

## 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.

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

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

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

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

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

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

(3) The department may not require:

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

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

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

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

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

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

(h)

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

(i)

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Construction.--Nothing in this act shall prohibit an 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