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## FISCAL IMPACT REPORT

**SPONSOR** Chasey/Stefanics      **ORIGINAL DATE** 1/27/2020  
**LAST UPDATED** 2/03/2020    **HB** 25/aHJC  
**SHORT TITLE** Pregnant Worker Accommodation    **SB** \_\_\_\_\_  
**ANALYST** Bachechi

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)  
 Department of Health (DOH)  
 Workforce Solutions Department (WSD)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment strikes “for as long as necessary” from the definition of “reasonable accommodation” in Section 28-1-2 (R).

#### Synopsis of Original Bill

House Bill 25 amends the New Mexico Human Rights Act NMSA 1978 §28-1-2 and §28-1-7 (the “Act”) to include pregnancy, childbirth or conditions related to pregnancy or childbirth as a basis for an unlawful discriminatory practice. The current Act does not include pregnant workers as a protected class. The bill also adds definitions to §28-1-1 for “reasonable accommodation” and “undue hardship” The enumerated definitions are taken from 29 CFR 38.4 as they are applied to recipients of federal funds under Section 188 of the federal Workforce Innovation and Opportunity Act (WIOA). The addition of definitions for “undue hardship” and “reasonable accommodation” to §28-1-1 will apply to all subsequent provisions of the statute, not just pregnancy related complaints. The bill also provides additional discretionary remedies which may be imposed against employers.

The bill would add pregnancy, childbirth or condition related to pregnancy or childbirth as a prohibited basis of discrimination in the context of employment (§ 28-1-7(A), membership in a

labor organization (§ 28-1-7(B)) public accommodation (§ 28-1-7(F)), housing accommodation (§ 28-1-7(G)), and financial assistance as relates to housing accommodation or real property or for any type of consumer credit (§ 28-1-7(H)).

The bill would require an employer to make reasonable accommodation for an employee or job applicant with a need arising from pregnancy, childbirth or condition related to pregnancy or childbirth (§ 28-1-7(J)). The bill further prohibits an employer from requiring an employee with a need arising from pregnancy, childbirth or condition related to pregnancy or childbirth to take paid or unpaid leave if another reasonable accommodation can be provided, unless the employee voluntarily requests to be placed on leave or the employee is placed on leave pursuant to federal law.

The bill requires employers to notify applicants and new and continuing employees of their rights under the Act. The bill does not require exhaustion of state administrative remedies before filing an action in court. The bill also provides claimants with administrative and judicial review, which may result in actual, punitive and treble damages as well as costs and attorney fees to an employer found to be violating the Act. A court in any action brought under the Act may order appropriate injunctive relief, including requiring an employer to post in the employer's place of business a description violations by the employer.

Previously introduced bills include HB179 in the 2017 Regular Session (vetoed) and HB196 in the 2019 Regular session (died).

## **FISCAL IMPLICATIONS**

There is no appropriation contained in this bill and no significant fiscal impact is identified at this time.

## **SIGNIFICANT ISSUES**

The proposed legislation states that an aggrieved individual can seek relief under the Human Rights Act, NMSA 1978, § 28-1-1 *et. seq.* The Department of Workforce Solution's (WSD) Human Rights Bureau is a neutral agency that enforces the New Mexico Human Rights Act. The Bureau accepts and investigates claims of discrimination based on race, color, national origin, religion, ancestry, sex, age, physical and mental handicap, serious medical condition, spousal affiliation, sexual orientation, and gender identity in the areas of employment, housing, credit, or public accommodation.

Providing reasonable accommodations for pregnant women in the workplace will allow them to continue working and protect their jobs, pay, and benefits (including health insurance). Such accommodations have a positive effect on women's financial stability, help to ensure continued access to health care and contribute to better maternal and child health outcomes. Of pregnant women, 56 percent work full time during pregnancy and 73 percent return to work within 6 months after giving birth.

<https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Obstetric-Practice/Employment-Considerations-During-Pregnancy-and-the-Postpartum-Period?IsMobileSet=false>

The Equal Employment Opportunity Commission has reported that pregnancy discrimination claims are on the rise. The bill would provide clear direction for both employers and pregnant workers. [https://www.eeoc.gov/laws/guidance/upload/pregnancy\\_guidance.pdf](https://www.eeoc.gov/laws/guidance/upload/pregnancy_guidance.pdf)

Twenty-three states and Washington, D.C. have passed laws expanding protections for pregnant women in the workplace. Eighteen of these laws, which guarantee pregnant employees' right to accommodations at work, were passed in the past five years, all with bipartisan support.

As WSD' Human Rights Bureau currently addresses pregnancy discrimination claims, the bill does not change the scope of work already being performed by the Bureau. Discrimination based on pregnancy, childbirth, or related medical conditions is a form of sex discrimination prohibited by Title VII of the Civil Rights Act of 1964. Through its administrative enforcement process, the Human Rights Bureau investigates discrimination charges under its work sharing agreement with the U. S. Equal Employment Opportunity Commission (EEOC). This legislation may increase the workload of the Bureau but the increase would be nominal.

Likewise, the Department of Health also noted that because the bill is consistent with the EEOC Pregnancy Discrimination Act and the department is bound to comply with this federal legislation, the bill would not have a significant impact on the Department of Health.

### **TECHNICAL ISSUES**

The Attorney General Office (AGO) noted that the bill creates inconsistent language regarding accommodation as between pregnancy/childbirth and physical or mental handicap or serious medical condition. "Reasonable accommodation" and "undue hardship" are newly defined terms in the Act. The bill requires an employer to make "reasonable accommodation" for a need arising from pregnancy, childbirth or condition related to pregnancy or childbirth, but leaves undisturbed the current provisions of the act which do not use the term "reasonable accommodation" in requiring an employer to accommodate a person's physical or mental handicap or serious medical condition, see §28-1-7(J). The AOG advised, "for the sake of consistency and clarity, and because the term "undue hardship" is referenced in the new definition of "reasonable accommodation," § 28-1-7(J) should be revised to mirror the use of the term "reasonable accommodation" in proposed § 28-1-7(K)."

The AGO also pointed out that the bill contains a confusing reference to voluntary leave and leave pursuant to federal law and recommends the bill be revised to clarify that federal law requires specific leave be available for an employee to use, but does not require an employer to place an employee on such leave.

WSD noted that the definition of "reasonable accommodations" provides accommodations "for as long as necessary". This definition may be ambiguous because it does not give any guidance in determining how long accommodations are necessary, whether by a medical doctor, by the employer or by the employee. WSD also noted that the definition requires a good faith effort to explore alternatives to the accommodation request, but does not specify that both parties are required to operate in good faith to seek alternatives.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Employees who work for covered employers will continue to be protected by the Pregnancy Discrimination Act (PDA), the Family Medical Leave Act (FMLA), and the Americans with

Disabilities Act of 1990 (ADA), including changes made by the ADA Amendments Act of 2008 (P.L. 110-325), though their remedies would not be as expansive as what the Act would provide.

CLB/rl/al