

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4284**

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

7 (Originating in the Committee on the Judiciary)

8 [January 31, 2014]

9

10 A BILL 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 remedies
15 and enforcement for discriminatory conduct; authorizing rule-
16 making by the West Virginia Human Rights Commission;
17 establishing the relationship of the article to other laws;
18 and requiring a report to the Joint Committee on Government
19 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 as
24 follows:

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

26 **§5-11B-1. Short title.**

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

3 **§5-11B-2. Nondiscrimination with regard to reasonable**
4 **accommodations related to pregnancy.**

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

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

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

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

25 (4) Require an employee to take leave under any leave law or

1 policy of the covered entity if another reasonable accommodation
2 can be provided to the known limitations related to the pregnancy,
3 childbirth, or related medical conditions of an employee.

4 **§5-11B-3. Remedies and enforcement.**

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

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

20 **§5-11B-4. Rule-making.**

21 Not later than two years after the date of enactment of this
22 article, the Commission shall propose legislative rules in
23 accordance with article three, chapter twenty-nine-A of this code,
24 to carry out this article. Such rules shall identify some
25 reasonable accommodations addressing known limitations related to

1 pregnancy, childbirth, or related medical conditions that shall be
2 provided to a job applicant or employee affected by such known
3 limitations unless the covered entity can demonstrate that doing so
4 would impose an undue hardship.

5 **§5-11B-5. Definitions.**

6 As used in this article:

7 (1) "Attorney General" means the West Virginia Attorney
8 General;

9 (2) "Commission" means the West Virginia Human Rights
10 Commission;

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

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

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

20 **§5-11B-6. Relationship to other laws.**

21 Nothing in this article shall be construed to invalidate or
22 limit the remedies, rights, and procedures that provides greater or
23 equal protection for workers affected by pregnancy, childbirth, or
24 related medical conditions.

25 **§5-11b-7. Reports.**

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