

109TH CONGRESS
1ST SESSION

H. R. 3185

To promote the economic security and safety of victims of domestic and sexual violence, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 2005

Ms. ROYBAL-ALLARD (for herself, Mrs. MALONEY, Ms. SOLIS, Mr. MORAN of Virginia, Mr. GEORGE MILLER of California, Mr. VAN HOLLEN, Ms. WATSON, Mr. HONDA, Mr. KILDEE, Mr. MOORE of Kansas, Mr. UDALL of New Mexico, Ms. WOOLSEY, Mrs. CAPPS, Ms. LORETTA SANCHEZ of California, Mrs. TAUSCHER, Ms. MATSUI, Ms. LINDA T. SÁNCHEZ of California, Mrs. NAPOLITANO, Ms. LEE, Ms. BALDWIN, Ms. MILLENDER-MCDONALD, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. CORRINE BROWN of Florida, Ms. JACKSON-LEE of Texas, Ms. DELAURO, Ms. VELÁZQUEZ, Ms. KAPTUR, Mr. HINCHEY, Mr. SERRANO, and Ms. BERKLEY) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Ways and Means and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To promote the economic security and safety of victims of domestic and sexual violence, 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Security and Financial Empowerment Act”.

4 (b) **TABLE OF CONTENTS.**—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.

TITLE I—ENTITLEMENT TO EMERGENCY LEAVE FOR
ADDRESSING DOMESTIC OR SEXUAL VIOLENCE

- Sec. 101. Purposes.
- Sec. 102. Entitlement to emergency leave for addressing domestic or sexual violence.
- Sec. 103. Existing leave usable for addressing domestic or sexual violence.
- Sec. 104. Emergency benefits.
- Sec. 105. Effect on other laws and employment benefits.
- Sec. 106. Conforming amendment.
- Sec. 107. Effective date.

TITLE II—ENTITLEMENT TO UNEMPLOYMENT COMPENSATION
FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE,
SEXUAL ASSAULT, OR STALKING

- Sec. 201. Purposes.
- Sec. 202. Unemployment compensation and training provisions.

TITLE III—VICTIMS’ EMPLOYMENT SUSTAINABILITY

- Sec. 301. Short title.
- Sec. 302. Purposes.
- Sec. 303. Prohibited discriminatory acts.
- Sec. 304. Enforcement.
- Sec. 305. Attorney’s fees.

TITLE IV—VICTIMS OF ABUSE INSURANCE PROTECTION

- Sec. 401. Short title.
- Sec. 402. Definitions.
- Sec. 403. Discriminatory acts prohibited.
- Sec. 404. Insurance protocols for subjects of abuse.
- Sec. 405. Reasons for adverse actions.
- Sec. 406. Life insurance.
- Sec. 407. Subrogation without consent prohibited.
- Sec. 408. Enforcement.
- Sec. 409. Effective date.

TITLE V—NATIONAL CLEARINGHOUSE ON DOMESTIC AND
SEXUAL VIOLENCE IN THE WORKPLACE GRANT

Sec. 501. National clearinghouse on domestic and sexual violence in the workplace grant.

TITLE VI—SEVERABILITY

Sec. 601. Severability.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Violence against women has been reported
4 to be the leading cause of physical injury to women.
5 Such violence has a devastating impact on women's
6 physical and emotional health, financial security,
7 and ability to maintain their jobs, and thus impacts
8 interstate commerce.

9 (2) Studies indicate that one of the best predic-
10 tors of whether a victim will be able to stay away
11 from her abuser is her degree of economic independ-
12 ence. However, domestic violence, dating violence,
13 sexual assault and stalking often negatively impacts
14 victims' ability to maintain employment.

15 (3) The Bureau of National Affairs has esti-
16 mated that domestic violence costs United States
17 employers between \$3,000,000,000 and
18 \$5,000,000,000 annually in lost time and produc-
19 tivity, while other reports have estimated the cost at
20 between \$5,800,000,000 and \$13,000,000,000 annu-
21 ally.

1 (4) United States medical costs for domestic vi-
2 olence have been estimated to be \$31,000,000,000
3 per year.

4 (5) Abusers frequently seek to exert financial
5 control over their partners by actively interfering
6 with their ability to work, including preventing their
7 partners from going to work, harassing their part-
8 ners at work, limiting the access of their partners to
9 cash or transportation, and sabotaging the child care
10 arrangements of their partners.

11 (6) Domestic violence also affects perpetrators'
12 ability to work. A recent study found that 48 per-
13 cent of abusers reported having difficulty concen-
14 trating at work and 42 percent reported being late
15 to work. Seventy-eight percent reported using their
16 own company's resources in connection with the abu-
17 sive relationship.

18 (7) Studies indicate that between 35 and 56
19 percent of employed battered women surveyed were
20 harassed at work by their abusive partners.

21 (8) Victims of domestic violence also frequently
22 miss work due to injuries, court dates, and safety
23 concerns requiring legal protections. Victims of do-
24 mestic violence lose 8,000,000 days of paid work

1 each year—the equivalent of over 32,000 full-time
2 jobs and 5,600,000 days of household productivity.

3 (9) According to a 1998 report of the General
4 Accounting Office, between $\frac{1}{4}$ and $\frac{1}{2}$ of domestic
5 violence victims surveyed in 3 studies reported that
6 they lost a job due, at least in part, to domestic vio-
7 lence.

8 (10) Women who have experienced domestic vi-
9 olence or dating violence are more likely than other
10 women to be unemployed, to suffer from health
11 problems that can affect employability and job per-
12 formance, to report lower personal income, and to
13 rely on welfare.

14 (11) The prevalence of sexual assault and other
15 violence against women at work is also dramatic.
16 About 36,500 individuals, 80 percent of whom are
17 women, were raped or sexually assaulted in the
18 workplace each year from 1993 through 1999. Half
19 of all female victims of violent workplace crimes
20 know their attackers. Nearly 1 out of 10 violent
21 workplace incidents are committed by partners or
22 spouses. Women who work for State and local gov-
23 ernments suffer a higher incidence of workplace as-
24 saults, including rapes, than women who work in the
25 private sector.

1 (12) Sexual assault, whether occurring in or out
2 of the workplace, can impair an employee’s work
3 performance, require time away from work, and un-
4 dermine the employee’s ability to maintain a job. Al-
5 most 50 percent of sexual assault survivors lose their
6 jobs or are forced to quit in the aftermath of the as-
7 saults.

8 (13) More than 35 percent of stalking victims
9 report losing time from work due to the stalking and
10 7 percent never return to work.

11 (14) Ninety-four percent of corporate security
12 and safety directors at companies nationwide rank
13 domestic violence as a high security concern.

14 (15) Already, 27 States and the District of Co-
15 lumbia have laws that explicitly provide unemploy-
16 ment insurance to domestic violence victims in cer-
17 tain circumstances. However, these laws vary in the
18 extent to which they effectively address the special
19 circumstances of victims of domestic violence and
20 very few of the laws explicitly cover victims of sexual
21 assault or stalking. Moreover—

22 (A) victims who do not receive unemploy-
23 ment insurance benefits often lack the economic
24 independence they need to escape violent rela-
25 tionships;

1 (B) victims who lose their jobs because of
2 domestic or sexual violence have lost their jobs
3 through no fault of their own, and thus are the
4 intended beneficiaries of unemployment com-
5 pensation benefits;

6 (C) under many State unemployment com-
7 pensation laws, victims of domestic or sexual vi-
8 olence who separate from their jobs because of
9 the violence may not be eligible to receive bene-
10 fits because of the circumstances of their sepa-
11 ration;

12 (D) victims who must leave a job to relo-
13 cate to a safe location or to take other steps to
14 secure their safety may be barred from unem-
15 ployment benefits on the grounds that they left
16 a job voluntarily and without good cause; and

17 (E) victims who have qualified for benefits
18 may not be able to satisfy requirements con-
19 cerning availability for work or the suitability of
20 potential work because of their ongoing safety
21 needs.

22 (16) Five States provide victims of domestic or
23 sexual violence with leave from work to go to court,
24 to the doctor, or to take other steps to address the
25 violence in their lives, and several other States pro-

1 vide time off to victims of crimes, which can include
2 victims of domestic and sexual violence, to attend
3 court proceedings. However, many States have no
4 employment-protected leave provisions that allow vic-
5 tims of domestic or sexual violence to take the time
6 off they need to address the violence.

7 (17) Domestic and sexual violence victims have
8 been subjected to discrimination by private and
9 State employers, including discrimination motivated
10 by sex and stereotypic notions about women.

11 (18) Domestic violence victims and third parties
12 who help them have been subjected to discriminatory
13 practices by health, life, disability, and property and
14 casualty insurers, and employers who self-insure em-
15 ployee benefits who have denied or canceled cov-
16 erage, rejected claims, and raised rates based on do-
17 mestic violence. Although some State legislatures
18 have tried to address these problems, the scope of
19 protection afforded by the laws adopted varies from
20 State to State, with many failing to address the
21 problem comprehensively. Moreover, Federal law
22 prevents States from protecting the almost 40 per-
23 cent of employees whose employers self-insure em-
24 ployee benefits.

25 (19) Existing Federal law does not explicitly—

1 (A) authorize victims of domestic violence,
2 dating violence, sexual assault, or stalking to
3 take leave from work to seek legal assistance
4 and redress, counseling, or assistance with safe-
5 ty planning activities;

6 (B) address the eligibility of victims of do-
7 mestic violence, dating violence, sexual assault,
8 or stalking for unemployment compensation;

9 (C) prohibit employment discrimination
10 against actual or perceived victims of domestic
11 violence, dating violence, sexual assault, or
12 stalking; or

13 (D) prohibit insurers and employers who
14 self-insure employee benefits from discrimi-
15 nating against domestic violence victims and
16 those who help them in determining eligibility,
17 rates charged, and standards for payment of
18 claims; nor does it prohibit insurers from diselo-
19 sure of information about abuse and the vic-
20 tim's location through insurance databases and
21 other means.

22 **SEC. 3. DEFINITIONS.**

23 In this Act, except as otherwise expressly provided:

24 (1) **COMMERCE.**—The terms “commerce” and
25 “industry or activity affecting commerce” have the

1 meanings given the terms in section 101 of the
2 Family and Medical Leave Act of 1993 (29 U.S.C.
3 2611).

4 (2) COURSE OF CONDUCT.—The term “course
5 of conduct” means a course of repeatedly maintain-
6 ing a visual or physical proximity to a person or con-
7 veying verbal or written threats, including threats
8 conveyed through electronic communications, or
9 threats implied by conduct.

10 (3) DATING VIOLENCE.—The term “dating vio-
11 lence” has the meaning given the term in section
12 826 of the Higher Education Amendments of 1998
13 (20 U.S.C. 1152).

14 (4) DOMESTIC OR SEXUAL VIOLENCE.—The
15 term “domestic or sexual violence” means domestic
16 violence, dating violence, sexual assault, or stalking.

17 (5) DOMESTIC VIOLENCE.—The term “domestic
18 violence” has the meaning given the term in section
19 826 of the Higher Education Amendments of 1998
20 (20 U.S.C. 1152).

21 (6) DOMESTIC VIOLENCE COALITION.—The
22 term “domestic violence coalition” means a non-
23 profit, nongovernmental membership organization
24 that—

1 (A) consists of the entities carrying out a
2 majority of the domestic violence programs car-
3 ried out within a State;

4 (B) collaborates and coordinates activities
5 with Federal, State, and local entities to further
6 the purposes of domestic violence intervention
7 and prevention; and

8 (C) among other activities, provides train-
9 ing and technical assistance to entities carrying
10 out domestic violence programs within a State,
11 territory, political subdivision, or area under
12 Federal authority.

13 (7) ELECTRONIC COMMUNICATIONS.—The term
14 “electronic communications” includes communica-
15 tions via telephone, mobile phone, computer, email,
16 video recorder, fax machine, telex, or pager.

17 (8) EMPLOY; STATE.—The terms “employ” and
18 “State” have the meanings given the terms in sec-
19 tion 3 of the Fair Labor Standards Act of 1938 (29
20 U.S.C. 203).

21 (9) EMPLOYEE.—

22 (A) IN GENERAL.—The term “employee”
23 means any person employed by an employer. In
24 the case of an individual employed by a public
25 agency, such term means an individual em-

1 employed as described in section 3(e) of the Fair
2 Labor Standards Act of 1938 (29 U.S.C.
3 203(e)).

4 (B) BASIS.—The term includes a person
5 employed as described in subparagraph (A) on
6 a full- or part-time basis, for a fixed time pe-
7 riod, on a temporary basis, pursuant to a detail,
8 as an independent contractor, or as a partici-
9 pant in a work assignment as a condition of re-
10 ceipt of Federal or State income-based public
11 assistance.

12 (10) EMPLOYER.—The term “employer”—

13 (A) means any person engaged in com-
14 merce or in any industry or activity affecting
15 commerce who employs 15 or more individuals;
16 and

17 (B) includes any person acting directly or
18 indirectly in the interest of an employer in rela-
19 tion to an employee, and includes a public agen-
20 cy, but does not include any labor organization
21 (other than when acting as an employer) or
22 anyone acting in the capacity of officer or agent
23 of such labor organization.

24 (11) EMPLOYMENT BENEFITS.—The term “em-
25 ployment benefits” means all benefits provided or

1 made available to employees by an employer, includ-
2 ing group life insurance, health insurance, disability
3 insurance, sick leave, annual leave, educational bene-
4 fits, and pensions, regardless of whether such bene-
5 fits are provided by a practice or written policy of
6 an employer or through an “employee benefit plan”,
7 as defined in section 3(3) of the Employee Retirement
8 Income Security Act of 1974 (29 U.S.C.
9 1002(3)).

10 (12) FAMILY OR HOUSEHOLD MEMBER.—The
11 term “family or household member” means a non-
12 abusive spouse, former spouse, parent, son or daugh-
13 ter, or person residing or formerly residing in the
14 same dwelling unit.

15 (13) PARENT; SON OR DAUGHTER.—The terms
16 “parent” and “son or daughter” have the meanings
17 given the terms in section 101 of the Family and
18 Medical Leave Act of 1993 (29 U.S.C. 2611).

19 (14) PERSON.—The term “person” has the
20 meaning given the term in section 3 of the Fair
21 Labor Standards Act of 1938 (29 U.S.C. 203).

22 (15) PUBLIC AGENCY.—The term “public agen-
23 cy” has the meaning given the term in section 3 of
24 the Fair Labor Standards Act of 1938 (29 U.S.C.
25 203).

1 (16) PUBLIC ASSISTANCE.—The term “public
2 assistance” includes cash, food stamps, medical as-
3 sistance, housing assistance, and other benefits pro-
4 vided on the basis of income by a public agency.

5 (17) REDUCED LEAVE SCHEDULE.—The term
6 “reduced leave schedule” means a leave schedule
7 that reduces the usual number of hours per work-
8 week, or hours per workday, of an employee.

9 (18) REPEATEDLY.—The term “repeatedly”
10 means on 2 or more occasions.

11 (19) SECRETARY.—The term “Secretary”
12 means the Secretary of Labor.

13 (20) SEXUAL ASSAULT.—The term “sexual as-
14 sault” has the meaning given the term in section
15 826 of the Higher Education Amendments of 1998
16 (20 U.S.C. 1152).

17 (21) SEXUAL ASSAULT COALITION.—The term
18 “sexual assault coalition” means a nonprofit, non-
19 governmental membership organization that—

20 (A) consists of the entities carrying out a
21 majority of the sexual assault programs carried
22 out within a State;

23 (B) collaborates and coordinates activities
24 with Federal, State, and local entities to further

1 the purposes of sexual assault intervention and
2 prevention; and

3 (C) among other activities, provides train-
4 ing and technical assistance to entities carrying
5 out sexual assault programs within a State, ter-
6 ritory, political subdivision, or area under Fed-
7 eral authority.

8 (22) STALKING.—The term “stalking” means
9 engaging in a course of conduct directed at a spe-
10 cific person that would cause a reasonable person to
11 suffer substantial emotional distress or to fear bodily
12 injury, sexual assault, or death to the person, or the
13 person’s spouse, parent, or son or daughter, or any
14 other person who regularly resides in the person’s
15 household, if the conduct causes the specific person
16 to have such distress or fear.

17 (23) VICTIM SERVICES ORGANIZATION.—The
18 term “victim services organization” means a non-
19 profit, nongovernmental organization that provides
20 assistance to victims of domestic or sexual violence
21 or to advocates for such victims, including a rape
22 crisis center, an organization carrying out a domes-
23 tic violence program, an organization operating a
24 shelter or providing counseling services, or an orga-

1 nization providing assistance through the legal pro-
2 cess.

3 **TITLE I—ENTITLEMENT TO**
4 **EMERGENCY LEAVE FOR AD-**
5 **DRESSING DOMESTIC OR SEX-**
6 **UAL VIOLENCE**

7 **SEC. 101. PURPOSES.**

8 The purposes of this title are, pursuant to the affirm-
9 ative power of Congress to enact legislation under the por-
10 tions of section 8 of article I of the Constitution relating
11 to providing for the general welfare and to regulation of
12 commerce among the several States, and under section 5
13 of the 14th amendment to the Constitution—

14 (1) to promote the national interest in reducing
15 domestic violence, dating violence, sexual assault,
16 and stalking by enabling victims of domestic or sex-
17 ual violence to maintain the financial independence
18 necessary to leave abusive situations, achieve safety,
19 and minimize the physical and emotional injuries
20 from domestic or sexual violence, and to reduce the
21 devastating economic consequences of domestic or
22 sexual violence to employers and employees;

23 (2) to promote the national interest in ensuring
24 that victims of domestic or sexual violence can re-
25 cover from and cope with the effects of such vio-

1 lence, and participate in criminal and civil justice
2 processes, without fear of adverse economic con-
3 sequences from their employers;

4 (3) to ensure that victims of domestic or sexual
5 violence can recover from and cope with the effects
6 of such violence, and participate in criminal and civil
7 justice processes, without fear of adverse economic
8 consequences with respect to public benefits;

9 (4) to promote the purposes of the 14th amend-
10 ment by preventing sex-based discrimination and
11 discrimination against victims of domestic and sex-
12 ual violence in employment leave, addressing the
13 failure of existing laws to protect the employment
14 rights of victims of domestic or sexual violence, by
15 protecting their civil and economic rights, and by
16 furthering the equal opportunity of women for eco-
17 nomic self-sufficiency and employment free from dis-
18 crimination;

19 (5) to minimize the negative impact on inter-
20 state commerce from dislocations of employees and
21 harmful effects on productivity, employment, health
22 care costs, and employer costs, caused by domestic
23 or sexual violence, including intentional efforts to
24 frustrate women's ability to participate in employ-
25 ment and interstate commerce;

1 (6) to further the goals of human rights and
2 dignity reflected in instruments such as the United
3 Nations Charter, the Universal Declaration of
4 Human Rights, and the International Covenant on
5 Civil and Political Rights; and

6 (7) to accomplish the purposes described in
7 paragraphs (1) through (6) by—

8 (A) entitling employed victims of domestic
9 or sexual violence to take leave to seek medical
10 help, legal assistance, counseling, safety plan-
11 ning, and other assistance without penalty from
12 their employers; and

13 (B) prohibiting employers from discrimi-
14 nating against actual or perceived victims of do-
15 mestic or sexual violence, in a manner that ac-
16 commodates the legitimate interests of employ-
17 ers and protects the safety of all persons in the
18 workplace.

19 **SEC. 102. ENTITLEMENT TO EMERGENCY LEAVE FOR AD-**
20 **DRESSING DOMESTIC OR SEXUAL VIOLENCE.**

21 (a) LEAVE REQUIREMENT.—

22 (1) BASIS.—An employee who is a victim of do-
23 mestic or sexual violence may take leave from work
24 to address domestic or sexual violence, by—

1 (A) seeking medical attention for, or recovering from, physical or psychological injuries
2 caused by domestic or sexual violence to the
3 employee or the employee's family or household
4 member;
5

6 (B) obtaining services from a victim services organization for the employee or the employee's family or household member;
7
8

9 (C) obtaining psychological or other counseling for the employee or the employee's family
10 or household member;
11

12 (D) participating in safety planning, temporarily or permanently relocating, or taking
13 other actions to increase the safety of the employee or the employee's family or household
14 member from future domestic or sexual violence
15 or ensure economic security; or
16
17

18 (E) seeking legal assistance or remedies to
19 ensure the health and safety of the employee or
20 the employee's family or household member, including preparing for or participating in any
21 civil or criminal legal proceeding related to or
22 derived from domestic or sexual violence.
23

1 (2) PERIOD.—An employee may take not more
2 than 30 days of leave, as described in paragraph (1),
3 in any 12-month period.

4 (3) SCHEDULE.—Leave described in paragraph
5 (1) may be taken intermittently or on a reduced
6 leave schedule.

7 (b) NOTICE.—The employee shall provide the em-
8 ployer with reasonable notice of the employee’s intention
9 to take the leave, unless providing such notice is not prac-
10 ticable.

11 (c) CERTIFICATION.—

12 (1) IN GENERAL.—The employer may require
13 the employee to provide certification to the employer
14 that—

15 (A) the employee or the employee’s family
16 or household member is a victim of domestic or
17 sexual violence; and

18 (B) the leave is for 1 of the purposes enu-
19 merated in subsection (a)(1).

20 The employee shall provide a copy of such certifi-
21 cation to the employer within a reasonable period
22 after the employer requests certification.

23 (2) CONTENTS.—An employee may satisfy the
24 certification requirement of paragraph (1) by pro-
25 viding to the employer—

1 (A) a sworn statement of the employee;

2 (B) documentation from an employee,
3 agent, or volunteer of a victim services organi-
4 zation, an attorney, a member of the clergy, or
5 a medical or other professional, from whom the
6 employee or the employee's family or household
7 member has sought assistance in addressing do-
8 mestic or sexual violence and the effects of the
9 violence;

10 (C) a police or court record; or

11 (D) other corroborating evidence.

12 (d) CONFIDENTIALITY.—All information provided to
13 the employer pursuant to subsection (b) or (c), including
14 a statement of the employee or any other documentation,
15 record, or corroborating evidence, and the fact that the
16 employee has requested or obtained leave pursuant to this
17 section, shall be retained in the strictest confidence by the
18 employer, except to the extent that disclosure is—

19 (1) requested or consented to by the employee
20 in writing; or

21 (2) otherwise required by applicable Federal or
22 State law.

23 (e) EMPLOYMENT AND BENEFITS.—

24 (1) RESTORATION TO POSITION.—

1 (A) IN GENERAL.—Except as provided in
2 paragraph (2), any employee who takes leave
3 under this section for the intended purpose of
4 the leave shall be entitled, on return from such
5 leave—

6 (i) to be restored by the employer to
7 the position of employment held by the em-
8 ployee when the leave commenced; or

9 (ii) to be restored to an equivalent po-
10 sition with equivalent employment benefits,
11 pay, and other terms and conditions of em-
12 ployment.

13 (B) LOSS OF BENEFITS.—The taking of
14 leave under this section shall not result in the
15 loss of any employment benefit accrued prior to
16 the date on which the leave commenced.

17 (C) LIMITATIONS.—Nothing in this sub-
18 section shall be construed to entitle any re-
19 stored employee to—

20 (i) the accrual of any seniority or em-
21 ployment benefits during any period of
22 leave; or

23 (ii) any right, benefit, or position of
24 employment other than any right, benefit,
25 or position to which the employee would

1 have been entitled had the employee not
2 taken the leave.

3 (D) CONSTRUCTION.—Nothing in this
4 paragraph shall be construed to prohibit an em-
5 ployer from requiring an employee on leave
6 under this section to report periodically to the
7 employer on the status and intention of the em-
8 ployee to return to work.

9 (2) EXEMPTION CONCERNING CERTAIN HIGHLY
10 COMPENSATED EMPLOYEES.—

11 (A) DENIAL OF RESTORATION.—An em-
12 ployer may deny restoration under paragraph
13 (1) to any employee described in subparagraph
14 (B) if—

15 (i) such denial is necessary to prevent
16 substantial and grievous economic injury to
17 the operations of the employer;

18 (ii) the employer notifies the employee
19 of the intent of the employer to deny res-
20 toration on such basis at the time the em-
21 ployer determines that such injury would
22 occur; and

23 (iii) in any case in which the leave has
24 commenced, the employee elects not to re-

1 turn to employment after receiving such
2 notice.

3 (B) AFFECTED EMPLOYEES.—An employee
4 referred to in subparagraph (A) is a salaried
5 employee who is among the highest paid 10 per-
6 cent of the employees employed by the employer
7 within 75 miles of the facility at which the em-
8 ployee is employed.

9 (3) MAINTENANCE OF HEALTH BENEFITS.—

10 (A) COVERAGE.—Except as provided in
11 subparagraph (B), during any period that an
12 employee takes leave under this section, the em-
13 ployer shall maintain coverage under any group
14 health plan (as defined in section 5000(b)(1) of
15 the Internal Revenue Code of 1986) for the du-
16 ration of such leave at the level and under the
17 conditions coverage would have been provided if
18 the employee had continued in employment con-
19 tinuously for the duration of such leave.

20 (B) FAILURE TO RETURN FROM LEAVE.—
21 The employer may recover the premium that
22 the employer paid for maintaining coverage for
23 the employee under such group health plan dur-
24 ing any period of leave under this section if—

1 (i) the employee fails to return from
2 leave under this section after the period of
3 leave to which the employee is entitled has
4 expired; and

5 (ii) the employee fails to return to
6 work for a reason other than—

7 (I) the continuation, recurrence,
8 or onset of domestic or sexual vio-
9 lence, that entitles the employee to
10 leave pursuant to this section; or

11 (II) other circumstances beyond
12 the control of the employee.

13 (C) CERTIFICATION.—

14 (i) ISSUANCE.—An employer may re-
15 quire an employee who claims that the em-
16 ployee is unable to return to work because
17 of a reason described in subclause (I) or
18 (II) of subparagraph (B)(ii) to provide,
19 within a reasonable period after making
20 the claim, certification to the employer
21 that the employee is unable to return to
22 work because of that reason.

23 (ii) CONTENTS.—An employee may
24 satisfy the certification requirement of
25 clause (i) by providing to the employer—

1 (I) a sworn statement of the em-
2 ployee;

3 (II) documentation from an em-
4 ployee, agent, or volunteer of a victim
5 services organization, an attorney, a
6 member of the clergy, or a medical or
7 other professional, from whom the
8 employee has sought assistance in ad-
9 dressing domestic or sexual violence
10 and the effects of that violence;

11 (III) a police or court record; or

12 (IV) other corroborating evi-
13 dence.

14 (D) CONFIDENTIALITY.—All information
15 provided to the employer pursuant to subpara-
16 graph (C), including a statement of the em-
17 ployee or any other documentation, record, or
18 corroborating evidence, and the fact that the
19 employee is not returning to work because of a
20 reason described in subclause (I) or (II) of sub-
21 paragraph (B)(ii) shall be retained in the strict-
22 est confidence by the employer, except to the
23 extent that disclosure is—

24 (i) requested or consented to by the
25 employee; or

1 (ii) otherwise required by applicable
2 Federal or State law.

3 (f) PROHIBITED ACTS.—

4 (1) INTERFERENCE WITH RIGHTS.—

5 (A) EXERCISE OF RIGHTS.—It shall be un-
6 lawful for any employer to interfere with, re-
7 strain, or deny the exercise of or the attempt to
8 exercise, any right provided under this section.

9 (B) EMPLOYER DISCRIMINATION.—It shall
10 be unlawful for any employer to discharge or
11 harass any individual, or otherwise discriminate
12 against any individual with respect to com-
13 pensation, terms, conditions, or privileges of
14 employment of the individual (including retalia-
15 tion in any form or manner) because the indi-
16 vidual—

17 (i) exercised any right provided under
18 this section; or

19 (ii) opposed any practice made unlaw-
20 ful by this section.

21 (C) PUBLIC AGENCY SANCTIONS.—It shall
22 be unlawful for any public agency to deny, re-
23 duce, or terminate the benefits of, otherwise
24 sanction, or harass any individual, or otherwise
25 discriminate against any individual with respect

1 to the amount, terms, or conditions of public
2 assistance of the individual (including retalia-
3 tion in any form or manner) because the indi-
4 vidual—

5 (i) exercised any right provided under
6 this section; or

7 (ii) opposed any practice made unlaw-
8 ful by this section.

9 (2) INTERFERENCE WITH PROCEEDINGS OR IN-
10 QUIRIES.—It shall be unlawful for any person to dis-
11 charge or in any other manner discriminate (as de-
12 scribed in subparagraph (B) or (C) of paragraph
13 (1)) against any individual because such indi-
14 vidual—

15 (A) has filed any charge, or has instituted
16 or caused to be instituted any proceeding,
17 under or related to this section;

18 (B) has given, or is about to give, any in-
19 formation in connection with any inquiry or
20 proceeding relating to any right provided under
21 this section; or

22 (C) has testified, or is about to testify, in
23 any inquiry or proceeding relating to any right
24 provided under this section.

25 (g) ENFORCEMENT.—

1 (1) CIVIL ACTION BY AFFECTED INDIVID-
2 UALS.—

3 (A) LIABILITY.—Any employer or public
4 agency that violates subsection (f) shall be lia-
5 ble to any individual affected—

6 (i) for damages equal to—

7 (I) the amount of—

8 (aa) any wages, salary, em-
9 ployment benefits, public assist-
10 ance, or other compensation de-
11 nied or lost to such individual by
12 reason of the violation; or

13 (bb) in a case in which
14 wages, salary, employment bene-
15 fits, public assistance, or other
16 compensation has not been de-
17 nied or lost to the individual, any
18 actual monetary losses sustained
19 by the individual as a direct re-
20 sult of the violation;

21 (II) the interest on the amount
22 described in subclause (I) calculated
23 at the prevailing rate; and

24 (III) an additional amount as liq-
25 uidated damages equal to the sum of

1 the amount described in subclause (I)
2 and the interest described in sub-
3 clause (II), except that if an employer
4 or public agency that has violated
5 subsection (f) proves to the satisfac-
6 tion of the court that the act or omis-
7 sion that violated subsection (f) was
8 in good faith and that the employer or
9 public agency had reasonable grounds
10 for believing that the act or omission
11 was not a violation of subsection (f),
12 such court may, in the discretion of
13 the court, reduce the amount of the li-
14 ability to the amount and interest de-
15 termined under subclauses (I) and
16 (II), respectively; and

17 (ii) for such equitable relief as may be
18 appropriate, including employment, rein-
19 statement, and promotion.

20 (B) RIGHT OF ACTION.—An action to re-
21 cover the damages or equitable relief prescribed
22 in subparagraph (A) may be maintained against
23 any employer or public agency in any Federal
24 or State court of competent jurisdiction by any

1 1 or more affected individuals for and on behalf
2 of—

3 (i) the individuals; or

4 (ii) the individuals and other individ-
5 uals similarly situated.

6 (C) FEES AND COSTS.—The court in such
7 an action shall, in addition to any judgment
8 awarded to the plaintiff, allow a reasonable at-
9 torney’s fee, reasonable expert witness fees, and
10 other costs of the action to be paid by the de-
11 fendant.

12 (D) LIMITATIONS.—The right provided by
13 subparagraph (B) to bring an action by or on
14 behalf of any affected individual shall termi-
15 nate—

16 (i) on the filing of a complaint by the
17 Secretary in an action under paragraph (4)
18 in which restraint is sought of any further
19 delay in the payment of the amount de-
20 scribed in subparagraph (A)(i) to such in-
21 dividual by an employer or public agency
22 responsible under subparagraph (A) for
23 the payment; or

24 (ii) on the filing of a complaint by the
25 Secretary in an action under paragraph (2)

1 in which a recovery is sought of the dam-
2 ages described in subparagraph (A)(i)
3 owing to an affected individual by an em-
4 ployer or public agency liable under sub-
5 paragraph (A), unless the action described
6 in clause (i) or (ii) is dismissed without
7 prejudice on motion of the Secretary.

8 (2) ACTION BY THE SECRETARY.—

9 (A) ADMINISTRATIVE ACTION.—The Sec-
10 retary shall receive, investigate, and attempt to
11 resolve complaints of violations of subsection (f)
12 in the same manner as the Secretary receives,
13 investigates, and attempts to resolve complaints
14 of violations of sections 6 and 7 of the Fair
15 Labor Standards Act of 1938 (29 U.S.C. 206
16 and 207).

17 (B) CIVIL ACTION.—The Secretary may
18 bring an action in any court of competent juris-
19 diction to recover the damages described in
20 paragraph (1)(A)(i).

21 (C) SUMS RECOVERED.—Any sums recov-
22 ered by the Secretary pursuant to subparagraph
23 (B) shall be held in a special deposit account
24 and shall be paid, on order of the Secretary, di-
25 rectly to each individual affected. Any such

1 sums not paid to such an individual because of
2 inability to do so within a period of 3 years
3 shall be deposited into the Treasury of the
4 United States as miscellaneous receipts.

5 (3) LIMITATION.—

6 (A) IN GENERAL.—Except as provided in
7 subparagraph (B), an action may be brought
8 under this subsection not later than 2 years
9 after the date of the last event constituting the
10 alleged violation for which the action is brought.

11 (B) WILLFUL VIOLATION.—In the case of
12 such action brought for a willful violation of
13 subsection (f), such action may be brought
14 within 3 years after the date of the last event
15 constituting the alleged violation for which such
16 action is brought.

17 (C) COMMENCEMENT.—In determining
18 when an action is commenced by the Secretary
19 under this subsection for the purposes of this
20 paragraph, it shall be considered to be com-
21 menced on the date when the complaint is filed.

22 (4) ACTION FOR INJUNCTION BY SECRETARY.—

23 The district courts of the United States shall have
24 jurisdiction, for cause shown, in an action brought
25 by the Secretary—

1 (A) to restrain violations of subsection (f),
2 including the restraint of any withholding of
3 payment of wages, salary, employment benefits,
4 public assistance, or other compensation, plus
5 interest, found by the court to be due to af-
6 fected individuals; or

7 (B) to award such other equitable relief as
8 may be appropriate, including employment, re-
9 instatement, and promotion.

10 (5) SOLICITOR OF LABOR.—The Solicitor of
11 Labor may appear for and represent the Secretary
12 on any litigation brought under this subsection.

13 (6) EMPLOYER LIABILITY UNDER OTHER
14 LAWS.—Nothing in this section shall be construed to
15 limit the liability of an employer or public agency to
16 an individual, for harm suffered relating to the indi-
17 vidual’s experience of domestic or sexual violence,
18 pursuant to any other Federal or State law, includ-
19 ing a law providing for a legal remedy.

20 **SEC. 103. EXISTING LEAVE USABLE FOR ADDRESSING DO-**
21 **MESTIC OR SEXUAL VIOLENCE.**

22 An employee who is entitled to take paid or unpaid
23 leave (including family, medical, sick, annual, personal, or
24 similar leave) from employment, pursuant to State or local
25 law, a collective bargaining agreement, or an employment

1 benefits program or plan, may elect to substitute any pe-
2 riod of such leave for an equivalent period of leave pro-
3 vided under section 102.

4 **SEC. 104. EMERGENCY BENEFITS.**

5 (a) IN GENERAL.—A State may use funds provided
6 to the State under part A of title IV of the Social Security
7 Act (42 U.S.C. 601 et seq.) to provide nonrecurrent short-
8 term emergency benefits to an individual for any period
9 of leave the individual takes pursuant to section 102.

10 (b) ELIGIBILITY.—In calculating the eligibility of an
11 individual for such emergency benefits, the State shall
12 count only the cash available or accessible to the indi-
13 vidual.

14 (c) TIMING.—

15 (1) APPLICATIONS.—An individual seeking
16 emergency benefits under subsection (a) from a
17 State shall submit an application to the State.

18 (2) BENEFITS.—The State shall provide bene-
19 fits to an eligible applicant under paragraph (1) on
20 an expedited basis, and not later than 7 days after
21 the applicant submits an application under para-
22 graph (1).

23 (d) CONFORMING AMENDMENT.—Section 404 of the
24 Social Security Act (42 U.S.C. 604) is amended by adding
25 at the end the following:

1 of domestic or sexual violence under this title shall not
2 be diminished by any State or local law, collective bar-
3 gaining agreement, or employment benefits program or
4 plan.

5 **SEC. 106. CONFORMING AMENDMENT.**

6 Section 1003(a)(1) of the Rehabilitation Act Amend-
7 ments of 1986 (42 U.S.C. 2000d-7(a)(1)) is amended by
8 inserting “title I or III of the Security and Financial Em-
9 powerment Act,” before “or the provisions”.

10 **SEC. 107. EFFECTIVE DATE.**

11 This title and the amendment made by this title take
12 effect 180 days after the date of enactment of this Act.

13 **TITLE II—ENTITLEMENT TO UN-**
14 **EMPLOYMENT COMPENSA-**
15 **TION FOR VICTIMS OF DO-**
16 **MESTIC VIOLENCE, DATING**
17 **VIOLENCE, SEXUAL ASSAULT,**
18 **OR STALKING**

19 **SEC. 201. PURPOSES.**

20 The purposes of this title are, pursuant to the affirm-
21 ative power of Congress to enact legislation under the por-
22 tions of section 8 of article I of the Constitution relating
23 to laying and collecting taxes, providing for the general
24 welfare, and regulation of commerce among the several

1 States, and under section 5 of the 14th amendment to
2 the Constitution—

3 (1) to promote the national interest in reducing
4 domestic violence, dating violence, sexual assault,
5 and stalking by enabling victims of domestic or sex-
6 ual violence to maintain the financial independence
7 necessary to leave abusive situations, achieve safety,
8 and minimize the physical and emotional injuries
9 from domestic or sexual violence, and to reduce the
10 devastating economic consequences of domestic or
11 sexual violence to employers and employees;

12 (2) to promote the national interest in ensuring
13 that victims of domestic or sexual violence can re-
14 cover from and cope with the effects of such victim-
15 ization and participate in the criminal and civil jus-
16 tice processes without fear of adverse economic con-
17 sequences;

18 (3) to minimize the negative impact on inter-
19 state commerce from dislocations of employees and
20 harmful effects on productivity, loss of employment,
21 health care costs, and employer costs, caused by do-
22 mestic or sexual violence including intentional efforts
23 to frustrate the ability of women to participate in
24 employment and interstate commerce;

1 (4) to promote the purposes of the 14th amend-
2 ment to the Constitution by preventing sex-based
3 discrimination and discrimination against victims of
4 domestic and sexual violence in unemployment insur-
5 ance, by addressing the failure of existing laws to
6 protect the employment rights of victims of domestic
7 or sexual violence, by protecting their civil and eco-
8 nomic rights, and by furthering the equal oppor-
9 tunity of women for economic self-sufficiency and
10 employment free from discrimination; and

11 (5) to accomplish the purposes described in
12 paragraphs (1) through (4) by providing unemploy-
13 ment insurance to those who are separated from
14 their employment as a result of domestic or sexual
15 violence, in a manner that accommodates the legiti-
16 mate interests of employers and protects the safety
17 of all persons in the workplace.

18 **SEC. 202. UNEMPLOYMENT COMPENSATION AND TRAINING**

19 **PROVISIONS.**

20 (a) UNEMPLOYMENT COMPENSATION.—Section 3304
21 of the Internal Revenue Code of 1986 (relating to approval
22 of State unemployment compensation laws) is amended—

23 (1) in subsection (a)—

24 (A) in paragraph (18), by striking “and”
25 at the end;

1 (B) by redesignating paragraph (19) as
2 paragraph (20); and

3 (C) by inserting after paragraph (18) the
4 following new paragraph:

5 “(19) compensation shall not be denied where
6 an individual is separated from employment due to
7 circumstances resulting from the individual’s experi-
8 ence of domestic or sexual violence, nor shall States
9 impose additional conditions that restrict the indi-
10 vidual’s eligibility for or receipt of benefits beyond
11 those required of other individuals who are forced to
12 leave their jobs or are deemed to have good cause
13 for voluntarily separating from a job in the State;
14 and”;

15 (2) by adding at the end the following new sub-
16 section:

17 “(g) CONSTRUCTION.—For purposes of subsection
18 (a)(19)—

19 “(1) DOCUMENTATION.—In determining eligi-
20 bility for compensation due to circumstances result-
21 ing from an individual’s experience of domestic or
22 sexual violence—

23 “(A) States shall adopt, or have adopted,
24 by statute, regulation, or policy a list of forms

1 of documentation that may be presented to
2 demonstrate eligibility, and

3 “(B) presentation of any one of such forms
4 of documentation shall be sufficient to dem-
5 onstrate eligibility, except that a State may re-
6 quire the presentation of a form of identifica-
7 tion in addition to the written statement of
8 claimant described in paragraph (2)(G).

9 “(2) LIST OF FORMS OF DOCUMENTATION.—

10 The list referred to in paragraph (1)(A) shall include
11 not less than 3 of the following forms of documenta-
12 tion:

13 “(A) An order of protection or other docu-
14 mentation issued by a court.

15 “(B) A police report or criminal charges
16 documenting the domestic or sexual violence.

17 “(C) Documentation that the perpetrator
18 has been convicted of the offense of domestic or
19 sexual violence.

20 “(D) Medical documentation of the domes-
21 tic or sexual violence.

22 “(E) Evidence of domestic or sexual vio-
23 lence from a counselor, social worker, health
24 worker, or domestic violence shelter worker.

1 “(F) A written statement that the appli-
2 cant or the applicant’s minor child is a victim
3 of domestic or sexual violence, provided by a so-
4 cial worker, member of the clergy, shelter work-
5 er, attorney at law, or other professional who
6 has assisted the applicant in dealing with the
7 domestic or sexual violence.

8 “(G) A written statement of the claimant.

9 “(3) DOMESTIC OR SEXUAL VIOLENCE DE-
10 FINED.—The term ‘domestic or sexual violence’ has
11 the meaning given such term in section 3 of the Se-
12 curity and Financial Empowerment Act.”.

13 (b) UNEMPLOYMENT COMPENSATION PERSONNEL
14 TRAINING.—Section 303(a) of the Social Security Act (42
15 U.S.C. 503(a)) is amended—

16 (1) by redesignating paragraphs (4) through
17 (10) as paragraphs (5) through (11), respectively;
18 and

19 (2) by inserting after paragraph (3) the fol-
20 lowing new paragraph:

21 “(4) Such methods of administration as will en-
22 sure that—

23 “(A) applicants for unemployment com-
24 pensation and individuals inquiring about such
25 compensation are adequately notified of the

1 provisions of subsections (a)(19) and (g) of sec-
2 tion 3304 of the Internal Revenue Code of 1986
3 (relating to the availability of unemployment
4 compensation for victims of domestic or sexual
5 violence); and

6 “(B) claims reviewers and hearing per-
7 sonnel are adequately trained in—

8 “(i) the nature and dynamics of do-
9 mestic or sexual violence (as defined in
10 section 3 of the Security and Financial
11 Empowerment Act); and

12 “(ii) methods of ascertaining and
13 keeping confidential information about pos-
14 sible experiences of domestic or sexual vio-
15 lence (as so defined) to ensure that—

16 “(I) requests for unemployment
17 compensation based on separations
18 stemming from such violence are reli-
19 ably screened, identified, and adju-
20 dicated; and

21 “(II) full confidentiality is pro-
22 vided for the individual’s claim and
23 submitted evidence; and”.

24 (c) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the amendments made by this section
3 shall apply in the case of compensation paid for
4 weeks beginning on or after the expiration of 180
5 days from the date of enactment of this Act.

6 (2) EXTENSION OF EFFECTIVE DATE FOR
7 STATE LAW AMENDMENT.—

8 (A) IN GENERAL.—If the Secretary of
9 Labor identifies a State as requiring a change
10 to its statutes, regulations, or policies in order
11 to comply with the amendments made by this
12 section, such amendments shall apply in the
13 case of compensation paid for weeks beginning
14 after the earlier of—

15 (i) the date the State changes its stat-
16 utes, regulations, or policies in order to
17 comply with such amendments; or

18 (ii) the end of the first session of the
19 State legislature which begins after the
20 date of enactment of this Act or which
21 began prior to such date and remained in
22 session for at least 25 calendar days after
23 such date;

1 except that in no case shall such amendments
2 apply before the date that is 180 days after the
3 date of enactment of this Act.

4 (B) SESSION DEFINED.—In this para-
5 graph, the term “session” means a regular, spe-
6 cial, budget, or other session of a State legisla-
7 ture.

8 (d) EFFECT ON EXISTING LAWS, ETC.—

9 (1) MORE PROTECTIVE LAWS, AGREEMENTS,
10 PROGRAMS, AND PLANS.—Nothing in this title shall
11 be construed to supersede any provision of any Fed-
12 eral, State, or local law, collective bargaining agree-
13 ment, or employment benefits program or plan that
14 provides greater unemployment insurance benefits
15 for victims of domestic or sexual violence than the
16 rights established under this title.

17 (2) LESS PROTECTIVE LAWS, AGREEMENTS,
18 PROGRAMS, AND PLANS.—The rights established for
19 victims of domestic or sexual violence under this title
20 shall not be diminished by any more restrictive State
21 or local law, collective bargaining agreement, or em-
22 ployment benefits program or plan.

1 **TITLE III—VICTIMS’**
2 **EMPLOYMENT SUSTAINABILITY**

3 **SEC. 301. SHORT TITLE.**

4 This title may be cited as the “Victims’ Employment
5 Sustainability Act”.

6 **SEC. 302. PURPOSES.**

7 The purposes of this title are, pursuant to the affirm-
8 ative power of Congress to enact legislation under the por-
9 tions of section 8 of article I of the Constitution relating
10 to providing for the general welfare and to regulation of
11 commerce among the several States, and under section 5
12 of the 14th amendment to the Constitution—

13 (1) to promote the national interest in reducing
14 domestic violence, dating violence, sexual assault,
15 and stalking by enabling victims of domestic or sex-
16 ual violence to maintain the financial independence
17 necessary to leave abusive situations, achieve safety,
18 and minimize the physical and emotional injuries
19 from domestic or sexual violence, and to reduce the
20 devastating economic consequences of domestic or
21 sexual violence to employers and employees;

22 (2) to promote the national interest in ensuring
23 that victims of domestic or sexual violence can re-
24 cover from and cope with the effects of such vio-
25 lence, and participate in criminal and civil justice

1 processes, without fear of adverse economic con-
2 sequences from their employers;

3 (3) to ensure that victims of domestic or sexual
4 violence can recover from and cope with the effects
5 of such violence, and participate in criminal and civil
6 justice processes, without fear of adverse economic
7 consequences with respect to public benefits;

8 (4) to promote the purposes of the 14th amend-
9 ment to the Constitution by preventing sex-based
10 discrimination and discrimination against victims of
11 domestic and sexual violence in employment, by ad-
12 dressing the failure of existing laws to protect the
13 employment rights of victims of domestic or sexual
14 violence, by protecting the civil and economic rights
15 of victims of domestic or sexual violence, and by fur-
16 thering the equal opportunity of women for economic
17 self-sufficiency and employment free from discrimi-
18 nation;

19 (5) to minimize the negative impact on inter-
20 state commerce from dislocations of employees and
21 harmful effects on productivity, employment, health
22 care costs, and employer costs, caused by domestic
23 or sexual violence, including intentional efforts to
24 frustrate women's ability to participate in employ-
25 ment and interstate commerce; and

1 (6) to accomplish the purposes described in
2 paragraphs (1) through (5) by prohibiting employers
3 from discriminating against actual or perceived vic-
4 tims of domestic or sexual violence, in a manner that
5 accommodates the legitimate interests of employers
6 and protects the safety of all persons in the work-
7 place.

8 **SEC. 303. PROHIBITED DISCRIMINATORY ACTS.**

9 (a) IN GENERAL.—An employer shall not fail to hire,
10 refuse to hire, discharge, or harass any individual, or oth-
11 erwise discriminate against any individual with respect to
12 the compensation, terms, conditions, or privileges of em-
13 ployment of the individual (including retaliation in any
14 form or manner), and a public agency shall not deny, re-
15 duce, or terminate the benefits of, otherwise sanction, or
16 harass any individual, or otherwise discriminate against
17 any individual with respect to the amount, terms, or condi-
18 tions of public assistance of the individual (including retal-
19 iation in any form or manner), because—

20 (1) the individual involved—

21 (A) is or is perceived to be a victim of do-
22 mestic or sexual violence;

23 (B) attended, participated in, prepared for,
24 or requested leave to attend, participate in, or
25 prepare for, a criminal or civil court proceeding

1 relating to an incident of domestic or sexual vi-
2 olence of which the individual, or the family or
3 household member of the individual, was a vic-
4 tim; or

5 (C) requested an adjustment to a job
6 structure, workplace facility, or work require-
7 ment, including a transfer, reassignment, or
8 modified schedule, leave, a changed telephone
9 number or seating assignment, installation of a
10 lock, or implementation of a safety procedure,
11 in response to actual or threatened domestic or
12 sexual violence, regardless of whether the re-
13 quest was granted; or

14 (2) the workplace is disrupted or threatened by
15 the action of a person whom the individual states
16 has committed or threatened to commit domestic or
17 sexual violence against the individual, or the individ-
18 ual's family or household member.

19 (b) DEFINITIONS.—In this section:

20 (1) DISCRIMINATE.—The term “discriminate”,
21 used with respect to the terms, conditions, or privi-
22 leges of employment or with respect to the terms or
23 conditions of public assistance, includes not making
24 a reasonable accommodation to the known limita-
25 tions of an otherwise qualified individual—

1 (A) who is a victim of domestic or sexual
2 violence;

3 (B) who is—

4 (i) an applicant or employee of the
5 employer (including a public agency); or

6 (ii) an applicant for or recipient of
7 public assistance from the public agency;

8 and

9 (C) whose limitations resulted from cir-
10 cumstances relating to being a victim of domes-
11 tic or sexual violence;

12 unless the employer or public agency can dem-
13 onstrate that the accommodation would impose an
14 undue hardship on the operation of the employer or
15 public agency.

16 (2) QUALIFIED INDIVIDUAL.—The term “quali-
17 fied individual” means—

18 (A) in the case of an applicant or employee
19 described in paragraph (1)(B)(i), an individual
20 who, with or without reasonable accommoda-
21 tion, can perform the essential functions of the
22 employment position that such individual holds
23 or desires; or

24 (B) in the case of an applicant or recipient
25 described in paragraph (1)(B)(ii), an individual

1 who, with or without reasonable accommoda-
2 tion, can satisfy the essential requirements of
3 the program providing the public assistance
4 that the individual receives or desires.

5 (3) REASONABLE ACCOMMODATION.—The term
6 “reasonable accommodation” may include an adjust-
7 ment to a job structure, workplace facility, or work
8 requirement, including a transfer, reassignment, or
9 modified schedule, leave, a changed telephone num-
10 ber or seating assignment, installation of a lock, or
11 implementation of a safety procedure, in response to
12 actual or threatened domestic or sexual violence.

13 (4) UNDUE HARDSHIP.—

14 (A) IN GENERAL.—The term “undue hard-
15 ship” means an action requiring significant dif-
16 ficulty or expense, when considered in light of
17 the factors set forth in subparagraph (B).

18 (B) FACTORS TO BE CONSIDERED.—In de-
19 termining whether a reasonable accommodation
20 would impose an undue hardship on the oper-
21 ation of an employer or public agency, factors
22 to be considered include—

23 (i) the nature and cost of the reason-
24 able accommodation needed under this sec-
25 tion;

1 (ii) the overall financial resources of
2 the facility involved in the provision of the
3 reasonable accommodation, the number of
4 persons employed at such facility, the ef-
5 fect on expenses and resources, or the im-
6 pact otherwise of such accommodation on
7 the operation of the facility;

8 (iii) the overall financial resources of
9 the employer or public agency, the overall
10 size of the business of an employer or pub-
11 lic agency with respect to the number of
12 employees of the employer or public agen-
13 cy, and the number, type, and location of
14 the facilities of an employer or public agen-
15 cy; and

16 (iv) the type of operation of the em-
17 ployer or public agency, including the com-
18 position, structure, and functions of the
19 workforce of the employer or public agen-
20 cy, the geographic separateness of the fa-
21 cility from the employer or public agency,
22 and the administrative or fiscal relation-
23 ship of the facility to the employer or pub-
24 lic agency.

1 **SEC. 304. ENFORCEMENT.**

2 (a) CIVIL ACTION BY INDIVIDUALS.—

3 (1) LIABILITY.—Any employer or public agency
4 that violates section 303 shall be liable to any indi-
5 vidual affected for—

6 (A) damages equal to the amount of
7 wages, salary, employment benefits, public as-
8 sistance, or other compensation denied or lost
9 to such individual by reason of the violation,
10 and the interest on that amount calculated at
11 the prevailing rate;

12 (B) compensatory damages, including dam-
13 ages for future pecuniary losses, emotional
14 pain, suffering, inconvenience, mental anguish,
15 loss of enjoyment or life, and other nonpecu-
16 niary losses;

17 (C) such punitive damages, up to 3 times
18 the amount of actual damages sustained, as the
19 court described in paragraph (2) shall deter-
20 mine to be appropriate; and

21 (D) such equitable relief as may be appro-
22 priate, including employment, reinstatement,
23 and promotion.

24 (2) RIGHT OF ACTION.—An action to recover
25 the damages or equitable relief prescribed in para-
26 graph (1) may be maintained against any employer

1 or public agency in any Federal or State court of
 2 competent jurisdiction by any 1 or more individuals
 3 described in section 303.

4 (b) ACTION BY DEPARTMENT OF JUSTICE.—The At-
 5 torney General may bring a civil action in any Federal
 6 or State court of competent jurisdiction to recover the
 7 damages or equitable relief described in subsection (a)(1).

8 **SEC. 305. ATTORNEY'S FEES.**

9 Section 722(b) of the Revised Statutes (42 U.S.C.
 10 1988(b)) is amended by inserting “the Victims’ Employ-
 11 ment Sustainability Act,” after “title VI of the Civil
 12 Rights Act of 1964,”.

13 **TITLE IV—VICTIMS OF ABUSE**
 14 **INSURANCE PROTECTION**

15 **SEC. 401. SHORT TITLE.**

16 This title may be cited as the “Victims of Abuse In-
 17 surance Protection Act”.

18 **SEC. 402. DEFINITIONS.**

19 In this title:

20 (1) ABUSE.—The term “abuse” means the oc-
 21 currence of 1 or more of the following acts by a cur-
 22 rent or former household or family member, intimate
 23 partner, or caretaker:

24 (A) Attempting to cause or causing an-
 25 other person bodily injury, physical harm, sub-

1 stantial emotional distress, psychological trau-
2 ma, rape, sexual assault, or involuntary sexual
3 intercourse.

4 (B) Engaging in a course of conduct or re-
5 peatedly committing acts toward another per-
6 son, including following the person without
7 proper authority and under circumstances that
8 place the person in reasonable fear of bodily in-
9 jury or physical harm.

10 (C) Subjecting another person to false im-
11 prisonment or kidnapping.

12 (D) Attempting to cause or causing dam-
13 age to property so as to intimidate or attempt
14 to control the behavior of another person.

15 (2) HEALTH CARRIER.—The term “health car-
16 rier” means a person that contracts or offers to con-
17 tract on a risk-assuming basis to provide, deliver, ar-
18 range for, pay for, or reimburse any of the cost of
19 health care services, including a sickness and acci-
20 dent insurance company, a health maintenance orga-
21 nization, a nonprofit hospital and health service cor-
22 poration or any other entity providing a plan of
23 health insurance, health benefits, or health services.

24 (3) INSURED.—The term “insured” means a
25 party named on a policy, certificate, or health ben-

1 efit plan, including an individual, corporation, part-
2 nership, association, unincorporated organization, or
3 any similar entity, as the person with legal rights to
4 the benefits provided by the policy, certificate, or
5 health benefit plan. For group insurance, such term
6 includes a person who is a beneficiary covered by a
7 group policy, certificate, or health benefit plan. For
8 life insurance, the term refers to the person whose
9 life is covered under an insurance policy.

10 (4) INSURER.—The term “insurer” means any
11 person, reciprocal exchange, inter insurer, Lloyds in-
12 surer, fraternal benefit society, or other legal entity
13 engaged in the business of insurance, including
14 agents, brokers, adjusters, and third-party adminis-
15 trators; and employers who provide or make avail-
16 able employment benefits through an employee ben-
17 efit plan, as defined in section 3(3) of the Employee
18 Retirement Income Security Act of 1974 (29 U.S.C.
19 102(3)). The term also includes health carriers,
20 health benefit plans, and life, disability, and prop-
21 erty and casualty insurers.

22 (5) POLICY.—The term “policy” means a con-
23 tract of insurance, certificate, indemnity, suretyship,
24 or annuity issued, proposed for issuance or intended

1 for issuance by an insurer, including endorsements
2 or riders to an insurance policy or contract.

3 (6) SUBJECT OF ABUSE.—The term “subject of
4 abuse” means—

5 (A) a person against whom an act of abuse
6 has been directed;

7 (B) a person who has prior or current in-
8 juries, illnesses, or disorders that resulted from
9 abuse; or

10 (C) a person who seeks, may have sought,
11 or had reason to seek medical or psychological
12 treatment for abuse, protection, court-ordered
13 protection, or shelter from abuse.

14 **SEC. 403. DISCRIMINATORY ACTS PROHIBITED.**

15 (a) IN GENERAL.—No insurer may, directly or indi-
16 rectly, engage in any of the following acts or practices on
17 the basis that an applicant for insurance or insured is,
18 has been, or may be the subject of abuse:

19 (1) Denying, refusing to issue, renew or reissue,
20 or canceling or otherwise terminating an insurance
21 policy or health benefit plan.

22 (2) Restricting, excluding, or limiting insurance
23 coverage for losses or denying a claim, except as oth-
24 erwise permitted or required by State laws relating
25 to life insurance beneficiaries.

1 (3) Adding a premium differential to any insur-
2 ance policy or health benefit plan.

3 (b) PROHIBITION ON LIMITATION OF CLAIMS.—No
4 insurer may, directly or indirectly, deny or limit payment
5 of a claim arising out of abuse to an innocent insured
6 under a property and casualty policy or insurance contract
7 if the loss is caused by the intentional act of an insured.

8 (c) USE OF INFORMATION.—

9 (1) LIMITATION.—

10 (A) IN GENERAL.—In order to protect the
11 safety and privacy of subjects of abuse, no per-
12 son employed by or contracting with an insurer
13 may—

14 (i) use, disclose, or transfer informa-
15 tion relating to abuse status or acts of
16 abuse for any purpose unrelated to the di-
17 rect provision of health care services unless
18 such use, disclosure, or transfer is required
19 by an order of an entity with authority to
20 regulate insurance or an order of a court
21 of competent jurisdiction; or

22 (ii) disclose or transfer information
23 relating to an address or telephone number
24 of an applicant for insurance or an insured
25 or to the address and telephone number of

1 a shelter for subjects of abuse, unless such
2 disclosure or transfer—

3 (I) is required in order to provide
4 insurance coverage; and

5 (II) does not have the potential
6 to endanger the safety of a subject of
7 abuse.

8 (B) RULE OF CONSTRUCTION.—Nothing in
9 this paragraph may be construed to limit or
10 preclude a subject of abuse from obtaining the
11 subject's own insurance records from an in-
12 surer.

13 (2) AUTHORITY OF SUBJECT OF ABUSE.—A
14 subject of abuse, at the absolute discretion of the
15 subject of abuse, may provide evidence of abuse to
16 an insurer for the limited purpose of facilitating
17 treatment of an abuse-related condition or dem-
18 onstrating that a condition is abuse-related. Nothing
19 in this paragraph shall be construed as authorizing
20 an insurer or health carrier to disregard such pro-
21 vided evidence.

22 **SEC. 404. INSURANCE PROTOCOLS FOR SUBJECTS OF**
23 **ABUSE.**

24 Insurers shall develop and comply with written poli-
25 cies specifying procedures to be followed by employees,

1 contractors, producers, agents, and brokers for the pur-
2 pose of protecting the safety and privacy of a subject of
3 abuse and otherwise implementing this title when taking
4 an application, investigating a claim, or taking any other
5 action relating to a policy or claim involving a subject of
6 abuse.

7 **SEC. 405. REASONS FOR ADVERSE ACTIONS.**

8 An insurer that takes an action that adversely affects
9 a subject of abuse, shall advise the subject of abuse appli-
10 cant or insured of the specific reasons for the action in
11 writing. For purposes of this section, reference to general
12 underwriting practices or guidelines shall not constitute
13 a specific reason.

14 **SEC. 406. LIFE INSURANCE.**

15 Nothing in this title shall be construed to prohibit
16 a life insurer from declining to issue a life insurance policy
17 if the applicant or prospective owner of the policy is or
18 would be designated as a beneficiary of the policy, and
19 if—

20 (1) the applicant or prospective owner of the
21 policy lacks an insurable interest in the insured; or

22 (2) the applicant or prospective owner of the
23 policy is known, on the basis of police or court
24 records, to have committed an act of abuse against
25 the proposed insured.

1 **SEC. 407. SUBROGATION WITHOUT CONSENT PROHIBITED.**

2 Subrogation of claims resulting from abuse is prohib-
3 ited without the informed consent of the subject of abuse.

4 **SEC. 408. ENFORCEMENT.**

5 (a) FEDERAL TRADE COMMISSION.—

6 (1) IN GENERAL.—The Federal Trade Commis-
7 sion shall have the power to examine and investigate
8 any insurer to determine whether such insurer has
9 been or is engaged in any act or practice prohibited
10 by this title.

11 (2) CEASE AND DESIST ORDERS.—If the Fed-
12 eral Trade Commission determines an insurer has
13 been or is engaged in any act or practice prohibited
14 by this title, the Commission may take action
15 against such insurer by the issuance of a cease and
16 desist order as if the insurer was in violation of sec-
17 tion 5 of the Federal Trade Commission Act. Such
18 cease and desist order may include any individual re-
19 lief warranted under the circumstances, including
20 temporary, preliminary, and permanent injunctive
21 and compensatory relief.

22 (b) PRIVATE CAUSE OF ACTION.—

23 (1) IN GENERAL.—An applicant or insured who
24 believes that the applicant or insured has been ad-
25 versely affected by an act or practice of an insurer
26 in violation of this title may maintain an action

1 against the insurer in a Federal or State court of
2 original jurisdiction.

3 (2) RELIEF.—Upon proof of such conduct by a
4 preponderance of the evidence in an action described
5 in paragraph (1), the court may award appropriate
6 relief, including temporary, preliminary, and perma-
7 nent injunctive relief and compensatory and punitive
8 damages, as well as the costs of suit and reasonable
9 fees for the aggrieved individual’s attorneys and ex-
10 pert witnesses.

11 (3) STATUTORY DAMAGES.—With respect to
12 compensatory damages in an action described in
13 paragraph (1), the aggrieved individual may elect, at
14 any time prior to the rendering of final judgment, to
15 recover in lieu of actual damages, an award of statu-
16 tory damages in the amount of \$5,000 for each vio-
17 lation.

18 **SEC. 409. EFFECTIVE DATE.**

19 This title shall apply with respect to any action taken
20 on or after the date of enactment of this Act.

1 **TITLE V—NATIONAL CLEARING-**
2 **HOUSE ON DOMESTIC AND**
3 **SEXUAL VIOLENCE IN THE**
4 **WORKPLACE GRANT**

5 **SEC. 501. NATIONAL CLEARINGHOUSE ON DOMESTIC AND**
6 **SEXUAL VIOLENCE IN THE WORKPLACE**
7 **GRANT.**

8 (a) **AUTHORITY.**—The Attorney General may award
9 a grant in accordance with this section to a private, non-
10 profit entity or tribal organization that meets the require-
11 ments of subsection (b), in order to provide for the estab-
12 lishment and operation of a national clearinghouse and re-
13 source center to provide information and assistance to em-
14 ployers, labor organizations, and advocates on behalf of
15 victims of domestic or sexual violence, in their efforts to
16 develop and implement appropriate responses to assist
17 those victims.

18 (b) **GRANTEES.**—Each applicant for a grant under
19 this section shall submit to the Attorney General an appli-
20 cation, which shall—

21 (1) demonstrate that the applicant—

22 (A) has a nationally recognized expertise in
23 the area of domestic violence, dating violence,
24 sexual assault, and stalking, and a record of
25 commitment and quality responses to reduce

1 domestic violence, dating violence, sexual as-
2 sault, and stalking; and

3 (B) will provide matching funds from non-
4 Federal sources in an amount equal to not less
5 than 10 percent of the total amount of the
6 grant awarded under this section; and

7 (2) include a plan to maximize, to the extent
8 practicable, outreach to employers (including private
9 companies, as well as public entities such as univer-
10 sities, and State and local governments) in devel-
11 oping and implementing appropriate responses to as-
12 sist employees who are victims of domestic or sexual
13 violence.

14 (c) USE OF GRANT AMOUNT.—A grant under this
15 section may be used for staff salaries, travel expenses,
16 equipment, printing, and other reasonable expenses nec-
17 essary to assemble, maintain, and disseminate to employ-
18 ers, labor organizations, and advocates described in sub-
19 section (a), information on and appropriate responses to
20 domestic violence, dating violence, sexual assault, and
21 stalking, including—

22 (1) training to promote a better understanding
23 of appropriate assistance to employee victims;

24 (2) conferences and other educational opportu-
25 nities;

1 (3) development of protocols and model work-
2 place policies;

3 (4) employer- and union-sponsored victim serv-
4 ices and outreach counseling; and

5 (5) assessments of the workplace costs of do-
6 mestic violence, dating violence, sexual assault, and
7 stalking.

8 (d) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated to carry out this section
10 \$500,000 for each of fiscal years 2004 through 2008.

11 **TITLE VI—SEVERABILITY**

12 **SEC. 601. SEVERABILITY.**

13 If any provision of this Act, any amendment made
14 by this Act, or the application of such provision or amend-
15 ment to any person or circumstance is held to be unconsti-
16 tutional, the remainder of the provisions of this Act, the
17 amendments made by this Act, and the application of such
18 provisions or amendments to any person or circumstance
19 shall not be affected.

○