

CS for SB 935

THE STATE SENATE
Tuesday, March 1, 2005

Committee Substitute for
Senate Bill No. 935

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 935 - By: LEFTWICH of the Senate and HAMILTON of the House.

[labor - Victims Economic Security and Safety Act -
codification - effective date]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 430 of Title 40, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Victims Economic Security and Safety Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 431 of Title 40, unless there is created a duplication in numbering, reads as follows:

As used in the Victims Economic Security and Safety Act:

1. "Commerce" or "industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes trade, traffic, commerce, transportation, or communication;

1 2. "Course of conduct" means a course of repeatedly maintaining
2 a visual or physical proximity to a person or conveying oral or
3 written threats, including threats conveyed through electronic
4 communications, or threats implied by conduct;

5 3. "Department" means the Department of Labor;

6 4. "Commissioner" means the Commissioner of Labor;

7 5. "Domestic or sexual violence" means domestic violence,
8 domestic abuse, sexual assault, or stalking;

9 6. "Domestic violence" or "domestic abuse" means acts or
10 threats of violence, not including acts of self defense, as defined
11 in Section 60.1 of Title 22 of the Oklahoma Statutes, sexual
12 assault, or death to the person, or the person's family or household
13 member, if the conduct causes the specific person to have such
14 distress or fear;

15 7. "Electronic communications" means communications via
16 telephone, mobile phone, computer, e-mail, video recorder, fax
17 machine, telex, or pager;

18 8. "Employ" means to suffer or permit to work;

19 9. "Employee" means any person employed by an employer for at
20 least twelve (12) months and who has worked at least twelve hundred
21 and fifty (1250) hours during the preceding twelve (12) months and
22 includes a person employed on a full- or part-time basis, or as a

1 participant in a work assignment as a condition of receipt of
2 federal or state income-based public assistance;

3 10. "Employer" means any of the following:

4 a. the state or any agency of the state,

5 b. any political subdivision, or

6 c. any person or entity that employs fifty (50) or more
7 employees for each working day in twenty (20) or more
8 calendar weeks of the current or preceding calendar
9 year;

10 11. "Employment benefits" means all benefits provided or made
11 available to employees by an employer, including group life
12 insurance, health insurance, disability insurance, sick leave,
13 annual leave, educational benefits, and pensions, regardless of
14 whether such benefits are provided by a practice or written policy
15 of an employer or through an "employee benefit plan". "Employee
16 benefit plan" or "plan" means an employee welfare benefit plan or an
17 employee pension benefit plan or a plan which is both an employee
18 welfare benefit plan and an employee pension benefit plan;

19 12. "Family or household member" means a spouse, parent, son,
20 daughter, and persons jointly residing in the same household;

21 13. "Parent" means the biological parent of an employee or an
22 individual who stood in loco parentis to an employee when the
23 employee was a son or daughter. "Son or daughter", for the purposes

1 of this paragraph, means a biological, adopted, or foster child, a
2 stepchild, a legal ward, or a child of a person standing in loco
3 parentis, who is under eighteen (18) years of age, or is eighteen
4 (18) years of age or older and incapable of self-care because of a
5 mental or physical disability;

6 14. "Perpetrator" means an individual who commits or is alleged
7 to have committed any act or threat of domestic or sexual violence;

8 15. "Person" means an individual, partnership, association,
9 corporation, business trust, legal representative, or any organized
10 group of persons;

11 16. "Public agency" means the state, any agency of the state,
12 or any political subdivision thereof;

13 17. "Public assistance" means cash, food stamps, medical
14 assistance, housing assistance, and other benefits provided on the
15 basis of income by a public agency or public employer;

16 18. "Reduced work schedule" means a work schedule that reduces
17 the usual number of hours per workweek, or hours per workday, of an
18 employee;

19 19. "Repeatedly" means on two (2) or more occasions;

20 20. "Sexual assault" means any conduct as defined in Section
21 142.20 of Title 21 of the Oklahoma Statutes;

22 21. "Stalking" means any conduct as defined in Section 60.1 of
23 Title 22 of the Oklahoma Statutes;

1 22. "Victim" or "survivor" means an individual who has been
2 subjected to domestic or sexual violence; and

3 23. "Victim services organization" means a nonprofit,
4 nongovernmental organization that provides assistance to victims of
5 domestic or sexual violence or to advocates for such victims,
6 including a rape crisis center, an organization carrying out a
7 domestic violence program, an organization operating a shelter or
8 providing counseling services, or a legal services organization or
9 other organization providing assistance through the legal process.

10 SECTION 3. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 432 of Title 40, unless there is
12 created a duplication in numbering, reads as follows:

13 The purpose of the Victims Economic Security and Safety Act is
14 to promote the state's interest in reducing domestic violence,
15 dating violence, sexual assault, and stalking by enabling victims of
16 domestic or sexual violence to maintain the financial independence
17 necessary to leave abusive situations, achieve safety, and minimize
18 the physical and emotional injuries from domestic or sexual
19 violence, to reduce the devastating economic consequences of
20 domestic or sexual violence to employers and employees; and to
21 entitle employed victims of domestic or sexual violence to take
22 unpaid leave to seek medical help, legal assistance, counseling,

1 safety planning, and other assistance without penalty from their
2 employers.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 433 of Title 40, unless there is
5 created a duplication in numbering, reads as follows:

6 A. Leave requirement.

7 1. An employee who is a victim of domestic or sexual violence
8 or has a family or household member who is a victim of domestic or
9 sexual violence whose interests are not adverse to the employee as
10 it relates to the domestic or sexual violence may take unpaid leave
11 from work to address domestic or sexual violence to:

- 12 a. seek medical attention for, or recovering from,
13 physical or psychological injuries caused by domestic
14 or sexual violence to the employee or the employee's
15 family or household member,
16 b. obtain services from a victim services organization
17 for the employee or the employee's family or household
18 member,
19 c. obtain psychological or other counseling for the
20 employee or the employee's family or household member,
21 d. participate in safety planning, temporarily or
22 permanently relocating, or taking other actions to
23 increase the safety of the employee or the employee's

1 family or household member from future domestic or
2 sexual violence or ensure economic security, or
3 e. seek legal assistance or remedies to ensure the health
4 and safety of the employee or the employee's family or
5 household member, including preparing for or
6 participating in any civil or criminal legal
7 proceeding related to or derived from domestic or
8 sexual violence.

9 2. Period. Subject to subsection C of this section, an
10 employee shall be entitled to a total of twelve (12) workweeks of
11 leave during any twelve-month period. This act shall not be
12 construed to create a right for an employee to take unpaid leave
13 that exceeds the unpaid leave time allowed under, or is in addition
14 to the unpaid leave time permitted by, the Federal Family and
15 Medical Leave Act of 1993, 29 U.S.C. 2601 et seq.

16 3. Schedule. Leave as provided in paragraph 1 of this
17 subsection may be taken intermittently or on a reduced work
18 schedule.

19 B. Notice. The employee shall provide the employer with at
20 least forty-eight (48) hours' advance notice of the employee's
21 intention to take the leave, unless providing such notice is not
22 practicable. When an unscheduled absence occurs, the employer may
23 not take any action against the employee if the employee, within a

1 reasonable period after the absence, provides certification under
2 subsection C of this section.

3 C. 1. The employer may require the employee to provide
4 certification to the employer that:

5 a. the employee or the employee's family or household
6 member is a victim of domestic or sexual violence, and

7 b. the leave is for one of the purposes enumerated in
8 subparagraph a of this paragraph.

9 The employee shall provide such certification to the employer
10 within a reasonable period after the employer requests
11 certification.

12 2. An employee may satisfy the certification requirement of
13 paragraph 1 of this subsection by providing to the employer a sworn
14 statement of the employee, and upon obtaining such documents the
15 employee shall provide as follows:

16 a. documentation from an employee, agent, or volunteer of
17 a victim services organization, an attorney, a member
18 of the clergy, or a medical or other professional from
19 whom the employee or the employee's family or
20 household member has sought assistance in addressing
21 domestic or sexual violence and the effects of the
22 violence,

23 b. a police or court record, or

1 c. other corroborating evidence.

2 D. All information provided to the employer pursuant to
3 subsection B or C of this section, including a statement of the
4 employee or any other documentation, record, or corroborating
5 evidence, and the fact that the employee has requested or obtained
6 leave pursuant to this section, shall be retained in the strictest
7 confidence by the employer, except to the extent that disclosure is:

- 8 1. Requested or consented to in writing by the employee; or
9 2. Otherwise required by applicable federal or state law.

10 E. 1. Restoration to employment for any person who takes leave
11 under this section shall be as follows:

12 a. any employee who takes leave under this section for
13 the intended purpose of the leave shall be entitled,
14 on return from such leave:

15 (1) to be restored by the employer to the position of
16 employment held by the employee when the leave
17 commenced, or

18 (2) to be restored to an equivalent position with
19 equivalent employment benefits, pay, and other
20 terms and conditions of employment,

21 b. the taking of leave under this section shall not
22 result in the loss of any employment benefit accrued
23 prior to the date on which the leave commenced,

- 1 c. nothing in this subsection shall be construed to
2 entitle any restored employee to:
- 3 (1) the accrual of any seniority or employment
4 benefits during any period of leave, or
- 5 (2) any right, benefit, or position of employment
6 other than any right, benefit, or position to
7 which the employee would have been entitled had
8 the employee not taken the leave, and
- 9 d. nothing in this subsection shall be construed to
10 prohibit an employer from requiring an employee on
11 leave under this section to report periodically to the
12 employer on the status and intention of the employee
13 to return to work.
- 14 2. Maintenance of health benefits.
- 15 a. Except as provided in this paragraph, during any
16 period that an employee takes leave under this
17 section, the employer shall maintain coverage for the
18 employee and any family or household member under any
19 group health plan for the duration of such leave at
20 the level and under the conditions coverage would have
21 been provided if the employee had continued in
22 employment continuously for the duration of such
23 leave.

1 b. The employer may recover the premium that the employer
2 paid for maintaining coverage for the employee and the
3 employee's family or household member under such group
4 health plan during any period of leave under this
5 section if:

6 (1) the employee fails to return from leave under
7 this section after the period of leave to which
8 the employee is entitled has expired, and

9 (2) the employee fails to return to work for a reason
10 other than:

11 (a) the continuation, recurrence, or onset of
12 domestic or sexual violence that entitles
13 the employee to leave pursuant to this
14 section, or

15 (b) other circumstances beyond the control of
16 the employee.

17 c. Certification.

18 (1) An employer may require an employee who claims
19 that the employee is unable to return to work
20 because of a reason described in division (1) or
21 (2) of subparagraph b of this paragraph to
22 provide, within a reasonable period after making
23 the claim, certification to the employer that the

1 employee is unable to return to work because of
2 that reason.

3 (2) An employee may satisfy the certification
4 requirement of division (1) of this subparagraph
5 by providing to the employer:

6 (a) a sworn statement of the employee,

7 (b) documentation from an employee, agent, or
8 volunteer of a victim services organization,
9 an attorney, a member of the clergy, or a
10 medical or other professional from whom the
11 employee has sought assistance in addressing
12 domestic or sexual violence and the effects
13 of that violence,

14 (c) a police or court record, or

15 (d) other corroborating evidence.

16 d. All information provided to the employer pursuant to
17 subparagraph c of this paragraph, including a
18 statement of the employee or any other documentation,
19 record, or corroborating evidence, and the fact that
20 the employee is not returning to work because of a
21 reason described in division (1) or (2) of
22 subparagraph b of this paragraph shall be retained in

1 the strictest confidence by the employer, except to
2 the extent that disclosure is:

3 (1) requested or consented to in writing by the
4 employee, or

5 (2) otherwise required by applicable federal or state
6 law.

7 F. 1. It shall be unlawful for any employer to interfere with,
8 restrain, or deny the exercise of or the attempt to exercise any
9 right provided under this section.

10 2. It shall be unlawful for any employer to discharge or harass
11 any individual, or otherwise discriminate against any individual
12 with respect to compensation, terms, conditions, or privileges of
13 employment of the individual, including retaliation in any form or
14 manner, because the individual:

15 a. exercised any right provided under this section, or

16 b. opposed any practice made unlawful by this section.

17 3. It shall be unlawful for any public agency to deny, reduce,
18 or terminate the benefits of, otherwise sanction, or harass any
19 individual, or otherwise discriminate against any individual with
20 respect to the amount, terms, or conditions of public assistance of
21 the individual, including retaliation in any form or manner, because
22 the individual:

23 a. exercised any right provided under this section, or

1 b. opposed any practice made unlawful by this section.

2 4. It shall be unlawful for any person to discharge or in any
3 other manner discriminate, as described in paragraph 2 or 3 of this
4 subsection, against any individual because such individual:

5 a. has filed any charge, or has instituted or caused to
6 be instituted any proceeding, under or related to this
7 section,

8 b. has given, or is about to give, any information in
9 connection with any inquiry or proceeding relating to
10 any right provided under this section, or

11 c. has testified, or is about to testify, in any inquiry
12 or proceeding relating to any right provided under
13 this section.

14 SECTION 5. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 434 of Title 40, unless there is
16 created a duplication in numbering, reads as follows:

17 An employee who is entitled to take paid or unpaid leave,
18 including family, medical, sick, annual, personal, or similar leave,
19 from employment, pursuant to federal, state, or local law, a
20 collective bargaining agreement, or an employment benefits program
21 or plan, may elect to substitute any period of such leave for an
22 equivalent period of leave provided under Section 4 of this act.

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 435 of Title 40, unless there is
3 created a duplication in numbering, reads as follows:

4 A. An employer shall not fail to hire, refuse to hire,
5 discharge, or harass any individual, otherwise discriminate against
6 any individual with respect to the compensation, terms, conditions,
7 or privileges of employment of the individual, or retaliate against
8 an individual in any form or manner, and a public agency shall not
9 deny, reduce, or terminate the benefits of, otherwise sanction, or
10 harass any individual, otherwise discriminate against any individual
11 with respect to the amount, terms, or conditions of public
12 assistance of the individual, or retaliate against an individual in
13 any form or manner, because:

- 14 1. The individual involved:
- 15 a. is or is perceived to be a victim of domestic or
16 sexual violence,
 - 17 b. attended, participated in, prepared for, or requested
18 leave to attend, participate in, or prepare for a
19 criminal or civil court proceeding relating to an
20 incident of domestic or sexual violence of which the
21 individual or a family or household member of the
22 individual was a victim, or

1 c. requested an adjustment to a job structure, workplace
2 facility, or work requirement, including a transfer,
3 reassignment, or modified schedule, leave, a changed
4 telephone number or seating assignment, installation
5 of a lock, or implementation of a safety procedure in
6 response to actual or threatened domestic or sexual
7 violence, regardless of whether the request was
8 granted; or

9 2. The workplace is disrupted or threatened by the action of a
10 person whom the individual states has committed or threatened to
11 commit domestic or sexual violence against the individual or the
12 individual's family or household member.

13 B. As used in this subsection:

14 1. "Discriminate" means not making a reasonable accommodation
15 to the known limitations resulting from circumstances relating to
16 being a victim of domestic or sexual violence or a family or
17 household member being a victim of domestic or sexual violence of an
18 otherwise qualified individual with respect to the terms,
19 conditions, or privileges of employment or with respect to the terms
20 or conditions of public assistance:

21 a. who is:

22 (1) an applicant or employee of the employer,
23 including a public agency, or

1 (2) an applicant for or recipient of public
2 assistance from a public agency, and
3 b. who is:
4 (1) a victim of domestic or sexual violence, or
5 (2) with a family or household member who is a victim
6 of domestic or sexual violence whose interests
7 are not adverse to the individual in subparagraph
8 a of this paragraph as it relates to the domestic
9 or sexual violence,
10 unless the employer or public agency can demonstrate that the
11 accommodation would impose an undue hardship on the operation of the
12 employer or public agency;

13 2. "Qualified individual" means:

14 a. in the case of an applicant or employee described in
15 division (1) of subparagraph a of paragraph 1 of this
16 subsection, an individual who, but for being a victim
17 of domestic or sexual violence or with a family or
18 household member who is a victim of domestic or sexual
19 violence, can perform the essential functions of the
20 employment position that such individual holds or
21 desires, or

22 b. in the case of an applicant or recipient described in
23 division (2) of subparagraph a of paragraph 1 of this

1 subsection, an individual who, but for being a victim
2 of domestic or sexual violence or with a family or
3 household member who is a victim of domestic or sexual
4 violence, can satisfy the essential requirements of
5 the program providing the public assistance that the
6 individual receives or desires;

7 3. "Reasonable accommodation" means an adjustment to a job
8 structure, workplace facility, or work requirement, including a
9 transfer, reassignment, or modified schedule, leave, a changed
10 telephone number or seating assignment, installation of a lock, or
11 implementation of a safety procedure, in response to actual or
12 threatened domestic or sexual violence; and

13 4. "Undue hardship" means an action requiring significant
14 difficulty or expense on the operation of an employer or public
15 agency when considered in light of the following:

- 16 a. the nature and cost of the reasonable
17 accommodation needed under this section,
18 b. the overall financial resources of the facility
19 involved in the provision of the reasonable
20 accommodation, the number of persons employed at
21 such facility, the effect on expenses and
22 resources, or the impact otherwise of such
23 accommodation on the operation of the facility,

- 1 c. the overall financial resources of the employer
2 or public agency, the overall size of the
3 business of an employer or public agency with
4 respect to the number of employees of the
5 employer or public agency, and the number, type,
6 and location of the facilities of an employer or
7 public agency, and
- 8 d. the type of operation of the employer or public
9 agency, including the composition, structure, and
10 functions of the workforce of the employer or
11 public agency, the geographic separateness of the
12 facility from the employer or public agency, and
13 the administrative or fiscal relationship of the
14 facility to the employer or public agency.

15 SECTION 7. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 436 of Title 40, unless there is
17 created a duplication in numbering, reads as follows:

18 A. 1. The Commissioner of Labor or his or her authorized
19 representative shall administer and enforce the provisions of the
20 Victims Economic Security and Safety Act. Any employee or a
21 representative of employees who believes his or her rights under
22 this act have been violated may, within three (3) years after the
23 alleged violation occurs, file a complaint with the Department of

1 Labor requesting a review of the alleged violation. A copy of the
2 complaint shall be sent to the person who allegedly committed the
3 violation, who shall be the respondent. Upon receipt of a
4 complaint, the Commissioner shall cause such investigation to be
5 made as he or she deems appropriate. The investigation shall
6 provide an opportunity for a public hearing at the request of any
7 party to the review to enable the parties to present information
8 relating to the alleged allegation. The parties shall be given
9 written notice of the time and place of the hearing at least seven
10 (7) days before the hearing. Upon receiving the report of the
11 investigation, the Commissioner shall make findings of fact. If the
12 Commissioner finds that a violation did occur, he or she shall issue
13 a decision incorporating his or her findings and requiring the party
14 committing the violation to take such affirmative action to abate
15 the violation as the Commissioner deems appropriate, including:
16 a. damages equal to the amount of wages, salary,
17 employment benefits, public assistance, or other
18 compensation denied or lost to such individual by
19 reason of the violation, and the interest on that
20 amount calculated at the prevailing rate,
21 b. such equitable relief as may be appropriate, including
22 but not limited to hiring, reinstatement, promotion,
23 and reasonable accommodations, and

1 c. reasonable attorney's fees, reasonable expert witness
2 fees, and other costs of the action to be paid by the
3 respondent to a prevailing employee.

4 If the Commissioner finds that there was no violation, he or she
5 shall issue an order denying the complaint. An order issued by the
6 Commissioner under this section shall be final and subject to
7 judicial review as provided in the Administrative Procedures Act.

8 2. The Commissioner shall adopt rules necessary to administer
9 and enforce the provisions of this act. The Commissioner shall have
10 the powers and the parties shall have the rights provided in the
11 Administrative Procedures Act for contested cases, including, but
12 not limited to, provisions for depositions, subpoena power and
13 procedures, and discovery and protective order procedures.

14 3. The Attorney General may intervene on behalf of the
15 Department of Labor if the Department certifies that the case is of
16 general public importance. Upon such intervention, the court may
17 award such relief as is authorized to be granted to an employee who
18 has filed a complaint or whose representative has filed a complaint
19 under this section.

20 B. Any employer who has been ordered by the Commissioner of
21 Labor or the court to pay damages under this section and who fails
22 to do so within thirty (30) days after the order is entered is
23 liable to pay a penalty of one percent (1%) per calendar day to the

1 employee for each day of delay in paying the damages to the
2 employee.

3 SECTION 8. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 437 of Title 40, unless there is
5 created a duplication in numbering, reads as follows:

6 Every employer covered by the Victims Economic Security and
7 Safety Act shall post and keep posted, in conspicuous places on the
8 premises of the employer where notices to employees are customarily
9 posted, a notice, to be prepared or approved by the Director of
10 Labor, summarizing the requirements of this act and information
11 pertaining to the filing of a charge. The Commissioner of Labor
12 shall furnish copies of summaries and rules to employers upon
13 request without charge.

14 SECTION 9. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 438 of Title 40, unless there is
16 created a duplication in numbering, reads as follows:

17 A. Nothing in the Victims Economic Security and Safety Act
18 shall be construed to supersede any provision of any federal, state,
19 or local law, collective bargaining agreement, or employment
20 benefits program or plan that provides:

21 1. Greater leave benefits for victims of domestic or sexual
22 violence than the rights established under this act; or

1 2. Leave benefits for a larger population of victims of
2 domestic or sexual violence, as defined in such law, agreement,
3 program, or plan, than the victims of domestic or sexual violence
4 covered under this act.

5 B. Less protective laws, agreements, programs, and plans. The
6 rights established for employees who are victims of domestic or
7 sexual violence and employees with a family or household member who
8 is a victim of domestic or sexual violence under this act shall not
9 be diminished by any federal, state or local law, collective
10 bargaining agreement, or employment benefits program or plan.

11 SECTION 10. This act shall become effective November 1, 2005.

12 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND LABOR, dated 2-21-05
13 - DO PASS, As Amended and Coauthored.