

SENATE BILL 784

D5, K3, P4

3lr3085
CF 3lr1784

By: **Senator Benson**

Introduced and read first time: February 1, 2013

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Employment Discrimination – Reasonable Accommodations for Disabilities**
3 **Due to Pregnancy**

4 FOR the purpose of requiring an employer, if an employee requests a reasonable
5 accommodation for a disability caused or contributed to by pregnancy, to explore
6 with the employee certain means of reasonably accommodating the disability;
7 requiring an employer to transfer an employee to a less strenuous or less
8 hazardous position for a certain period of time under certain circumstances;
9 authorizing an employer to require an employee to provide a certain
10 certification from a health care provider under certain circumstances; requiring
11 an employer to post in a certain location, and to include in a certain handbook,
12 information concerning an employee's rights to reasonable accommodations and
13 leave for a disability caused or contributed to by pregnancy; prohibiting an
14 employer from interfering with, restraining, or denying the exercise of, or the
15 attempt to exercise, certain rights; providing that a certain provision of law may
16 not be construed to affect any other provision of law relating to discrimination
17 on the basis of sex or pregnancy or to diminish in any way certain coverage of
18 pregnancy, childbirth, or a related medical condition; defining a certain term;
19 and generally relating to reasonable accommodations for temporary disabilities
20 due to pregnancy.

21 BY repealing and reenacting, without amendments,
22 Article – State Government
23 Section 20–601(a) through (d) and 20–606(a)(4)
24 Annotated Code of Maryland
25 (2009 Replacement Volume and 2012 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article – State Government
28 Section 20–609
29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2009 Replacement Volume and 2012 Supplement)

2 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
3 MARYLAND, That the Laws of Maryland read as follows:

4 **Article – State Government**

5 20–601.

6 (a) In this subtitle the following words have the meanings indicated.

7 (b) (1) “Disability” means:

8 (i) 1. a physical disability, infirmity, malformation, or
9 disfigurement that is caused by bodily injury, birth defect, or illness, including
10 epilepsy; or

11 2. a mental impairment or deficiency;

12 (ii) a record of having a physical or mental impairment as
13 otherwise defined under this subsection; or

14 (iii) being regarded as having a physical or mental impairment
15 as otherwise defined under this subsection.

16 (2) “Disability” includes:

17 (i) 1. any degree of paralysis, amputation, or lack of
18 physical coordination;

19 2. blindness or visual impairment;

20 3. deafness or hearing impairment;

21 4. muteness or speech impediment; and

22 5. physical reliance on a service animal, wheelchair, or
23 other remedial appliance or device; and

24 (ii) retardation and any other mental impairment or deficiency
25 that may have necessitated remedial or special education and related services.

26 (c) (1) “Employee” means an individual employed by an employer.

27 (2) Unless the individual is subject to the State or local civil service
28 laws, “employee” does not include:

- 1 (i) an individual elected to public office;
- 2 (ii) an individual chosen by an elected officer to be on the
3 officer's personal staff;
- 4 (iii) an appointee on the policy making level; or
- 5 (iv) an immediate adviser with respect to the exercise of the
6 constitutional or legal powers of an elected office.

7 (d) (1) "Employer" means:

8 (i) a person that:

- 9 1. is engaged in an industry or business; and
- 10 2. has 15 or more employees for each working day in
11 each of 20 or more calendar weeks in the current or preceding calendar year; and

12 (ii) an agent of a person described in item (i) of this paragraph.

13 (2) "Employer" includes the State to the extent provided in this title.

14 (3) Except for a labor organization, "employer" does not include a bona
15 fide private membership club that is exempt from taxation under § 501(c) of the
16 Internal Revenue Code.

17 20-606.

18 (a) An employer may not:

19 (4) fail or refuse to make a reasonable accommodation for the known
20 disability of an otherwise qualified employee.

21 20-609.

22 **(A) IN THIS SECTION, "REASONABLE ACCOMMODATION" MEANS AN**
23 **ACCOMMODATION:**

24 **(1) FOR AN EMPLOYEE'S DISABILITY CAUSED OR CONTRIBUTED**
25 **TO BY PREGNANCY; AND**

26 **(2) THAT DOES NOT IMPOSE AN UNDUE HARDSHIP ON THE**
27 **EMPLOYEE'S EMPLOYER.**

28 **[(a)] (B) Disabilities caused or contributed to by pregnancy or childbirth:**

1 (1) are temporary disabilities for all job-related purposes; and

2 (2) shall be treated as temporary disabilities under any health or
3 temporary disability insurance or sick leave plan available in connection with
4 employment.

5 **[(b)] (C)** Written and unwritten employment policies and practices
6 involving matters such as the commencement and duration of leave, the availability of
7 extensions of leave, the accrual of seniority and other benefits and privileges,
8 reinstatement, and payment under any health or temporary disability insurance or
9 sick leave plan, formal or informal, shall be applied to disability due to pregnancy or
10 childbirth on the same terms and conditions as they are applied to other temporary
11 disabilities.

12 **(D) IF AN EMPLOYEE REQUESTS A REASONABLE ACCOMMODATION, THE**
13 **EMPLOYER SHALL EXPLORE WITH THE EMPLOYEE ALL POSSIBLE MEANS OF**
14 **PROVIDING THE REASONABLE ACCOMMODATION, INCLUDING:**

15 **(1) CHANGING THE EMPLOYEE'S JOB DUTIES;**

16 **(2) CHANGING THE EMPLOYEE'S WORK HOURS;**

17 **(3) RELOCATING THE EMPLOYEE'S WORK AREA;**

18 **(4) PROVIDING MECHANICAL OR ELECTRICAL AIDS;**

19 **(5) TRANSFERRING THE EMPLOYEE TO A LESS STRENUOUS OR**
20 **LESS HAZARDOUS POSITION; OR**

21 **(6) PROVIDING LEAVE.**

22 **(E) IF AN EMPLOYEE REQUESTS A TRANSFER TO A LESS STRENUOUS OR**
23 **LESS HAZARDOUS POSITION AS A REASONABLE ACCOMMODATION, THE**
24 **EMPLOYER SHALL TRANSFER THE EMPLOYEE FOR A PERIOD OF TIME UP TO THE**
25 **DURATION OF THE EMPLOYEE'S PREGNANCY IF:**

26 **(1) THE EMPLOYER HAS A POLICY, PRACTICE, OR COLLECTIVE**
27 **BARGAINING AGREEMENT REQUIRING OR AUTHORIZING THE TRANSFER OF A**
28 **TEMPORARILY DISABLED EMPLOYEE TO A LESS STRENUOUS OR LESS**
29 **HAZARDOUS POSITION FOR THE DURATION OF THE DISABILITY; OR**

1 **(2) THE EMPLOYEE'S HEALTH CARE PROVIDER ADVISES THE**
2 **TRANSFER AND THE EMPLOYER CAN PROVIDE THE REASONABLE**
3 **ACCOMMODATION BY TRANSFERRING THE EMPLOYEE WITHOUT:**

4 **(I) CREATING ADDITIONAL EMPLOYMENT THAT THE**
5 **EMPLOYER WOULD NOT OTHERWISE HAVE CREATED;**

6 **(II) DISCHARGING ANY EMPLOYEE;**

7 **(III) TRANSFERRING ANY EMPLOYEE WITH MORE SENIORITY**
8 **THAN THE EMPLOYEE REQUESTING THE REASONABLE ACCOMMODATION; OR**

9 **(IV) PROMOTING ANY EMPLOYEE WHO IS NOT QUALIFIED TO**
10 **PERFORM THE JOB.**

11 **(F) (1) AN EMPLOYER MAY REQUIRE AN EMPLOYEE TO PROVIDE A**
12 **CERTIFICATION FROM THE EMPLOYEE'S HEALTH CARE PROVIDER CONCERNING**
13 **THE MEDICAL ADVISABILITY OF A REASONABLE ACCOMMODATION TO THE SAME**
14 **EXTENT A CERTIFICATION IS REQUIRED FOR OTHER TEMPORARY DISABILITIES.**

15 **(2) A CERTIFICATION UNDER PARAGRAPH (1) OF THIS**
16 **SUBSECTION SHALL INCLUDE:**

17 **(I) THE DATE THE REASONABLE ACCOMMODATION BECAME**
18 **MEDICALLY ADVISABLE;**

19 **(II) THE PROBABLE DURATION OF THE REASONABLE**
20 **ACCOMMODATION; AND**

21 **(III) AN EXPLANATORY STATEMENT AS TO THE MEDICAL**
22 **ADVISABILITY OF THE REASONABLE ACCOMMODATION.**

23 **(G) AN EMPLOYER SHALL POST IN A CONSPICUOUS LOCATION, AND**
24 **INCLUDE IN ANY EMPLOYEE HANDBOOK, INFORMATION CONCERNING AN**
25 **EMPLOYEE'S RIGHTS TO REASONABLE ACCOMMODATIONS AND LEAVE FOR A**
26 **DISABILITY CAUSED OR CONTRIBUTED TO BY PREGNANCY.**

27 **(H) AN EMPLOYER MAY NOT INTERFERE WITH, RESTRAIN, OR DENY THE**
28 **EXERCISE OF, OR THE ATTEMPT TO EXERCISE, ANY RIGHT PROVIDED UNDER**
29 **THIS SECTION.**

30 **(I) THIS SECTION MAY NOT BE CONSTRUED TO:**

1 **(1) AFFECT ANY OTHER PROVISION OF LAW RELATING TO**
2 **DISCRIMINATION ON THE BASIS OF SEX OR PREGNANCY; OR**

3 **(2) DIMINISH IN ANY WAY THE COVERAGE OF PREGNANCY,**
4 **CHILDBIRTH, OR A MEDICAL CONDITION RELATED TO PREGNANCY OR**
5 **CHILDBIRTH UNDER THIS SECTION.**

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2013.