

HOUSE No. 3816

Text of a further amendment, offered by Mr. Brodeur of Melrose, to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2104) of the House Bill establishing the Massachusetts pregnant workers fairness act (House, No. 3680, amended). July 17, 2017.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

By striking out all after the enacting clause (inserted by amendment by the Senate) and inserting in place thereof the following:—

1 “SECTION 1. Section 4 of chapter 151B of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by inserting after the word “information”, in lines 5, 89 and
3 in lines 93 and 94, the following words, in each instance:- , pregnancy or a condition related to
4 said pregnancy including, but not limited to, lactation or the need to express breast milk for a
5 nursing child.

6 SECTION 2. Said section 4 of said chapter 151B, as so appearing, is hereby further
7 amended by inserting after subsection 1D the following subsection:-

8 1E. (a) For an employer to deny a reasonable accommodation for an employee’s
9 pregnancy or any condition related to the employee’s pregnancy including, but not limited to,
10 lactation or the need to express breast milk for a nursing child if the employee requests such an
11 accommodation; provided, however, that an employer may deny such an accommodation if the
12 employer can demonstrate that the accommodation would impose an undue hardship on the

13 employer's program, enterprise or business. It shall also be an unlawful practice under this
14 subsection to:

15 (i) take adverse action against an employee who requests or uses a reasonable
16 accommodation in terms, conditions or privileges of employment including, but not limited to,
17 failing to reinstate the employee to the original employment status or to an equivalent position
18 with equivalent pay and accumulated seniority, retirement, fringe benefits and other applicable
19 service credits when the need for a reasonable accommodation ceases;

20 (ii) deny an employment opportunity to an employee if the denial is based on the need of
21 the employer to make a reasonable accommodation to the known conditions related to the
22 employee's pregnancy including, but not limited to, lactation or the need to express breast milk
23 for a nursing child;

24 (iii) require an employee affected by pregnancy, or require said employee affected by a
25 condition related to the pregnancy, including, but not limited to, lactation or the need to express
26 breast milk for a nursing child, to accept an accommodation that the employee chooses not to
27 accept, if that accommodation is unnecessary to enable the employee to perform the essential
28 functions of the job;

29 (iv) require an employee to take a leave if another reasonable accommodation may be
30 provided for the known conditions related to the employee's pregnancy, including, but not
31 limited to, lactation or the need to express breast milk for a nursing child, without undue
32 hardship on the employer's program, enterprise or business;

33 (v) refuse to hire a person who is pregnant because of the pregnancy or because of a
34 condition related to the person's pregnancy, including, but not limited to, lactation or the need to

35 express breast milk for a nursing child; provided, however, that the person is capable of
36 performing the essential functions of the position with a reasonable accommodation and that
37 reasonable accommodation would not impose an undue hardship, demonstrated by the employer,
38 on the employer's program, enterprise or business.

39 (b) As used in this subsection, the following words shall have the following meanings
40 unless the context clearly requires otherwise:

41 "Reasonable accommodation", may include, but shall not be limited to: (i) more frequent
42 or longer paid or unpaid breaks; (ii) time off to attend to a pregnancy complication or recover
43 from childbirth with or without pay; (iii) acquisition or modification of equipment or seating; (iv)
44 temporary transfer to a less strenuous or hazardous position; (v) job restructuring; (vi) light duty;
45 (vii) private non-bathroom space for expressing breast milk; (viii) assistance with manual labor;
46 or (ix) a modified work schedule; provided, however, that an employer shall not be required to
47 discharge or transfer an employee with more seniority or promote an employee who is not able to
48 perform the essential functions of the job with or without a reasonable accommodation.

49 "Undue hardship", an action requiring significant difficulty or expense; provided,
50 however, that the employer shall have the burden of proving undue hardship; provided further,
51 that in making a determination of undue hardship, the following factors shall be considered:(i)
52 the nature and cost of the needed accommodation; (ii) the overall financial resources of the
53 employer; (iii) the overall size of the business of the employer with respect to the number of
54 employees and the number, type and location of its facilities; and (iv) the effect on expenses and
55 resources or any other impact of the accommodation on the employer's program, enterprise or
56 business.

57 (c) Upon request for an accommodation from the employee or prospective employee
58 capable of performing the essential functions of the position involved, the employee or
59 prospective employee and the employer shall engage in a timely, good faith and interactive
60 process to determine an effective, reasonable accommodation to enable the employee or
61 prospective employee to perform the essential functions of the employee's job or the position to
62 which the prospective employee has applied. An employer may require that documentation about
63 the need for a reasonable accommodation come from an appropriate health care or rehabilitation
64 professional; provided, however, that an employer shall not require documentation from an
65 appropriate health care or rehabilitation professional for the following accommodations: (i) more
66 frequent restroom, food or water breaks; (ii) seating; (iii) limits on lifting over 20 pounds; and
67 (iv) private non-bathroom space for expressing breast milk. An "appropriate health care or
68 rehabilitation professional" shall include, but shall not be limited to, a medical doctor, including
69 a psychiatrist, a psychologist, a nurse practitioner, a physician assistant, a psychiatric clinical
70 nurse specialist, a physical therapist, an occupational therapist, a speech therapist, a vocational
71 rehabilitation specialist, a midwife, a lactation consultant or another licensed mental health
72 professional authorized to perform specified mental health services. An employer may require
73 documentation for an extension of the accommodation beyond the originally agreed to
74 accommodation.

75 (d) Written notice of the right to be free from discrimination in relation to pregnancy or a
76 condition related to the employee's pregnancy including, but not limited to, lactation or the need
77 to express breast milk for a nursing child, including the right to reasonable accommodations for
78 conditions related to pregnancy pursuant to this subsection, shall be distributed by an employer
79 to its employees. The notice shall be provided in a handbook, pamphlet or other means of notice

80 to all employees including, but not limited to: (i) new employees at or prior to the
81 commencement of employment; and (ii) an employee who notifies the employer of a pregnancy
82 or an employee who notifies the employer of a condition related to the employee's pregnancy
83 including, but not limited to, lactation or the need to express breast milk for a nursing child not
84 more than 10 days after such notification.

85 (e) Subject to appropriation, the commission shall develop courses of instruction and
86 conduct public education efforts as necessary to inform employers, employees and employment
87 agencies about the rights and responsibilities established under this subsection within 180 days
88 of the appropriation.

89 (f) This subsection shall not be construed to preempt, limit, diminish or otherwise affect
90 any other law relating to sex discrimination or pregnancy or in any way diminish the coverage
91 for pregnancy or a condition related to pregnancy including, but not limited to, lactation or the
92 need to express breast milk for a nursing child under section 105D of chapter 149.

93 SECTION 3. An employer shall provide written notice in a handbook, pamphlet or by
94 other means to its employees of the right to be free from discrimination in relation to pregnancy
95 or a condition related to pregnancy including, but not limited to, lactation or the need to express
96 breast milk for a nursing child, including the right to reasonable accommodations for conditions
97 related to pregnancy, pursuant to subsection 1E of section 4 of chapter 151B of the General Laws
98 on or before April 1, 2018.

99 SECTION 4. This act shall take effect on April 1, 2018.”