

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **H. B. 4284**

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

8 [Passed March 6, 2014; in effect ninety days from passage.]

9
10 AN ACT to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §5-11B-1, §5-11B-2,
12 §5-11B-3, §5-11B-4, §5-11B-5, §5-11B-6 and §5-11B-7, all
13 relating to creating the Pregnant Workers' Fairness Act;
14 defining unlawful employment practices; establishing
15 remedies and enforcement for discriminatory conduct;
16 authorizing rule-making by the West Virginia Human Rights
17 Commission; establishing the relationship of the article to
18 other laws; and requiring a report to the Joint Committee on
19 Government and Finance.

20 *Be it enacted by the Legislature of West Virginia:*

21 That the Code of West Virginia, 1931, as amended, be amended
22 by adding thereto a new article, designated §5-11B-1, §5-11B-2,
23 §5-11B-3, §5-11B-4, §5-11B-5, §5-11B-6 and §5-11B-7, all to read
24 as follows:

25 **ARTICLE 11B. PREGNANT WORKERS' FAIRNESS ACT.**

1 **§5-11B-1. Short title.**

2 This article may be cited as the Pregnant Workers Fairness
3 Act.

4 **§5-11B-2. Nondiscrimination with regard to reasonable**
5 **accommodations related to pregnancy.**

6 It shall be an unlawful employment practice for a covered
7 entity to:

8 (1) Not make reasonable accommodations to the known
9 limitations related to the pregnancy, childbirth, or related
10 medical conditions of a job applicant or employee, following
11 delivery by the applicant or employee of written documentation
12 from the applicant's or employee's health care provider that
13 specifies the applicant's or employee's limitations and
14 suggesting what accommodations would address those limitations,
15 unless such covered entity can demonstrate that the accommodation
16 would impose an undue hardship on the operation of the business
17 of such covered entity;

18 (2) Deny employment opportunities to a job applicant or
19 employee, if such denial is based on the refusal of the covered
20 entity to make reasonable accommodations to the known limitations
21 related to the pregnancy, childbirth, or related medical
22 conditions of an employee or applicant;

23 (3) Require a job applicant or employee affected by
24 pregnancy, childbirth, or related medical conditions to accept an
25 accommodation that such applicant or employee chooses not to

1 accept; or

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

7 **§5-11B-3. Remedies and enforcement.**

8 (a) The powers, procedures, and remedies provided in
9 article eleven of this chapter to the Commission, the Attorney
10 General, or any person, alleging a violation of the West Virginia
11 Human Rights Act shall be the powers, procedures, and remedies
12 this article provides to the Commission, the Attorney General, or
13 any person, respectively, alleging an unlawful employment
14 practice in violation of this article against an employee or job
15 applicant.

16 (b) No person shall discriminate against any individual
17 because such individual has opposed any act or practice made
18 unlawful by this article or because such individual made a
19 charge, testified, assisted, or participated in any manner in an
20 investigation, proceeding, or hearing under this article. The
21 remedies and procedures otherwise provided for under this section
22 shall be available to aggrieved individuals with respect to
23 violations of this subsection.

24 **§5-11B-4. Rule-making.**

25 Not later than two years after the date of enactment of this

1 article, the Commission shall propose legislative rules in
2 accordance with article three, chapter twenty-nine-A of this
3 code, to carry out this article. Such rules shall identify some
4 reasonable accommodations addressing known limitations related to
5 pregnancy, childbirth, or related medical conditions that shall
6 be provided to a job applicant or employee affected by such known
7 limitations unless the covered entity can demonstrate that doing
8 so would impose an undue hardship.

9 **§5-11B-5. Definitions.**

10 As used in this article:

11 (1) "Attorney General" means the West Virginia Attorney
12 General;

13 (2) "Commission" means the West Virginia Human Rights
14 Commission;

15 (3) "Covered entity" has the meaning given the word employer
16 in section three, article eleven of this chapter;

17 (4) "Person" has the meaning given the word in section
18 three, article eleven of this chapter; and

19 (5) "Reasonable accommodation" and "undue hardship" have the
20 meanings given those terms in section 101 of the Americans with
21 Disabilities Act of 1990 (42 U.S.C. 12111) and shall be construed
22 as such terms have been construed under such Act and as set forth
23 in the rules required by this article.

24 **§5-11B-6. Relationship to other laws.**

25 Nothing in this article shall be construed to invalidate or

1 limit the remedies, rights, and procedures that provides greater
2 or equal protection for workers affected by pregnancy,
3 childbirth, or related medical conditions.

4 **§5-11b-7. Reports.**

5 The Commission shall annually on October 1 of each year
6 report to the Joint Committee on Government and Finance on the
7 number of complaints filed under this article during the pervious
8 year and their resolution.