

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 712

97TH GENERAL ASSEMBLY

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Reported from the Committee on Seniors, Families and Pensions, March 6, 2014, with recommendation that the Senate Committee Substitute do pass.

4758S.03C

TERRY L. SPIELER, Secretary.

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## AN ACT

To amend chapter 285, RSMo, by adding thereto ten new sections relating to domestic violence.

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

Section A. Chapter 285, RSMo, is amended by adding thereto ten new sections, to be known as sections 285.625, 285.630, 285.635, 285.640, 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 any 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

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

22 (8) "Family or household member", for employees with a family  
23 or household member who is a victim of domestic violence, means a  
24 spouse, parent, son, daughter, other person related by blood or by  
25 present or prior marriage, other person who shares a relationship  
26 through a son or daughter, and persons jointly residing in the same  
27 household;

28 (9) "Parent", the biological parent of an employee or an  
29 individual who stood in loco parentis to an employee when the  
30 employee was a son or daughter;

31 (10) "Person", an individual, partnership, association,  
32 corporation, business trust, legal representative, or any organized  
33 group of persons;

34 (11) "Public agency", means the government of the state or  
35 political subdivision thereof, any agency of the state, or of a political  
36 subdivision of the state, or any governmental agency;

37 (12) "Public assistance", includes cash, food stamps, medical  
38 assistance, housing assistance, and other benefits provided on the basis  
39 of income by a public agency or public employer;

40 (13) "Qualified individual", in the case of:

41 (a) An applicant or employee of an employer, an individual who,  
42 but for being a victim of domestic violence or with a family or  
43 household member who is a victim of domestic violence, can perform  
44 the essential functions of the employment position that such individual  
45 holds or desires; or

46 (b) An applicant for or recipient of public assistance from a  
47 public agency, an individual who, but for being a victim of domestic  
48 violence or with a family or household member who is a victim of  
49 domestic violence, can satisfy the essential requirements of the  
50 program providing the public assistance that the individual receives or  
51 desires;

52 (14) "Reasonable accommodation", an adjustment to a job  
53 structure, workplace facility, or work requirement, including a  
54 transfer, reassignment, modified schedule, leave, a changed telephone  
55 number or seating assignment, installation of a lock, implementation  
56 of a safety procedure, or assistance in documenting domestic violence

57 that occurs at the workplace or in work-related settings, in response to  
58 actual or threatened domestic violence. Any exigent circumstances or  
59 danger facing the employee or his or her family or household member  
60 shall be considered in determining whether the accommodation is  
61 reasonable;

62 (15) "Reduced work schedule", a work schedule that reduces the  
63 usual number of hours per workweek, or hours per workday, of an  
64 employee;

65 (16) "Son or daughter", a biological, adopted, or foster child, a  
66 stepchild, a legal ward, or a child of a person standing in loco parentis,  
67 who is under eighteen years of age, or is eighteen years of age or older  
68 and incapable of self-care because of a mental or physical disability;

69 (17) "Undue hardship", significant difficulty or expense, when  
70 considered in light of the following factors:

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

72 (b) The overall financial resources of the facility involved in the  
73 provision of the reasonable accommodation, the number of persons  
74 employed at such facility, the effect on expenses and resources, or the  
75 impact otherwise of such accommodation on the operation of the  
76 facility;

77 (c) The overall financial resources of the employer or public  
78 agency, the overall size of the business of an employer or public agency  
79 with respect to the number of employees of the employer or public  
80 agency, and the number, type, and location of the facilities of an  
81 employer or public agency; and

82 (d) The type of operation of the employer or public agency,  
83 including the composition, structure, and functions of the workforce of  
84 the employer or public agency, the distance of the facility from the  
85 employer or public agency, and the administrative or fiscal relationship  
86 of the facility to the employer or public agency;

87 (18) "Victim", an individual who has been subjected to domestic  
88 violence;

89 (19) "Victim services organization", means a nonprofit,  
90 nongovernmental organization that provides assistance to victims of  
91 domestic violence or to advocates for such victims, including a rape  
92 crisis center, an organization carrying out a domestic violence  
93 program, an organization operating a shelter or providing counseling

94 services, or a legal services organization or other organization  
95 providing assistance through the legal process;

96 (20) "Work", any job, task, labor, services, or any other activity  
97 for which compensation is provided, expected, or due.

285.630. 1. An employee who is a victim of domestic violence or  
2 has a family or household member who is a victim of domestic violence  
3 whose interests are not adverse to the employee as it relates to the  
4 domestic violence may take unpaid leave from work to address such  
5 violence in order to prepare for or participate in any civil or criminal  
6 legal proceeding related to or derived from such domestic violence.

7 2. Leave described in this section may be taken intermittently or  
8 on a reduced work schedule.

9 3. The employee shall provide the employer with at least forty-  
10 eight hours' advance notice of the employee's intention to take leave  
11 under subsection 1 of this section, unless providing such notice is not  
12 practicable. When an unscheduled absence occurs, the employer may  
13 not take any action against the employee if the employee, upon request  
14 of the employer and within a reasonable period after the absence,  
15 provides certification under subsection 4 of this section.

16 4. The employer may require the employee to provide  
17 certification to the employer that the employee or the employee's  
18 family or household member is a victim of domestic violence and that  
19 the leave is for one of the purposes enumerated in subsection 1 of this  
20 section. The employee shall provide such certification to the employer  
21 within a reasonable period after the employer requests certification.

22 5. An employee may satisfy the certification requirement of  
23 subsection 4 of this section by providing to the employer, a sworn  
24 statement of the employee and documentation from an employee, agent,  
25 or volunteer of a victim services organization, or an attorney, or a  
26 court record evidencing that the employee is involved in a civil or  
27 criminal proceeding related to or derived from domestic violence.

28 6. All information provided to the employer pursuant to  
29 subsection 5 of this section including a statement of the employee, any  
30 other documentation or record, and the fact that the employee has  
31 requested or obtained leave pursuant to this section, shall be retained  
32 in the strictest confidence by the employer, except to the extent that  
33 disclosure is requested or consented to in writing by the employee or

34 otherwise required by applicable federal or state law.

35           7. Any employee who takes leave under this section shall be  
36 entitled, on return from such leave, to be restored by the employer to  
37 the position of employment held by the employee when the leave  
38 commenced or an equivalent position with equivalent employment  
39 benefits, pay, and other terms and conditions of employment.

40           8. The taking of leave under this section shall not result in the  
41 loss of any employment benefit accrued prior to the date on which the  
42 leave commenced. Nothing in this section shall be construed to entitle  
43 any restored employee to the accrual of any seniority or employment  
44 benefits during any period of leave or any right, benefit, or position of  
45 employment other than any right, benefit, or position to which the  
46 employee would have been entitled had the employee not taken the  
47 leave. Nothing in this section shall be construed to prohibit an  
48 employer from requiring an employee on leave under this section to  
49 report periodically to the employer on the status and intention of the  
50 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 that entitled the employee to  
14 leave under section 285.630; or other circumstances beyond the control  
15 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 and the effects of that  
27 violence;

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.

285.640. 1. It shall be unlawful for any employer to interfere  
2 with, restrain, or deny the exercise of or the attempt to exercise any  
3 right provided under sections 285.625 to 285.670.

4 2. It shall be unlawful for any employer to discharge or harass  
5 any individual, or otherwise discriminate against any individual with  
6 respect to compensation, terms, conditions, or privileges of employment  
7 of the individual, including retaliation in any form or manner, because  
8 the individual exercised any right provided under sections 285.625 to  
9 285.670 or opposed any practice made unlawful by sections 285.625 to  
10 285.670.

11 3. It shall be unlawful for any public agency to deny, reduce, or  
12 terminate the benefits of, otherwise sanction, or harass any individual,  
13 or otherwise discriminate against any individual with respect to the  
14 amount, terms, or conditions of public assistance of the individual,  
15 including retaliation in any form or manner, because the individual  
16 exercised any right provided under sections 285.625 to 285.670 or  
17 opposed any practice made unlawful by sections 285.625 to 285.670.

18 4. It shall be unlawful for any employer to discharge or in any  
19 other manner discriminate, as provided in subsections 2 or 3 of this  
20 section, against any individual because such individual has:

21           **(1) Filed any charge, or has instituted or caused to be instituted**  
22 **any proceeding under or related to sections 285.625 to 285.670;**

23           **(2) Given, or is about to give, any information in connection with**  
24 **any inquiry or proceeding relating to any right provided under sections**  
25 **285.625 to 285.670; or**

26           **(3) Testified, or is about to testify, in any inquiry or proceeding**  
27 **relating to any right provided under sections 285.625 to 285.670.**

**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 or is perceived to be a victim of**  
12 **domestic violence;**

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 of which the individual or a family or household member of**  
17 **the individual was a victim;**

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

21           **(4) The workplace is disrupted or threatened by the action of a**  
22 **person whom the individual states has committed or threatened to**  
23 **commit domestic violence against the individual or the individual's**  
24 **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 family or household member being a victim of domestic violence of an**  
5 **otherwise qualified individual:**

6           **(1) Who is:**

- 7           **(a) An applicant or employee of the employer; or**  
8           **(b) An applicant for or recipient of public assistance from a**  
9 **public agency; and**  
10          **(2) Who is:**  
11          **(a) A victim of domestic violence; or**  
12          **(b) With a family or household member who is a victim of**  
13 **domestic violence whose interests are not adverse to the individual in**  
14 **this subdivision as it relates to the domestic violence.**

15           **2. Subsection 1 of this section shall not apply if the employer or**  
16 **public agency can demonstrate that the accommodation would impose**  
17 **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 than  
6 the rights established under sections 285.625 to 285.670; or

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

10 2. The rights and remedies established for applicants and  
11 employees who are victims of domestic violence and applicants and  
12 employees with a family or household member who is a victim of  
13 domestic violence under sections 285.625 to 285.670 shall not be  
14 diminished by any federal, state or local law, collective bargaining  
15 agreement, or employment benefits program or plan.

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