WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3415

By Delegate Young

[Introduced February 13, 2023; Referred to the Committee on Health and Human Resources then Finance]

A BILL to amend and reenact §5-11B-2 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §16-4G-1, §16-4G-2, §16-4G-3, §16-4G-4, §16-4G-5, §16-4G-6, §16-4G-7 §16-4G-8, and §16-4G-9; and to amend said code by adding thereto a new article, designated §21-5J-1, §21-5J-2, §21-5J-3, §21-5J-4, §21-5J-5, §21-5J-6, §21-5J-7, §21-5J-8, §21-5J-9, and §21-5J-10, all relating to requiring the West Virginia Division of Labor to notify all employers that the Pregnant Workers' Fairness Act is in place; to require that the West Virginia Division of Labor to conduct public education campaigns about the Pregnant Workers' Fairness Act; listing legislative findings regarding pregnancy and post-pregnancy care; creating a short title; listing definitions; establishing the Housing for Moms Grant program; requiring a report from the Department of Health and Human Resources regarding transportation and barriers to care; requiring respectful maternity care training for all employees providing prenatal, labor, and postpartum care; requiring the Department of Health and Human Resources Bureau for Public Health to establish a program to award grants to eligible entities to educate the public and health care providers about maternal mental health conditions and establishing parameters for those grants; expanding nutritional assistance; establishing the Paid Parental Leave Pilot Program; establishing the Paid Parental Leave Fund and setting disbursement qualifications for that fund; expanding access to family planning care; establishing the requiring employers to continue to provide group health care coverage as long as the employee continues to pay the premiums for this coverage; providing for an employer survey for the Paid Parental Leave Pilot Program; establishing a performance review date for the Paid Parental Leave Pilot Program; establishing rulemaking for the Paid Parental Leave Pilot Program; and providing a sunset date for the Paid Parental Leave Pilot Program.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

article 11b. pregnant workers' fairness act.

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

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

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

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

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

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

(5) On an annual basis, the West Virginia Division of Labor shall notify all employers that the Pregnant Workers’ Fairness Act is in effect; compliance is compulsory and that violations harm maternal and child health, and carry consequences.

(6) The West Virginia Human Rights Commission shall on an annual basis conduct public education campaigns to inform the public of the benefits of the Pregnant Workers’ Fairness Act and may partner with community-based organizations or other state agencies to accomplish such. Such education shall consist of public service announcements, and earned or paid media outreach to all 55 counties.

chapter 21. public health.

article 4G. maternal health and family support.

§16-4G-1. Legislative Findings.

The Legislature finds that pregnancy and childbirth can be incredibly special and powerful experiences. Unfortunately, systemic inequities and a lack of prenatal and postnatal care results in a higher likelihood of mortality and pregnancy-related health issues for Black women in particular. While West Virginia agencies and organizations have dedicated expertise and resources to address these problems, better coordination of resources and programs and development of new approaches are necessary.

The Legislature also finds:

(a) The United States has the highest maternal mortality rate in the developed world and the only rate that is rising. West Virginia’s overall maternal mortality rate is even higher than the national average. In 2017, West Virginia’s maternal mortality rate was 21.4 per 100,000 compared with 17.4 per 100,000 nationally.

(1) The maternal mortality rate is significantly higher among black women, who are three to four times more likely than white women to die from pregnancy-related complications.

(2) West Virginia gets an F grade for its preterm birth rate from the March of Dimes. The preterm birth rate was 12.6 percent with inadequate prenatal care and poverty for women between the ages of 15 and 44 identified as contributing factors.

(3) The Mountain State’s infant mortality rate is one of the highest in the U.S. at 7.0. The infant mortality rate for the U.S. in 2022 was 5.547 deaths per 1000 live births.

(4) Nursing mothers are not sufficiently supported in West Virginia and are suffering negative health consequences and being forced to choose between breastfeeding and earning a paycheck.

(5) Babies who are fed breastmilk have stronger immune systems and therefore have higher protection from illnesses and diseases, ranging from the common cold to diabetes.

(6) Breastfeeding also has protective factors for the mother, lowering the risk for developing osteoporosis, breast, ovarian, and uterine cancers, and rheumatoid arthritis; breastfeeding may reduce postpartum anxiety and depression.

(7) Even with West Virginia’s Pregnant Workers’ Fairness Act, too many nursing mothers are left without the ability to pump at work. Without these accommodations, nursing mothers face serious health consequences, including risk of painful illness and infection, diminished milk supply, or inability to continue breastfeeding.

(8) West Virginia Department of Health and Human Resources Family Planning Program offers exemplary and beneficial services, but the program is under-resourced and not well known by potential clients. Therefore, family planning is not fully accessible in West Virginia.

(9) Contraception and family planning allows people to attain their desired number of children, if any, and to determine the spacing of their pregnancies.

(10) The prevention of unintended pregnancies helps to lower maternal illness and disease, and the number of pregnancy-related deaths. Delaying pregnancies in young people who are at increased risk of health problems from early childbearing, and preventing pregnancies among older women who also face increased risks, are important health benefits of family planning.

(11) Untreated substance use disorders can have long-term negative impacts on the mother, baby, family, and society.

(12) Maternal mental health conditions are the most common complications of pregnancy and childbirth, affecting 1 in 5 women or 800,000 women annually, during pregnancy or the year following pregnancy.

(13) Maternal mental health and substance use disorders contribute to the high rate of maternal mortality in the United States, with suicide and drug overdose combined being the leading cause of death for women in the first year following pregnancy.

(14) Untreated maternal mental health conditions are estimated to cost the West Virginia economy $86,000,000 every year due to mother’s lost wages and productivity, and poor health outcomes of mother and baby.

(15) Frontline providers who care for women during pregnancy and the first year following pregnancy are often reluctant to screen for maternal mental health conditions, citing lack of education, insurance reimbursement, and resources for affected women.

(b) As the rest of the world and states across the nation work to improve maternal health outcomes, rising maternal mortality rates in West Virginia are precipitating a public health crisis, one that puts women of color and all rural women at particular risk. This bill includes a comprehensive set of proposals that will save West Virginians’ lives and improve health outcomes for all.

(c) The West Virginia Legislature finds that proper care that women and birthing people deserve should be inclusive, respectful and accessible; regardless of race, ethnicity, gender identity, sexual orientation, religion, marital status, familial status, socioeconomic status, immigration status, incarceration status, or disability.

§16-4G-2. Short title.

This article may be cited as the "West Virginia Maternal Health & Family Support Act of 2023".

§16-4G-3. Definitions.

In this article:

(a) Culturally congruent --The term "culturally congruent", with respect to care or maternity care, means care that is in agreement with the preferred cultural values, beliefs, worldview, language, and practices of the health care consumer and other stakeholders.

(b) Birth equity – The term "birth equity" means the assurance of the conditions of optimal births for all people with a willingness to address racial and social inequalities in a sustained effort.

(c) Postpartum and postpartum period --The terms "postpartum'' and "postpartum period'' refer to the 1-year period beginning on the last day of the pregnancy of an individual. The care provided to a mother and her child does not end with labor and delivery.

(d) Racial and ethnic minority group--The term "racial and ethnic minority group'' is widely used and often defined by numbers in terms of the majority or minority of a population based on demographics, but it is widely accepted, including by the APA (American Psychological Association) style guide and definitions as being about more than statistical determinations of population. *Race* refers to physical differences that groups and cultures consider socially significant. For example, people might identify their race as Aboriginal, African American or Black, Asian, European American or White, Native American, Native Hawaiian or Pacific Islander, Māori, or some other race. *Ethnicity* refers to shared cultural characteristics such as language, ancestry, practices, and beliefs. For example, people might identify as Latino or another ethnicity. Race is a social construct that is not universal.

(e) Marginalized Communities - The term "marginalized communities" refers to groups and communities that experience discrimination and exclusion (social, political, and economic) because of unequal power relationships across economic, political, social, and cultural dimensions.

§16-4G-4. Housing for Moms Grant Program.

(a) The West Virginia Housing Development Fund shall work with relevant state agencies and not-for-profit agencies, and representatives from local housing authorities to establish a Housing for Moms grant program to make grants to eligible entities to increase access to safe, stable, affordable, and adequate housing for pregnant and postpartum individuals and their families.

(b) Grants -- The West Virginia Housing Development Fund shall develop and publicize the grant application process. To be eligible to receive a grant under this section, an eligible entity shall submit to the West Virginia Housing Development Fund an application. Applications shall be reviewed and grant awards made at the Fund’s discretion.

(c) Use of Funds --An eligible entity that receives a grant under this section shall use funds under the grant for the purposes of--

(1) Identifying and conducting outreach to pregnant and postpartum individuals who are low-income and lack consistent access to safe, stable, affordable, and adequate housing;

(2) Providing safe, stable, affordable, and adequate housing options to such individuals;

(3) Connecting such individuals with local organizations offering safe, stable, affordable, and adequate housing options;

(4) Providing application assistance to such individuals seeking to enroll in programs offering safe, stable, affordable, and adequate housing options;

(5) Providing direct financial assistance to such individuals for the purposes of maintaining safe, stable, and adequate housing for the duration of the individual's pregnancy and postpartum periods; and

(6) Working with relevant stakeholders to ensure that local housing and homeless shelter infrastructure is supportive to pregnant and postpartum individuals.

(d) Reporting --The West Virginia Housing Development Fund shall require each eligible entity receiving a grant under this section to annually submit to the Housing Development Fund and make publicly available a report on the status of activities conducted using the grant.

(e) Not later than the end of each fiscal year in which grants are made under this section, the Director of the West Virginia Housing Development Fund shall submit to the Legislature and make publicly available a report that summarizes the grants, evaluates the effectiveness of grants awarded in increasing access to safe, stable, affordable, and adequate housing for pregnant and postpartum individuals and their families; and makes recommendations with respect to ensuring affordable housing.

§16-4G-5. Report on transportation and barriers to care.

No later than one year after the date of enactment of this article, the West Virginia Department of Health and Human Resources shall submit to the Legislature and make publicly available a report regarding transportation barriers preventing individuals from attending prenatal and postpartum appointments, accessing maternal and pediatric health care services, or accessing related services and resources. The report shall contain at a minimum the following:

(a) An assessment of medical transportation services and current capacity within all 55 counties and/or regions of the state;

(b) An assessment of public transportation services; including identification of communities with available public transportation and those without such services;

(c) Recommendations on how to overcome the barriers assessed under paragraph (1).

§16-4G-6. Nutrition.

Department of Health and Human Resources shall subsize additional Supplemental Nutrition Assistance Program benefits.

(a) As of March 1, 2023, emergency allotments (EA) for the Supplemental Nutrition Assistance Program (SNAP) will be cut.

(b) The state shall allot funding to provide an increase in SNAP benefits with a priority for pregnant people and families with children. This increase shall be at least equal to the federal emergency allotments that expire on March 1, 2023.

§16-4G-7. Respectful maternity care training for all employees providing prenatal, labor, and postpartum care.

Grants - The Department of Health and Human Resources shall offer grants for programs to reduce and prevent bias and discrimination in maternity care settings and to advance respectful, culturally congruent, trauma-informed care.

(a) Special Consideration: In awarding grants the Department of Health and Human Resources shall give special consideration to applications for programs that would--

(1) Apply to all maternity care providers and any employees who interact with pregnant and postpartum individuals in the provider setting, including front desk employees, sonographers, schedulers, health care professionals, hospital or health system administrators, security staff, and other employees;

(2) Emphasize annual, as opposed to one-time, trainings for all health care professionals and employees in participating programs or facilities;

(3) Address implicit bias, racism, and cultural humility;

(4) Include trauma-informed care best practices and an emphasis on shared decision making between providers and patients;

(5) Be delivered in settings that apply to providers of the special supplemental nutrition program for women, infants, and children;

(6) Integrate bias training in obstetric emergency simulation trainings or related trainings;

(7) Offer training to all maternity care providers on the value of culturally congruent care, particularly with respect to race, ethnicity, and gender;

(b) Application --To seek a grant under subsection (a), an entity shall submit an application at such time, in such manner, and containing such information as the Secretary of Department of Health and Human Resources may require.

§16-4G-8. Maternal Mental Health Equity.

Department of Health and Human Resources Bureau for Public Health shall establish a program to award grants to eligible entities to educate the public and health care providers about maternal mental health conditions with respect to all pregnant and postpartum individuals, including a focus on racial and ethnic minority groups and underserved communities.

(a) Grants -- The Bureau for Public Health shall create an application process and eligibility requirements and disseminate requests for proposals annually. To be eligible to receive a grant under this section an eligible entity shall submit to the Secretary of DHHR an application including how such entity will use funds for activities.

(b) Use of Funds.-- An eligible entity that receives a grant under this section shall use funds to establish or expand maternity care programs to improve the integration of maternal health and behavioral health care services into primary care settings where pregnant individuals regularly receive health care services.

(c) Grants shall be used to establish or expand group prenatal care programs or group postpartum care programs; existing group programs that improve maternal mental and behavioral health during the prenatal and postpartum periods, with a focus on individuals from marginalized groups.

(d) Special Consideration:

(1) Provide services and support for pregnant and postpartum individuals with maternal mental health conditions.

(2) Enhanced screening, prevention, and treatment of maternal mental health conditions.

(3) Address stigma associated with maternal mental health conditions, with a focus on racial and ethnic minority groups.

(4) Raise awareness of warning signs of maternal mental health conditions, with a focus on pregnant and postpartum individuals from racial and ethnic minority groups.

(5) Establish or expand programs to prevent suicide or self-harm among pregnant and postpartum individuals.

(6) Improved coordination between maternity care providers and mental and behavioral health care providers who treat maternal mental health conditions and substance use disorders.

§16-4G-9. Family planning.

(a) To minimize barriers to family planning access afforded through the West Virginia Department of Health and Human Resources Family Planning Program, the state shall allocate funds to enable increased staffing and hours of operation of all Family Planning sites.

(b) To ensure West Virginians are aware of the benefits of family planning and the availability of services in every county, Department of Health and Human Resources shall create and launch a monthly public education campaign that reaches diverse audiences with regard to age, gender, race, ethnicity, and geographic location.

chapter 21. labor.

ARTICLE 5J. PAID PARENTAL LEAVE PILOT PROGRAM.

§21-5J-1. Legislative findings; purpose.

(a) The Legislature recognizes that the birth or adoption of a child is a significant life event which poses unique challenges for working families.

(b) The purpose of the pilot program established in this article is to determine the viability of paid parental leave for state employees as a means of promoting working families’ physical and mental health, increasing employee retention, and improving employee productivity and morale following the birth or adoption of a child.

§21-5J-2. Definitions.

As used in this article:

"Child" means an individual under the age of 12 who is the biological or adopted child of an employee. "Child" does not include a child who is the biological, adopted, or foster child, stepchild, or legal ward of the employee’s spouse but not the employee prior to his or her marriage to the employee, and who is adopted by the employee following the marriage.

"Department" means the Department of Labor.

"Employee" means any individual engaged in full-time permanent employment, who has worked for at least 12 consecutive weeks performing services for remuneration for any department, division, board, bureau, agency, commission, or other unit of state government prior to filing a claim under this article. "Employee" does not include:

(1) An individual employed by a person who is not an "employer" as defined by this article;

(2) An individual holding an elected public office;

(3) A part-time employee; or

(4) A person in a vocational rehabilitation facility certified under federal law who has been designated an evaluee, trainee, or work activity client.

"Employer" includes any department, division, board, bureau, agency, commission, or other unit of state government. "Employer" does not include a county, municipality, or any unit thereof, or a county board of education.

"Employment benefits" means all benefits, other than salary or wages, provided or made available to employees by an employer, and includes group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a policy or practice of an employer or by an employee benefit plan as defined in the federal Employee Retirement Income Security Act of 1974.

"Spouse" means any person legally married to an "employee" covered under this article.

§21-5J-3. Paid parental leave.

(a) An employee is entitled to a total of 12 weeks of paid leave during any 12-month period to care for and bond with his or her child during:

(1) The first 12 months after the child’s birth, for a child born during the period July 1, 2023, through July 1, 2026.

(2) The first 12 months after adoption of a child which occurs during the period July 1, 2023, through July 1, 2026.

(b) The paid leave provided under this article is in addition to accrued annual or sick leave.

(c) An employee who takes paid leave under this article forfeits his or her right to take unpaid leave under §21-5D-4(a)(1) or §21-5D-4(a)(2) of this code during any 12-month period beginning on July 1, 2023.

(d) The paid leave provided under this article may be combined with the unpaid parental leave provided under §21-5D-4(a)(3) of this code for a maximum duration of 18 weeks of paid and unpaid leave per 12 months beginning on July 1, 2023.

(e) An employee may not take leave under this section intermittently or on a reduced leave schedule unless the employee and the employer agree otherwise.

(f) An employee taking leave under this article is entitled to receive a weekly benefit of 90 percent of his or her average weekly wage, up to a maximum of $1,000 per week, while on leave pursuant to this section.

§21-5J-4. Filing a claim for benefits; notification of eligibility or ineligibility; payment of benefits.

(a) To receive benefits under this article, an employee may file a claim with his or her employer in a form and manner required by the department, and shall include the following documentation supporting the request for leave:

(1) For birth, the child’s birth certificate.

(2) For adoption, the child’s new adoption birth certificate or decree of adoption by a court of competent jurisdiction.

(b) The employer shall submit all claims to the department within three business days of receipt.

(c) The department shall notify the employer and the employee of the employee’s eligibility or ineligibility for benefits under this article within seven days of receiving a claim.

(d) If an employee is ineligible, the department shall specify the reason for ineligibility.

(e) Payment of benefits to the employee shall be prorated to the date of eligibility.

§21-5J-5. Paid parental leave pilot program fund.

(a) There is hereby created in the State Treasury a special revenue account to be known as the Paid Parental Leave Pilot Program Fund. The fund shall be administered by the department. The fund shall consist of all moneys deposited into the fund pursuant to §60-8A-3 of this code; any moneys that may be designated for deposit in this fund by an act of the Legislature; any moneys appropriated and designated for the fund by the Legislature; any moneys able to be transferred into the fund by authority of the commissioner from other funds; and gifts, donations, and interest or other returns earned from investment of the fund.

(b) Expenditures from the fund shall be for the purpose of paying benefits to eligible employees under this article, and are not authorized from collections, but are to be made only in accordance with appropriations by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon the fulfillment of the provisions set forth in §11B-2-1 *et seq.* of this code.

(c) Any balance, including accrued interest and other returns, remaining in the fund on December 31, 2026, shall revert to the General Revenue Fund.

§21-5J-6. Group health coverage; position upon return from leave; employment benefits and seniority.

(a) During any leave taken by an employee under this article, the employer shall continue group health insurance coverage for the employee: *Provided*, That the employee shall pay to the employer the premium costs of such group health insurance coverage attributable to the employee.

(b) The position held by the employee immediately before leave taken under this article is commenced shall be held for a period not to exceed the 12-week period of the leave, or 18-week period of the combined leave under §21-5J-3(d) of this code, and the employee shall be returned to that position: *Provided*, That the employer may employ a temporary employee or temporary employees to fill said position for the period of the leave taken under this article.

(c) No employer may, because an employee received leave under this article, reduce or deny any employment benefit or seniority which accrued to the employee before his or her leave commenced or during such leave.

§21-5J-7. Employer survey.

(a) On July 1, 2024 and each year thereafter, the department shall survey each employer to which a claim has been submitted in a form and manner required by the department which includes the following information for each eligible employee who took leave under this article in the preceding 12 months:

(1) The duration of leave taken by the employee under this article;

(2) The duration of any leave taken by the employee under §21-5D-1 *et seq.* of this code;

(3) Whether the employer employed a temporary employee or temporary employees to fill the position of the employee taking leave under this article for the period of the leave;

(4) The duration of employment of each such temporary employee;

(5) The gross salary paid to each such temporary employee;

(6) The type and cost of each additional employee benefit provided to each such temporary employee.

(b) The information collected under this section shall be submitted to the Joint Committee on Government and Finance on or before August 1, 2024, and each year thereafter.

§21-5J-8. Performance review.

The department shall report to the Joint Committee on Government Organization on October 1, 2025, and each year thereafter the findings of the performance review which includes, at a minimum:

(1) An evaluation of the utilization, fiscal impact, and effectiveness of the pilot program;

(2) A recommendation as to whether the paid family leave provided under this section should be continued, reduced, expanded, terminated, or otherwise modified;

(3) Any recommended legislation; and

(4) Any other issues considered relevant.

§21-5J-9. Emergency rulemaking authority.

The department may promulgate emergency and legislative rules pursuant to the provisions of §29A-3-1 *et seq.* of this code to effectuate the provisions of this article.

§21-5J-10. Sunset.

This article shall be of no further force and effect on December 31, 2027.

NOTE: The purpose of this bill is to provide support during and after pregnancy to mothers and provide services to attempt to diminish the likelihood of mortality and pregnancy-related health issues.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.