

AMENDMENTS TO HOUSE BILL NO. 181

Sponsor: REPRESENTATIVE DAWKINS

Printer's No. 1461

1 Amend Bill, page 1, line 1, by striking out "Insurance"

2 Amend Bill, page 1, line 2, by striking out "Insurance"

3 Amend Bill, page 1, line 10, by striking out "Insurance"

4 Amend Bill, page 1, line 11, by striking out "Insurance"

5 Amend Bill, page 1, line 13, by striking out "insurance"

6 Amend Bill, page 2, by inserting between lines 4 and 5

7 Section 310. Employer waiver to use private plan.

8 Amend Bill, page 2, line 12, by striking out "Insurance"

9 Amend Bill, page 2, line 26, by striking out "Insurance"

10 Amend Bill, page 2, line 29, by striking out "insurance"

11 Amend Bill, page 3, line 1, by striking out "insurance"

12 Amend Bill, page 3, line 6, by striking out "insurance"

13 Amend Bill, page 3, line 14, by striking out "insurance"

14 Amend Bill, page 3, by inserting between lines 14 and 15

15 "Attesting third party." A law enforcement official,
16 licensed health care professional, licensed social worker,
17 victim advocate or victim service provider.

18 "Authorized reason for leave for a qualifying act of
19 violence." Any of the following:

20 (1) To seek or obtain medical attention, rehabilitative
21 services, accessibility equipment or other treatment related
22 to a physical or mental injury or disability caused or
23 aggravated by the applicable qualifying act of violence.

24 (2) To recover from a physical or mental injury or

1 disability caused or aggravated by the applicable qualifying
2 act of violence.

3 (3) To seek or obtain services from a victim service
4 provider in relation to the applicable qualifying act of
5 violence.

6 (4) To seek or obtain mental health treatment or other
7 counseling in relation to the applicable qualifying act of
8 violence.

9 (5) To relocate or engage in the process of securing a
10 new residence due to the applicable qualifying act of
11 violence, including securing temporary or permanent housing
12 or enrolling children in a new school.

13 (6) To seek or obtain financial services or meet with a
14 financial professional to address financial issues resulting
15 from the applicable qualifying act of violence.

16 (7) To seek, obtain or provide child care or care to a
17 care-dependent adult necessary as a result of the applicable
18 qualifying act of violence.

19 (8) To seek or obtain legal services related to or
20 resulting from the applicable qualifying act of violence.

21 (9) To prepare for, participate in or attend a civil,
22 administrative or criminal legal proceeding relating to or
23 resulting from the applicable qualifying act of violence.

24 (10) To make modifications to a home or vehicle
25 necessary to create usability of and accessibility to the
26 home or vehicle due to an injury sustained in a qualifying
27 act of violence.

28 (11) To take any other action necessary to protect or
29 restore physical, mental, emotional or economic well-being as
30 a result of the applicable qualifying act of violence.

31 Amend Bill, page 3, line 16, by striking out "as" and

32 inserting

33 for

34 Amend Bill, page 3, line 16, by striking out "insurance"

35 Amend Bill, page 3, line 19, by striking out "Insurance"

36 Amend Bill, page 4, by inserting between lines 21 and 22

37 "Domestic violence." The occurrence of any of the following
38 acts between family or household members as defined in 23

39 Pa.C.S. § 6102(a) (relating to definitions):

40 (1) Intentionally, knowingly or recklessly causing, or
41 attempting to cause, bodily injury, serious bodily injury or
42 sexual violence.

43 (2) Placing another individual in reasonable fear of
44 imminent serious bodily harm.

45 (3) An act of domestic and other violence as defined in

1 55 Pa. Code § 3041.3 (relating to definitions).
2 (4) The infliction of false imprisonment under 18
3 Pa.C.S. § 2903 (relating to false imprisonment).
4 "Eligible employee." An employee who meets the requirements
5 of section 303(b)(1) and (2).

6 Amend Bill, page 5, line 28, by striking out "insurance"

7 Amend Bill, page 5, line 30, by striking out "Insurance"

8 Amend Bill, page 6, line 16, by striking out "Insurance"

9 Amend Bill, page 6, by inserting between lines 17 and 18

10 "Qualifying act of violence." An act, conduct or pattern of
11 conduct that could constitute any of the following, regardless
12 of whether anyone is arrested or charged with committing a
13 crime:

14 (1) Domestic violence.

15 (2) Sexual violence.

16 (3) Stalking.

17 (4) An act or conduct in which a person uses force to
18 cause or attempt to cause physical or mental injury to
19 another. For purposes of this paragraph, the act or conduct
20 does not include an act or conduct arising out of the
21 ownership, maintenance or use of a motor vehicle, except when
22 the person engaging in the act or conduct:

23 (i) intended to cause, or intended to threaten to
24 cause, physical or mental injury; or

25 (ii) was under the influence of alcohol or a
26 controlled substance.

27 (5) An act or conduct in which a person makes a
28 reasonably perceived or actual threat of physical or mental
29 injury to another. For purposes of this paragraph, the act or
30 conduct does not include an act or conduct arising out of the
31 ownership, maintenance or use of a motor vehicle, except when
32 the person engaging in the act or conduct:

33 (i) intended to cause, or intended to threaten to
34 cause, physical or mental injury; or

35 (ii) was under the influence of alcohol or a
36 controlled substance.

37 Amend Bill, page 6, by inserting between lines 21 and 22

38 "Retaliatory personnel action." As follows:

39 (1) Any threat, discipline, discharge, suspension,
40 demotion, reduction of hours or other adverse action taken
41 against an employee for exercising the rights and protections
42 afforded by this act.

43 (2) The term includes interference with or punishment
44 for participating in or acting on a complaint or appeal under
45 this act.

1 Amend Bill, page 6, by inserting between lines 27 and 28

2 "Sexual violence." As defined in 42 Pa.C.S. § 62A03
3 (relating to definitions).

4 "Stalking." Conduct in which an individual does any of the
5 following:

6 (1) Engages in a course of conduct or repeatedly commits
7 acts toward another individual, including following the other
8 individual without proper authority:

9 (i) under circumstances which demonstrate either an
10 intent to place the other individual in reasonable fear
11 of bodily injury or to cause substantial emotional
12 distress to the other individual; or

13 (ii) which, as a result, intentionally, knowingly or
14 recklessly places the other individual in reasonable fear
15 of bodily injury or causes substantial emotional distress
16 to the other individual.

17 (2) Engages in a course of conduct or repeatedly
18 communicates to another individual:

19 (i) under circumstances which demonstrate or
20 communicate either an intent to place the other
21 individual in reasonable fear of bodily injury or to
22 cause substantial emotional distress to the other
23 individual; or

24 (ii) which, as a result, intentionally, knowingly or
25 recklessly places the other individual in reasonable fear
26 of bodily injury or causes substantial emotional distress
27 to the other individual.

28 Amend Bill, page 7, by inserting between lines 5 and 6

29 "Victim." Any of the following:

30 (1) An individual against whom a qualifying act of
31 violence was committed.

32 (2) An individual who was physically present at the
33 scene of a qualifying act of violence and witnessed the
34 qualifying act of violence, who did not commit the qualifying
35 act of violence and who as a direct result:

36 (i) suffers physical or mental injury; or

37 (ii) reasonably believes that the individual is
38 under the threat of physical harm.

39 "Victim advocate." An individual, whether paid or serving as
40 a volunteer, who provides services to victims under the auspices
41 or supervision of a victim service provider, a court or law
42 enforcement or prosecution agency.

43 "Victim service provider." As follows:

44 (1) An agency or organization that provides services to
45 victims.

46 (2) The term includes:

47 (i) A rape crisis center as defined in 42 Pa.C.S. §
48 5945.1(a) (relating to confidential communications with

1 sexual assault counselors).
2 (ii) A domestic violence program as defined in 23
3 Pa.C.S. § 6102(a).
4 (iii) An agency or organization with a documented
5 history of providing services to victims.

6 Amend Bill, page 7, line 9, by striking out "INSURANCE"

7 Amend Bill, page 7, line 10, by striking out "Insurance"

8 Amend Bill, page 7, line 14, by striking out "Insurance"

9 Amend Bill, page 7, line 15, by striking out "No" and
10 inserting

11 Except as provided under section 310, no

12 Amend Bill, page 7, line 17, by striking out "insurance"

13 Amend Bill, page 7, line 20, by striking out "and" and
14 inserting a comma

15 Amend Bill, page 7, line 22, by inserting after "condition"

16 and any certification required from a victim of a qualifying
17 act of violence to support a claim

18 Amend Bill, page 8, line 27, by striking out "premium"

19 Amend Bill, page 9, line 13, by striking out "PREMIUM"

20 Amend Bill, page 9, line 25, by striking out "any and"

21 Amend Bill, page 10, line 7, by striking out "insurance"

22 Amend Bill, page 10, line 8, by inserting after "benefits"

23 , denial of a waiver under section 310, denial of family and
24 medical leave benefits provided through a private plan under
25 section 310

26 Amend Bill, page 10, line 17, by striking out "insurance"

27 Amend Bill, page 11, by inserting between lines 6 and 7

28 (6) Is a victim of a qualifying act of violence or is
29 caring for a family member who is a victim of a qualifying
30 act of violence and is taking leave for an authorized reason
31 for leave for a qualifying act of violence.

1 Amend Bill, page 11, line 9, by striking out "have"

2 Amend Bill, page 11, line 10, by striking out "Worked" and
3 inserting

4 Have worked

5 Amend Bill, page 11, line 12, by striking out "Earned" and
6 inserting

7 Have earned

8 Amend Bill, page 11, by inserting between lines 19 and 20

9 (3) Not be employed by an employer that has been issued
10 a waiver under section 310.

11 Amend Bill, page 12, line 8, by striking out "cannot" and
12 inserting

13 may not

14 Amend Bill, page 12, line 14, by inserting after
15 "certification"

16 or qualifying act of violence certification

17 Amend Bill, page 12, line 19, by striking out "and (4) that
18 justify" and inserting

19 or (4) that justifies

20 Amend Bill, page 12, line 29, by striking out "SHALL" and
21 inserting

22 may

23 Amend Bill, page 13, by inserting between lines 1 and 2

24 (g) Qualifying act of violence certification.--The
25 department may require that an employee, within a reasonable
26 period after the absence, provide documentation that the
27 employee or family member of the employee is a victim of a
28 qualifying act of violence. The following apply:

29 (1) The employee may satisfy the certification
30 requirement by providing to the department any of the
31 following:

32 (i) A copy of a valid court order that restrains the
33 person alleged to have committed the qualifying act of
34 violence from contact with the employee or family member
35 of the employee.

1 (ii) Medical or mental health records indicating
2 that the employee or family member of the employee is a
3 victim of a qualifying act of violence.

4 (iii) A police report documenting the act of which
5 the employee or family member of the employee is a victim
6 of a qualifying act of violence.

7 (iv) Evidence that the person alleged to have
8 committed the qualifying act of violence has been charged
9 with or convicted of an act of which the employee or
10 family member of the employee is a victim.

11 (v) A written certification signed by an attesting
12 third party that affirms that the employee or family
13 member of the employee is a victim of a qualifying act of
14 violence.

15 (vi) Any other form of documentation that reasonably
16 verifies that the employee or family member of the
17 employee is a victim of a qualifying act of violence,
18 including a written statement signed by the employee or
19 an individual authorized to act on behalf of the
20 employee.

21 (2) Furnishing documentation or providing a
22 certification under this subsection shall not waive any
23 confidentiality or privilege that may exist between the
24 employee or victim and a third party.

25 (3) The department may not require:

26 (i) That the employee provide a certification that
27 explains the details of the qualifying act of violence.

28 (ii) Disclosure of details relating to a qualifying
29 act of violence or the details of the medical condition
30 of the employee or family member of the employee as a
31 condition of providing leave under this act.

32 (4) All information provided to the department under
33 this subsection shall be retained in the strictest confidence
34 by the department, except to the extent that disclosure is:

35 (i) requested or consented to in writing by the
36 employee; or

37 (ii) otherwise required by applicable Federal or
38 State law, in which case the department shall provide the
39 employee notice prior to any authorized disclosure.

40 Amend Bill, page 13, line 2, by striking out "(G)" and
41 inserting

42 (h)

43 Amend Bill, page 13, line 7, by striking out "(H)" and
44 inserting

45 (i)

46 Amend Bill, page 13, line 8, by inserting after "AN"

1 eligibility

2 Amend Bill, page 13, line 10, by striking out "(I)" and
3 inserting

4 (j)

5 Amend Bill, page 13, line 17, by striking out "or" and
6 inserting a comma

7 Amend Bill, page 13, line 17, by inserting after "(3)"
8 or (6)

9 Amend Bill, page 13, line 22, by striking out "cannot" and
10 inserting
11 may not

12 Amend Bill, page 16, line 26, by striking out all of said
13 line and inserting

14 dependents.
15 (ix) The amount of any

16 Amend Bill, page 17, line 19, by striking out "insurance"

17 Amend Bill, page 17, line 22, by striking out "insurance"

18 Amend Bill, page 18, line 2, by striking out "premium"

19 Amend Bill, page 18, line 3, by striking out "premium"

20 Amend Bill, page 18, line 5, by striking out "any"

21 Amend Bill, page 18, line 6, by striking out "premium"

22 Amend Bill, page 18, line 7, by striking out "premium"

23 Amend Bill, page 18, line 11, by striking out "PREMIUM"

24 Amend Bill, page 18, line 13, by inserting after "ALL"

25 applicable

26 Amend Bill, page 18, line 18, by striking out "premium"

27 Amend Bill, page 18, line 29, by striking out "premium"

28 Amend Bill, page 19, by inserting between lines 1 and 2

1 (4) An employer may deduct up to 50% of the contribution
2 required for an employee by this section from that employee's
3 wages and shall remit 100% of the contribution required by
4 this section from both the employer and those employees to
5 the fund, as follows:

6 (i) An employer with fewer than 15 employees may
7 deduct up to 50% of the contribution required for an
8 employee by this section from that employee's wages and
9 shall remit 50% of the contribution required by this
10 section to the fund.

11 (ii) To determine an employer's number of employees
12 under this subsection, all of an employer's employees
13 shall be counted, including full-time, part-time and
14 temporary in-State employees and all out-of-State
15 employees.

16 Amend Bill, page 19, line 4, by striking out "premium"

17 Amend Bill, page 19, line 5, by striking out "An" and
18 inserting

19 Except for an employer issued a waiver under section 310, an
20 Amend Bill, page 19, line 6, by striking out "premium"

21 Amend Bill, page 19, line 17, by striking out "insurance"

22 Amend Bill, page 19, line 20, by striking out "shall" and
23 inserting

24 may

25 Amend Bill, page 19, line 27, by striking out "Any" and
26 inserting

27 A

28 Amend Bill, page 20, line 8, by striking out "was"

29 Amend Bill, page 20, line 18, by striking out "shall" and
30 inserting

31 may

32 Amend Bill, page 21, lines 3 through 9, by striking out all
33 of said lines

34 Amend Bill, page 22, by inserting between lines 18 and 19
35 Section 310. Employer waiver to use private plan.

1 (a) Waiver.--An employer may apply to the department for a
2 waiver to meet the employer's obligations under this chapter
3 through a private plan. The application shall be submitted on a
4 form and in a manner prescribed by the department. The
5 department may approve a private plan and issue a waiver under
6 this section if a private plan confers at least all of the same
7 rights, protections and benefits provided to employees under
8 this chapter and if the employer provides evidence that it has
9 in effect a self-funded plan governed under the Employee
10 Retirement Income Security Act of 1974 (Public Law 93-406, 88
11 Stat. 829) or an insurance policy issued by an entity that has a
12 certificate of authority to do the business of insurance as
13 required by section 208 of the act of May 17, 1921 (P.L.789,
14 No.285), known as The Insurance Department Act of 1921. The
15 private plan shall comply with all of the requirements under
16 this chapter, including the following:

17 (1) Benefits to a covered individual under section
18 303(a)(1), (3) and (6) for the maximum number of weeks
19 required under section 304(a) in a benefit year.

20 (2) Benefits to a covered individual under section
21 303(a)(2), (4) and (5) for the maximum number of weeks
22 required under section 304(b) in a benefit year.

23 (3) Covered individuals, in the aggregate, the maximum
24 number of weeks of benefits in a benefit year as required
25 under section 304(c).

26 (4) A weekly wage replacement rate for each week of
27 benefits of the amount required by section 305(a).

28 (5) A maximum weekly benefit for each week of benefits
29 of the amount specified in section 305(b).

30 (6) Payment of benefits in accordance with section
31 303(f) and (i).

32 (7) The allowance of leave and benefits to be taken
33 intermittently or on a reduced schedule as authorized by
34 section 307.

35 (8) For the adjustment of the maximum benefit cap in
36 accordance with the notice published annually in the
37 Pennsylvania Bulletin under section 305(c).

38 (9) That no additional conditions or restrictions on the
39 use of leave or benefits beyond those explicitly authorized
40 by this act or regulations promulgated under this act shall
41 be imposed.

42 (10) An employee covered under the private plan who is
43 eligible to receive benefits under this act, with benefits
44 under the private plan.

45 (11) That the cost to employees covered by a private
46 plan shall not be greater than the cost charged to employees
47 under section 306(c) and posted on the department's publicly
48 accessible Internet website under section 306(c)(3).

49 (12) Coverage consistent with section 303(b)(1) and (2).

50 (b) Construction.--Nothing in this act shall prohibit an
51 employer from providing benefits greater than those listed in

1 subsection (a).

2 (c) Additional employer duties.--To be eligible for a waiver
3 under subsection (a), an employer shall meet all of the
4 following requirements:

5 (1) If the private plan is in the form of self-funded
6 coverage, an employer must furnish a bond running to the
7 Commonwealth, issued by an entity authorized to transact
8 surety business in this Commonwealth under Article VI(e) of
9 the act of May 17, 1921 (P.L.682, No.284), known as The
10 Insurance Company Law of 1921. The form of surety shall be on
11 a form approved by the Insurance Department and in an amount
12 required by the department.

13 (2) The private plan shall provide for all eligible
14 employees throughout the employee's period of employment.

15 (3) An employer that provides a private plan under this
16 section shall provide each employee with a notice of the
17 availability of the program. The notice shall be provided to
18 each employee within five days of approval of a waiver, upon
19 hire and annually thereafter.

20 (d) Additional documentation to be submitted upon
21 approval.--Upon approval of an application for an exemption:

22 (1) The employer shall provide to the department all
23 reports required by regulations promulgated by the
24 department.

25 (2) If an exemption is based on the employer having a
26 self-funded plan, the employer shall provide satisfactory
27 evidence of maintenance of the form of surety as required by
28 the department under subsection (c)(1).

29 (e) Termination of waiver.--The department may terminate
30 approval to use a private plan granted under subsection (a) if
31 the secretary finds that the terms and conditions have been
32 violated or that the employer or private plan has failed to
33 confer any right, protection or benefit afforded to employees
34 under this chapter. The department shall be required to notify
35 an employer of a terminated waiver. Causes for termination of a
36 waiver shall include:

37 (1) failure to pay benefits;

38 (2) failure to pay benefits timely and in a manner
39 consistent with the program;

40 (3) failure to maintain an adequate security deposit;

41 (4) misuse of private plan trust funds;

42 (5) failure to submit any and all reports as required by
43 regulations promulgated by the department; or

44 (6) failure to comply with this section or regulations
45 promulgated by the department.

46 (f) Appeal.--If the secretary terminates a waiver for a
47 private plan under subsection (e), the employer shall have the
48 ability to appeal the decision of the secretary through the
49 regulatory process established under section 302.

50 (g) Protections and enforcement.--An employee covered under
51 a private plan shall retain all employee protections under

1 section 308 and enforcement procedures and the appeals process
2 under section 302(c). The following shall apply:

3 (1) Applicable enforcement procedures and the appeals
4 process for benefits by an employer-funded plan shall be
5 subject to an appeal under section 302(c).

6 (2) Applicable enforcement procedures and the appeals
7 process for benefits by an insurance policy shall be subject
8 to review as outlined in the policy of insurance and
9 applicable insurance law.

10 (3) If all appeals under the policy of insurance have
11 been exhausted, an individual may appeal to the department on
12 a form and in a manner prescribed by the department.

13 Amend Bill, page 22, line 22, by striking out "Upon" and
14 inserting

15 Except for an employer that has been issued a waiver under
16 section 310, upon

17 Amend Bill, page 23, lines 11 and 12, by striking out "for
18 violations" and inserting

19 alleging a violation

20 Amend Bill, page 26, line 12, by striking out "Insurance"

21 Amend Bill, page 26, line 14, by striking out "Insurance"

22 Amend Bill, page 26, line 16, by striking out "premium"

23 Amend Bill, page 27, line 20, by striking out "premium"

24 Amend Bill, page 28, line 23, by striking out "Insurance"

25 Amend Bill, page 28, by inserting after line 30

26 (3) The Insurance Commissioner or a designee.

27 Amend Bill, page 29, line 1, by striking out "(3)" and
28 inserting

29 (4)

30 Amend Bill, page 29, line 3, by striking out "(4)" and
31 inserting

32 (5)

33 Amend Bill, page 29, line 6, by striking out "(5)" and
34 inserting

1 (6)

2 Amend Bill, page 30, line 3, by striking out "303(G)" and
3 inserting

4 303(i)

5 Amend Bill, page 30, line 4, by striking out "SHALL" and
6 inserting

7 may