

1 HB352
2 209740-1
3 By Representative Rafferty
4 RFD: Judiciary
5 First Read: 09-FEB-21

SYNOPSIS: Under existing state law, employees in Alabama have no protections against pregnancy discrimination when it comes to any aspect of employment, including hiring, firing, pay, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

This bill would create the Alabama Pregnant Workers Fairness Act, which requires that employers provide reasonable accommodations for employees related to pregnancy, childbirth, or related medical conditions unless the accommodation would cause an undue hardship on the employer.

This bill would require employers to post a notice of employee rights and authorize the Department of Labor to administer and enforce the Alabama Pregnant Workers Fairness Act.

A BILL
TO BE ENTITLED
AN ACT

1
2 Relating to unlawful employment practices; to create
3 the Alabama Pregnant Workers Fairness Act to provide workplace
4 protections against pregnancy discrimination and related
5 medical conditions; to add Chapter 15 to Title 25, Code of
6 Alabama 1975; and to amend Sections 25-2-2 and 25-2-7, Code of
7 Alabama 1975.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Chapter 15, commencing with Section
10 25-15-1, is added to Title 25, Code of Alabama 1975, to read
11 as follows:

12 §25-15-1.

13 This chapter shall be known and may be cited as the
14 Alabama Pregnant Workers Fairness Act.

15 §25-15-2.

16 Alabama currently has no workplace laws to protect
17 pregnant women from being constructively discharged or
18 terminated due to medical conditions resulting from pregnancy.
19 Many pregnant women are single mothers or the primary
20 wage-earners for their families; if a pregnant woman loses her
21 job, the whole family could suffer. This is income that
22 Alabama's working families cannot afford to lose. Therefore,
23 it is the intent of the Legislature to combat pregnancy
24 discrimination, promote public health, and ensure full
25 participation for women in the labor force by requiring
26 employers to provide reasonable accommodations to employees

1 with conditions related to pregnancy, childbirth, or a related
2 medical condition.

3 §25-15-3.

4 As used in this chapter, the following terms have
5 the following meanings:

6 (1) EMPLOYER. Any person employing 15 or more
7 employees for each working day in each of 20 or more calendar
8 weeks in the current or preceding calendar year, and any agent
9 of that person.

10 (2) REASONABLE ACCOMMODATION. Any change or
11 modification in the work environment or the normal course of
12 business for an individual with known limitations related to
13 pregnancy, childbirth, or related medical conditions.

14 (3) RELATED MEDICAL CONDITION. Any condition
15 medically resulting from, or pertaining to, pregnancy or
16 childbirth.

17 (4) UNDUE HARDSHIP. An accommodation that would be
18 too difficult or too expensive to provide, in light of the
19 employer's size, financial resources, and the needs of the
20 business.

21 §25-15-4.

22 (a) It shall be an unlawful employment practice for
23 an employer to do any of the following:

24 (1) Refuse to make reasonable accommodations for any
25 condition of a job applicant or employee related to pregnancy,
26 childbirth, or a related medical condition, including, but not
27 limited to, the need to express breast milk, if the employee

1 or applicant so requests, unless the employer can demonstrate
2 that the accommodation would impose an undue hardship on the
3 employer's program, enterprise, or business.

4 (2) Take adverse action against an employee who
5 requests or uses an accommodation in terms, conditions, or
6 privileges of employment, including, but not limited to,
7 counting an absence related to pregnancy under no fault
8 attendance policies or failing to reinstate the employee to
9 her original job or to an equivalent position with equivalent
10 pay and accumulated seniority, retirement, fringe benefits,
11 and other applicable service credits when the need for a
12 reasonable accommodation ceases.

13 (3) Deny employment opportunities to a job applicant
14 or employee if the denial is based on the need of the employer
15 to make a reasonable accommodation to any known condition
16 related to the pregnancy, childbirth, or related medical
17 condition of the applicant or employee.

18 (4) Require an employee to take leave if another
19 reasonable accommodation can be provided to any known
20 conditions related to the pregnancy, childbirth, or related
21 medical conditions of an employee.

22 (b) The employer shall engage in a timely, good
23 faith, and interactive process with the employee to identify
24 effective reasonable accommodations. A reasonable
25 accommodation may include, but is not limited to, any of the
26 following:

27 (1) More frequent or longer breaks.

1 (2) Acquisition or modification of equipment.

2 (3) Seating.

3 (4) Temporary transfer to a less strenuous or
4 hazardous position.

5 (5) Job restructuring.

6 (6) Light duty.

7 (7) Break time and private non-bathroom space for
8 expressing breast milk.

9 (8) Time off to recover from childbirth.

10 (9) Assistance with manual labor.

11 (10) Modified work schedules.

12 (c) (1) An employer shall consider all of the
13 following factors when determining whether a reasonable
14 accommodation would impose an undue hardship:

15 a. The nature and cost of the accommodation needed.

16 b. The overall financial resources of the employer.

17 c. The overall size of the business of the employer
18 with respect to the number of its employees.

19 d. The number, type, and location of the business
20 facilities.

21 e. The effect on expenses and resources or other
22 impact of the accommodation upon the operations of the
23 employer.

24 (2) The employer shall have the burden of proving
25 undue hardship. There shall be a rebuttable presumption that
26 the accommodation does not impose an undue hardship on the

1 employer if the employer provides or would be required to
2 provide a similar accommodation to other classes of employees.

3 §25-15-5.

4 An employer shall provide written notice of the
5 right to be free from discrimination in relation to pregnancy,
6 childbirth, and related medical conditions, including the
7 right to reasonable accommodations for conditions related to
8 pregnancy, childbirth, or related medical conditions, pursuant
9 to this section to new employees at the commencement of
10 employment and to existing employees by January 1, 2022. The
11 notice shall be conspicuously posted at an employer's place of
12 business in an area accessible to employees.

13 §25-15-6.

14 (a) Any applicant or employee who is aggrieved under
15 this chapter may bring a cause of action against the employer
16 in the county where the applicant applied for a position. An
17 employee aggrieved under this chapter may bring a cause of
18 action in the county where the employee worked. An employee
19 shall not be required to pursue any administrative action or
20 remedy prior to filing suit under this section.

21 (b) If an employer is found to have engaged in an
22 unlawful employment practice under this chapter, the employee
23 shall be awarded attorney's fees, prejudgment interest, back
24 pay, compensatory damages, and any legal or equitable relief
25 that will effect the purpose of this chapter.

26 §25-15-7.

1 Nothing in this chapter shall be construed to
2 preempt, limit, diminish, or otherwise affect any other
3 provision of federal, state, or local law relating to
4 discrimination based on sex or pregnancy, or to invalidate or
5 limit the remedies, rights, and procedures of any federal,
6 state, or local law that provides greater or equal protection
7 for employees affected by pregnancy, childbirth, or related
8 medical conditions.

9 Section 2. Sections 25-2-2 and 25-2-7, Code of
10 Alabama 1975, are amended to read as follows:

11 "§25-2-2.

12 "(a) The general functions and duties of the
13 Department of Labor shall be as follows:

14 "(1) To administer all labor laws and all laws
15 relating to the relationship between employer and employee,
16 including laws relating to hours of work, and working
17 conditions in places of employment.

18 "(2) To make or cause to be made all necessary
19 inspections to determine whether or not the laws, the
20 administration of which is delegated to the Department of
21 Labor, and rules ~~and regulations~~ issued pursuant ~~thereto~~ to
22 those laws, are being complied with by employers and
23 employees, and to take such action as may be necessary to
24 enforce compliance; provided, however, that there shall be no
25 inspection of boilers which have been inspected, approved, and
26 insured by an insurance company authorized to do business in

1 the State of Alabama. Provided, however, that this provision
2 may not prevent compliance verification by the department.

3 "(3) To propose to the board of appeals, provided
4 for in this chapter, ~~such rules and regulations,~~ or amendments
5 as may be deemed advisable for the prevention of accidents or
6 the prevention of sickness and diseases in mines. The
7 Secretary of Labor may appoint committees composed of
8 employers, employees, and experts to suggest and assist in the
9 preparation of rules ~~and regulations~~ or amendments.

10 "(4) To administer and perform, by and under the
11 direction of the Secretary of Labor, all functions and duties
12 of Chapter 4 ~~of this title,~~ and ~~it shall have power and~~
13 ~~authority~~ to adopt and enforce all reasonable rules and orders
14 necessary or suitable to that end, and to require any reports,
15 and to take any other action, consistent with Chapter 4 ~~of~~
16 ~~this title,~~ necessary or suitable to that end.

17 "(5) To cooperate with all authorities of the United
18 States having powers and duties under the Wagner-Peyser Act,
19 approved June 6, 1933, ~~(48 Stat. 113, United States Code,~~
20 ~~Title 29, Section 49~~ 29 U.S.C. § 49), ~~entitled "An Act to~~
21 provide for the establishment of a national employment system
22 and for cooperation with the states in the promotion of such
23 system and for other purposes," and to do and perform all
24 things necessary to secure for the State of Alabama the
25 benefits of ~~such~~ that act and the promotion and maintenance of
26 a system of public employment offices. The Department of Labor
27 is ~~hereby~~ designated as the state agency and vested with all

1 powers necessary to cooperate with the United States
2 Employment Service or its successor.

3 "(6) To administer and perform, by and under the
4 direction of the Secretary of Labor, all functions and duties
5 of Chapter 5 ~~of this title~~, and ~~it shall have power and~~
6 ~~authority~~ to adopt and enforce all reasonable rules and orders
7 necessary or suitable to that end, and to require any reports,
8 and to take any other action, consistent with Chapter 5 ~~of~~
9 ~~this title~~, necessary or suitable to that end.

10 "(7) To make investigations and studies and to
11 collect, collate, and compile statistical information and to
12 make and publish reports concerning the conditions of labor
13 generally, including living conditions, hours of work, wages
14 paid, and all matters relating to the enforcement and effect
15 of the provisions of this title coming under the jurisdiction
16 of the Department of Labor and the rules ~~and regulations~~
17 issued pursuant ~~thereto~~ to this title and other laws relating
18 to the Department of Labor. The Secretary of Labor shall
19 deliver a copy of each ~~such~~ report to every person making
20 application therefor.

21 "(8) To make an annual report to the Governor
22 covering the activities and accomplishments of the Department
23 of Labor during the preceding fiscal year, accompanied by the
24 recommendations of the Secretary of Labor. The report shall be
25 printed and the Secretary of Labor shall deliver a copy to
26 every person making application therefor.

1 "(9) To make recommendations to the Legislature for
2 the enactment of laws ~~which~~ that, on the basis of information
3 and statistics compiled by the Department of Labor, appear to
4 be desirable for the protection of laborers and for promoting
5 and fostering amicable relations between employers and
6 employees.

7 "(10) To administer and perform, by and under the
8 direction of the Secretary of Labor, all functions and duties
9 of Section 25-2-7, and ~~it shall have power and authority~~ to
10 adopt and enforce all reasonable rules and orders necessary or
11 suitable to that end, and to require any reports, and to take
12 any other action, consistent with Section 25-2-7, necessary or
13 suitable to that end.

14 "(11) To administer and perform, by and under the
15 direction of the Secretary of Labor, all functions and duties
16 of Chapter 7 ~~of this title and such other statutes as may be~~
17 ~~provided by law~~ and to advise the Governor with respect to the
18 provisions ~~thereof~~ of Chapter 7, and ~~it shall have power and~~
19 ~~authority~~ to adopt and enforce all reasonable rules and orders
20 necessary or suitable to that end, and to require any reports,
21 and to take any other action, consistent with Chapter 7 ~~of~~
22 ~~this title~~, necessary or suitable to that end.

23 "(12) To administer and perform, by and under the
24 direction of the Secretary of Labor, all functions and duties
25 of Chapter 8 ~~of this title~~, and ~~it shall have power and~~
26 ~~authority~~ to adopt and enforce all reasonable rules and orders
27 necessary or suitable to that end, and to require any reports,

1 and to take any other action, consistent with Chapter 8 of
2 ~~this title~~, necessary or suitable to that end.

3 "(13) To administer and perform, by and under the
4 direction of the Secretary of Labor, all functions and duties
5 of Chapter 9 ~~of this title~~, and ~~it shall have power and~~
6 ~~authority~~ to adopt and enforce all reasonable rules and orders
7 necessary or suitable to that end, and to require any reports,
8 and to take any other action, consistent with Chapter 9 of
9 ~~this title~~, necessary or suitable to that end.

10 "(14) To administer and perform, by and under the
11 direction of the Secretary of Labor, all functions and duties
12 of Chapter 10 ~~of this title~~, and ~~it shall have power and~~
13 ~~authority~~ to adopt and enforce all reasonable rules and orders
14 necessary or suitable to that end, and to require any reports,
15 and to take any other action, consistent with Chapter 10 of
16 ~~this title~~, necessary or suitable to that end.

17 "(15) To administer and perform, by and under the
18 direction of the Secretary of Labor, all functions and duties
19 of Chapter 11 ~~of this title~~, and ~~it shall have power and~~
20 ~~authority~~ to adopt and enforce all reasonable rules and orders
21 necessary or suitable to that end, and to require any reports,
22 and to take any other action, consistent with Chapter 11 of
23 ~~this title~~, necessary or suitable to that end.

24 "(16) To administer and perform, by and under the
25 direction of the Secretary of Labor, all functions and duties
26 of Chapter 12 ~~of this title~~, and ~~it shall have power and~~
27 ~~authority~~ to adopt and enforce all reasonable rules and orders

1 necessary or suitable to that end, and to require any reports,
2 and to take any other action, consistent with Chapter 12 ~~of~~
3 ~~this title,~~ necessary or suitable to that end.

4 "(17) To administer and perform, by and under the
5 direction of the Secretary of Labor, all functions and duties
6 of Chapter 13 ~~of this title,~~ and to require any reports, and
7 to take any other action, consistent with Chapter 13 ~~of this~~
8 ~~title,~~ necessary or suitable to that end.

9 "(18) To administer and perform, by and under the
10 direction of the Secretary of Labor, all functions and duties
11 of Chapter 14 ~~of this title,~~ and ~~it shall have power and~~
12 ~~authority~~ to adopt and enforce all reasonable rules and orders
13 necessary or suitable to that end, and to require any reports,
14 and to take any other action, consistent with Chapter 14 ~~of~~
15 ~~this title,~~ necessary or suitable to that end.

16 "(19) To administer and perform, by and under the
17 direction of the Secretary of Labor, all functions and duties
18 of Chapter 15, and to adopt and enforce all reasonable rules
19 and orders necessary or suitable to that end, and to require
20 any reports, and to take any other action, consistent with
21 Chapter 15 necessary or suitable to that end.

22 "(b) The combining of the functions of the
23 Department of Industrial Relations and Department of Labor
24 made by Act 2012-496 shall reduce administrative costs and
25 expenses paid from the State General Fund by an amount equal
26 to at least 20 percent of the amount appropriated from the

1 State General Fund to the Department of Labor for the fiscal
2 year ending September 30, 2012.

3 "§25-2-7.

4 "(a) All functions and duties of the Department of
5 Labor shall be exercised by the Secretary of Labor acting
6 personally or by and through such administrative divisions or
7 such officers or employees as he or she may designate. The
8 Secretary of Labor shall have all power and authority
9 necessary or convenient to carry out the functions and duties
10 of the Department of Labor. ~~It shall be the duty of the~~ The
11 Secretary of Labor ~~to~~ shall administer Chapter 4 ~~of this title~~
12 and he or she ~~shall have power and authority to~~ may adopt and
13 enforce all reasonable rules and orders necessary or suitable
14 to that end, require any reports and take any other action
15 consistent with the provisions of Chapter 4 necessary or
16 suitable to that end.

17 "(b) To the end that strikes, lockouts, boycotts,
18 blacklists, and discriminations may be avoided, the secretary
19 shall have authority and it shall be his or her duty to
20 investigate labor disputes and to promote the peaceful and
21 voluntary adjustment and settlement thereof.

22 "(c) ~~It shall be the duty of the~~ The secretary ~~to~~
23 shall make available to any board of mediation appointed by
24 the Governor pursuant to Section 25-7-4 all data and
25 information in ~~his or her~~ the custody or possession of the
26 secretary relevant or pertinent to any matter ~~which such that~~
27 the board of mediation may have been appointed to consider,

1 and to render to ~~any such~~ the board of mediation ~~such~~
2 assistance as it may request of ~~him or her~~ the secretary in
3 the discharge of its official duties.

4 "(d) ~~It shall be the duty of the~~ The secretary to
5 shall administer and enforce ~~the Alabama~~ state child labor ~~law~~
6 laws relating to minimum age of employment, hours of work,
7 places of employment, and prohibited occupations.

8 "(e) ~~It shall be the duty of the~~ The secretary to
9 shall investigate and attempt equitably to adjust
10 controversies ~~in~~ with respect to wage claims or alleged wage
11 claims.

12 "(f) The secretary shall administer and enforce the
13 Alabama Pregnant Workers Fairness Act."

14 Section 3. This act shall become effective on the
15 first day of the third month following its passage and
16 approval by the Governor, or its otherwise becoming law.