

BILL ANALYSIS

C.S.H.B. 3037
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Economic Development
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many family leave policies in the workplace do not provide enough flexibility and support for the unique needs of family caregivers. A large number of Texas' informal caregivers juggle work with care-giving responsibilities in order to meet both their own financial obligations and the costs of caring for a seriously ill loved one.

Currently, according to the National Center on Caregiving at Family Caregiver Alliance, there are an estimated 1.9 million informal caregivers in Texas who provide approximately 2.1 billion hours per year of care with a market value of \$18 billion. Texas, along with 39 other states, allows public employees to use sick leave to care for sick family members.

As proposed, C.S.H.B. 3037 would allow an employee who is entitled to sick leave or other paid time off to use any or all of his/her sick leave or other paid time off to care for certain family members with serious medical conditions.

RULEMAKING AUTHORITY

It is opinion of the committee that rulemaking authority is expressly granted to the Texas Workforce Commission in SECTION 1 and SECTION 2 of this bill.

ANALYSIS

SECTION 1. The bill states a definition of "child," "commission," "employee," "employer," "employment benefits," "grandchild," "grandparent," "grandparent-in-law," "health care provider," "parent," "parent-in-law," "serious health condition," and "sibling."

The bill states that an eligible employee is entitled to use accrued paid sick leave or other accrued paid leave to care for the employee's child, grandchild, spouse, sibling, parent or parent-in-law, or grandparent or grandparent-in-law.

The bill requires each employer to post a notice, prepared or approved by the Texas Workforce Commission (commission), setting forth guidelines and enforcement for using family and medical leave. The bill states that an employer who does not post adequate notice is liable for a civil penalty not to exceed \$100 for each violation. The bill authorizes the attorney general to collect a civil penalty which is required to be deposited in the general revenue fund.

The bill states that an employer who does not provide paid sick leave or other paid medical leave does not need to institute a family and medical leave program.

The bill requires that an employee that foresees the use of family and medical leave provide notice to the employer.

The bill requires the employee to make a reasonable effort to schedule the medical treatment to avoid disrupting the operations of the employer.

The bill authorizes an employer to require that a request for family and medical leave be certified by the health care provider of the employee or of the child, grandchild, spouse, sibling, parent, parent-in-law, grandparent, or grandparent-in-law of the employee, as appropriate. The bill requires that the employee provide to the employer a copy of the certification that states the date on which the serious health condition began, the probable duration of the condition, the appropriate medical facts within the knowledge of the health care provider regarding the condition, a statement that the eligible employee is needed to care for the child, grandchild,

spouse, sibling, parent, parent-in-law, grandparent, or grandparent-in-law, and an estimate of the amount of time that the employee is needed to care for that individual.

The bill states that an employee who takes family and medical leave is entitled, on return from the leave, to reinstatement in the former position of employment or an equivalent position of employment with equivalent employment benefits, pay, and other terms and conditions of employment.

The bill prohibits the loss of any employment benefit accrued prior to the employee using the family and medical leave.

The bill states that family and medical leave does not entitle an employee who is reinstated in employment to the accrual of seniority or other employment benefits during any period of leave; or any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

The bill states that family and medical leave does not prohibit an employer from requiring an employee on leave to report periodically to the employer on the status and intention of the employee to return to work.

The bill requires the commission to adopt rules necessary to implement this subchapter.

The bill prohibits an employer from interfering with, restraining, or denying the exercise of or the attempt to exercise any right provided for family and medical leave.

The bill prohibits an employer from discharging or otherwise discriminating against an individual for opposing a practice made unlawful by a family and medical leave program.

The bill prohibits an individual from being discharged or otherwise discriminated against because that individual has: filed a charge, or instituted or caused to be instituted a proceeding, under or related to a family and medical leave program; given, or is about to give, any information in connection with an inquiry or proceeding relating to a right provided under a family and medical leave program; or testified, or is about to testify, in an inquiry or proceeding relating to a right provided under a family and medical leave program.

The bill sets forth that an employer that violates this Act commits an unlawful employment practice subject to enforcement by the commission's administrative review process for unlawful employment practices by an employer.

SECTION 2. The bill states that the Act applies only to a suspension, termination, or other adverse employment action that is taken by an employer against an employee because of an employee absence authorized under Chapter 85, Labor Code, as added by this Act, that occurs on or after January 1, 2008. Action taken by an employer against an employee for an employee absence occurring before January 1, 2008, is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose. The bill states that an employee is not entitled to take leave as provided by Chapter 85, Labor Code, as added by this Act, before January 1, 2008. The bill requires the commission to adopt rules and prescribe notices and forms as required by Chapter 85, Labor Code, as added by this Act, not later than November 1, 2007.

SECTION 3. States the effective date for this Act.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 3037 modifies the original by adding new language that states a definition of the word "sibling" and adds an "employee's sibling" to the list of individuals that an eligible employee is entitled to use accrued paid sick leave or other accrued paid leave to care for.

The substitute removes the provision in the original bill which set forth damages for an affected employee by a liable employer. The substitute also modifies the original by adding new language that sets forth that an employer that violates this Act commits an unlawful employment practice subject to enforcement by the commission's administrative review process for unlawful employment practices by an employer.