

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.

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## 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

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## 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 dislo-  
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 proc-  
2 ess.

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—

(A) to restrain violations of subsection (f), including the restraint of any withholding of payment of wages, salary, employment benefits, public assistance, or other compensation, plus interest, found by the court to be due to affected individuals; or

(B) to award such other equitable relief as may be appropriate, including employment, reinstatement, and promotion.

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

(6) EMPLOYER LIABILITY UNDER OTHER LAWS.—Nothing in this section shall be construed to limit the liability of an employer or public agency to an individual, for harm suffered relating to the individual's experience of domestic or sexual violence, pursuant to any other Federal or State law, including a law providing for a legal remedy.

**SEC. 103. EXISTING LEAVE USABLE FOR ADDRESSING DOMESTIC OR SEXUAL VIOLENCE.**

An employee who is entitled to take paid or unpaid leave (including family, medical, sick, annual, personal, or similar leave) from employment, pursuant to State or local 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       “(1) AUTHORITY TO PROVIDE EMERGENCY BENE-  
 2 FITS.—A State that receives a grant under section 403  
 3 may use the grant to provide nonrecurrent short-term  
 4 emergency benefits, in accordance with section 104 of the  
 5 Security and Financial Empowerment Act, to individuals  
 6 who take leave pursuant to section 102 of that Act, with-  
 7 out regard to whether the individuals receive assistance  
 8 under the State program funded under this part.”.

9   **SEC. 105. EFFECT ON OTHER LAWS AND EMPLOYMENT BEN-**  
 10                           **EFITS.**

11       (a) MORE PROTECTIVE LAWS, AGREEMENTS, PRO-  
 12 GRAMS, AND PLANS.—Nothing in this title shall be con-  
 13 strued to supersede any provision of any Federal, State,  
 14 or local law, collective bargaining agreement, or employ-  
 15 ment benefits program or plan that provides—

16           (1) greater leave benefits for victims of domes-  
 17 tic or sexual violence than the rights established  
 18 under this title; or

19           (2) leave benefits for a larger population of vic-  
 20 tims of domestic or sexual violence (as defined in  
 21 such law, agreement, program, or plan) than the vic-  
 22 tims of domestic or sexual violence covered under  
 23 this title.

24       (b) LESS PROTECTIVE LAWS, AGREEMENTS, PRO-  
 25 GRAMS, AND PLANS.—The rights established for victims

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”; 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.

○