

118TH CONGRESS
1ST SESSION

S. 166

To amend the Family and Medical Leave Act of 1993 to provide leave for the spontaneous loss of an unborn child, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 2023

Mr. COTTON (for himself, Mr. BOOZMAN, Mr. BUDD, Mr. CRAMER, Mrs. HYDE-SMITH, Mr. SCOTT of Florida, Mr. VANCE, Mr. WICKER, Mr. BRAUN, and Mr. HOEVEN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Family and Medical Leave Act of 1993 to provide leave for the spontaneous loss of an unborn child, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Helping with Equal
5 Access to Leave and Investing in Needs for Grieving
6 Mothers and Fathers Act” or the “HEALING Mothers
7 and Fathers Act”.

1 **SEC. 2. LEAVE FOR SPONTANEOUS LOSS OF AN UNBORN**
2 **CHILD.**

3 (a) DEFINITION OF SPONTANEOUS LOSS OF AN UN-
4 BORN CHILD.—Section 101 of the Family and Medical
5 Leave Act of 1993 (29 U.S.C. 2611) is amended—

6 (1) by redesignating paragraphs (13) through
7 (19) as paragraphs (14) through (20), respectively;

8 (2) by inserting after paragraph (12) the fol-
9 lowing:

10 “(13) SPONTANEOUS LOSS OF AN UNBORN
11 CHILD.—The term ‘spontaneous loss of an unborn
12 child’ means the loss of a child in the womb that
13 does not result from a purposeful act and is un-
14 planned.”; and

15 (3) in paragraph (19)(B), as redesignated, by
16 striking “paragraph (15)(B)” and inserting “para-
17 graph (16)(B)”.

18 (b) ENTITLEMENT TO LEAVE.—Section 102(a)(1) of
19 such Act (29 U.S.C. 2612(a)(1)) is amended by adding
20 at the end the following:

21 “(G) Because of the spontaneous loss of an
22 unborn child of the employee or spouse of the
23 employee.”.

24 (c) SCHEDULE.—Section 102(b)(1) of such Act (29
25 U.S.C. 2612(b)(1)) is amended by inserting after the third
26 sentence the following: “Subject to subsection (e)(4) and

1 section 103(g), leave under subsection (a)(1)(G) may be
2 taken intermittently or on a reduced leave schedule when
3 medically necessary.”.

4 (d) SUBSTITUTION OF PAID LEAVE.—Section
5 102(d)(2)(B) of such Act (29 U.S.C. 2612(d)(2)(B)) is
6 amended in the first sentence by striking “(C) or (D)”
7 and inserting “(C), (D), or (G)”.

8 (e) NOTICE.—Section 102(e) of such Act (29 U.S.C.
9 2612(e)) is amended by adding at the end the following
10 new paragraph:

11 “(4) NOTICE FOR LEAVE DUE TO SPONTA-
12 NEOUS LOSS OF AN UNBORN CHILD.—For leave
13 under subsection (a)(1)(G), the employee shall pro-
14 vide such notice to the employer as is reasonable and
15 practicable.”.

16 (f) CERTIFICATION.—Section 103 of such Act (29
17 U.S.C. 2613) is amended—

18 (1) in subsection (c)(1)—

19 (A) by inserting “or subsection (g)(1) for
20 leave under section 102(a)(1)(G)” after “sec-
21 tion 102(a)(1)”;

22 (B) by striking “under subsection (b) for
23 such leave” and inserting “under subsection (b)
24 for leave under subparagraph (C) or (D) of sec-

1 tion 102(a)(1) or subsection (g)(2) for leave
2 under section 102(a)(1)(G), respectively”;

3 (2) in subsection (d)—

4 (A) in paragraph (1)—

5 (i) by inserting “or subsection (g)(1)”
6 after “under subsection (a)”;

7 (ii) by inserting “or subsection (g)(2),
8 respectively” after “under subsection (b)”;
9 and

10 (B) in paragraph (2), by inserting “or sub-
11 section (g)(2)” after “under subsection (b)”;
12 and

13 (3) by adding at the end the following:

14 “(g) CERTIFICATION FOR LEAVE DUE TO SPONTA-
15 NEOUS LOSS OF AN UNBORN CHILD.—

16 “(1) IN GENERAL.—An employer may require
17 that a request for leave under section 102(a)(1)(G)
18 be supported by a certification issued by the health
19 care provider of the eligible employee or of the
20 spouse of the eligible employee, as appropriate. The
21 employee shall provide, in a timely manner, a copy
22 of such certification to the employer.

23 “(2) SUFFICIENT CERTIFICATION.—Certifi-
24 cation provided under paragraph (1) shall be suffi-
25 cient if it includes the information described in para-

1 graphs (1), (2), (3), and (5) of subsection (b), with
 2 respect to spontaneous loss of an unborn child or
 3 bodily side effects of that loss, as appropriate.”.

4 **SEC. 3. LEAVE FOR SPONTANEOUS LOSS OF AN UNBORN**
 5 **CHILD, FOR CIVIL SERVICE EMPLOYEES.**

6 (a) DEFINITIONS.—Section 6381 of title 5, United
 7 States Code, is amended—

8 (1) by redesignating paragraphs (7) through
 9 (12) as paragraphs (8) through (13), respectively;

10 (2) by inserting after paragraph (6) the fol-
 11 lowing:

12 “(7) the term ‘spontaneous loss of an unborn
 13 child’ means the loss of a child in the womb that
 14 does not result from a purposeful act and is un-
 15 planned;”; and

16 (3) in paragraph (12)(B), as redesignated, by
 17 striking “paragraph (8)(B)” and inserting “para-
 18 graph (9)(B)”.

19 (b) ENTITLEMENT TO LEAVE.—Section 6382(a)(1)
 20 of title 5, United States Code, is amended by adding at
 21 the end the following:

22 “(F) Because of the spontaneous loss of an un-
 23 born child of the employee or spouse of the em-
 24 ployee.”.

1 (c) SCHEDULE.—Section 6382(b)(1) of title 5,
2 United States Code, is amended by inserting after the
3 third sentence the following: “Subject to subsection (e)(4),
4 and section 103(g), leave under subsection (a)(1)(G) may
5 be taken intermittently or on a reduced leave schedule
6 when medically necessary.”.

7 (d) SUBSTITUTION OF PAID LEAVE.—Section
8 6382(d)(1) of title 5, United States Code, is amended in
9 the first sentence by striking “or (E)” and inserting “(E),
10 or (F)”.

11 (e) NOTICE.—Section 6382(e) of title 5, United
12 States Code, is amended by adding at the end the fol-
13 lowing:

14 “(4) For leave under subsection (a)(1)(F), the em-
15 ployee shall provide such notice to the employing agency
16 as is reasonable and practicable.”.

17 (f) CERTIFICATION.—Section 6383 of title 5, United
18 States Code, is amended—

19 (1) in subsection (c)(1)—

20 (A) by inserting “or subsection (g)(1) for
21 leave under section 6382(a)(1)(F)” after “sec-
22 tion 6382(a)(1)”; and

23 (B) by striking “under subsection (b) for
24 such leave” and inserting “under subsection (b)
25 for leave under subparagraph (C) or (D) of sec-

1 tion 6382(a)(1) or subsection (g)(2) for leave
2 under section 6382(a)(1)(F), respectively”;

3 (2) in subsection (d)—

4 (A) in paragraph (1)—

5 (i) by inserting “or subsection (g)(1)”
6 after “under subsection (a)”;

7 (ii) by inserting “or subsection (g)(2),
8 respectively” after “under subsection (b)”;
9 and

10 (B) in paragraph (2), by inserting “or sub-
11 section (g)(2)” after “under subsection (b)”;
12 and

13 (3) by adding at the end the following:

14 “(g)(1) An employing agency may require that a re-
15 quest for leave under section 6382(a)(1)(F) be supported
16 by a certification issued by the health care provider of the
17 employee or of the spouse of the employee, as appropriate.
18 The employee shall provide, in a timely manner, a copy
19 of such certification to the employing agency.

20 “(2) Certification provided under paragraph (1) shall
21 be sufficient if it includes the information described in
22 paragraphs (1), (2), (3), and (5) of subsection (b), with
23 respect to spontaneous loss of an unborn child or bodily
24 side effects of that loss, as appropriate.”.

1 **SEC. 4. REFUNDABLE PERSONAL CREDIT FOR INDIVIDUALS**
2 **WHO HAVE SUFFERED A STILLBIRTH.**

3 (a) IN GENERAL.—Subpart C of part IV of sub-
4 chapter A of chapter 1 of the Internal Revenue Code of
5 1986 is amended by inserting after section 36B the fol-
6 lowing new section:

7 **“SEC. 36C. STILLBIRTHS.**

8 “(a) ALLOWANCE OF CREDIT.—

9 “(1) IN GENERAL.—In the case of an eligible
10 individual, there shall be allowed as a credit against
11 the tax imposed by this subtitle for the taxable year
12 an amount equal to the applicable amount.

13 “(2) APPLICABLE AMOUNT.—For purposes of
14 paragraph (1), the applicable amount shall be equal
15 to the dollar amount in effect for such taxable year
16 under subsection (a) of section 24.

17 “(b) ELIGIBLE INDIVIDUAL.—For purposes of this
18 section, the term ‘eligible individual’ means any indi-
19 vidual—

20 “(1) who suffered during the taxable year the
21 stillbirth of a child who would have been a qualifying
22 child of the taxpayer (within the meaning of section
23 152) for the taxable year if such child had been born
24 live, and

25 “(2) for whom a certificate of birth resulting in
26 stillbirth has been issued under applicable State law.

1 “(c) STILLBIRTH.—For purposes of this section, the
2 term ‘stillbirth’ means the delivery of a child where there
3 was a spontaneous death of the child, not induced by any
4 purposeful act, before the complete delivery from the
5 child’s mother.

6 “(d) IDENTIFICATION REQUIREMENT.—

7 “(1) IN GENERAL.—No credit shall be allowed
8 under this section to a taxpayer unless the taxpayer
9 includes the social security number of such taxpayer
10 on the return of tax for the taxable year. In the case
11 of a joint return, the requirements of this subsection
12 shall be treated as met as long as 1 spouse includes
13 a social security number on the return of tax for the
14 taxable year.

15 “(2) SOCIAL SECURITY NUMBER.—For pur-
16 poses of this subsection, the term ‘social security
17 number’ means a social security number issued to an
18 individual by the Social Security Administration, but
19 only if the social security number is issued—

20 “(A) to a citizen of the United States or
21 pursuant to subclause (I) (or that portion of
22 subclause (III) that relates to subclause (I)) of
23 section 205(c)(2)(B)(i) of the Social Security
24 Act, and

25 “(B) before the due date for such return.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
 2 for subpart C of part IV of subchapter A of chapter 1
 3 of such Code is amended by inserting after the item relat-
 4 ing to section 36B the following new item:

“Sec. 36C. Stillbirths.”.

5 (c) CONFORMING AMENDMENTS.—

6 (1) Section 6211(b)(4)(A) of such Code is
 7 amended by inserting “36C,” after “36B,”.

8 (2) Paragraph (2) of section 1324(b) of title
 9 31, United States Code, is amended by inserting “,
 10 36C” after “36B”.

11 (d) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to taxable years beginning after
 13 the date of the enactment of this Act.

14 **SEC. 5. PROHIBITION OF FUNDING FAMILY PLANNING PRO-**
 15 **VIDERS THAT OFFER ABORTION SERVICES.**

16 Title X of the Public Health Service Act (42 U.S.C.
 17 300 et seq.) is amended by adding at the end the fol-
 18 lowing:

19 **“SEC. 1009. ADDITIONAL PROHIBITION REGARDING ABOR-**
 20 **TION.**

21 “The Secretary shall not provide any assistance
 22 under this title to an entity unless the entity certifies that,
 23 during the period of such assistance, the entity will not—

24 (1) perform an abortion, or provide funding to
 25 any other entity that performs abortions; or

1 “(2) refer patients to an abortion provider.”.

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