~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 21, 2018

**H. 3865**

Introduced by Reps. Bernstein, Delleney, Ridgeway, King, Whipper, J.E. Smith and Knight

S. Printed 2/21/18--S. [SEC 2/22/18 4:11 PM]

Read the first time April 5, 2017.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3865) to amend the Code of Laws of South Carolina, 1976, so as to enact the “South Carolina Pregnancy Accommodations Act”; to amend Section 1‑13‑30, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, page 4 by striking lines 20-24, in Section 1-13-80(A)(4)(e), as contained in SECTION 4, and inserting therein the following:

/ (i) The term ‘reasonable accommodation’ may include:

(AA) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(BB) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(ii)(AA) The term ‘undue hardship’ means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subsection (A)(4)(e)(i)(BB).

(BB) In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:

(aa) the nature and cost of the accommodation needed under this chapter;

(bb) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(cc) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(dd) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity. /

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on April 5, 2017**

**State Expenditure**

This bill amends current law for medical needs arising from pregnancy, childbirth, or related medical conditions. This bill adds lactation to related medical conditions for women who have recently had a child and specifies that women must be treated the same for all employment-related purposes. In addition, nothing in this bill will prevent an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion. This bill amends current law by adding that it is illegal for employers to fail or refuse to provide reasonable accommodations for medical needs related to pregnancy, childbirth, or related medical conditions for job applicants and current employees, unless the employer can demonstrate that the accommodation would impose an undue hardship on the employer.

In addition, employers cannot deny employment opportunities to a job applicant based on the need of the employer to make reasonable accommodations for medical needs related to pregnancy or childbirth. It is unlawful for employers to require job applicants or employees to accept accommodations related to pregnancy or childbirth that the applicant or employee does not accept. In addition, it is unlawful for employers to require employees to take leave under any leave of absence policy if reasonable accommodations can be provided regarding pregnancy, childbirth, or related medical conditions. Employers cannot take adverse action against an employee in the terms, conditions, or privileges of employment because the employee requested or used reasonable accommodations for medical needs related to pregnancy or childbirth.

This bill amends current law by requiring employers to provide written notice of the right to be free from discrimination for medical needs arising from pregnancy, childbirth, or related medical conditions to new employees at the start of their employment and to existing employees within one hundred and twenty days after the effective date of this bill. This notice also must be conspicuously posted at an employer’s place of business in an area accessible to employees. The Commission must develop courses of instruction and conduct ongoing public education to inform employers, employees, applicants for employment, and employment agencies their rights and responsibilities under this bill. The Commission must promulgate regulations to carry out this bill no later than two years after it is enacted. These regulations will identify reasonable accommodations addressing medical needs related to pregnancy and childbirth and they will be provided to job applicants or employees.

**Commission on Human Affairs.** The Commission indicates they will need to hire one Program Coordinator I position as a full time employee to facilitate non-discriminatory practices by creating courses of instruction and conducting ongoing public education efforts. This position would have a salary of $40,000 and fringe benefits of $14,240 totaling $54,240 in general fund costs. In addition, there would be recurring other operating costs for two cell phones, printing of brochures and training materials, and in-state travel that total $16,468 in general fund costs. The total recurring cost to the general fund would be $70,708. The Commission would also have a one time non-recurring cost in FY 2018-19 to the general fund to hire an outside consultant and IT equipment totaling $70,100. The promulgation of regulations by the Commission as required by this bill can be absorbed within existing resources.

**Department of Administration.** The department indicates that the bill will not materially or fiscally impact the department, as DOA is in compliance with federal laws such as in the Americans with Disabilities Act, the Family and Medical Leave Act, and the Pregnancy Discrimination Act. As such, this bill will have no expenditure impact to the general fund, other funds, or federal funds.

**Local Expenditure**

The Revenue and Fiscal Affairs (RFA) Office contacted forty-six county governments and the Municipal Association of South Carolina (MASC) regarding the expenditure impact of this bill. Barnwell, Charleston, Clarendon, Florence, Horry, and Saluda counties indicate there would be a minimal impact since they all already comply with the Pregnancy Discrimination Act which is governed by the Equal Employment Opportunity Commission and the Americans with Disabilities Act.

Lancaster County indicates there would be potential operational impacts to finding a private space for mother’s to pump breast milk and they would likely need to purchase small refrigerators for each lactation space. Lancaster County indicates they have 15 separate office locations. It is anticipated that the county would likely need six separate refrigerators to meet the needs of persons affected by this bill. The county has estimated that the cost per refrigerator is approximately $200 per unit. Therefore, the total cost to Lancaster County would be $1,200.

The MASC indicated there would be minimal impact to municipalities since they already comply with the same federal laws cited by the counties.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “SOUTH CAROLINA PREGNANCY ACCOMMODATIONS ACT”; TO AMEND SECTION 1‑13‑30, RELATING TO DEFINITIONS UNDER THE SOUTH CAROLINA HUMAN AFFAIRS LAWS, SO AS TO REVISE THE TERMS “BECAUSE OF SEX” OR “ON THE BASIS OF SEX” USED IN THE CONTEXT OF EQUAL TREATMENT FOR WOMEN AFFECTED BY PREGNANCY, CHILDBIRTH, OR RELATED MEDICAL CONDITIONS; TO AMEND SECTION 1‑13‑80, AS AMENDED, RELATING TO UNLAWFUL EMPLOYMENT PRACTICES OF AN EMPLOYER, SO AS TO ADD CERTAIN OTHER UNLAWFUL EMPLOYMENT PRACTICES IN REGARD TO FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS FOR AN APPLICANT FOR EMPLOYMENT OR EMPLOYEE WITH LIMITATIONS BECAUSE OF PREGNANCY, CHILDBIRTH, OR RELATED MEDICAL CONDITIONS, AND TO PROVIDE FOR NOTICE AND APPLICABILITY TO EMPLOYEES TO WHOM THE ABOVE PROVISIONS APPLY; AND TO PROVIDE NO LATER THAN TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ACT, THE SOUTH CAROLINA HUMAN AFFAIRS COMMISSION SHALL PROMULGATE REGULATIONS, WHICH SHALL IDENTIFY SOME REASONABLE ACCOMMODATIONS ADDRESSING KNOWN LIMITATIONS RELATED TO PREGNANCY, CHILDBIRTH, OR RELATED MEDICAL CONDITIONS THAT MUST BE PROVIDED TO A JOB APPLICANT OR EMPLOYEE, UNLESS THE EMPLOYER CAN DEMONSTRATE THAT DOING SO WOULD IMPOSE AN UNDUE HARDSHIP.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act is known and may be cited as the “South Carolina Pregnancy Accommodations Act”.

SECTION 2. It is the intent of the General Assembly by this act to combat pregnancy discrimination, promote public health, and ensure full and equal participation for women in the labor force by requiring employers to provide reasonable accommodations to employees for medical needs arising from pregnancy, childbirth, or related medical conditions. Current workplace laws are inadequate to protect pregnant women from being forced out or fired when they need a simple, reasonable accommodation in order to stay on the job. Many pregnant women are single mothers or the primary breadwinners for their families; if they lose their jobs then the whole family will suffer. This is not an outcome that families can afford in today’s difficult economy.

SECTION 3. Section 1‑13‑30(l) of the 1976 Code is amended to read:

“(l) The terms ‘because of sex’ or ‘on the basis of sex’ include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions~~;~~, including, but not limited to, lactation, and women affected by pregnancy, childbirth, or related medical conditions ~~shall~~ must be treated the same for all employment‑related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in item (3) of subsection (h) of Section 1‑13‑80 ~~shall~~ must be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion. ~~Provided, that~~ However, nothing ~~herein~~ in this subsection shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion. This subsection shall not apply to any fringe benefit fund or insurance program which was in effect on October 31, 1978, until April 30, 1979. Until after October 31, 1979 or, if there was an applicable collective bargaining agreement in effect on October 31, 1978, until the termination of that agreement, no person who, on October 31, 1978, was providing either by direct payment or by making contributions to a fringe benefit fund or insurance program, benefits in violation of the provisions of this chapter relating to sex discrimination in employment shall, in order to come into compliance with such provisions, reduce the benefits or the compensation provided any employee on October 31, 1978, either directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance program~~: Provided, That~~, except that where the costs of such benefits on October 31, 1978 are apportioned between employers and employees, the payments or contributions required to comply with the provisions of this chapter relating to sex discrimination in employment may be made by employers and employees in the same proportion~~:~~. ~~And provided, further, That~~ Nothing in this section shall prevent the readjustment of benefits or compensation for reasons unrelated to compliance with the provisions of this chapter relating to sex discrimination in employment.”

SECTION 4. Section 1‑13‑80(A) of the 1976 Code is amended to read:

“(A) It is an unlawful employment practice for an employer:

(1) to fail or refuse to hire, bar, discharge from employment, or otherwise discriminate against an individual with respect to the individual’s compensation or terms, conditions, or privileges of employment because of the individual’s race, religion, color, sex, age, national origin, or disability;

(2) to limit, segregate, or classify employees or applicants for employment in a way which would deprive or tend to deprive an individual of employment opportunities, or otherwise adversely affect the individual’s status as an employee, because of the individual’s race, color, religion, sex, age, national origin, or disability;

(3) to reduce the wage rate of an employee in order to comply with the provisions of this chapter relating to age~~.~~;

(4)(a) to fail or refuse to make reasonable accommodations for medical needs arising from pregnancy, childbirth, or related medical conditions of an applicant for employment or employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer;

(b) to deny employment opportunities to a job applicant or employee, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations for medical needs arising from pregnancy, childbirth, or related medical conditions of an applicant for employment or employee;

(c) to require an applicant for employment or employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation that the applicant or employee chooses not to accept, if the applicant or employee does not have a known limitation related to pregnancy, or if the accommodation is unnecessary for the applicant or employee to perform the essential duties of her job;

(d) to require an employee to take leave under any leave law or policy of the employer if another reasonable accommodation can be provided to the known limitations for medical needs arising from pregnancy, childbirth, or related medical conditions; or

(e) to take adverse action against an employee in the terms, conditions, or privileges of employment for requesting or using a reasonable accommodation to the known limitations for medical needs arising from pregnancy, childbirth, or related medical conditions.

For the purposes of this item:

(i) The terms ‘reasonable accommodations’ and ‘undue hardship’ have the meanings given those terms in section 101 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111), as amended, and shall be construed as these terms have been construed under the act and as set forth in the rules required by this act.

(ii) An employer shall provide written notice of the right to be free from discrimination for medical needs arising from pregnancy, childbirth, or related medical conditions, pursuant to this item to new employees at the commencement of employment, and existing employees within one hundred twenty days after the effective date of this item.

(iii) The notice required by subsubitem (ii) also must be conspicuously posted at an employer’s place of business in an area accessible to employees.

The Commission shall develop courses of instruction and conduct ongoing public education efforts as necessary to inform employers, employees, employment agencies, and applicants for employment about their rights and responsibilities under this item.”

SECTION 5. No later than two years after the effective date of this act, the South Carolina Human Affairs Commission shall promulgate regulations to carry out this act, which shall identify some reasonable accommodations addressing medical needs arising from pregnancy, childbirth, or related medical conditions that must be provided to a job applicant or employee affected by these known limitations, unless the employer can demonstrate that doing so would impose an undue hardship.

SECTION 6. Nothing in this act shall be construed to preempt, limit, diminish or otherwise affect any other provision of federal, state, or local law relating to discrimination based on sex or pregnancy, or to invalidate or limit the remedies, rights, and procedures of any federal, state, or local law that provides greater or equal protection for employees affected by pregnancy, childbirth, or related conditions.

SECTION 7. This act takes effect upon approval by the Governor.

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