

26 (2) AN INSURER OFFERING A PLAN PURSUANT TO THIS ARTICLE 24

27 SHALL PAY AN INSURER FEE IN THE AMOUNT DETERMINED BY THE

28 COMMISSIONER BY RULE. SUCH FEES ARE TO BE USED FOR THE PURPOSE OF

1 ADMINISTERING THE PAID FAMILY AND MEDICAL LEAVE INSURANCE
2 PROGRAM.

3 **10-24-104. Claims denied in error - required payments.** AN
4 INSURER THAT IS FOUND TO HAVE DENIED A CLAIM IN ERROR PURSUANT TO
5 SECTION 8-13.3-408 SHALL PAY THE OFFICE THE AMOUNT SPECIFIED IN
6 SECTION 8-13.3-408 (3)(a)(II) OR (3)(b)(II), WHICH AMOUNT MUST BE
7 DEPOSITED IN THE LEAVE PROTECTION FUND CREATED IN SECTION
8 8-13.3-409.

9 **10-24-105. Guaranteed issuance of paid family and medical**
10 **leave insurance plans.** (1) (a) SUBJECT TO SUBSECTION (4) OF THIS
11 SECTION, EACH INSURER THAT OFFERS A PAID FAMILY AND MEDICAL LEAVE
12 PLAN IN THIS STATE SHALL ISSUE ANY APPLICABLE PLAN TO ANY
13 INDIVIDUAL WHO APPLIES FOR THE PLAN AND AGREES TO MAKE THE
14 REQUIRED PREMIUM PAYMENTS AND SATISFY THE OTHER REASONABLE
15 PROVISIONS OF THE PLAN CONSISTENT WITH THIS ARTICLE 24.

16 (b) EXCEPT AS PROVIDED IN THIS SUBSECTION (4) OF THIS SECTION,
17 EACH INSURER THAT OFFERS A PAID FAMILY AND MEDICAL LEAVE
18 INSURANCE PLAN IN THIS STATE SHALL ISSUE ANY PAID FAMILY AND
19 MEDICAL LEAVE INSURANCE PLAN TO ANY EMPLOYER THAT APPLIES FOR
20 THE PLAN AND AGREES TO MAKE THE REQUIRED PREMIUM PAYMENTS AND
21 SATISFY THE OTHER REASONABLE PROVISIONS OF THE PLAN NOT
22 INCONSISTENT WITH THIS ARTICLE 24.

23 (2) THE COVERAGE MUST EXTEND TO ALL EMPLOYEES WHO ARE
24 COVERED EMPLOYEES AS DEFINED IN SECTION 8-13.3-402(2).

25 (3) AN INSURER SHALL NOT APPLY A WAITING PERIOD FOR PLAN
26 BENEFITS FOR AN EMPLOYEE WHO IS AN ELIGIBLE INDIVIDUAL PURSUANT
27 TO SECTION 8-13.3-405.

28 (4) (a) AN INSURER IS NOT REQUIRED TO ISSUE A PLAN IF:

1 (I) FOR ANY PERIOD OF TIME THE INSURER DEMONSTRATES, AND
2 THE COMMISSIONER DETERMINES, THAT THE INSURER DOES NOT HAVE THE
3 FINANCIAL RESERVES NECESSARY TO UNDERWRITE ADDITIONAL
4 COVERAGE; AND

5 (II) THE INSURER IS APPLYING THIS SUBSECTION (5)(d)(I)
6 UNIFORMLY TO ALL EMPLOYERS IN THIS STATE CONSISTENT WITH
7 APPLICABLE STATE LAW AND WITHOUT REGARD TO THE CLAIMS
8 EXPERIENCE OF OR ANY RISK-RELATED FACTOR RELATING TO THE
9 EMPLOYER AND ITS EMPLOYEES.

10 (b) AN INSURER THAT DENIES COVERAGE IN ACCORDANCE WITH
11 SUBSECTION (5)(d)(I) OF THIS SECTION SHALL NOT OFFER A PLAN IN THIS
12 STATE UNTIL THE LATER OF:

13 (I) ONE HUNDRED EIGHTY DAYS AFTER THE DATE THE COVERAGE
14 IS DENIED; OR

15 (II) THE DATE ON WHICH THE INSURER DEMONSTRATES TO THE
16 COMMISSIONER THAT IT HAS SUFFICIENT FINANCIAL RESERVES TO
17 UNDERWRITE ADDITIONAL COVERAGE.

18 **10-24-106. Premium rates established by the commissioner -**
19 **public comment - limitations - rules.** (1) THE COMMISSIONER SHALL,
20 BY RULE PROMULGATED AFTER A PUBLIC COMMENT PERIOD, ESTABLISH
21 THE PREMIUM RATES AT WHICH INSURERS SHALL OFFER A PLAN.

22 (2) THE RATES ESTABLISHED BY THE COMMISSIONER MUST:

23 (a) NOT BE EXCESSIVE, INADEQUATE, OR UNFAIRLY
24 DISCRIMINATORY;

25 (b) BE ACTUARIALLY JUSTIFIED;

26 (c) ALLOW FOR INSURERS TO ESTABLISH SUFFICIENT RESERVES TO
27 COVER EXPECTED CLAIMS;

28 (d) BE STATEWIDE COMMUNITY RATED;

1 (e) BE BASED ON RELEVANT ACTUARIAL FACTORS, INCLUDING
2 ESTIMATED CLAIMS AND PROVIDE FOR A MARGIN FOR PROFIT AND
3 ADMINISTRATIVE COSTS NOT TO EXCEED TWENTY-FIVE PERCENT;

4 (f) NOT VARY BASED ON GEOGRAPHIC LOCATION OF THE EMPLOYER
5 OR EMPLOYEE;

6 (g) BE SET UNIFORMLY FOR ALL EMPLOYEES.

7 **10-24-107. Risk adjustment mechanism.** (1) THE COMMISSIONER
8 SHALL PROMULGATE RULES NECESSARY FOR THE IMPLEMENTATION OF A
9 RISK ADJUSTMENT MECHANISM BY WHICH:

10 (a) INSURERS ARE ASSESSED A CHARGE IF THE ACTUARIAL RISK OF
11 THEIR ENROLLEES FOR THAT YEAR IS LESS THAN THE AVERAGE ACTUARIAL
12 RISK OF ALL ENROLLEES IN ALL PLANS IN THE STATE FOR THAT YEAR; AND

13 (b) INSURERS RECEIVE A PAYMENT IF THE ACTUARIAL RISK FOR
14 THEIR ENROLLEES IS GREATER THAN THE AVERAGE ACTUARIAL RISK OF
15 ALL ENROLLEES IN ALL PLANS IN THE STATE FOR THAT YEAR.

16 (2) THE COMMISSIONER SHALL ADMINISTER THE RISK ADJUSTMENT
17 MECHANISM DIRECTLY OR SELECT A THIRD-PARTY ADMINISTRATOR .

18 (3) EMPLOYERS OFFERING SELF-FUNDED PAID FAMILY AND
19 MEDICAL LEAVE BENEFITS ARE NOT SUBJECT TO THE RISK ADJUSTMENT
20 MECHANISM.

21 **10-24-108. Audits.** (1) THE COMMISSIONER MAY:

22 (a) IN THE FORM AND MANNER DETERMINED BY THE
23 COMMISSIONER, REQUIRE AN INSURER OFFERING A PLAN PURSUANT TO THIS
24 ARTICLE 24 TO FILE A REPORT RELATING A CLAIM, INCLUDING DATES OF
25 COMMENCEMENT AND TERMINATION OF BENEFIT PAYMENTS AND THE
26 AMOUNT OF BENEFITS PAID PURSUANT TO THIS ARTICLE 24.

27 (b) REQUIRE AN INSURER TO PROVIDE ANNUAL INFORMATION
28 SPECIFYING THE AGGREGATE AMOUNTS OF BENEFITS PAID, NUMBER OF

1 CLAIMS ALLOWED AND DENIED, THE AVERAGE AMOUNT OF WEEKLY WAGE
2 BENEFITS PAID, THE AVERAGE DURATION OF BENEFIT PERIODS, THE
3 AMOUNT OF PAYROLLS COVERED, AND ANY OTHER INFORMATION THE
4 COMMISSIONER FINDS NECESSARY TO ADMINISTER THIS ARTICLE 24. IF THE
5 INSURER PROVIDES BENEFITS FOR MORE THAN ONE EMPLOYER, THE
6 COMMISSIONER MAY REQUIRE THE INFORMATION SPECIFIED IN THIS
7 SUBSECTION (1)(b) TO BE SHOWN SEPARATELY FOR EMPLOYERS THAT
8 PROVIDE ONLY BENEFITS THAT ARE SUBSTANTIALLY THE SAME AS
9 BENEFITS REQUIRED IN THIS ARTICLE 24.

10 **10-24-109. Rules.** THE COMMISSIONER MAY PROMULGATE RULES
11 NECESSARY TO EFFECTUATE THIS ARTICLE 24.

12 **SECTION 3.** In Colorado Revised Statutes, 8-1-140, **add** (4) as
13 follows:

14 **8-1-140. Violation - penalty.** (4) IN AN INVESTIGATION OF
15 EMPLOYER RETALIATION OR INTERFERENCE WITH EMPLOYEE RIGHTS, OR
16 OF FAILURE TO PROVIDE PAID FAMILY AND MEDICAL LEAVE PURSUANT TO
17 PART 4 OF ARTICLE 13.3 OF THIS TITLE 8, IF AN INVESTIGATION YIELDS A
18 DETERMINATION THAT:

19 (a) RIGHTS OF MULTIPLE EMPLOYEES HAVE BEEN VIOLATED, THEN
20 THE VIOLATION AS TO EACH EMPLOYEE IS A SEPARATE VIOLATION FOR
21 PURPOSED OF FINED, PENALTIES, OR OTHER REMEDIES; AND

22 (b) A VIOLATION COST AN EMPLOYEE THE EMPLOYEE'S JOB, THEN
23 THE DETERMINATION MAY INCLUDE AN ORDER TO REINSTATE THE
24 EMPLOYEE, TO PAY THE EMPLOYEE'S LOST PAY UNTIL REINSTATEMENT, OR
25 FOR A REASONABLE PERIOD IF REINSTATEMENT IS DETERMINED NOT TO BE
26 FEASIBLE.

27 **SECTION 4.** In Colorado Revised Statutes, 10-1-304, **amend** (1)
28 as follows:

1 **10-1-304. Authority and scope of market conduct surveillance**
2 **- rules.** (1) The commissioner may conduct market conduct surveillance
3 of any company as often as the commissioner, in the commissioner's sole
4 discretion, deems appropriate; EXCEPT THAT THE COMMISSIONER SHALL
5 CONDUCT AN EXAMINATION OF EACH INSURER OFFERING PAID FAMILY AND
6 MEDICAL LEAVE INSURANCE AT LEAST ONCE EVERY THREE YEARS. When
7 initiating market conduct surveillance and in determining its nature,
8 scope, and frequency, the commissioner may consider any market analysis
9 performed pursuant to section 10-1-303 and any other criteria as set forth
10 in the most recent available edition of the Market Regulation Handbook.

11 **SECTION 5.** In Colorado Revised Statutes, 10-1-305, **amend** (1)
12 as follows:

13 **10-1-305. Market conduct examinations.** (1) The commissioner
14 may conduct a market conduct examination of any company as often as
15 the commissioner, in the commissioner's sole discretion, deems
16 appropriate; except that the commissioner shall:

17 (a) Rely upon the state of domicile to conduct market conduct
18 examinations of those eligible nonadmitted insurers regulated in
19 accordance with article 5 of this title 10; AND

20 (b) CONDUCT AN EXAMINATION OF EACH INSURER OFFERING PAID
21 FAMILY AND MEDICAL LEAVE INSURANCE AT LEAST ONCE EVERY THREE
22 YEARS.

23 **SECTION 6.** In Colorado Revised Statutes, 24-50-104, **add**
24 (7)(e) as follows:

25 **24-50-104. Job evaluation and compensation - state employee**
26 **reserve fund - created - definitions - repeal.**(1) **Total compensation**
27 **philosophy.** (7) **Leaves.** (e) THE STATE PERSONNEL DIRECTOR MAY
28 ADMINISTER AND PROMULGATE LEAVE POLICIES, INCLUDING PAID FAMILY

UNEDITED
UNREVISED
REDRAFT
2.18.20
Double underlining
denotes changes from
prior draft

1 AND MEDICAL LEAVE, ACCORDING TO BEST PRACTICES, AS DETERMINED BY
2 THE STATE PERSONNEL DIRECTOR.

3 **SECTION 7. Safety clause.** The general assembly hereby finds,
4 determines, and declares that this act is necessary for the immediate
5 preservation of the public peace, health, and safety.