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**SHB 1796** - H AMD **79**

By Representative Farrell

**ADOPTED 03/01/2017**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  The legislature finds that the state has an interest in assuring that children are given the opportunity to have a healthy start in life. Because approximately half of all births in Washington state are funded by state resources, the state is in a unique position to make a difference in the health of children in Washington. The legislature further finds that providing children with a healthy start requires promoting healthy pregnancies. In one national survey, pregnant workers said they needed more frequent breaks while pregnant. Prenatal care is also critical for positive birth outcomes, and pregnant women have cited the need for flexibility in their work schedule for the purposes of attending doctor visits. Reasonable accommodations for pregnant women in the workplace can go a long way to promoting healthy pregnancies without producing an undue hardship on employers.

NEW SECTION. **Sec.**  A new section is added to chapter 43.10 RCW to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Employer" has the same meaning as and shall be interpreted consistent with how that term is defined in RCW 49.60.040, except that for the purposes of this section only the threshold of employees must be fifteen or more.

(b) "Pregnancy" includes the employee's pregnancy and pregnancy-related health conditions.

(c) "Reasonable accommodation" means:

(i) Providing more frequent, longer, or flexible restroom breaks;

(ii) Modifying a no food or drink policy;

(iii) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, or acquiring or modifying equipment, devices, or an employee's work station;

(iv) Providing seating or allowing the employee to sit more frequently if her job requires her to stand;

(v) Providing for a temporary transfer to a less strenuous or less hazardous position;

(vi) Providing assistance with manual labor and limits on lifting;

(vii) Scheduling flexibility for prenatal visits; and

(viii) Any further pregnancy accommodation an employee may request, and to which an employer must give reasonable consideration in consultation with information provided on pregnancy accommodation by the department of labor and industries or the attending health care provider of the employee.

(d) "Undue hardship" means an action requiring significant difficulty or expense. An employer may not claim undue hardship for the accommodations under (c)(i), (ii), and (iv) of this subsection, or for limits on lifting over seventeen pounds.

(2) It is an unfair practice for any employer to:

(a) Fail or refuse to make reasonable accommodation for an employee for pregnancy, unless the employer can demonstrate that doing so would impose an undue hardship on the employer's program, enterprise, or business;

(b) Take adverse action against an employee who requests, declines, or uses an accommodation under this section that affects the terms, conditions, or privileges of employment;

(c) Deny employment opportunities to an otherwise qualified employee if such denial is based on the employer's need to make reasonable accommodation required by this section;

(d) Require an employee to take leave if another reasonable accommodation can be provided for the employee's pregnancy.

(3) An employer may request that the employee provide written certification from her treating health care professional regarding the need for reasonable accommodation, except for accommodations listed in subsection (1)(d) of this section.

(4)(a) This section does not require an employer to create additional employment that the employer would not otherwise have created, unless the employer does so or would do so for other classes of employees who need accommodation.

(b) This section does not require an employer to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job, unless the employer does so or would do so to accommodate other classes of employees who need accommodation.

(5) The department of labor and industries must provide online education materials explaining the respective rights and responsibilities of employers and employees who have a health condition related to pregnancy or childbirth. The online education materials must be prominently displayed on the department's web site.

(6) The attorney general shall investigate complaints and enforce this section, including by conference and conciliation. In addition to the complaint process with the attorney general, any person believed to be injured by a violation of this section has a civil cause of action in court to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit and reasonable attorneys' fees or any other appropriate remedy authorized by state or federal law.

(7) This section does not preempt, limit, diminish, or otherwise affect any other provision of law relating to disability discrimination, sex discrimination, or pregnancy, or in any way diminish or limit legal protections or coverage for pregnancy, childbirth, or a pregnancy-related health condition.

NEW SECTION. **Sec.**  A new section is added to chapter 43.70 RCW to read as follows:

(1) The healthy pregnancy advisory committee is established to develop a strategy for improving maternal and infant health outcomes. The advisory committee shall conduct its activities in consultation with the maternal mortality review panel established in RCW 70.54.450 and an initiative related to improving maternal and infant outcomes that is established by the largest association representing hospitals in Washington. Administration of the advisory committee by the department must be done within existing resources.

(2) The secretary shall appoint up to twenty members to the advisory committee including experts in maternal and child health, pediatric primary care providers, public health experts, hospitals that provide birthing services, health care providers involved in the care of pregnant women and infants, and representatives of low-income women, women of color, and immigrant communities. In addition, the secretary shall designate a representative from the department of health and invite participation from the health care authority, the department of social and health services, and the department of early learning. The secretary's designee shall serve as the chair of the advisory committee and shall convene the work group.

(3) The advisory committee shall meet quarterly and develop a strategy to promote maternal and child health outcomes. The strategy shall consider best practices that agencies may integrate into their programs to improve birth outcomes, reduce maternal mortality and morbidity, and reduce infant mortality. The strategy shall include elements to promote breastfeeding, incentivize the adoption of the baby-friendly designation by hospitals, and reduce barriers to accessing prenatal care. The advisory committee shall consider where there may be gaps in the availability of services that may benefit pregnant women and infants, such as coverage for lactation consulting, the availability of smoking cessation programs for persons who are codomiciled with the pregnant woman or infant, access to fresh fruits and vegetables, and improved access to dental care for pregnant women.

(4) The advisory committee shall submit the strategy to the legislature and the governor's council for the healthiest next generation by October 15, 2018.

(5) This section expires July 1, 2019.

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2017, in the omnibus appropriations act, this act is null and void."

Correct the title.

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|  | EFFECT:   * Adds an intent section. * Codifies the reasonable accommodation provision in the chapter governing the Attorney General's Office (AG), rather than the Washington Law Against Discrimination; * Applies the provisions to employers with 15 or more employees (rather than 8 or more); * Removes from the definition of "pregnancy" the need to express breastmilk; * Changes the definition of "reasonable accommodation" by removing the phrase "including but not limited to" and adding: (1) scheduling flexibility for prenatal visits; (2) limits on lifting; and (3) providing any further pregnancy accommodation an employee may request and to which an employer must give reasonable consideration in consultation with information provided on pregnancy accommodation by the Department of Labor and Industries (L&I) or the employee's health care provider. * Provides that an employer may not ask for written certification from the employee's health care provider and may not claim undue hardship for: providing flexible restroom breaks; modifying food/drink policies; providing seating; and providing limits on lifting over 17 pounds. * Removes the provision making it an unfair practice for an employer to require an employee to accept an accommodation that the employee chooses not to accept. * Defines "undue hardship" to mean an action requiring significant difficulty or expense (underlying bill did not define). * Requires L&I to provide online educational materials. * Specifies that the AG's enforcement process must include conference and conciliation. * Specifies that the bill does not preempt, limit, diminish or affect laws related to disability discrimination. * Creates the Healthy Pregnancy Advisory Committee to develop a strategy for improving maternal and infant health outcomes. Requires the Secretary of the Department of Health (DOH) to: appoint up to 20 members from various organizations and communities; designate a representative from the DOH; and invite representatives from other state agencies. Requires the committee to meet quarterly and develop a strategy for best practices that include, among other things, promoting breastfeeding, incentivizing baby-friendly designations by hospitals, and reducing barriers to accessing prenatal care. Requires the committee to submit a strategy to the Legislature and the Governor's Council for the Healthiest Next Generation by October 15, 2018. |

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