

By: Rose

H.B. No. 3037

Substitute the following for H.B. No. 3037:

By: Straus

C.S.H.B. No. 3037

A BILL TO BE ENTITLED

AN ACT

relating to employment leave to comply with certain family or medical obligations; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle D, Title 2, Labor Code, is amended by adding Chapter 85 to read as follows:

CHAPTER 85. EMPLOYEE LEAVE FOR FAMILY OR MEDICAL OBLIGATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 85.001. DEFINITIONS. In this chapter:

(1) "Child" means a biological child, adopted or foster child, stepchild, legal ward, or child of a person standing in loco parentis who is:

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of a physical or mental disability or serious health condition.

(2) "Commission" means the Texas Workforce Commission.

(3) "Employee" means an individual who performs services for an employer for compensation under an oral or written contract of hire, whether express or implied. The term does not include an independent contractor.

(4) "Employer" means a person who employs employees. The term includes a public employer.

1           (5) "Employment benefits" means all benefits provided  
2 by or made available to employees by an employer. The term includes  
3 group life insurance, health insurance, disability insurance, sick  
4 leave, annual leave, educational benefits, and pensions whether the  
5 benefits are provided by a practice or written policy of an employer  
6 or through an employee benefit plan.

7           (6) "Grandchild" means the child of a child of an  
8 employee.

9           (7) "Grandparent" means the parent of a parent of an  
10 employee.

11           (8) "Grandparent-in-law" means the parent of a parent  
12 of an employee's spouse.

13           (9) "Health care provider" means:

14                   (A) a licensed individual who provides or renders  
15 health care; or

16                   (B) an unlicensed individual who provides or  
17 renders health care under the direction or supervision of a  
18 physician.

19           (10) "Parent" means:

20                   (A) the biological parent of an employee; or

21                   (B) an individual who stood in loco parentis to  
22 an employee when the employee was a child.

23           (11) "Parent-in-law" means the parent of an employee's  
24 spouse.

25           (12) "Serious health condition" means an illness,  
26 injury, impairment, or physical or mental condition that requires  
27 inpatient care in a hospital, hospice, or residential medical care

1 facility or continuing treatment by a health care provider. The  
2 term includes a serious disease such as cancer or acquired immune  
3 deficiency syndrome.

4 (13) "Sibling" means the brother or sister of the  
5 employee or the employee's spouse.

6 [Sections 85.002-85.050 reserved for expansion]

7 SUBCHAPTER B. FAMILY AND MEDICAL LEAVE

8 Sec. 85.051. FAMILY AND MEDICAL LEAVE. An eligible  
9 employee is entitled to use the employee's choice of accrued paid  
10 sick leave or other accrued paid leave to care for the following  
11 individuals:

12 (1) the employee's child;

13 (2) the employee's grandchild;

14 (3) the employee's spouse;

15 (4) the employee's sibling;

16 (5) the employee's parent or parent-in-law; or

17 (6) the employee's grandparent or grandparent-in-law.

18 Sec. 85.052. NOTICE; CIVIL PENALTY. (a) Each employer  
19 shall post in conspicuous places on the premises of the employer  
20 where notices to employees and applicants for employment are  
21 customarily posted a notice, prepared or approved by the  
22 commission, setting forth the pertinent provisions of this  
23 subchapter and information relating to the enforcement of this  
24 subchapter.

25 (b) An employer who wilfully violates this section is liable  
26 for a civil penalty not to exceed \$100 for each violation. The  
27 attorney general may bring an action to collect a civil penalty

1 under this section. Civil penalties assessed under this section  
2 shall be deposited in the general revenue fund.

3 Sec. 85.053. INSTITUTION OF PAID LEAVE PROGRAM NOT  
4 REQUIRED. This subchapter does not require an employer who does  
5 not provide paid sick leave or other paid medical leave to institute  
6 a program of paid leave for any situation in which that employer is  
7 not normally providing paid leave.

8 Sec. 85.054. FORESEEABILITY OF LEAVE; NOTICE TO EMPLOYER.

9 (a) If the necessity for leave under Section 85.051 is reasonably  
10 foreseeable, the affected employee shall provide notice to the  
11 employer as is practicable.

12 (b) If the necessity for leave under Section 85.051 is  
13 foreseeable because of planned medical treatment, the employee  
14 shall make a reasonable effort to schedule the treatment to avoid  
15 disrupting unduly the operations of the employer, subject to the  
16 approval of the health care provider of the employee or of the  
17 child, spouse, or parent of the employee, as applicable.

18 Sec. 85.055. CERTIFICATION. (a) An employer may require  
19 that a request for leave under Section 85.051 be certified by the  
20 health care provider of the employee or of the child, grandchild,  
21 spouse, sibling, parent, parent-in-law, grandparent, or  
22 grandparent-in-law of the employee, as appropriate. The employee  
23 shall provide, in a timely manner, a copy of the certification to  
24 the employer.

25 (b) Certification provided under Subsection (a) is  
26 sufficient if it states:

27 (1) the date on which the serious health condition

1 began;

2 (2) the probable duration of the condition;

3 (3) the appropriate medical facts within the knowledge  
4 of the health care provider regarding the condition; and

5 (4) a statement that the eligible employee is needed  
6 to care for the child, grandchild, spouse, sibling, parent,  
7 parent-in-law, grandparent, or grandparent-in-law and an estimate  
8 of the amount of time that the employee is needed to care for that  
9 individual.

10 Sec. 85.056. EMPLOYMENT AND BENEFITS PROTECTION;  
11 EXCEPTION. (a) An employee who takes leave under Section 85.051  
12 is entitled, on return from the leave, to reinstatement in the  
13 former position of employment or an equivalent position of  
14 employment with equivalent employment benefits, pay, and other  
15 terms and conditions of employment.

16 (b) Leave taken under Section 85.051 may not result in the  
17 loss of any employment benefit accrued before the date on which the  
18 leave began.

19 (c) This section does not entitle an employee who is  
20 reinstated in employment to:

21 (1) the accrual of seniority or other employment  
22 benefits during any period of leave; or

23 (2) any right, benefit, or position of employment  
24 other than any right, benefit, or position to which the employee  
25 would have been entitled had the employee not taken the leave.

26 (d) This section does not prohibit an employer from  
27 requiring an employee on leave under Section 85.051 to report

1 periodically to the employer on the status and intention of the  
2 employee to return to work.

3 Sec. 85.057. COMMISSION POWERS AND DUTIES. The commission  
4 shall adopt rules as necessary to implement this subchapter.

5 Sec. 85.058. PROHIBITED ACTS. (a) An employer may not  
6 interfere with, restrain, or deny the exercise of or the attempt to  
7 exercise any right provided under this subchapter.

8 (b) An employer may not discharge or otherwise discriminate  
9 against an individual for opposing a practice made unlawful by this  
10 subchapter.

11 (c) A person may not discharge or otherwise discriminate  
12 against an individual because that individual has:

13 (1) filed a charge, or instituted or caused to be  
14 instituted a proceeding, under or related to this subchapter;

15 (2) given, or is about to give, any information in  
16 connection with an inquiry or proceeding relating to a right  
17 provided under this subchapter; or

18 (3) testified, or is about to testify, in an inquiry or  
19 proceeding relating to a right provided under this subchapter.

20 Sec. 85.059. ENFORCEMENT. An employer commits an unlawful  
21 employment practice subject to enforcement by the commission under  
22 Subchapter E, Chapter 21, if the employer violates Section 85.058.

23 SECTION 2. (a) This Act applies only to a suspension,  
24 termination, or other adverse employment action that is taken by an  
25 employer against an employee because of an employee absence  
26 authorized under Chapter 85, Labor Code, as added by this Act, that  
27 occurs on or after January 1, 2008. Action taken by an employer

1 against an employee for an employee absence occurring before  
2 January 1, 2008, is governed by the law in effect immediately before  
3 the effective date of this Act, and the former law is continued in  
4 effect for that purpose.

5 (b) An employee is not entitled to take leave as provided by  
6 Chapter 85, Labor Code, as added by this Act, before January 1,  
7 2008.

8 (c) The Texas Workforce Commission shall adopt rules and  
9 prescribe notices and forms as required by Chapter 85, Labor Code,  
10 as added by this Act, not later than November 1, 2007.

11 SECTION 3. This Act takes effect September 1, 2007.