

FIRST REGULAR SESSION

# HOUSE BILL NO. 944

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MITTEN.

1976H.011

DANA RADEMAN MILLER, Chief Clerk

## AN ACT

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

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

Section A. Chapter 285, RSMo, is amended by adding thereto six new sections, to be known as sections 285.625, 285.630, 285.635, 285.650, 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, an employee pension benefit plan, or a plan that 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**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

23 (9) "Parent", the biological parent of an employee or an individual who stood in  
24 loco parentis to an employee when the employee was a son or daughter who is a victim of  
25 domestic or sexual violence;

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

28 (11) "Public agency", the government of the state or of any political subdivision  
29 thereof, any agency of the state or of any political subdivision of the state, or any other  
30 governmental agency;

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

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

35 (a) An applicant or employee of an employer, an individual who, but for being a  
36 victim of domestic or sexual violence or with a family or household member who is a victim  
37 of domestic or sexual violence, can perform the essential functions of the employment  
38 position that such individual holds or desires; or

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

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

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

54 (16) "Sexual violence", a sexual assault, as defined in section 455.010, and  
55 trafficking for the purposes of sexual exploitation as described in section 566.209;

56 (17) "Son or daughter", a biological, adopted, or foster child, a stepchild, a legal  
57 ward, or a child of a person standing in loco parentis, who is under eighteen years of age,  
58 or is eighteen years of age or older and incapable of self-care because of a mental or  
59 physical disability, and is a victim of domestic or sexual violence;

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

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

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

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

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

75 (19) "Victim of domestic or sexual violence", an individual who has been subjected  
76 to domestic violence or sexual violence;

77 (20) "Victim services organization", a nonprofit, nongovernmental organization  
78 that provides assistance to victims of domestic violence or to advocates for such victims,  
79 including a rape crisis center, an organization carrying out a domestic violence program,  
80 an organization operating a shelter or providing counseling services, or a legal services  
81 organization or other organization providing assistance through the legal process;

82 (21) "Work", any job, task, labor, services, or any other activity for which  
83 compensation is provided, expected, or due.

285.630. 1. An employee who is a victim of domestic or sexual violence or has a  
2 family or household member who is a victim of domestic or sexual violence whose interests  
3 are not adverse to the employee as it relates to the domestic violence may take unpaid leave  
4 from work to address such violence by:

5           (1) Seeking medical attention for, or recovering from, physical or psychological  
6 injuries caused by domestic violence or sexual violence to the employee or the employee's  
7 family or household member;

8           (2) Obtaining services from a victim services organization for the employee or the  
9 employee's family or household member;

10          (3) Obtaining psychological or other counseling for the employee or the employee's  
11 family or household member;

12          (4) Participating in safety planning, temporarily or permanently relocating, or  
13 taking other actions to increase the safety of the employee or the employee's family or  
14 household member from future domestic violence or sexual violence or to ensure economic  
15 security; or

16          (5) Seeking legal assistance or remedies to ensure the health and safety of the  
17 employee or the employee's family or household member, including preparing for or  
18 participating in any civil or criminal legal proceeding related to or derived from domestic  
19 violence or sexual violence.

20           2. Subject to subsection 5 of this section, an employee working for an employer that  
21 employs at least fifty employees shall be entitled to a total of two workweeks of leave under  
22 subsection 1 of this section during any twelve-month period. An employee working for an  
23 employer that employs at least fifteen but not more than forty-nine employees shall be  
24 entitled to a total of one workweek of leave under subsection 1 of this section during any  
25 twelve-month period. The total number of workweeks to which an employee is entitled  
26 shall not decrease during the relevant twelve-month period. Sections 285.625 to 285.670  
27 shall not create a right for an employee to take unpaid leave that exceeds the amount of  
28 unpaid leave time allowed under the federal Family and Medical Leave Act of 1993 (29  
29 U.S.C. Section 2601, et seq.).

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

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

38           5. The employer may require the employee to provide certification to the employer  
39 that the employee or the employee's family or household member is a victim of domestic  
40 or sexual violence and that the leave is for one of the purposes enumerated in subsection

41 **1 of this section. The employee shall provide such certification to the employer within a**  
42 **reasonable period after the employer requests certification.**

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

45 **(1) Documentation from an employee, agent, or volunteer of a victim services**  
46 **organization, an attorney, a member of the clergy, or a medical or other professional from**  
47 **whom the employee or the employee's family or household member has sought assistance**  
48 **in addressing domestic violence or sexual violence and the effects of such violence;**

49 **(2) A police or court record; or**

50 **(3) Other corroborating evidence.**

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

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

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

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

6 **2. The employer may recover from the employee the premium that the employer**  
7 **paid for maintaining coverage for the employee and the employee's family or household**

8 member under such group health plan during any period of leave under this section if the  
9 employee fails to return from leave after the period of leave to which the employee is  
10 entitled has expired for a reason other than the continuation, recurrence, or onset of  
11 domestic violence or sexual violence, a sexual assault, or human trafficking that entitled  
12 the employee to leave under section 285.630, or other circumstances beyond the control of  
13 the employee.

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

19 (1) A sworn statement of the employee;

20 (2) Documentation from an employee, agent, or volunteer of a victim services  
21 organization, an attorney, a member of the clergy, or a medical or other professional from  
22 whom the employee has sought assistance in addressing domestic violence or sexual  
23 violence and the effects of such violence;

24 (3) A police or court record; or

25 (4) Other corroborating evidence.

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

285.650. 1. Employers and public agencies shall make reasonable accommodation,  
2 in a timely manner, to the known limitations resulting from circumstances relating to being  
3 a victim of domestic or sexual violence or a family or household member being a victim of  
4 domestic or sexual violence 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 public agency; and

8 (2) Who is:

9 (a) A victim of domestic or sexual violence; or

10 (b) With a family or household member who is a victim of domestic or sexual  
11 violence whose interests are not adverse to the individual in this subdivision as it relates  
12 to the domestic violence.

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

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

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

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

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

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

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