

SENATE BILL REPORT

SB 5835

As Reported by Senate Committee On:
Commerce, Labor & Sports, February 16, 2017
Ways & Means, February 24, 2017

Title: An act relating to promoting healthy outcomes for pregnant women and infants.

Brief Description: Promoting healthy outcomes for pregnant women and infants.

Sponsors: Senators Keiser, Baumgartner, Fain, Conway, Cleveland, Rivers, Kuderer, Braun, Rossi, Hasegawa, Hunt and Saldaña.

Brief History:

Committee Activity: Commerce, Labor & Sports: 2/16/17 [DP-WM].
Ways & Means: 2/22/17, 2/24/17 [DPS].

Brief Summary of Substitute Bill

- Requires employers to provide reasonable accommodation in employment for pregnancy unless the accommodation would impose an undue hardship on the employer's business.
- Requires certain health care facilities to establish skin-to-skin contact and room-in policies for newborn infants.
- Creates the Healthy Pregnancy Advisory Committee to develop a strategy to improve health outcomes for mothers and infants.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Baumgartner, Chair; Braun, Vice Chair; Keiser, Ranking Minority Member; Conway, Hasegawa, King, Rossi, Saldaña and Wilson.

Staff: Jarrett Sacks (786-7448)

SENATE COMMITTEE ON WAYS & MEANS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: That Substitute Senate Bill No. 5835 be substituted therefor, and the substitute bill do pass.

Signed by Senators Braun, Chair; Brown, Vice Chair; Rossi, Vice Chair; Honeyford, Vice Chair, Capital Budget ; Ranker, Ranking Minority Member; Rolfes, Assistant Ranking Minority Member, Operating Budget; Frockt, Assistant Ranking Minority Member, Capital Budget; Bailey, Becker, Billig, Conway, Darneille, Fain, Hasegawa, Keiser, Miloscia, Pedersen, Rivers, Schoesler, Warnick and Zeiger.

Staff: Sandy Stith (786-7710)

Background: Washington State Law Against Discrimination (WLAD). Under the WLAD, a person has the right to be free from discrimination related to a protected status, such as race, national origin, sex, veteran or military status, sexual orientation, and disability. An employer may not discriminate against a person because of one's protected status. The WLAD applies to employers that employ eight or more employees, but does not apply to any religious or sectarian organization not organized for private profit.

Discrimination Based on Pregnancy. Under Washington law, pregnancy itself is not considered a disability. However, if a pregnancy-related medical condition results in an employee becoming temporarily disabled, the laws prohibiting discrimination because of a disability apply. Under the WLAD, an employer must provide reasonable accommodation to a disabled worker unless the employer can demonstrate that the accommodation would impose an undue hardship.

As it applies to sex discrimination, an employer may not refuse to hire, demote, or impose different conditions of employment on a person because they are pregnant. In general, if an employer provides reasonable accommodations to other employees that are impaired from doing their jobs, the employer would have to provide reasonable accommodation to a pregnant employee.

Other Laws Regarding Pregnancy and Childbirth. There are federal laws that prohibit sex discrimination and require that employees affected by pregnancy or pregnancy-related conditions must be treated the same as other employees who have similar ability or inability to work. Federal law also requires employers to provide reasonable break time for an employee to express milk for nursing for one year after the child's birth. Employers must provide a place, other than a bathroom, for this purpose. Employers with fewer than 50 employees are not subject to these requirements if compliance imposes an undue hardship.

Apple Health for Kids. Apple Health for Kids provides health care coverage for children under the age of 19 whose family income is less than 250 percent of the federal poverty level. Under current law, the Health Care Authority (HCA), the Department of Health (DOH), the Department of Social and Health Services (DSHS), and other health care-related entities, are required to establish a set of performance measures that indicate whether children enrolled in Apple Health for Kids are receiving health care through established and effective medical homes, and whether the overall health of children is improving. DOH submits a report biennially on the performance measures.

Summary of Bill (First Substitute): Reasonable Accommodation for Pregnancy. It is an unfair practice for any employer to:

- 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—undue hardship means an action requiring significant difficulty or expense;
- take adverse action against an employee who requests, declines, or uses an accommodation; and
- deny employment opportunities to an otherwise qualified employee if the denial is based on the employer's need to make reasonable accommodation;

Reasonable accommodation means:

- providing more frequent, longer, or flexible restroom breaks;
- modifying a no food or drink policy;
- 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;
- providing seating or allowing the employee to sit more frequently if the job requires standing;
- providing a temporary transfer to a less strenuous or hazardous position;
- providing assistance with manual labor and limits on lifting;
- scheduling flexibility for prenatal visits; and
- any further accommodation an employee may request, and to which an employer must give reasonable consideration to in consultation with information provided by the Department of Labor and Industries or the attending health care provider.

An employer may not claim undue hardship or require written certification from an employee for:

- providing more frequent, longer, or flexible restroom breaks;
- modifying a no food or drink policy; or
- providing seating or allowing the employee to sit more frequently if the job requires standing.

Employer has the same meaning as it does under the WLAD, which includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organizations that are not organized for private profit. For the purposes of this act, however, it only applies to employers with 15 or more employees.

The Attorney General investigates complaints and enforces the reasonable accommodation requirements, including by conference and conciliation. In addition, a civil cause of action is created to enjoin further violations, recover actual damages, and recover reasonable attorneys' fees.

Health Care Authority. HCA must require health care facilities that provide newborn delivery services to medical assistance clients to establish policies and procedures to provide:

- skin-to-skin placement of the newborn on the mother's chest immediately after birth; and

- room-in practices where the newborn and the mother share a room for the duration of their post-delivery stay at the facility.

Managed care organizations must report to HCA on the frequency with which each facility they contract with is able to adhere to these policies and procedures. HCA and DOH must include this information in their biennial performance measures report to the Legislature.

Healthy Pregnancy Advisory Committee. The Healthy Pregnancy Advisory Committee (Committee) is established to develop a strategy for improving maternal and infant health outcomes. The Committee is comprised of 20 members from DOH and the health industry, including medical experts, hospitals that provide birthing services, health care providers involved in the care of pregnant women, and representatives of low-income women, women of color, and immigrant communities. The members are appointed by the Secretary of Health. Administration of the Committee is done by DOH and must be done within existing resources.

The Committee shall meet quarterly and must consider best practices that agencies may integrate into their programs to improve birth outcomes, reduce maternal mortality and morbidity, and reduce infant mortality. The Committee must submit its strategy to the Legislature and the Governor's Council for the Healthiest Next Generation by October 15, 2018.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (First Substitute):

- Removes the provision requiring L&I to update its Your Rights as a Worker poster.
- Requires online education materials to be prominently displayed on L&I's website.
- Requires that the administration by the Department of Health of the Healthy Pregnancy Advisory Committee be done within existing resources.
- Provides that the Healthy Pregnancy Advisory Committee meets quarterly.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Commerce, Labor & Sports): No public hearing was held.

Persons Testifying (Commerce, Labor & Sports): N/A

Persons Signed In To Testify But Not Testifying (Commerce, Labor & Sports): N/A

Staff Summary of Public Testimony on Original Bill (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: This bill is

important. Our maternal mortality rate is too high. It is higher than other countries and higher than other parts of the country. Our infant mortality rate is also too high. We support this bill because we believe this makes things more sure for employers. The goal is how to come up with business solutions. We look forward to coming up with solutions on the fiscal costs. We are interested in looking at the terms conference and conciliation, and believe these are important to small- and mid-size businesses.

CON: This bill is important for women and for birth outcomes. It is an important first step. I have signed in with concerns because the bill has an employer size of 15; this is different than all other Washington State law on discrimination. The remainder of the law is at an employer size of 8. Pregnant women already have some protections because of disability and gender. We believe this bill will create confusion because of the different employer size. We think this will cost the state more money because of the confusion created by this discrepancy. All women deserve to have the accommodations they need for healthy pregnancies. Consolidating employer size will save the state money in the long run.

Persons Testifying (Ways & Means): PRO: Senator Karen Keiser, Prime Sponsor; Carolyn Logue, Washington Food Industry Association/Washington Retail Association.

CON: Melanie Smith, NARAL Pro-Choice Washington.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.