

HB1038 - Rep. Rogers, David (D) - An Act establishing the Massachusetts pregnant workers fairness act

SECTION 1. Section 4 of chapter 151B of the General Laws is hereby amended by striking out, in line 5, the word "or" and inserting, in line 6, after the words "ancestry of any individual", the following words:-

or pregnancy, or a related condition, including, but not limited to, the need to express breast milk for a nursing child.

SECTION 2. Said section 4 is hereby amended by inserting after subsection 1D the following subsection:-

1E. (a) For an employer to deny reasonable accommodations for any condition of an employee related to pregnancy or related conditions if the employee so requests, unless 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:

(1) 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 her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits and other applicable service credits when her need for reasonable accommodations ceases;

(2) deny employment opportunities to a employee, if such denial is based on the need of the employer to make reasonable accommodations to the known conditions related to the pregnancy or related conditions of the employee;

(3) require an employee affected by pregnancy or related conditions to accept an accommodation that such employee chooses not to accept, if such an accommodation is unnecessary to enable the employee to perform the essential functions of her job;

(4) require an employee to take leave if another reasonable accommodation can be provided to the known conditions related to the pregnancy or related conditions of an employee without undue hardship to the employer;

(5) refuse to hire a person who is affected by pregnancy or a related condition, capable of performing the essential functions of the position involved with reasonable accommodation, unless the employer can demonstrate that the accommodation would impose an undue hardship on the employer's program, enterprise or business.

(b) For the purposes of this subsection:

(1) The term "reasonable accommodations" may include, but not be limited to: more frequent or longer paid or unpaid breaks, time off to recover from childbirth with or without pay, acquisition or modification of equipment, seating, temporary transfer to a less strenuous or hazardous position, job restructuring, light duty, break time and private non-bathroom space for expressing breast milk, assistance with manual labor, or modified work schedules; and provided further, that no employer shall be required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job. An employee not able to perform the essential functions, with or without reasonable accommodation may be considered not "qualified".

(2) The term "related conditions" shall include, but not be limited to, lactation or the need to express breast milk for a nursing child.

(3) The term "undue hardship" shall mean an action requiring significant difficulty or expense. The employer shall have the burden of proving undue hardship. In making a determination of undue hardship, factors to be considered include:

(i) the nature and cost of the accommodation;

(ii) the overall financial resources of the employer; 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;

(iii) the effect on expenses and resources or the impact otherwise of such

accommodation upon the operation of the employer.

(d) The employer and employee shall engage in a timely, good faith, and interactive process to determine effective reasonable accommodations to enable the employee to perform the essential functions of the employee's job. An employer may require that the documentation about the need for reasonable accommodation come from an appropriate health care or rehabilitation professional. An employee shall not be required to obtain documentation from an appropriate health care or rehabilitation professional for the following accommodations: (1) more frequent restroom, food, and water breaks; (2) seating; and (3) limits on lifting over 20 pounds.

The appropriate professional in any particular situation will depend on the issue related to pregnancy or related condition and the type of functional limitation it imposes including duration. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, midwives, lactation consultants, and licensed mental health professionals. An employer may require documentation for any extension of the accommodation beyond the originally agreed to accommodation. In requesting documentation, employers should specify what types of information they are seeking regarding the accommodation, its functional limitations, and the need for reasonable accommodation. The individual can be asked to sign a limited release allowing the employer to submit a list of specific questions to the health care or vocational professional.

(e) Written notice of the right to be free from discrimination in relation to pregnancy and related conditions, including the right to reasonable accommodations for conditions related to pregnancy or related conditions, pursuant to this subsection shall be distributed in a handbook or other means to:

- (1) new employees at the commencement of employment;
- (2) existing employees within 120 days after the effective date of the law that added this subsection;
- (3) any employee who notifies the employer of her pregnancy within 10 days of such notification.

(f) The commission shall develop courses of instruction and conduct ongoing public education efforts as necessary to inform employers, employees, and employment agencies, about their rights and responsibilities under this subsection.

(g) This subsection shall not be construed to preempt, limit, diminish or otherwise affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish the coverage for pregnancy or a condition related to pregnancy under section 105D of chapter 149, or any other special or general law.

SB1023 - Sen. Lovely, Joan (D) - An Act establishing the Massachusetts pregnant workers fairness act

SECTION 1. Section 4 of chapter 151B of the General Laws is hereby amended by striking out, in line 5, the word "or" and inserting, in line 6, after the words "ancestry of any individual", the following words:-

or pregnancy, or a related condition, including, but not limited to, the need to express breast milk for a nursing child.

SECTION 2. Said section 4 is hereby amended by inserting after subsection 1D the following subsection:-

1E. (a) For an employer to deny reasonable accommodations for any condition of an employee related to pregnancy or related conditions if the employee so requests, unless 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:

(1) 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 her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits and other applicable service credits when her need for reasonable accommodations ceases;

(2) deny employment opportunities to an employee, if such denial is based on the need of the employer to make reasonable accommodations to the known conditions related to the pregnancy or related conditions of the employee;

(3) require an employee affected by pregnancy or related conditions to accept an accommodation that such employee chooses not to accept, if such an accommodation is unnecessary to enable the employee to perform the essential functions of her job;

(4) require an employee to take leave if another reasonable accommodation can be provided to the known conditions related to the pregnancy or related conditions of an employee without undue hardship to the employer;

(5) refuse to hire a person who is affected by pregnancy or a related condition, capable of performing the essential functions of the position involved with reasonable accommodation, unless the employer can demonstrate that the accommodation would impose an undue hardship on the employer's program, enterprise or business.

(b) For the purposes of this subsection:

(1) The term "reasonable accommodations" may include, but not be limited to: more frequent or longer paid or unpaid breaks, time off to recover from childbirth with or without pay, acquisition or modification of equipment, seating, temporary transfer to a less strenuous or hazardous position, job restructuring, light duty, break time and private non-bathroom space for expressing breast milk, assistance with manual labor, or modified work schedules; and provided further, that no employer shall be required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job. An employee not able to perform the essential functions, with or without reasonable accommodation may be considered not "qualified".

(2) The term "related conditions" shall include, but not be limited to, lactation or the need to express breast milk for a nursing child.

(3) The term "undue hardship" shall mean an action requiring significant difficulty or expense. The employer shall have the burden of proving undue hardship. In making a determination of undue hardship, factors to be considered include:

(i) the nature and cost of the accommodation;

(ii) the overall financial resources of the employer; 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;

(iii) the effect on expenses and resources or the impact otherwise of such accommodation upon the operation of the employer.

(d) The employer and employee shall engage in a timely, good faith, and interactive process to determine effective reasonable accommodations to enable the employee to perform the essential

functions of the employee's job. An employer may require that the documentation about the need for reasonable accommodation come from an appropriate health care or rehabilitation professional. An employee shall not be required to obtain documentation from an appropriate health care or rehabilitation professional for the following accommodations: (1) more frequent restroom, food, and water breaks; (2) seating; and (3) limits on lifting over 20 pounds.

The appropriate professional in any particular situation will depend on the issue related to pregnancy or related condition and the type of functional limitation it imposes including duration. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, midwives, lactation consultants, and licensed mental health professionals. An employer may require documentation for any extension of the accommodation beyond the originally agreed to accommodation. In requesting documentation, employers should specify what types of information they are seeking regarding the accommodation, its functional limitations, and the need for reasonable accommodation. The individual can be asked to sign a limited release allowing the employer to submit a list of specific questions to the health care or vocational professional.

(e) Written notice of the right to be free from discrimination in relation to pregnancy and related conditions, including the right to reasonable accommodations for conditions related to pregnancy or related conditions, pursuant to this subsection shall be distributed in a handbook or other means to:

- (1) new employees at the commencement of employment;
- (2) existing employees within 120 days after the effective date of the law that added this subsection;
- (3) any employee who notifies the employer of her pregnancy within 10 days of such notification.

(f) The commission shall develop courses of instruction and conduct ongoing public education efforts as necessary to inform employers, employees, and employment agencies, about their rights and responsibilities under this subsection.

(g) This subsection shall not be construed to preempt, limit, diminish or otherwise affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish the coverage for pregnancy or a condition related to pregnancy under section 105D of chapter 149, or any other special or general law.

HB3659 - Joint Committee on Labor & Workforce Development - An Act establishing the Massachusetts pregnant workers fairness act

SECTION 1. Section 4 of chapter 151B of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out, in lines 5 and 6, the words "or ancestry of any individual" and inserting in place thereof the following words:-

ancestry of any individual, pregnancy or a condition related to pregnancy, including, but not limited to, the need to express breast milk for a nursing child.

SECTION 2. Said section 4, as so appearing, is hereby amended by inserting after subsection 1D the following subsection:-

1E. (a) For an employer to deny reasonable accommodations for pregnancy or any condition of an employee related to pregnancy if the employee so requests, unless 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:

- (1) 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 reasonable accommodations ceases;

- (2) deny employment opportunities to an employee, if such denial is based on the need of the employer to make reasonable accommodations to the known conditions related to the pregnancy;

- (3) require an employee affected by pregnancy or a condition related to pregnancy to accept an accommodation that such employee chooses not to accept, if such an accommodation is unnecessary to enable the employee to perform the essential functions of the job;

- (4) require an employee to take leave if another reasonable accommodation can be provided to the known conditions related to the pregnancy without undue hardship to the employer;

- (5) refuse to hire a person who is affected by pregnancy or a condition related to pregnancy and who is capable of performing the essential functions of the position involved with reasonable accommodation, unless the employer can demonstrate that the accommodation would impose an undue hardship on the employer's program, enterprise or business.

(b) For the purposes of this subsection:

- (1) The term "reasonable accommodations" may include, but not be limited to: more frequent or longer paid or unpaid breaks, time off to recover from childbirth with or without pay, acquisition or modification of equipment, seating, temporary transfer to a less strenuous or hazardous position, job restructuring, light duty, break time and private non-bathroom space for expressing breast milk, assistance with manual labor, or modified work schedules; provided, however, that no employer shall be required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not able to perform the essential functions of the job, with or without reasonable accommodations.

- (2) The term "condition related to pregnancy" shall include, but not be limited to, lactation or the need to express breast milk for a nursing child.

- (3) The term "undue hardship" shall mean an action requiring significant difficulty or expense. The employer shall have the burden of proving undue hardship. In making a determination of undue hardship, factors to be considered include:

- (i) the nature and cost of the accommodation needed;

- (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;

- (iv) the effect on expenses and resources or the impact otherwise of such accommodation upon the operation of the employer.

- (c) The employer and employee shall engage in a timely, good faith and interactive process to determine effective reasonable accommodations to enable the employee to perform the essential functions of the employee's job. An employer may require that documentation about the need for a reasonable accommodation come from an appropriate health care or rehabilitation professional.

An employee shall not be required to obtain documentation from an appropriate health care or rehabilitation professional for the following accommodations: (1) more frequent restroom, food, and water breaks; (2) seating; and (3) limits on lifting over 20 pounds. Appropriate professionals shall include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, midwives, lactation consultants, and licensed mental health professionals. An employer may require documentation for any extension of the accommodation beyond the originally agreed to accommodation.

(d) Written notice of the right to be free from discrimination in relation to pregnancy or a condition related to pregnancy, including the right to reasonable accommodations for conditions related to pregnancy pursuant to this subsection shall be distributed by employers in a handbook or other means to:

- (1) new employees at the commencement of employment;
- (2) existing employees on or before January 1, 2018;
- (3) any employee who notifies the employer of a pregnancy or a condition related to pregnancy within 10 days of 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 their rights and responsibilities under this subsection.

(f) This subsection shall not be construed to preempt, limit, diminish or otherwise affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish the coverage for pregnancy or a condition related to pregnancy under section 105D of chapter 149, or any other special or general law.

HB3680 (Chapter 54 of 2017) - House Ways and Means - An Act establishing the Massachusetts pregnant workers fairness act

Amendment #1 to H3680

Additional Health Protection

Mr. Lyons of Andover moves to amend the bill by striking out section 1 and inserting in place thereof the following section:-

"SECTION 1. Section 4 of chapter 151B of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out, in lines 5 and 6, the words "or ancestry of any individual" and inserting in place thereof the following words:-
, or pregnancy or a condition related to said pregnancy, including, but not limited to, the health of the unborn child, lactation, or the need to express breast milk for a nursing child, to."

Amendment #2 to H3680

To improve access to online resources available to low-income pregnant women

Ms. Ferrante of Gloucester moves to amend the bill by inserting the following new section: SECTION 3. The executive office of health and human services, in consultation with the department of public health and the assistant secretary for MassHealth, shall investigate and study methods to improve access to online resources available to low-income pregnant women seeking information about state programs or assistance, including, but not limited to eligibility information for the MassHealth program and the supplemental nutrition assistance program. The investigation shall include, but not be limited to: a review of existing state agency websites dedicated to providing information and resources to low income pregnant women; recommendations for improving access to such websites, including a determination about whether the websites are search engine optimized and measures necessary improve the availability of such websites through the use of online search engines; and the feasibility of creating a comprehensive state resource website for low-income pregnant women. The executive office of health and human services shall file a report of its findings and recommendations with the house and senate committees on ways and means and the joint committee on children, families and persons with disabilities not later than January 1, 2018.

Amendment #3 to H3680

Additional Health Protection

Mr. Lyons of Andover moves to amend the bill by inserting, in line 4, after the word "to" the following:- "the health of the unborn child,".

SB2093 - Senate Ways and Means - An Act establishing the Massachusetts pregnant workers fairness act

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 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 accommodations 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; (ii) seating; (iii) limits on lifting over 20 pounds; 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. An employer may require documentation for an extension of the accommodation beyond the originally agreed to accommodation, unless it is an accommodation listed above not requiring documentation.

(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 within 10 days of 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 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 April 1, 2018.

SECTION 5. This act shall take effect on April 1, 2018.

SB2104 - Senate Ways and Means - Text of the Senate amendment to the House Bill establishing the Massachusetts pregnant workers fairness act (House, No. 3680, amended)

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.

HOUSE No. 1038**The Commonwealth of Massachusetts**

PRESENTED BY:

David M. Rogers*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing the Massachusetts pregnant workers fairness act.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Daniel Cahill</i>	<i>10th Essex</i>
<i>Solomon Goldstein-Rose</i>	<i>3rd Hampshire</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Adrian Madaro</i>	<i>1st Suffolk</i>
<i>Brendan P. Crighton</i>	<i>11th Essex</i>
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>

<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>John C. Velis</i>	<i>4th Hampden</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Dylan Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Keiko M. Orrall</i>	<i>12th Bristol</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Joan Meschino</i>	<i>3rd Plymouth</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>

<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Donald F. Humason, Jr.</i>	<i>Second Hampden and Hampshire</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>
<i>Bud Williams</i>	<i>11th Hampden</i>
<i>Michael J. Finn</i>	<i>6th Hampden</i>
<i>Natalie Higgins</i>	<i>4th Worcester</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Paul Tucker</i>	<i>7th Essex</i>
<i>Juana Matias</i>	<i>16th Essex</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Evandro C. Carvalho</i>	<i>5th Suffolk</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>RoseLee Vincent</i>	<i>16th Suffolk</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>
<i>Kathleen O'Connor Ives</i>	<i>First Essex</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>William Driscoll</i>	<i>7th Norfolk</i>

<i>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>
<i>Kate D. Campanale</i>	<i>17th Worcester</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>
<i>Gerard Cassidy</i>	<i>9th Plymouth</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>

HOUSE No. 1038

By Mr. Rogers of Cambridge, a petition (accompanied by bill, House, No. 1038) of David M. Rogers and others relative to protecting pregnant workers from discrimination in the workplace . Labor and Workforce Development.

The Commonwealth of Massachusetts

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

An Act establishing the Massachusetts pregnant workers fairness act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 4 of chapter 151B of the General Laws is hereby amended
2 by striking out, in line 5, the word “or” and inserting, in line 6, after the words “ancestry
3 of any individual”, the following words:-
4 or pregnancy, or a related condition, including, but not limited to, the need to
5 express breast milk for a nursing child.

6 SECTION 2. Said section 4 is hereby amended by inserting after subsection 1D
7 the following subsection:-

8 1E. (a) For an employer to deny reasonable accommodations for any condition
9 of an employee related to pregnancy or related conditions if the employee so requests,

unless 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:

- (1) 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 her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits and other applicable service credits when her need for reasonable accommodations ceases;
- (2) deny employment opportunities to a employee, if such denial is based on the need of the employer to make reasonable accommodations to the known conditions related to the pregnancy or related conditions of the employee;
- (3) require an employee affected by pregnancy or related conditions to accept an accommodation that such employee chooses not to accept, if such an accommodation is unnecessary to enable the employee to perform the essential functions of her job;
- (4) require an employee to take leave if another reasonable accommodation can be provided to the known conditions related to the pregnancy or related conditions of an employee without undue hardship to the employer;

(5) refuse to hire a person who is affected by pregnancy or a related condition, capable of performing the essential functions of the position involved with reasonable accommodation, unless the employer can demonstrate that the accommodation would impose an undue hardship on the employer's program, enterprise or business.

(b) For the purposes of this subsection:

(1) The term "reasonable accommodations" may include, but not be limited to: more frequent or longer paid or unpaid breaks, time off to recover from childbirth with or without pay, acquisition or modification of equipment, seating, temporary transfer to a less strenuous or hazardous position, job restructuring, light duty, break time and private non-bathroom space for expressing breast milk, assistance with manual labor, or modified work schedules; and provided further, that no employer shall be required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job. An employee not able to perform the essential functions, with or without reasonable accommodation may be considered not "qualified".

(2) The term "related conditions" shall include, but not be limited to, lactation or the need to express breast milk for a nursing child.

(3) The term “undue hardship” shall mean an action requiring significant difficulty or expense. The employer shall have the burden of proving undue hardship. In making a determination of undue hardship, factors to be considered include:

- (i) the nature and cost of the accommodation;
- (ii) the overall financial resources of the employer; 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;
- (iii) the effect on expenses and resources or the impact otherwise of such accommodation upon the operation of the employer.

(d) The employer and employee shall engage in a timely, good faith, and interactive process to determine effective reasonable accommodations to enable the employee to perform the essential functions of the employee’s job. An employer may require that the documentation about the need for reasonable accommodation come from an appropriate health care or rehabilitation professional. An employee shall not be required to obtain documentation from an appropriate health care or rehabilitation professional for the following accommodations: (1) more frequent restroom, food, and water breaks; (2) seating; and (3) limits on lifting over 20 pounds.

The appropriate professional in any particular situation will depend on the issue related to pregnancy or related condition and the type of functional limitation it imposes including duration. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, midwives, lactation consultants, and licensed mental health professionals. An employer may require documentation for any extension of the accommodation beyond the originally agreed to accommodation. In requesting documentation, employers should specify what types of information they are seeking regarding the accommodation, its functional limitations, and the need for reasonable accommodation. The individual can be asked to sign a limited release allowing the employer to submit a list of specific questions to the health care or vocational professional.

(e) Written notice of the right to be free from discrimination in relation to pregnancy and related conditions, including the right to reasonable accommodations for conditions related to pregnancy or related conditions, pursuant to this subsection shall be distributed in a handbook or other means to:

(1) new employees at the commencement of employment;

(2) existing employees within 120 days after the effective date of the law that

added this subsection;

(3) any employee who notifies the employer of her pregnancy within 10 days of

such notification.

(f) The commission shall develop courses of instruction and conduct ongoing

public education efforts as necessary to inform employers, employees, and employment

agencies, about their rights and responsibilities under this subsection.

(g) This subsection shall not be construed to preempt, limit, diminish or

otherwise affect any other provision of law relating to sex discrimination or pregnancy, or

in any way to diminish the coverage for pregnancy or a condition related to pregnancy

under section 105D of chapter 149, or any other special or general law.

HOUSE No. 3659

The Commonwealth of Massachusetts

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

An Act establishing the Massachusetts pregnant workers fairness act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 4 of chapter 151B of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by striking out, in lines 5 and 6, the words “or ancestry of
3 any individual” and inserting in place thereof the following words:-

4 ancestry of any individual, pregnancy or a condition related to pregnancy, including, but
5 not limited to, the need to express breast milk for a nursing child.

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

8 1E. (a) For an employer to deny reasonable accommodations for pregnancy or any
9 condition of an employee related to pregnancy if the employee so requests, unless the employer
10 can demonstrate that the accommodation would impose an undue hardship on the employer’s
11 program, enterprise or business. It shall also be an unlawful practice under this subsection to:

(1) 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 reasonable accommodations ceases;

(2) deny employment opportunities to an employee, if such denial is based on the need of the employer to make reasonable accommodations to the known conditions related to the pregnancy;

(3) require an employee affected by pregnancy or a condition related to pregnancy to accept an accommodation that such employee chooses not to accept, if such an accommodation is unnecessary to enable the employee to perform the essential functions of the job;

(4) require an employee to take leave if another reasonable accommodation can be provided to the known conditions related to the pregnancy without undue hardship to the employer;

(5) refuse to hire a person who is affected by pregnancy or a condition related to pregnancy and who is capable of performing the essential functions of the position involved with reasonable accommodation, unless the employer can demonstrate that the accommodation would impose an undue hardship on the employer's program, enterprise or business.

(b) For the purposes of this subsection:

(1) The term "reasonable accommodations" may include, but not be limited to: more frequent or longer paid or unpaid breaks, time off to recover from childbirth with or without pay,

33 acquisition or modification of equipment, seating, temporary transfer to a less strenuous or
34 hazardous position, job restructuring, light duty, break time and private non-bathroom space for
35 expressing breast milk, assistance with manual labor, or modified work schedules; provided,
36 however, that no employer shall be required to discharge any employee, transfer any employee
37 with more seniority, or promote any employee who is not able to perform the essential functions
38 of the job, with or without reasonable accommodations.

39 (2) The term “condition related to pregnancy” shall include, but not be limited to,
40 lactation or the need to express breast milk for a nursing child.

41 (3) The term “undue hardship” shall mean an action requiring significant difficulty or
42 expense. The employer shall have the burden of proving undue hardship. In making a
43 determination of undue hardship, factors to be considered include:

44 (i) the nature and cost of the accommodation needed;

45 (ii) the overall financial resources of the employer;

46 (iii) the overall size of the business of the employer with respect to the number of
47 employees, and the number, type and location of its facilities;

48 (iv) the effect on expenses and resources or the impact otherwise of such accommodation
49 upon the operation of the employer.

50 (c) The employer and employee shall engage in a timely, good faith and interactive
51 process to determine effective reasonable accommodations to enable the employee to perform
52 the essential functions of the employee’s job. An employer may require that documentation
53 about the need for a reasonable accommodation come from an appropriate health care or

rehabilitation professional. An employee shall not be required to obtain documentation from an appropriate health care or rehabilitation professional for the following accommodations: (1) more frequent restroom, food, and water breaks; (2) seating; and (3) limits on lifting over 20 pounds. Appropriate professionals shall include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, midwives, lactation consultants, and licensed mental health professionals. An employer may require documentation for any extension of the accommodation beyond the originally agreed to accommodation.

(d) Written notice of the right to be free from discrimination in relation to pregnancy or a condition related to pregnancy, including the right to reasonable accommodations for conditions related to pregnancy pursuant to this subsection shall be distributed by employers in a handbook or other means to:

(1) new employees at the commencement of employment;

(2) existing employees on or before January 1, 2018;

(3) any employee who notifies the employer of a pregnancy or a condition related to pregnancy within 10 days of 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 their rights and responsibilities under this subsection.

(f) This subsection shall not be construed to preempt, limit, diminish or otherwise affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish

75 the coverage for pregnancy or a condition related to pregnancy under section 105D of chapter
76 149, or any other special or general law.

HOUSE No. 3680

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 8, 2017.

The committee on Ways and Means, to whom was referred the Bill establishing the Massachusetts pregnant workers fairness act (House, No. 3659), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 3680).

For the committee,

BRIAN S. DEMPSEY.

HOUSE No. 3680

The Commonwealth of Massachusetts

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

An Act establishing the Massachusetts pregnant workers fairness act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 4 of chapter 151B of the General Laws, as amended by section 22
2 of chapter 141 of the acts of 2016, is hereby amended by striking out, in line 6, the word “to”,
3 the first time it appears, and inserting in place thereof the following words:-

4 , or pregnancy or a condition related to said pregnancy, including, but not limited to,
5 lactation, or the need to express breast milk for a nursing child, to.

6 SECTION 2. Said section 4 of said chapter 151B, as appearing in the 2014 Official
7 Edition, is hereby 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 so requests,
11 unless the employer can demonstrate that the accommodation would impose an undue hardship
12 on the employer’s program, enterprise or business. It shall also be an unlawful practice under this
13 subsection to:

(1) 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 reasonable accommodations ceases;

(2) deny an employment opportunity to an employee, if such 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;

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

(4) require an employee to take leave of absence 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 to the employer;

(5) knowingly 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, that such person is capable of performing the essential functions of the position involved with a reasonable

accommodation, unless the employer is able to demonstrate that the accommodation would impose an undue hardship on the employer's program, enterprise or business.

(b) For the purposes of this subsection:

(1) The term "reasonable accommodation" may include, but shall not be limited to: (i) more frequent or longer paid or unpaid breaks; (ii) time off to 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) modified work schedules; provided, however, that no employer shall be required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not able to perform the essential functions of the job, with or without a reasonable accommodation.

(2) The term "undue hardship" shall mean an action requiring significant difficulty or expense. The employer shall have the burden of proving undue hardship. In making a determination of undue hardship, the following factors shall be considered:

(i) the nature and cost of the accommodation needed;

(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;

(iv) the number, type and location of its facilities; and;

(v) the effect on expenses and resources or the impact otherwise of such accommodation upon the operation of the employer.

(c) The employer and employee shall engage in a timely, good faith and interactive process to determine effective reasonable accommodations to enable the employee to perform the essential functions of the employee's job. 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 may not require, and an employee shall not be required to obtain, documentation from an appropriate health care or rehabilitation professional for the following accommodations: (1) more frequent restroom, food and water breaks; (2) seating; and (3) limits on lifting over 20 pounds. 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 consistent with law. An employer may require documentation for an extension of the accommodation beyond the originally agreed to accommodation.

(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 in a handbook or other means to:

(1) new employees at the commencement of employment;

(2) existing employees on or before January 1, 2018;

79 (3) an employee who notifies the employer of a pregnancy or an employee who notifies
80 the employer of a condition related to the employee's pregnancy including, but not limited to,
81 lactation, or the need to express breast milk for a nursing child, within 10 days of such
82 notification.

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

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

SENATE No. 1023**The Commonwealth of Massachusetts**

PRESENTED BY:

Joan B. Lovely

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing the Massachusetts pregnant workers fairness act.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Joan B. Lovely</i>	<i>Second Essex</i>	
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>1/23/2017</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	<i>2/2/2017</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>	<i>1/23/2017</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>	<i>1/25/2017</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/25/2017</i>
<i>Thomas M. McGee</i>	<i>Third Essex</i>	<i>1/25/2017</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>1/26/2017</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>1/26/2017</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>1/26/2017</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>1/27/2017</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/27/2017</i>
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	<i>1/27/2017</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/27/2017</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/2/2017</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>1/27/2017</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	<i>1/30/2017</i>
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>	<i>1/30/2017</i>

<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>	<i>1/30/2017</i>
<i>Bradford R. Hill</i>	<i>4th Essex</i>	<i>1/31/2017</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>1/31/2017</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>1/31/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/31/2017</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>2/1/2017</i>
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>	<i>2/1/2017</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>	<i>2/1/2017</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>2/2/2017</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>	<i>2/2/2017</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>2/2/2017</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>2/2/2017</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>	<i>2/2/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/2/2017</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>2/2/2017</i>
<i>Donald F. Humason, Jr.</i>	<i>Second Hampden and Hampshire</i>	<i>2/2/2017</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>2/2/2017</i>
<i>Jerald A. Parisella</i>	<i>6th Essex</i>	<i>2/2/2017</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>2/3/2017</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>2/3/2017</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>2/3/2017</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>2/3/2017</i>
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>	<i>2/3/2017</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>2/3/2017</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/3/2017</i>
<i>James E. Timilty</i>	<i>Bristol and Norfolk</i>	<i>2/3/2017</i>
<i>Kathleen O'Connor Ives</i>	<i>First Essex</i>	<i>2/3/2017</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	<i>2/3/2017</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/3/2017</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>2/3/2017</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>	<i>2/3/2017</i>
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>	<i>2/3/2017</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>2/3/2017</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/3/2017</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	<i>2/3/2017</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/3/2017</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and</i>	<i>2/3/2017</i>

	<i>Middlesex</i>	
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>	<i>2/3/2017</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/21/2017</i>

SENATE No. 1023

By Ms. Lovely, a petition (accompanied by bill, Senate, No. 1023) of Joan B. Lovely, Michelle M. DuBois, Eric P. Lesser, Jack Lewis and other members of the General Court for legislation to establish the Massachusetts pregnant workers fairness act. Labor and Workforce Development.

The Commonwealth of Massachusetts

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

An Act establishing the Massachusetts pregnant workers fairness act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 4 of chapter 151B of the General Laws is hereby amended by
2 striking out, in line 5, the word “or” and inserting, in line 6, after the words “ancestry of any
3 individual”, the following words:-

4 or pregnancy, or a related condition, including, but not limited to, the need to express
5 breast milk for a nursing child.

6 SECTION 2. Said section 4 is hereby amended by inserting after subsection 1D the
7 following subsection:-

8 1E. (a) For an employer to deny reasonable accommodations for any condition of an
9 employee related to pregnancy or related conditions if the employee so requests, unless the
10 employer can demonstrate that the accommodation would impose an undue hardship on the
11 employer’s program, enterprise, or business. It shall also be an unlawful practice under this
12 subsection to:

(1) 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 her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits and other applicable service credits when her need for reasonable accommodations ceases;

(2) deny employment opportunities to an employee, if such denial is based on the need of the employer to make reasonable accommodations to the known conditions related to the pregnancy or related conditions of the employee;

(3) require an employee affected by pregnancy or related conditions to accept an accommodation that such employee chooses not to accept, if such an accommodation is unnecessary to enable the employee to perform the essential functions of her job;

(4) require an employee to take leave if another reasonable accommodation can be provided to the known conditions related to the pregnancy or related conditions of an employee without undue hardship to the employer;

(5) refuse to hire a person who is affected by pregnancy or a related condition, capable of performing the essential functions of the position involved with reasonable accommodation, unless the employer can demonstrate that the accommodation would impose an undue hardship on the employer's program, enterprise or business.

(b) For the purposes of this subsection:

(1) The term "reasonable accommodations" may include, but not be limited to: more frequent or longer paid or unpaid breaks, time off to recover from childbirth with or without pay,

34 acquisition or modification of equipment, seating, temporary transfer to a less strenuous or
35 hazardous position, job restructuring, light duty, break time and private non-bathroom space for
36 expressing breast milk, assistance with manual labor, or modified work schedules; and provided
37 further, that no employer shall be required to discharge any employee, transfer any employee
38 with more seniority, or promote any employee who is not qualified to perform the job. An
39 employee not able to perform the essential functions, with or without reasonable accommodation
40 may be considered not “qualified”.

41 (2) The term “related conditions” shall include, but not be limited to, lactation or the need
42 to express breast milk for a nursing child.

43 (3) The term “undue hardship” shall mean an action requiring significant difficulty or
44 expense. The employer shall have the burden of proving undue hardship. In making a
45 determination of undue hardship, factors to be considered include:

46 (i) the nature and cost of the accommodation;

47 (ii) the overall financial resources of the employer; the overall size of the business of the
48 employer with respect to the number of employees, and the number, type, and location of its
49 facilities;

50 (iii) the effect on expenses and resources or the impact otherwise of such accommodation
51 upon the operation of the employer.

52 (d) The employer and employee shall engage in a timely, good faith, and interactive
53 process to determine effective reasonable accommodations to enable the employee to perform
54 the essential functions of the employee’s job. An employer may require that the documentation

about the need for reasonable accommodation come from an appropriate health care or rehabilitation professional. An employee shall not be required to obtain documentation from an appropriate health care or rehabilitation professional for the following accommodations: (1) more frequent restroom, food, and water breaks; (2) seating; and (3) limits on lifting over 20 pounds.

The appropriate professional in any particular situation will depend on the issue related to pregnancy or related condition and the type of functional limitation it imposes including duration. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, midwives, lactation consultants, and licensed mental health professionals. An employer may require documentation for any extension of the accommodation beyond the originally agreed to accommodation. In requesting documentation, employers should specify what types of information they are seeking regarding the accommodation, its functional limitations, and the need for reasonable accommodation. The individual can be asked to sign a limited release allowing the employer to submit a list of specific questions to the health care or vocational professional.

(e) Written notice of the right to be free from discrimination in relation to pregnancy and related conditions, including the right to reasonable accommodations for conditions related to pregnancy or related conditions, pursuant to this subsection shall be distributed in a handbook or other means to:

(1) new employees at the commencement of employment;

(2) existing employees within 120 days after the effective date of the law that added this subsection;

(3) any employee who notifies the employer of her pregnancy within 10 days of such notification.

(f) The commission shall develop courses of instruction and conduct ongoing public education efforts as necessary to inform employers, employees, and employment agencies, about their rights and responsibilities under this subsection.

(g) This subsection shall not be construed to preempt, limit, diminish or otherwise affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish the coverage for pregnancy or a condition related to pregnancy under section 105D of chapter 149, or any other special or general law.

SENATE No. 2093

The Commonwealth of Massachusetts

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

SENATE, Thursday, May 18, 2017

The committee on Ways and Means to whom was referred the House Bill establishing the Massachusetts pregnant workers fairness act (House, No. 3680),-- reports, recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2093

For the committee,
Karen E. Spilka

SENATE No. 2093

The Commonwealth of Massachusetts

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

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 “ancestry”, in lines 5 and 6 and
3 line 89, each time it appears, the following words:- , pregnancy or a condition related to said
4 pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing
5 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 by a condition related to a pregnancy
25 including, but not limited to, lactation or the need to express breast milk for a nursing child to
26 accept an accommodation that the employee chooses not to accept, if that accommodation is
27 unnecessary to enable the employee to perform the essential functions of the job;

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

32 (v) refuse to hire a person who is pregnant because of the pregnancy or because of a
33 condition related to the person's pregnancy which shall include, but shall not be limited to,
34 lactation or the need to express breast milk for a nursing child; provided, however, that the
35 person is capable of performing the essential functions of the position with a reasonable
36 accommodation and that reasonable accommodation would not impose an undue hardship,
37 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 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 accommodations 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; (ii) seating; (iii) limits on lifting over 20 pounds; 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. An employer may require documentation for an extension of the accommodation beyond the originally agreed to accommodation, unless it is an accommodation listed above not requiring documentation.

(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

82 limited to, lactation or the need to express breast milk for a nursing child within 10 days of such
83 notification.

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

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

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

95 SECTION 4. An employer shall provide written notice to its employees of the right to be
96 free from discrimination in relation to pregnancy or a condition related to pregnancy including,
97 but not limited to, lactation or the need to express breast milk for a nursing child, including the
98 right to reasonable accommodations for conditions related to pregnancy, pursuant to subsection
99 1E of section 4 of chapter 151B of the General Laws by April 1, 2018.

100 SECTION 5. This act shall take effect on April 1, 2018.

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)

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 “ancestry”, in lines 5 and 6 and
3 line 89, each time it appears, the following words:- , pregnancy or a condition related to said
4 pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing
5 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:

(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.