

House _____ Amendment NO. _____

Offered By

1 AMEND House Bill No. 1741, Page 1, In the Title, Line 3, by deleting the words "illegal
2 immigration" and inserting in lieu thereof the word "employer-employee relations"; and

3
4 Further amend said bill and page, Section A, Line 3, by inserting after all of said section and line
5 the following:

6
7 "285.400. 1. The provisions of sections 285.400 to 285.416 shall be known and may be
8 cited as the "Missouri Earned Family and Medical Leave Act".

9 2. As used in sections 285.400 to 285.416, the following terms mean:

10 (1) "Average daily pay", the total wages earned by an employee in the most recent month
11 divided by the number of days worked by the employee in such month;

12 (2) "Care", includes, but is not limited to, physical care, emotional support, visitation,
13 assistance in treatment, transportation, arranging for a change in care, assistance with essential daily
14 living matters, and personal attendant services;

15 (3) "Care provider", the family member who is providing the required care for a serious
16 health condition, or the family member who is bonding with the new child;

17 (4) "Care recipient", the family member who is receiving care for a serious health condition,
18 or the new child with whom the care provider is bonding;

19 (5) "Child", a biological, adopted, or foster son or daughter; a stepson or stepdaughter; a
20 legal ward; a son or daughter of a domestic or civil union partner; or the person to whom the
21 employee stands in loco parentis who is under nineteen years of age or who is nineteen years of age
22 or older but incapable of self-care because of mental or physical impairment;

23 (6) "Department", the department of labor and industrial relations;

24 (7) "Employee", any person performing work or service of any kind or character for hire
25 within the state of Missouri;

26 (8) "Employer", any person acting directly or indirectly in the interest of an employer in
27 relation to an employee;

28 (9) "Family member", a child, parent, grandparent, grandchild, sibling, spouse, domestic or
29 civil union partner, or household member;

30 (10) "Family or medical leave", any of the following:

31 (a) Leave to bond with a minor child within the first year of the child's birth or placement in
32 connection with foster care or adoption;

33 (b) Leave to care for a family member who has a serious health condition; or

34 (c) Leave due to an employee's own serious health condition;

35 (11) "Grandchild", a child of the employee's child;

36 (12) "Grandparent", a parent of the employee's parent;

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1 (13) "Health care provider", any physician, hospital, health maintenance organization,
2 ambulatory surgical center, long-term care facility including those licensed under chapter 198,
3 dentist, registered or licensed practical nurse, optometrist, podiatrist, pharmacist, chiropractor,
4 professional physical therapist, psychologist, physician-in-training, and any other person or entity
5 that provides health care services under the authority of a license or certificate of this state or any
6 other state or foreign country;

7 (14) "Parent", a biological, foster, or adoptive parent; a parent-in-law; a stepparent; a legal
8 guardian; or other person who stood in loco parentis to the employee when the employee was a
9 child;

10 (15) "Parent-in-law", the parent of a spouse or domestic partner;

11 (16) "Serious health condition", an illness, injury, impairment, or physical or mental
12 condition that involves inpatient care in a hospital, hospice, or residential health care facility or
13 continuing medical treatment or continuing supervision by a health care provider. The term shall
14 include medical attention, services, or counseling for victims of stalking, domestic violence, abuse,
15 or sexual assault, as such terms are defined under section 455.010, or victims of trafficking for the
16 purpose of sexual exploitation as described under section 566.209;

17 (17) "Sibling", a person related to another person by blood, adoption, or affinity through a
18 common legal or biological parent;

19 (18) "Spouse", a partner to a lawful marriage;

20 (19) "Valid claim", any claim for Missouri family leave benefits made in accordance with
21 the provisions of sections 285.400 to 285.416 and any rules and regulations adopted thereunder if
22 the individual claiming benefits is unable to work due to caring for a family member with a serious
23 health condition, due to bonding with a minor child during the first year after the birth or placement
24 of the child in connection with foster care or adoption, or due to his or her own serious health
25 condition.

26 285.405. 1. There is hereby established the "Missouri Earned Family and Medical Leave
27 Program" to provide up to thirty days of wage replacement benefits to employees who take time off
28 work for family or medical leave. The department shall administer and implement the program and
29 the provisions of sections 285.400 to 285.416 and shall pay Missouri family or medical leave
30 benefits as specified in such sections.

31 2. An employee shall be eligible to receive Missouri earned family or medical leave
32 program benefits equal to one hundred percent of his or her average daily pay for each full day
33 during which he or she has taken family or medical leave.

34 3. The maximum amount of Missouri earned family or medical leave program benefits
35 payable to an employee during any family or medical care leave period shall be thirty times his or
36 her average daily pay. If the benefit is not a multiple of one dollar, it shall be computed to the next
37 higher multiple of one dollar.

38 4. No more than thirty days of Missouri earned family and medical leave benefits shall be
39 paid to an employee within any calendar year.

40 5. An employee shall file a claim for Missouri earned family and medical leave benefits
41 with the department not later than the forty-first consecutive day following the first compensable
42 day with respect to which the claim is made for benefits, which time shall be extended by the
43 department upon a showing of good cause. If a first claim is not complete, the claim form shall be
44 returned to the employee for completion, and it shall be completed and returned not later than the
45 tenth consecutive day after the date it was mailed by the department to the employee; except that,
46 such time shall be extended by the department upon a showing of good cause.

47 6. No employee shall be eligible for Missouri earned family and medical leave program
48 benefits with respect to any day:

1 (1) That he or she has received unemployment compensation benefits under chapter 288 or
2 under an unemployment compensation act of any other state or of the federal government;

3 (2) That he or she has received, or is entitled to receive, any other benefits under chapter
4 287; or

5 (3) That he or she is entitled to receive state disability insurance benefits under the laws of
6 this state or under a disability insurance act of any other state or of the federal government.

7 7. No employee shall be eligible for Missouri earned family and medical leave benefits until
8 such employee has been employed by his or her present employer for one year.

9 8. An employee who is entitled to leave under the Family and Medical Leave Act (FMLA)
10 under 29 U.S.C. Section 2601 et seq. shall take family or medical leave under this act concurrent
11 with leave taken under the FMLA.

12 9. The first payment of Missouri earned family and medical leave program benefits shall be
13 made to an employee within two weeks after the completed claim is received by the department or
14 the day the family or medical leave began, whichever is later. Subsequent payments shall be made
15 bimonthly.

16 285.410. 1. An employee shall establish medical eligibility for each uninterrupted family or
17 medical care leave period by filing a first claim for benefits supported by the certificate of a treating
18 physician or health care provider that establishes the serious health condition of the family member
19 that warrants the care of the employee or that establishes the serious health condition of the
20 employee. For subsequent periods of uninterrupted leave after the period covered by the initial
21 certificate or any preceding continued claim, a claimant shall file a continued claim for those
22 benefits supported by the certificate of a treating physician or health care provider.

23 2. The certificates required under subsection 1 of this section shall be developed by the
24 department. In order to establish medical eligibility of the serious health condition of the family
25 member that warrants the care of the employee or to establish medical eligibility of the serious
26 health condition of the employee, the information on the certificate shall be within the physician's or
27 health care provider's knowledge and shall be based on a physical examination and documented
28 medical history of the family member or employee. The certificate shall contain all of the
29 following:

30 (1) A diagnosis and diagnostic code prescribed in the International Classification of
31 Diseases or, if no diagnosis has yet been obtained, a detailed statement of symptoms;

32 (2) The date, if known, on which the condition commenced;

33 (3) The probable duration of the condition;

34 (4) An estimate of the amount of time that the physician or health care provider believes the
35 employee needs to care for the family member or himself or herself; and

36 (5) If applicable, a statement that the serious health condition warrants the participation of
37 the employee to provide care for his or her family member.

38 3. The department shall develop a certificate form that is separate and distinct from the
39 certificate required under subsection 1 of this section for an employee taking leave to bond with a
40 minor child within the first year of the child's birth or placement in connection with foster care or
41 adoption.

42 4. Any claim of an individual who obtains care and treatment outside the state shall be
43 supported by a certificate of a treating physician or health care provider duly licensed or certified by
44 the state or foreign country in which the claimant is receiving care and treatment.

45 5. Nothing in this section shall be construed to preclude the department from requesting
46 additional medical evidence to supplement any claim. Any cost incurred for procuring additional
47 medical evidence shall be paid by the employee. The department may require that the additional
48 evidence include any or all of the following:

- 1 (1) Identification of diagnoses;
- 2 (2) Identification of symptoms;
- 3 (3) A statement setting forth the facts of the serious health condition of the employee or
- 4 such employee's family member, which shall be completed by any of the following individuals:
- 5 (a) The physician or health care provider treating the employee or family member of the
- 6 employee;
- 7 (b) The registrar, authorized medical officer, or other duly authorized official of the hospital
- 8 or health care facility treating the employee or family member of the employee; or
- 9 (c) An examining physician or other representative of the department; or
- 10 (4) An affidavit from an employee averring that the employee or such employee's spouse
- 11 gave birth to a child or has adopted a child or received a child in connection with foster care.

12 285.412. 1. Except as provided under subsection 4 of this section, an employee may file a

13 notice of appeal from any determination or redetermination of eligibility for benefits made by the

14 department by mail or in person within thirty days after the date on which a copy of the

15 department's decision was received by the employee. Upon receipt of the notice of appeal, the

16 department shall request the assignment of an administrative law judge in accordance with chapter

17 536 to conduct a hearing and issue a proposed decision and order. The hearing shall be conducted

18 in accordance with chapter 536.

19 2. The administrative law judge's proposed decision and order shall be final and not subject

20 to further appeal unless, within thirty days after the decision is served on the interested parties, a

21 party files a petition for judicial review as provided under chapter 536.

22 3. In the event that judicial review is granted and the final decision of the department is

23 reversed or modified, the court in its discretion may award the prevailing party, other than the

24 department, reasonable attorneys' fees and costs. Attorneys' fees and costs owed by the department,

25 if any, shall be payable from employer contributions collected under chapter 288.

26 4. A determination of the amount of benefits potentially payable under sections 285.400 to

27 285.416 shall not serve as a basis for appeal under this section. However, the determination shall be

28 subject to request by the employee on family or medical leave for redetermination by the

29 department at any time within one year from the date of delivery or mailing of such determination

30 or any redetermination thereof. A redetermination shall be furnished to the individual in writing

31 and provide the basis for appeal under this section.

32 5. A denial of benefits shall become final in the absence of timely appeal therefrom. The

33 department may redetermine a denial of benefits at any time within one year from delivery or

34 mailing of such denial to correct an error in identity, omission of fact, or misapplication of law with

35 respect to the facts.

36 6. A determination of allowance of benefits shall become final in the absence of timely

37 appeal therefrom. The department may redetermine such allowance at any time within two years

38 following the application year in which such allowance was made in order to recover any benefits

39 for which recovery is provided under this section.

40 7. A redetermination of benefits may be made at any time for any of the following reasons:

- 41 (1) To conform to a final court decision applicable to either an initial determination or a
- 42 determination of denial or allowance of benefits;
- 43 (2) In the event of a back pay award or settlement affecting the allowance of benefits; or
- 44 (3) In the case of misrepresentation or willful failure to report a material fact.

45

46 Written notice of any such redetermination shall be promptly given by mail or delivered to such

47 interested parties as were notified of the initial determination of denial or allowance of benefits and

48 any new interested party or parties who, under such rule as the department may adopt, would be an

1 interested party.

2 285.413. 1. It shall be unlawful for any person to discharge or in any other manner
3 discriminate against an employee because the employee has applied for, indicated intent to apply
4 for, or received Missouri earned family and medical leave benefits.

5 2. (1) Any person who violates the provisions of subsection 1 of this section shall be liable
6 to any employee of such person who is affected by the violation for such equitable relief as may be
7 appropriate including employment, reinstatement, or promotion and for damages equal to the sum
8 of:

9 (a) The amount of:

10 a. Any wages, salary, employment benefits, or other compensation denied or lost to such
11 individual by reason of the violation; or

12 b. In a case in which wages, salary, employment benefits, or other compensation have not
13 been denied or lost to the individual, any actual monetary losses sustained by the individual as a
14 direct result of the violation, such as the cost of providing care, up to a sum equal to sixty calendar
15 days of wages or salary for the individual;

16 (b) The interest on the amount described under paragraph (a) of this subdivision calculated
17 at the prevailing rate; and

18 (c) An additional amount as liquidated damages equal to the sum of the amount described
19 under paragraph (a) of this subdivision and the interest described under paragraph (b) of this
20 subdivision, except that if a person who has violated subsection 1 of this section proves to the
21 satisfaction of the court that the act or omission was in good faith and that the person had reasonable
22 grounds for believing that the act or omission was not a violation, such court may reduce the
23 amount of damages.

24 (2) The court may additionally require reasonable attorney's fees, expert witness fees, and
25 other court costs to be paid by a defendant.

26 3. An action to recover the relief prescribed under subsection 2 of this section may be
27 maintained against any person in any court of competent jurisdiction by:

28 (1) The employee affected; or

29 (2) By any employee on behalf of an employee affected.

30 4. The department may bring an action seeking relief on behalf of an employee under this
31 section. The right to bring an action provided under subsection 3 of this section shall terminate
32 upon the filing of a complaint by the department in an action in which injunctive, equitable, or
33 compensatory relief is sought, as provided under subsection 2 of this section. If any damages are
34 recovered in such action, such damages shall be held in a special deposit account and paid directly
35 to each employee affected.

36 5. An action may be brought under this section not later than three years after the date of the
37 alleged violation for which the action is brought. An action brought under this section shall be
38 considered to be commenced on the date when the complaint is filed.

39 285.414. 1. The department shall develop and implement an outreach program to ensure
40 that employees who may be eligible to receive Missouri earned family and medical leave benefits
41 under sections 285.400 to 285.416 are made aware of such benefits. Outreach information shall
42 explain, in an easy-to-understand manner, eligibility requirements, the claims process, weekly
43 benefit amounts, maximum benefits payable, notice and medical certification requirements,
44 reinstatement and nondiscrimination rights, confidentiality, and the relationship between
45 employment protection, leave from employment, wage replacement benefits, and other laws,
46 collective bargaining agreements, and employer policies.

47 2. Not later than three years after the effective date of sections 285.400 to 285.416, the state
48 auditor shall submit to the general assembly a report on the Missouri earned family and medical

1 leave benefits paid for any month during the one-year period beginning on the effective date of
 2 sections 285.400 to 285.416. The report shall include the following:

3 (1) An identification of the total number of applications for such benefits filed and the
 4 average number of days between when an application is received and when a determination is made;

5 (2) An identification of the total number of requests for review of an initial adverse
 6 determination of eligibility for such benefits made and the average number of days between when
 7 such review is requested and when a final determination of eligibility is made; and

8 (3) An identification of the total number of monthly benefit claim reports for such benefits
 9 filed and the average number of days between the date such report is received and the date on which
 10 the initial determination of eligibility with respect to the claim report is made.

11 285.415. In order to provide funding to implement the provisions of sections 285.400 to
 12 285.410, employees shall contribute one quarter of one percent of their average daily pay to the
 13 program beginning January 1, 2017. Employers may also contribute funds to the program
 14 beginning January 1, 2017 in order to cover all or a percentage of the costs associated with the
 15 Missouri earned family and medical leave program. Employers shall not be required to contribute
 16 to the program. Employees of employers that contribute one hundred percent of funds to the
 17 program necessary to cover all of such employer's employees shall not be required to contribute to
 18 the program. In the event that an employer contributes a fraction of the funds required to cover the
 19 program costs for their employees, such employees shall only be required to contribute the
 20 remaining fraction of the program costs. No employee shall receive benefits from the program until
 21 January 1, 2018.

22 285.416. Any rule or portion of a rule, as that term is defined in section 536.010, that is
 23 created under the authority delegated in sections 285.400 to 285.415 shall become effective only if
 24 it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section
 25 536.028. This section and chapter 536 are nonseverable, and if any of the powers vested with the
 26 general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and
 27 annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any
 28 rule proposed or adopted after August 28, 2016, shall be invalid and void."; and

29
 30 Further amend said bill by amending the title, enacting clause, and intersectional references
 31 accordingly.
 32