

H. B. 4284

(By Delegates Perdue, Fleischauer, Barrett, Caputo, Guthrie, Kinsey, Lawrence, Manchin, Skinner, Sponaugle and Young)

[Introduced January 24, 2014; referred to the Committee on the Judiciary.]

FISCAL NOTE

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-11B-1, §5-11B-2, §5-11B-3 and §5-11B-4, all relating to requiring that reasonable accommodations be made for pregnant employees; defining terms; establishing what constitutes sex discrimination; establishing what is an undue hardship; and requiring written notification.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5-11B-1, §5-11B-2, §5-11B-3 and §5-11B-4, all to read as follows:

ARTICLE 11B. PREGNANT WORKERS' FAIRNESS ACT.

§5-11B-1. Definitions.

For the purposes of this article:

(1) "Reasonable accommodations" means, but is not limited to,

1 the provision of an accessible worksite, acquisition or
2 modification of equipment, seating, frequent bathroom breaks,
3 breaks for increased water intake, periodic rest, assistance with
4 manual labor, job restructuring, light duty assignments, modified
5 work schedules, or temporary transfers to less strenuous or
6 hazardous work.

7 (2) "Related medical conditions" means, but is not limited to,
8 lactation or the need to express breast milk for a nursing child.

9 **§5-11B-2. Reasonable accommodations.**

10 (a) It is unlawful sex discrimination for an employer to:

11 (1) Not make reasonable accommodations for any limitations
12 related to the pregnancy, childbirth, or related conditions of a
13 job applicant or employee if the employee or applicant so requests,
14 unless the employer can demonstrate that the accommodation would
15 impose an undue hardship on the operation of the employer's
16 business;

17 (2) In any way penalize an employee in terms, conditions or
18 privileges of employment for requesting or using the accommodation;

19 (3) Deny employment opportunities to an otherwise qualified
20 job applicant or employee, if the denial is based on the need of
21 the employer to make reasonable accommodations to the known
22 limitations related to the pregnancy, childbirth or related
23 conditions of the applicant or employee;

24 (4) Require a job applicant or employee affected by pregnancy,

1 childbirth or related conditions to accept an accommodation that
2 the applicant or employee chooses not to accept; or

3 (5) Require an employee to take leave under any leave law or
4 policy of the employer if another reasonable accommodation can be
5 provided to the known limitations related to the pregnancy,
6 childbirth or related conditions of an employee.

7 (b) An employee who takes leave or a temporary transfer as a
8 result of the limitations related to pregnancy, childbirth or
9 related conditions must be reinstated to her original job or to an
10 equivalent position with equivalent pay and accumulated seniority,
11 retirement, fringe benefits and other applicable service credits
12 when her need for reasonable accommodations ceases.

13 (c) An employer is not required to create additional
14 employment that the employer would not otherwise have created.

15 (d) The employer is not required to discharge any employee,
16 transfer any employee with more seniority, or promote any employee
17 who is not qualified to perform the job.

18 (e) This section does not affect any other provision of law
19 relating to sex discrimination or pregnancy, or in any way diminish
20 the coverage for pregnancy, childbirth or a condition related to
21 pregnancy or childbirth under any other provision of this section.

22 **§5-11B-3. Undue hardship.**

23 (a) The employer has the burden of proving undue hardship. In
24 making a determination of undue hardship, the factors which may be

1 considered include, but are not limited to, the:

2 (1) Overall financial resources of the employer;

3 (2) Overall size of the employer's operation with respect to
4 the number of its employees;

5 (3) Number, type and location of its facilities;

6 (4) Nature of the employer's operation, including composition,
7 structure and functions of the employer's workforce;

8 (5) Geographic separateness, administrative or fiscal
9 relationship of the employer's facility or facilities;

10 (6) Nature and cost of the accommodations needed; and

11 (7) Effect on expenses and resources, or the impact otherwise
12 of such accommodation upon the employer's operation.

13 (b) The fact that the employer provides or would be required
14 to provide a similar accommodation to other classes of employees
15 who need it creates a rebuttable presumption that the accommodation
16 does not impose an undue hardship on the employer.

17 **§5-11B-4. Written notification.**

18 (a) An employer shall provide written notice of the right to
19 reasonable accommodations to known limitations related to
20 pregnancy, childbirth, and related conditions pursuant to this
21 section, to:

22 (1) New employees at the commencement of employment;

23 (2) Existing employees within one hundred twenty days after
24 the effective of this section; and

1 (3) Any employee who notifies the employer of her pregnancy
2 within ten days of the notification.

3 (b) The Human Rights Commission may revise the notification
4 prepared under this section to include information concerning an
5 employee's right to reasonable accommodation because of pregnancy,
6 childbirth or a related condition.

7 (c) The revised notification shall be conspicuously posted at
8 an employer's place of business in an area accessible to employees.

NOTE: The purpose of this bill is to create the Pregnant Workers' Fairness Act.

This article is new; therefore, it has been completely underscored.