

LFC Requester:	Klundt, Kelly
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: Date Jan. 12, 2015
Original **Amendment** **Bill No:** HB 37-305
Correction **Substitute**

Sponsor: Rep. Gail Chasey **Agency Code:** Attorney General's Office
Short Pregnant Worker **Person Writing** Sean Cunniff, AAG
Title: Accommodation Act **Phone:** 827-6469 **Email** scunniff@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis: Through the Pregnant Worker Accommodation Act (the “Act”), Rep. Chasey seeks to prohibit certain employment discrimination based upon pregnancy or related conditions. If enacted, the legislation would require employers to furnish affected employees with “reasonable accommodations” where no “undue hardship” would result to the employer. The legislation also provides affected employees the right to a “reasonable” leave period “not to exceed three months.” Under the bill, employers would be bound to provide notice of employee rights under the Act.

Persons claiming to be aggrieved under the Act may bring state court claims to recover damages and seek injunctive relief, or may seek redress under the procedures outlined in the Human Rights Act, NMSA 1978, Sections 28-1-10 through 28-1-13. In addition to actual, treble and punitive damages, employees may also seek equitable remedies. Retaliation by employers is also prohibited under the Act

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

The legislation seeks to supplement an array of existing state and federal protections for workers subject to pregnancy-based discrimination.

Under state law, persons may seek redress under the Human Rights Act for gender-based discrimination, including discrimination based upon pregnancy or related conditions. See NMSA 1978, Section 28-1-7. Likewise, the New Mexico Constitution’s Equal Rights Amendment, see N.M. Const. art. II, § 18, prohibits discrimination “based on the unique ability of women to become pregnant and bear children.” New Mexico Right to Choose/NARAL v. Johnson, 1999-NMSC-005, ¶ 43, 126 N.M. 788.

Under federal law, which governs the conduct of New Mexico employers, gender discrimination

in employment is prohibited pursuant to Title VII of the 1964 Civil Rights Act on the “basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work.” 42 U.S.C. 2000e(k). The federal Family Medical Leave Act provides “an eligible employee” a “total of 12 workweeks of leave during any 12-month” for certain pregnancy-related events. 29 U.S.C. § 2612.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

Tolling of Claims: Section 5(F) addresses the interplay between the Human Rights Act and the proposed legislation with respect to the tolling of claims. It is not clear from the language whether a person is entitled to bring claims under both the Human Rights Act and the proposed legislation.

Damages: The legislation provides for both “treble damages” and “punitive damages.” As treble damages are a type of punitive damages, the language providing for “treble damages” may be surplusage.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Affected persons would be limited to existing state and federal protections.

AMENDMENTS

N/A