

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 130

98TH GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industry, April 23, 2015, with recommendation that the Senate Committee Substitute do pass.

0336S.04C

ADRIANE D. CROUSE, Secretary.

AN ACT

To amend chapter 285, RSMo, by adding thereto nine new sections relating to employment leave for victims of certain offenses.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 285, RSMo, is amended by adding thereto nine new sections, to be known as sections 285.625, 285.630, 285.635, 285.645, 285.650, 285.655, 285.660, 285.665, and 285.670, to read as follows:

285.625. As used in sections 285.625 to 285.670, the following terms mean:

(1) "Director", the director of the department of labor and industrial relations;

(2) "Domestic violence", the same meaning as in section 455.010;

(3) "Employ", the act of employing or state of being employed, engaged, or hired to perform work or services of any kind or character within the state of Missouri;

(4) "Employee", any person performing work or service of any kind or character for hire within the state of Missouri;

(5) "Employer", the state or any agency of the state, political subdivision of the state, or any person that employs at least fifteen employees;

(6) "Employee benefit plan" or "plan", an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan;

(7) "Employment benefits", all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, pensions, and profit-sharing, regardless of

21 whether such benefits are provided by a practice or written policy of
22 an employer or through an "employee benefit plan";

23 (8) "Family or household member", for employees with a family
24 or household member who is a victim of domestic violence or a sexual
25 offense, as defined in section 455.010, has the same meaning as in
26 section 455.010;

27 (9) "Person", an individual, partnership, association, corporation,
28 business trust, legal representative, or any organized group of persons;

29 (10) "Public agency", means the government of the state or
30 political subdivision thereof, any agency of the state, or of a political
31 subdivision of the state, or any governmental agency;

32 (11) "Public assistance", includes cash, food stamps, medical
33 assistance, housing assistance, and other benefits provided on the basis
34 of income by a public agency or public employer;

35 (12) "Qualified individual", in the case of:

36 (a) An employee of an employer, an individual who, but for being
37 a victim of domestic violence or a sexual offense can perform the
38 essential functions of the employment position that such individual
39 holds or desires; or

40 (b) An applicant for or recipient of public assistance from a
41 public agency, an individual who, but for being a victim of domestic
42 violence or a sexual offense can satisfy the essential requirements of
43 the program providing the public assistance that the individual
44 receives or desires;

45 (13) "Reasonable accommodation", an adjustment to a job
46 structure, workplace facility, or work requirement, including a
47 transfer, reassignment, modified schedule, leave, a changed telephone
48 number or seating assignment, installation of a lock, implementation
49 of a safety procedure, or assistance in documenting domestic violence
50 or sexual offenses that occurs at the workplace or in work-related
51 settings, in response to actual or threatened domestic violence or
52 sexual offense. Any exigent circumstances or danger facing the
53 employee shall be considered in determining whether the
54 accommodation is reasonable;

55 (14) "Reduced work schedule", a work schedule that reduces the
56 usual number of hours per workweek, or hours per workday, of an
57 employee;

58 (15) "Sexual offense", any offense under chapter 566;

59 **(16) "Undue hardship", significant difficulty or expense, when**
60 **considered in light of the following factors:**

61 **(a) The nature and cost of the reasonable accommodation;**

62 **(b) The overall financial resources of the facility involved in the**
63 **provision of the reasonable accommodation, the number of persons**
64 **employed at such facility, the effect on expenses and resources, or the**
65 **impact otherwise of such accommodation on the operation of the**
66 **facility;**

67 **(c) The overall financial resources of the employer or public**
68 **agency, the overall size of the business of an employer or public agency**
69 **with respect to the number of employees of the employer or public**
70 **agency, and the number, type, and location of the facilities of an**
71 **employer or public agency; and**

72 **(d) The type of operation of the employer or public agency,**
73 **including the composition, structure, and functions of the workforce of**
74 **the employer or public agency, the distance of the facility from the**
75 **employer or public agency, and the administrative or fiscal relationship**
76 **of the facility to the employer or public agency;**

77 **(17) "Victim", an individual who has been subjected to domestic**
78 **violence or a sexual offense as defined in section 455.010;**

79 **(18) "Victim services organization", a nonprofit, nongovernmental**
80 **organization that provides assistance to victims of domestic violence**
81 **or sexual offenses or to advocates for such victims, including a rape**
82 **crisis center, an organization carrying out a domestic violence or**
83 **sexual offense program, an organization operating a shelter or**
84 **providing counseling services, or a legal services organization or other**
85 **organization providing assistance through the legal process;**

86 **(19) "Work", any job, task, labor, services, or any other activity**
87 **for which compensation is provided, expected, or due.**

285.630. 1. An employee who is a victim of domestic violence or
2 **a sexual offense may take unpaid leave from work to address such**
3 **violence by:**

4 **(1) Seeking medical attention for, or recovering from, physical**
5 **or psychological injuries caused by domestic violence or sexual offense**
6 **to the employee;**

7 **(2) Obtaining services from a victim services organization for the**
8 **employee;**

9 **(3) Obtaining psychological or other counseling for the employee;**

10 **(4) Participating in safety planning, temporarily or permanently**
11 **relocating, or taking other actions to increase the safety of the**
12 **employee from future domestic violence or sexual offense or ensure**
13 **economic security; or**

14 **(5) Seeking legal assistance or remedies to ensure the health and**
15 **safety of the employee, including preparing for or participating in any**
16 **civil or criminal legal proceeding related to or derived from domestic**
17 **violence or a sexual offense.**

18 **2. Subject to subsection 5 of this section, an employee working**
19 **for an employer shall be entitled to a total of one workweek of leave**
20 **under subsection 1 of this section during any twelve-month period. The**
21 **total number of workweeks to which an employee is entitled shall not**
22 **decrease during the relevant twelve-month period. Sections 285.625 to**
23 **285.670 shall not create a right for an employee to take unpaid leave**
24 **that exceeds the amount of unpaid leave time allowed under the federal**
25 **Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.).**

26 **3. Leave described in subsection 2 of this section may be taken**
27 **intermittently or on a reduced work schedule.**

28 **4. The employee shall provide the employer with at least forty-**
29 **eight hours' advance notice of the employee's intention to take leave**
30 **under subsection 1 of this section, unless providing such notice is not**
31 **practicable. When an unscheduled absence occurs, the employer may**
32 **not take any action against the employee if the employee, upon request**
33 **of the employer and within a reasonable period after the absence,**
34 **provides certification under subsection 5 of this section.**

35 **5. The employer may require the employee to provide**
36 **certification to the employer that the employee is a victim of domestic**
37 **violence or a sexual offense and that the leave is for one of the**
38 **purposes enumerated in subsection 1 of this section. The employee**
39 **shall provide such certification to the employer within a reasonable**
40 **period after the employer requests certification.**

41 **6. An employee may satisfy the certification requirement of**
42 **subsection 5 of this section by providing to the employer, a sworn**
43 **statement of the employee and the following:**

44 **(1) Documentation from an employee, agent, or volunteer of a**
45 **victim services organization, an attorney, a member of the clergy, or a**
46 **medical or other professional from whom the employee has sought**
47 **assistance in addressing domestic violence or a sexual offense and the**

48 effects of the violence or a sexual offense;

49 (2) A police or court record; or

50 (3) Other corroborating evidence.

51 7. All information provided to the employer pursuant to
52 subsection 6 of this section including a statement of the employee or
53 any other documentation, record, or corroborating evidence, and the
54 fact that the employee has requested or obtained leave pursuant to this
55 section, shall be retained in the strictest confidence by the employer,
56 except to the extent that disclosure is requested or consented to in
57 writing by the employee or otherwise required by applicable federal or
58 state law.

59 8. Any employee who takes leave under this section shall be
60 entitled, on return from such leave, to be restored by the employer to
61 the position of employment held by the employee when the leave
62 commenced or an equivalent position with equivalent employment
63 benefits, pay, and other terms and conditions of employment.

64 9. The taking of leave under this section shall not result in the
65 loss of any employment benefit accrued prior to the date on which the
66 leave commenced. Nothing in this section shall be construed to entitle
67 any restored employee to the accrual of any seniority or employment
68 benefits during any period of leave or any right, benefit, or position of
69 employment other than any right, benefit, or position to which the
70 employee would have been entitled had the employee not taken the
71 leave. Nothing in this section shall be construed to prohibit an
72 employer from requiring an employee on leave under this section to
73 report periodically to the employer on the status and intention of the
74 employee to return to work.

285.635. 1. During any period that an employee takes leave
2 under section 285.630, the employer shall maintain coverage for the
3 employee and any family or household member under any group health
4 plan for the duration of such leave at the level and under the
5 conditions coverage would have been provided if the employee had
6 continued in employment continuously for the duration of such leave.

7 2. The employer may recover from the employee the premium
8 that the employer paid for maintaining coverage for the employee and
9 the employee's family or household member under such group health
10 plan during any period of leave under this section if the employee fails
11 to return from leave after the period of leave to which the employee is

12 entitled has expired for a reason other than the continuation,
13 recurrence, or onset of domestic violence or a sexual offense that
14 entitled the employee to leave under section 285.630; or other
15 circumstances beyond the control of the employee.

16 3. An employer may require an employee who claims that the
17 employee is unable to return to work because of a reason described in
18 subsection 2 of this section to provide, within a reasonable period after
19 making the claim, certification to the employer that the employee is
20 unable to return to work because of that reason by providing the
21 employer with:

22 (1) A sworn statement of the employee;

23 (2) Documentation from an employee, agent, or volunteer of a
24 victim services organization, an attorney, a member of the clergy, or a
25 medical or other professional from whom the employee has sought
26 assistance in addressing domestic violence or a sexual offense and the
27 effects of that violence or sexual offense;

28 (3) A police or court record; or

29 (4) Other corroborating evidence.

30 4. All information provided to the employer pursuant to
31 subsection 3 of this section including a statement of the employee or
32 any other documentation, record, or corroborating evidence, and the
33 fact that the employee is not returning to work because of a reason
34 described in subsection 2 of this section shall be retained in the
35 strictest confidence by the employer, except to the extent that
36 disclosure is requested or consented to in writing by the employee; or
37 otherwise required by applicable federal or state law.

 285.645. An employer shall not fail to hire, refuse to hire,
2 discharge, constructively discharge, or harass any individual, otherwise
3 discriminate against any individual with respect to the compensation,
4 terms, conditions, or privileges of employment of the individual, or
5 retaliate against an individual in any form or manner, and a public
6 agency shall not deny, reduce, or terminate the benefits of, otherwise
7 sanction, or harass any individual, otherwise discriminate against any
8 individual with respect to the amount, terms, or conditions of public
9 assistance of the individual, or retaliate against an individual in any
10 form or manner, because:

11 (1) The individual involved is a victim of domestic violence or a
12 sexual offense;

13 **(2) The individual involved attended, participated in, prepared**
14 **for, or requested leave to attend, participate in, or prepare for a**
15 **criminal or civil court proceeding relating to an incident of domestic**
16 **violence or sexual offense of which the individual was a victim, or**
17 **requested or took leave for any other reason provided under section**
18 **285.630; or**

19 **(3) The individual involved requested a reasonable**
20 **accommodation in response to actual or threatened domestic violence**
21 **or sexual offense, regardless of whether the request was granted; or**

22 **(4) The workplace is disrupted or threatened by the action of a**
23 **person whom the individual states has committed or threatened to**
24 **commit domestic violence or a sexual offense against the individual or**
25 **the individual's family or household member.**

285.650. 1. Employers and public agencies shall make reasonable
2 **accommodation, in a timely manner, to the known limitations resulting**
3 **from circumstances relating to being a victim of domestic violence or**
4 **a sexual offense of an otherwise qualified individual:**

5 **(1) Who is:**

6 **(a) An employee of the employer; or**

7 **(b) An applicant for or recipient of public assistance from a**
8 **public agency; and**

9 **(2) Who is a victim of domestic violence or a sexual offense;**

10 **2. Subsection 1 of this section shall not apply if the employer or**
11 **public agency can demonstrate that the accommodation would impose**
12 **an undue hardship on the operation of the employer or public agency.**

285.655. The attorney general may investigate alleged or
2 **suspected violations of sections 285.625 to 285.670 and shall have all**
3 **powers provided by sections 407.040 to 407.090 in connection with any**
4 **investigation of an alleged or suspected violation of sections 285.625 to**
5 **285.670 as if the unlawful acts enumerated in sections 285.625 to 285.670**
6 **are unlawful acts proscribed by chapter 407. The attorney general may**
7 **serve and enforce subpoenas related to the enforcement of sections**
8 **285.625 to 285.670.**

285.660. Damages awarded due to violations of sections 285.625
2 **to 285.670 shall include:**

3 **(1) Damages equal to the amount of wages, salary, employment**
4 **benefits, public assistance, or other compensation denied or lost to**
5 **such individual by reason of the violation, and the interest on that**

6 amount calculated at the prevailing rate;

7 (2) Such equitable relief as may be appropriate, including but
8 not limited to hiring, reinstatement, promotion, and reasonable
9 accommodations; and

10 (3) Reasonable attorney's fees, reasonable expert witness fees,
11 and other costs of the action to be paid by the respondent to a
12 prevailing employee.

285.665. Every employer covered by sections 285.625 to 285.670
2 shall post and keep posted, in conspicuous places on the premises of
3 the employer where notices to employees are customarily posted, a
4 notice, to be prepared or approved by the director, summarizing the
5 requirements of sections 285.625 to 285.670 and information pertaining
6 to the filing of a charge. The director shall furnish copies of summaries
7 and rules to employers upon request without charge.

285.670. 1. Nothing in sections 285.625 to 285.670 shall be
2 construed to supersede any provision of any federal, state, or local law,
3 collective bargaining agreement, or employment benefits program or
4 plan that provides:

5 (1) Greater leave benefits for victims of domestic violence or
6 sexual offenses than the rights established under sections 285.625 to
7 285.670; or

8 (2) Leave benefits for a larger population of victims of domestic
9 violence or sexual offenses, as defined in such law, agreement, program,
10 or plan, than the victims of domestic violence or sexual offenses
11 covered under sections 285.625 to 285.670.

12 2. The rights and remedies established for employees who are
13 victims of domestic violence or a sexual offense under sections 285.625
14 to 285.670 shall not be diminished by any federal, state, or local law,
15 collective bargaining agreement, or employment benefits program or
16 plan.

✓