# SENATE . . . . . No. 2104

Senate June 29, 2017, – Text of the Senate amendment to the House Bill establishing the Massachusetts pregnant workers fairness act (House, No. 3680, amended)

## The Commonwealth of Massachusetts

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

SECTION 1. Section 4 of chapter 151B of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the word “ancestry”, in lines 5 and 6 and line 89, each time it appears, the following words:- , pregnancy or a condition related to said pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child.

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

1E. (a) For an employer to deny a reasonable accommodation for an employee’s pregnancy or any condition related to the employee’s pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child if the employee requests such an accommodation; provided, however, that an employer may deny such an accommodation if the employer can demonstrate that the accommodation would impose an undue hardship on the employer’s program, enterprise or business. It shall also be an unlawful practice under this subsection to:

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

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

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

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

(v) refuse to hire a person who is pregnant because of the pregnancy or because of a condition related to the person's pregnancy which shall include, but shall not be limited to, lactation or the need to express breast milk for a nursing child; provided, however, that the person is capable of performing the essential functions of the position with a reasonable

accommodation and that reasonable accommodation would not impose an undue hardship, demonstrated by the employer, on the employer's program, enterprise or business.

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

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

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

(c) Upon request for an accommodation from the employee or prospective employee capable of performing the essential functions of the position involved, the employee or

prospective employee and the employer shall engage in a timely, good faith and interactive process to determine an effective, reasonable accommodation to enable such employee or prospective employee to perform the essential functions of the employee's job or the position to which the prospective employee has applied. An employer may require that documentation about the need for a reasonable accommodation come from an appropriate health care or rehabilitation professional; provided, however, that an employer shall not require documentation from an appropriate health care or rehabilitation professional for the following accommodations: (i) more frequent restroom, food or water breaks during pregnancy; (ii) seating during pregnancy; (iii) limits on lifting over 20 pounds during pregnancy; and (iv) private non-bathroom space for expressing breast milk. An "appropriate health care or rehabilitation professional" shall include, but shall not be limited to, a medical doctor, including a psychiatrist, a psychologist, a nurse practitioner, a physician assistant, a psychiatric clinical nurse specialist, a physical therapist, an occupational therapist, a speech therapist, a vocational rehabilitation specialist, a midwife, a lactation consultant or another licensed mental health professional authorized to perform specified mental health services.

(d) Written notice of the right to be free from discrimination in relation to pregnancy or a condition related to the employee's pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child, including the right to reasonable accommodations for conditions related to pregnancy pursuant to this subsection, shall be distributed by an employer to its employees. The notice shall be provided in a handbook or other means of notice to all employees including, but not limited to: (i) new employees at or prior to the commencement of employment; and (ii) an employee who notifies their employer of a pregnancy or an employee who notifies their employer of a condition related to the employee's pregnancy including, but not

limited to, lactation or the need to express breast milk for a nursing child not more than 10 days after such notification.

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

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

SECTION 3. Said section 4 of said chapter 151B, as so appearing, is hereby further amended by inserting after the word “ancestry”, in line 94, the following words:- , pregnancy or a condition related to said pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child.

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

SECTION 5. The executive office of health and human services shall provide a report on the creation of a designation of a business as “Family-Friendly” which may be used in promotional materials if the business develops and implements a written policy supporting the

expression of breast milk at the workplace. Such policy may include, but shall not be limited to, the following elements: (i) work schedule flexibility, including scheduling breaks and work patterns to provide time for the expression of breast milk; (ii) accessible private non-bathroom space to express breast milk; (iii) access to an electrical outlet; (iv) access to a clean, safe water source and a sink for washing; and (v) access to hygienic refrigerated storage in the workplace to store breast milk. The report shall consider information from other states which have enacted similar initiatives and include a review of the feasibility and estimated cost of maintaining a list of businesses designated as "Family-Friendly".

The executive office of health and human services shall file the report with the clerks of the senate and house of representatives, the chairs of the joint committee on labor and workforce development and the chairs of the joint committee on public health not later than March 1, 2018.

SECTION 6. This act shall take effect on April 1, 2018.