

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

There is currently no law regulating sick leave in the Labor Code. Currently, there are an estimated 1.9 million informal caregivers in this state who provide approximately 2.1 billion hours per year of care with a market value of \$18 billion. Many family leave policies in the workplace do not provide enough flexibility and support for the unique needs of family caregivers. Under Chapter 661.202 (Entitlement to Sick Leave; General Provisions and Procedures), Government Code, Texas, along with 39 other states, authorizes public employees to use sick leave to care for sick immediate family members.

As proposed, S.B. 996 requires an employer who employs 50 or more employees in this state to allow an employee to use sick leave or other paid time off that the employee is entitled to use to care for a child, spouse, parent, parent-in-law, grandparent, or grandparent-in-law. This bill does not grant new benefits, rather it allows more flexibility in the use of certain benefits.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Workforce Commission in SECTION 1 (Section 85.058, Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle D, Title 2, Labor Code, by adding Chapter 85, as follows:

CHAPTER 85. EMPLOYEE LEAVE FOR FAMILY OR MEDICAL OBLIGATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 85.001. DEFINITIONS. Defines "child," "commission," "employee," "employer," "employment benefits," "grandparent," "grandparent-in-law," "health care provider," "parent," "parent-in-law," and "serious health condition."

[Reserves Sections 85.002-85.050 for expansion.]

SUBCHAPTER B. FAMILY AND MEDICAL LEAVE

Sec. 85.051. APPLICATION OF SUBCHAPTER. Provides that this subchapter applies to each employer who employs 50 or more employees in this state.

Sec. 85.052. FAMILY AND MEDICAL LEAVE. Entitles an eligible employee to use the employee's choice of accrued paid sick leave or other accrued paid leave to care for the employee's child, spouse, parent, parent-in-law, grandparent, or grandparent-in-law.

Sec. 85.053. NOTICE; CIVIL PENALTY. (a) Requires each employer to post in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted a notice, prepared or approved by the Texas Workforce Commission (TWC), setting forth the pertinent provisions of this subchapter and information relating to the enforcement of this subchapter.

(b) Provides that an employer who wilfully violates this subsection is liable for a civil penalty not to exceed \$100 for each violation. Authorizes the attorney

general to bring an action to collect a civil penalty under this section. Requires civil penalties assessed under this section to be deposited in the general revenue fund.

Sec. 85.054. INSTITUTION OF PAID LEAVE PROGRAM NOT REQUIRED. Provides that this subchapter does not require an employer who does not provide paid sick leave or other paid medical leave to institute a program of paid leave for any situation in which that employer is not normally providing paid leave.

Sec. 85.055. FORSEEABILITY OF LEAVE; NOTICE TO EMPLOYER. (a) Requires the affected employee to provide notice to the employer as is practicable if the necessity for leave under Section 85.052 is reasonably foreseeable.

(b) Requires the employee, if the necessity for leave under Section 85.052 is foreseeable because of planned medical treatment, to make a reasonable effort to schedule the treatment to avoid disrupting unduly the operations of the employer, subject to the approval of the health care provider of the employee or of the child, spouse, or parent of the employee, as applicable.

Sec. 85.056. CERTIFICATION. (a) Authorizes an employer to require that a request for leave under Section 85.052 be certified by the health care provider of the employee or the child, spouse, parent, parent-in-law, grandparent, or grandparent-in-law of the employee, as appropriate. Requires the employee to provide, in a timely manner, a copy of the certification to the employer.

(b) Sets forth the criteria for determining that certification provided under Subsection (a) is sufficient.

Sec. 85.057. EMPLOYMENT AND BENEFITS PROTECTION; EXCEPTION. (a) Entitles an employee who takes leave under Section 85.052, on return from leave, to reinstatement in the former position of employment or an equivalent position of employment with equivalent employment benefits, pay, and other terms and conditions of employment.

(b) Prohibits leave taken under Section 85.052 from resulting in the loss of any employment benefit accrued before the date on which the leave began.

(c) Provides that this section does not entitle an employee who is reinstated to the accrual of seniority or other employment benefits during any period of leave or any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(d) Provides that this section does not prohibit an employer from requiring an employee on leave under Section 85.052 to report periodically to the employer on the status and intention of the employee to return to work.

Sec. 85.058. COMMISSION POWERS AND DUTIES. Requires TWC to adopt rules as necessary to implement this subchapter.

Sec. 85.059. PROHIBITED ACTS. Prohibits an employer from interfering with, restraining, or denying the exercise of or the attempt to exercise any right provided under this subchapter. Prohibits an employer from discharging or otherwise discriminating against an individual for certain reasons.

Sec. 85.060. ENFORCEMENT. (a) Provides that an employer who violates Section 85.059 is liable to an affected individual for damages equal to a certain amount.

(b) Authorizes the court to reduce the amount of damages to the amount determined under Subsections (a)(1) and (2) if an employer who has violated Section 85.059 proves to the satisfaction of the court that the act or omission that

violated Section 85.059 was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation.

(c) Provides that the employer is also liable for equitable relief as appropriate, including employment, reinstatement, and promotion.

(d) Authorizes an action to recover damages or equitable relief under this section to be maintained by any one or more individuals for and on behalf of those individuals.

(e) Authorizes the court to require the defendant to pay reasonable attorney's fees, reasonable expert witness fees, and other costs in addition to any judgment awarded to the plaintiff.

(f) Provides certain times in which the right to bring an action under this section terminates, unless the action is dismissed without prejudice on motion of TWC.

(g) Requires TWC to receive, investigate, and attempt to resolve complaints of violations under Section 85.059 in the same manner that TWC does so under Chapter 61 (Payment of Wages).

(h) Authorizes TWC to bring an action to recover on behalf of an individual the damages described in Subsection (a). Requires any amount recovered by TWC on behalf of an individual under this subsection to be held in a special deposit account and requires the amount to be paid, on order of TWC, directly to the individual. Requires any amount not paid to the individual within three years of receipt because of inability to make the payment to be deposited in the state treasury to the credit of the general revenue fund.

(i) Requires an action to be brought under this section not later than the second anniversary of the date of the last event constituting the alleged violation for which the action is brought, except as otherwise provided by this subsection. Requires the action to be brought not later than the third anniversary of the date of the last event constituting the alleged violation if the action alleges a willful violation of Section 85.059. Provides that, for the purposes of this subsection, an action is begun by TWC under Subsection (h) on the date on which the complaint is filed under Subsection (g).

(j) Authorizes TWC to bring an action to restrain violation of Section 85.059, in addition to an action to recover damages, including an action to restrain the withholding of payment of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due to eligible employees.

SECTION 2. (a) Makes application of this Act prospective to January 1, 2008.

(b) Provides that an employee is not entitled to take leave as provided by Chapter 85, Labor Code, as added by this Act, before January 1, 2008.

(c) Requires TWC to adopt rules and prescribe notices and forms as required by Chapter 85, Labor Code, as added by this Act, not later than November 1, 2007.

SECTION 3. Effective date: September 1, 2007.