SB14-196

Colorado Legislative Council Staff Fiscal Note

STATE and LOCAL FISCAL IMPACT

Drafting Number:	LLS 14-0172	**Date:**	April 25, 2014
Prime Sponsor(s):	Sen. Ulibarri Rep. Salazar	**Bill Status:**	Senate SVMA
		Fiscal Analyst:	Clare Pramuk (303-866-2677)

SHORT TITLE: FAMLI INSURANCE PROGRAM WAGE REPLACEMENT

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016	FY 2016-2017	FY 2017-2018
State Revenue		**$217 million**	**$434 million**	**$434 million**
Cash Fund		217 million	434 million	434 million
State Expenditures	**$16 million**	**$17 million**	**$248 million**	**$493 million**
General Fund	15.9 million	10.0 million		
Cash Funds		6.7 million	248 million	493 million
Centrally Appropriated Costs**	0.1 million	0.3 million		
FTE Position Change	3.0 FTE	12.0 FTE	121.5 FTE	238.5 FTE
Appropriation Required: $15,934,178 - Department of Labor (2014-15)				

* *This summary shows changes from current law under the bill for each fiscal year.*
** *These costs are not included in the bill's appropriation for FY 2014-15 and FY 2015-16. See the State Expenditures section for more information.*

Summary of Legislation

This bill creates the Family Medical Leave Insurance Program in the newly created Division of Family Medical Leave Insurance in the Colorado Department of Labor and Employment (CDLE). The program provides partial wage replacement benefits to eligible individuals who are unable to work due to their own serious health condition, or who take leave from work to care for a new child or a family member with a serious health condition. The division will establish rules and procedures to administer the program including development of an outreach program to educate the public.

By January 1, 2016, every individual employed by an employer, other than an individual who has opted out of participation, will be automatically enrolled. Employees will begin paying a premium equal to 0.42 percent of their annual wages up to a maximum annual premium of $328. Employers are required to collect premiums as a payroll deduction.

Family and medical leave insurance benefits will be payable to covered individuals beginning one year after the division begins collection of premiums. The amount of weekly benefits is based on the individual's income and is capped at $1,000 per week for up to 12 weeks in a 12-month period. Claimants with lower incomes will receive a higher percentage of their weekly wage than claimants with higher incomes. The division director can adjust the benefit caps over time according to the Consumer Price Index. Benefits received are not subject to state income tax. Leave taken runs concurrently with leave taken under the FMLA or the state Family Care Act which expands Family and Medical Leave Act (FMLA) eligibility to include partners in civil unions and domestic partnerships. A claimant cannot receive benefits from multiple sources (workers' compensation, unemployment insurance, disability insurance) that exceed his or her actual wages.

Employers covered by the federal FMLA include private employers with at least 50 employees, all government agencies, and elementary and secondary schools, regardless of the number of employees. The bill expands the employment protections from the FMLA to private employers with fewer than 50 employees by requiring that an employee be restored to an equivalent position of employment with the employer after taking leave and receiving family and medical leave benefits.

The division is required to provide annual reports beginning September 1, 2017, to the General Assembly on projected and actual program participation, and other details about the program.

Premiums are deposited into, and all benefits and administrative expenses are paid from, the Family and Medical Leave Insurance Fund. The division is established as an enterprise and premiums are not considered state revenue for purposes of Section 20 of Article X of the Colorado Constitution (TABOR). The General Assembly and the Governor must approve the division's authority to issue revenue bonds by a separate bill or joint resolution.

The division director is authorized to assess a fine up to $3,000 for violations of the bill. If an employer violates the employment protection provisions of the bill, the aggrieved employee may bring action in state court against the employer to recover damages and equitable relief as specified under the FMLA.

Background

The federal FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave for specified family and medical reasons, with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Employees may use sick time, vacation time, or other accrued leave time along with FMLA leave in order to continue being paid. For an employee to be eligible, he or she must have worked for the covered employer for at least 12 months and for at least 1,250 hours in the 12 months prior to taking FMLA leave. Finally, the employer must have at least 50 employees within 75 miles of an employee's worksite for the employer to be subject to FMLA requirements.

State Revenue

This bill is expected to increase cash fund revenue to the Family and Medical Leave Insurance Fund by $217 million in FY 2015-16 and $434 million in FY 2016-17 from premiums. A minimal amount of fine revenue is expected beginning in FY 2016-17.

Assumptions. The revenue for this fiscal note is based on the following assumptions:

- 2.9 million employees will be eligible for the program;
- although there may be variation by salary range for employees to opt out, a flat 15 percent (435,000) is used for the fiscal note;
- average annual wage is $31,326; and
- the program will begin collecting premiums on January 1, 2016, so FY 2015-16 will only have 6 months of premium collections.

Table 1 illustrates the current number of employees in each salary range included in the bill. Average annual premium is multiplied by the number of participants in each salary range to determine the premium revenue.

Table 1. Premium Revenue Under SB14-196						
Salary Ranges		Employees in Salary Range	Average Annual Income	Average Annual Premium	Participants	Full Year Premium Revenue
0	9,398	568,000	$ 9,398	$39	482,800	19,056,483
9,398	15,663	234,000	12,530	66	198,900	13,084,557
15,663	25,061	323,000	20,362	105	274,550	28,897,859
25,061	31,326	254,000	28,193	132	215,900	28,405,790
31,326	37,591	361,000	34,459	158	306,850	48,446,411
37,591	48,869	276,000	43,230	205	234,600	48,151,170
48,869	107,000	891,000	78,000	328*	757,350	248,107,860
TOTAL		**2,907,000**			**2,470,950**	**$434,150,130**

**Maximum premium applies to average annual income of $78,000.*

State Expenditures

This bill is expected to increase expenditures by **$16 million and 3.0 FTE in FY 2014-15, $17 million and 13.0 FTE in FY 2015-16, $248 million and 121.5 FTE in FY 2016-17 and $493 million and 238.5 FTE in FY 2017-18**.

Division of Family Medical Leave Insurance.

Benefits. This bill is expected to increase expenditures for benefits by **$235.2 million in FY 2016-17 and $470.5 million in FY 2017-18**, the first full year in which benefits will be paid.

Assumptions. The following assumptions were used to determine the benefit payments.

- benefits will be paid beginning January 1, 2017;
- although there may be variation in utilization by salary range, a flat 5 percent of program participation is used for the fiscal note; and
- paid leave will average 8 weeks per claimant.

Because benefits will begin to be distributed during the middle of FY 2016-17, only one-half year of claims ($235.2 million) are expected. By FY 2017-18, the division is expected to pay out $470.5 million in claims annually. Table 2 shows the benefits expected by salary range for the first two fiscal years of implementation.

Table 2. Family Medical Leave Insurance Benefits Paid Under SB14-196						
Salary Ranges		**Claimants**	**Weekly Benefit**	**Average Weeks**	**FY 2016-17 Benefits Paid**	**FY 2017-18 Benefits Paid**
0	9,398	24,140	$172	8	$16,608,320	$33,216,640
9,398	15,663	9,945	217	8	8,632,260	17,264,520
15,663	25,061	13,728	333	8	18,285,696	36,571,392
25,061	31,326	10,795	358	8	15,458,440	30,916,880
31,326	37,591	15,343	437	8	26,819,564	53,639,128
37,591	48,869	11,730	549	8	25,759,080	51,518,160
48,869	78,000	18,934	654	8	49,531,344	99,062,688
78,000		18,934	979	8	74,145,544	$148,291,088
TOTAL		**104,615**			**$235,240,248**	**$470,480,496**

Administration. This bill is expected to increase administrative expenditures for CDLE by approximately $16 million and 3.0 FTE in FY 2014-15, $17 million and 12.0 FTE in FY 2015-16, $13 million and 121.5 FTE in FY 2016-17 and $22 million and 238.5 FTE in FY 2017-18. Table 3 shows the cost components for the program administration which is described below.

Table 3. Administrative Expenditures Under SB14-196				
Cost Components	**FY 2014-15**	**FY 2015-16**	**FY 2016-17**	**FY 2017-18**
Personal Services	$213,576	$753,260	$5,995,210	$11,700,508
FTE	3.0	12.0	121.5	238.5
Operating Expenses and Capital Outlay Costs	13,116,959	13,553,727	1,380,404	1,776,826
Legal Services	3,643	21,859	43,718	54,648
Computer Programming	2,600,000	2,600,000	2,080,000	2,080,000
Actuarial Analysis			15,000	15,000
Third Party Administrator		25,000	25,000	25,000
Centrally Appropriated Costs*	82,640	308,981	3,838,000	6,424,471
TOTAL	**$16,016,818**	**$17,262,827**	**$13,377,332**	**$22,076,453**

* *Centrally appropriated costs are not included in the bill's appropriation. Due to the number of new FTE, beginning in FY 2016-17, costs will include benefits and supplemental retirement payments typically shown as centrally appropriated costs.*

In FY 2014-15, the division will hire 3 FTE and use 40 hours of legal services to develop rules to administer the program and conduct outreach. The eligibility system will require $14.6 million in hardware, software, and programming costs for two years. In FY 2015-16, the division will require 8 additional FTE to collect premiums and increase outreach efforts. A telephone system will be added for $250,000.

In FY 2016-17, the division will add 109.5 additional staff to begin processing premiums and responding to program inquiries. The division will require $1.2 million in leased space going forward. It will have 1.7 million in programming expenses to provide on-going support of the premium and claims systems. Beginning January 1, 2017, staff will begin to process claims for benefits. In FY 2017-18, the division will be fully staffed at 238 FTE handling approximately 100,000 claims per year.

An actuarial analysis ($15,000) will be conducted in both FY 2016-17 and FY 2017-18 to ensure that the fund is actuarially sound. Annual legal costs to support the program and address administrative actions related to claim denials will increase from 240 hours in FY 2015-16, to 480 hours in FY 2016-17, and to 600 hours in FY 2017-18.

The administrative expenditures for FY 2014-15 and a portion of FY 2015-16 will be General Fund. Once sufficient revenues are received from premiums, expenditures will be paid from the Family and Medical Leave Insurance Fund. If the program receives and exercises bonding authority, this may enable the program to use cash funds earlier in FY 2015-16.

Department of Personnel and Administration. The department will have an increase of $61,045 General Fund annually beginning in FY 2015-16. The department will add a 0.5 FTE contract manager to coordinate and manage the collection of premiums and the claims process for state employees through a third party administrator (TPA). The cost of the TPA is estimated at $25,000 annually.

Judicial Department. Beginning in FY 2017-18, the department may see a minimal increase in discrimination claims against employers for violating the employment protection provisions of the bill. This increase is not expected to require new appropriations.

All State Agencies. All agencies will be required to implement payroll deductions for employees and coordinate sick leave, FMLA, and disability benefits when an employee applies for family and medical leave. This increase in workload is not expected to require new appropriations.

Centrally appropriated costs*.* Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 4.

Table 4. Centrally Appropriated Costs Under SB14-196*

Cost Components	**FY 2014-15**	**FY 2015-16**	**FY 2016-17**	**FY 2017-18**
Employee Insurance (Health, Life, Dental, and Short-term Disability)	$18,439	$73,557	$741,548	$1,455,497
Supplemental Employee Retirement Payments	14,832	58,384	416,334	906,894
Indirect Costs	49,369	177,040	1,430,618	2,812,580
Leased Space			1,249,500	1,249,500
TOTAL	**$82,640**	**$308,981**	**$3,838,000**	**$6,424,471**

**More information is available at: http://colorado.gov/fiscalnotes*

Local Government Impact

Like state agencies, all local governments, school districts, and statutory public entities will be required to implement payroll deductions for employees and coordinate sick leave, FMLA, and disability benefits when an employee applies for family and medical leave.

Technical or Mechanical Defects

Colorado uses average annual wage rather than the area median income as specified in the bill.

Effective Date

The bill takes effect August 6, 2014, if the General Assembly adjourns on May 7, 2014, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2014-15, the Department of Labor and Employment requires a General Fund appropriation of $15,934,178 and authorization for 3.0 FTE.

Departmental Difference

The Department of Labor and Employment assumptions differed from those of the fiscal note. The department assumed that 129,000 individuals would participate in the program resulting in annual premiums of $30 million with a utilization rate of 15 percent for an average of 6 weeks with an annual benefit amount of $72 million.

State and Local Government Contacts

Labor and Employment	Personnel and Administration
Counties	Municipalities
Revenue	Law