The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL:	SB 220
INTRODUCER:	Senator Thompson
SUBJECT:	Florida Civil Rights Act
DATE:	December 6, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Hrdlicka	CM	**Pre-meeting**
2.			JU	
3.			CA	

I. Summary:

SB 220 amends ch. 760, F.S., also known as the Florida Civil Rights Act (FCRA), to protect individuals from unlawful discrimination on the basis of pregnancy in education, employment, housing, or public accommodation. This bill also amends s. 509.092, F.S., to prohibit discrimination based on pregnancy in public lodging and public food establishments. The bill defines "pregnancy" as a woman affected by pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. Currently, state and federal courts are split on whether the Legislature intended to prohibit discrimination based on pregnancy.

II. Present Situation:

Title VII Civil Rights Act of 1964[1]

Title VII of the Civil Rights Act of 1962 (Title VII) prohibits discrimination on the basis of race, color, religion, national origin, or sex. Title VII covers employers with 15 or more employees and outlines a number of unlawful employment practices. For example, Title VII makes it unlawful for employers to refuse to hire, discharge, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, based on race, color, religion, national origin, or sex.

Pregnancy Discrimination Act[2]

In 1976, the United States Supreme Court ruled in *General Electric Co. v. Gilbert*[3] that Title VII did not include pregnancy under its prohibition against unlawful employment practices. The Pregnancy Discrimination Act (PDA), passed in 1978, amended Title VII to define the terms

[1] 42 U.S.C. 2000e. et. seq.
[2] Pub. L. No. 95-555, 95th Cong. (Oct. 31, 1978).
[3] 429 U.S. 125, 145 (1976).

"because of sex" or "on the basis of sex," to prohibit discrimination against a woman due to pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.[4] Under the PDA, an employer cannot discriminate against a woman on the basis of pregnancy in hiring, fringe benefits (such as health insurance), pregnancy and maternity leave, harassment, and any other term or condition of employment.[5]

Americans with Disabilities Act[6]

The Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in the areas of employment, public accommodation, telecommunications, and requires public entities to comply with its provisions. The ADA defines disability as a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or being regarding as having such an impairment. Although pregnancy is not generally considered a disability, complications arising out of the pregnancy may afford an individual the protections provided under the ADA.[7]

Family and Medical Leave Act[8]

The Family and Medical Leave Act (FMLA) provides that employees of certain covered employers are entitled to take up to 12 weeks of unpaid leave a year for a serious illness, injury, or other serious health condition that involves continuing treatment by a health care provider. The FMLA also provides that the employees are entitled to return to the same or an equivalent position upon their return from leave. The FMLA is only applicable for those employees who work for a covered employer and have met the eligibility requirements.[9] In addition to the protection for the birth or adoption of a child, the FMLA provides that the mother may take leave for prenatal care, incapacity related to the pregnancy, and any serious health condition following the birth of a child.[10]

Florida Civil Rights Act of 1992

The Florida Civil Rights Act of 1992 (FCRA) was enacted to "secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age,

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[4] The PDA defines the terms "because of sex" or "on the basis of sex" to include pregnancy, childbirth, or related conditions and women who are affected by pregnancy, childbirth, or related conditions. It further states that these individuals must be treated the same for employment purposes, including the receipt of benefits, as any other person who is not so infected but has similar ability or inability to work.

[5] For more information, see U.S. Equal Employment Opportunity Commission, *Facts about Pregnancy Discrimination*, http://www.eeoc.gov/facts/fs-preg.html (last visited Nov. 7, 2013).

[6] Pub. L. No. 101-336, 101st Cong. (July 26, 1990).

[7] Society of Human Resource Managers, *EEO: Disability: Is Pregnancy Covered under the Americans with Disabilities Act?*, (Jan. 28, 2013), *available at* http://www.shrm.org/TemplatesTools/hrqa/Pages/PregnancyandADA.aspx (last visited Dec. 2, 2013).

[8] Pub. L. No. 103-3, 103rd Cong. (Feb. 5, 1993).

[9] The FMLA applies to private employers with at least 50 employees and all public employers. To be eligible for FMLA leave, an individual must have worked for the employer for at least 12 months and must have worked at least 1,250 hours during the 12 months prior to the leave.

[10] For more information, see U.S. Department of Labor, *FMLA Frequently Asked Questions*, http://www.dol.gov/whd/fmla/fmla-faqs.htm (last visited Dec. 2, 2013).

handicap, or marital status…"[11] FCRA provides protection from discrimination in the areas of education, employment, housing, and public accommodations.

Similar to Title VII, the FCRA specifically provides a number of actions that, if undertaken by an employer, would be considered unlawful employment practices.[12] For example, it is unlawful to discharge or fail to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment based on an individual's race, color, religion, sex, national origin, age, handicap, or marital status. Unlike Title VII, the FCRA has not been amended to specifically include a prohibition against pregnancy discrimination.

Pregnancy Discrimination in Florida

Although Title VII expressly includes pregnancy status as a component of sex discrimination, the FCRA does not. The fact that the FCRA is patterned after Title VII but failed to include this provision has caused division among both federal and state courts as to whether the Legislature intended to provide protection on the basis of pregnancy status. Since the Florida Supreme Court has not yet ruled on the issue, the ability to bring a claim based on pregnancy discrimination varies among the jurisdictions.

The earliest case to address the issue of pregnancy discrimination under the FCRA was *O'Loughlin v. Pinchback*.[13] In this case, the plaintiff alleged that she was terminated from her position as a correctional officer based on pregnancy. The First District Court of Appeal held that the Florida Human Rights Act was preempted by Title VII, as amended, as it stood as "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress by not recognizing that discrimination against pregnant employees is sex-based discrimination."[14] By preempting the Florida statute, the court did not reach the question of whether the Florida law prohibits pregnancy discrimination. However, the court did note that Florida law had not been amended to include a prohibition against pregnancy-based discrimination.

The court in *Carsillo v. City of Lake Worth*[15] found that since the FCRA is patterned after Title VII, which considers pregnancy discrimination to be sex discrimination, the FCRA also bars such discrimination. The court recognized that the Florida statute had never been amended, but concluded that since Congress' original intent was to prohibit this type of discrimination, it was unnecessary for Florida to amend its statute to import the intent of the law after which it was patterned.

The court in *Delva v. Continental Group, Inc.*[16] held that FCRA does not prohibit pregnancy discrimination based on the *O'Loughlin* court's analysis that the FCRA had not been amended to

[11] Section 760.01, F.S.
[12] Section 760.10, F.S. Note that this section does not apply to a religious corporation, association, educational institution, or society which conditions employment opportunities or public accomodation to members of that religious corporation, association, educational institution, or society.
[13] 579 So.2d 788 (Fla. 1st DCA 1991). This case was brought under the Florida Human Rights Act of 1977, which was the predecessor to the Florida Civil Rights Act of 1992, and was also patterned after Title VII.
[14] *Id. at 792.*
[15] 995 So.2d 1118 (Fla. 4th DCA 2008), *rev. denied*, 20 So.3d 848 (Fla. 2009).
[16] 96 So.3d 956 (Fla. 3d DCA 2012), *reh'g denied*.

include pregnancy status. The issue before the court was narrowly defined to whether the FCRA prohibited discrimination in employment on the basis of pregnancy; therefore, it did not address the preemption holding in *O'Loughlin*. The court certified the conflict with the *Carsillo* case to the Florida Supreme Court.[17]

Federal courts interpreting the FCRA have similarly wrestled with whether pregnancy status is covered by its provisions.[18] Like the state courts, the federal courts finding that the FCRA does provide a cause of action based on pregnancy discrimination did so because the FCRA is patterned after Title VII, which bars pregnancy discrimination. The courts finding that the FCRA does not prohibit pregnancy discrimination primarily did so because the Legislature has not amended the FCRA to specifically protect pregnancy status.

III. Effect of Proposed Changes:

Section 1 amends s. 509.092, F.S., to provide that a person may not be discriminated against in public lodging and public food service establishments on the basis of pregnancy.

Section 2 amends s. 760.01, F.S., to expand the purpose of the FCRA to include protection from discrimination on the basis of pregnancy. This will clarify legislative intent on whether pregnancy discrimination is prohibited under the FCRA.

Section 3 amends s. 760.02, F.S., to create a definition of "pregnancy" which means a woman who is affected by pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

Sections 4, 5, and 6 amend ss. 760.05, 760.07, and 760.08, F.S., to include pregnancy as a status for which discrimination is prohibited.

Section 7 amends s. 760.10, F.S., to provide that it is unlawful for persons to be discriminated against with respect to employment benefits and provides that it is unlawful for an employer, employment agency, or labor organization to discriminate against a person on the basis of pregnancy with respect to compensation, benefits, terms, conditions, or privileges of employment. Discrimination on the basis of pregnancy is also prohibited in licensing, certification, or any other credential a person may be required to obtain to engage in a profession, occupation, or trade.

Section 8 reenacts s. 760.11(1), F.S., for the purpose of incorporating the amendments made by the bill to s. 760.10, F.S. (**Section 7**). Section 760.11(1), F.S., provides that any aggrieved person may file a complaint alleging a violation of ss. 760.01-760.10, F.S., or s. 590.092, F.S.,

[17] The case was filed with the Florida Supreme Court on October 16, 2012, and assigned case number SC12-2315. Oral arguments were held on November 7, 2013.

[18] Federal courts finding that the FCRA does not include a prohibition against pregnancy discrimination include: *Frazier v. T-Mobile USA, Inc.*, 495 F.Supp.2d 1185, (M.D. Fla. 2003), *Boone v. Total Renal Laboratories, Inc.*, 565 F.Supp.2d 1323 (M.D. Fla. 2008), and *DuChateau v. Camp Dresser & McKee, Inc.*, 822 F.Supp.2d 1325 (S.D. Fla. 2011). Federal courts finding that FCRA does provide protection against pregnancy discrimination include *Jolley v. Phillips Educ. Grp. of Cent. Fla., Inc.*, 1996 WL 529202 (M.D. Fla. 1996), *Terry v. Real Talent, Inc.*, 2009 WL 3494476 (M.D. Fla. 2009), *Constable v. Agilysys, Inc.*, 2011 WL 2446605 (M.D. Fla. 2011), and *Glass v. Captain Katanna's, Inc.*, 2013 WL 3017010 (M.D. Fla 2013).

with the Florida Commission on Human Rights or the Equal Employment Opportunity Commission. The complaint must contain a brief description of the alleged violation and the relief sought. The Florida Commission on Human Rights must notify the person against whom the complaint was filed within 5 days of receipt and the respondent must file an answer within 25 days of the date the complaint was filed.

Section 9 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 220 will resolve court conflicts and reduce the need to litigate whether pregnancy status is protected under the FCRA.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Individuals may bring claims for pregnancy discrimination under Title VII of the Civil Rights Act of 1964, in federal courts.

VIII. Statutes Affected:

This bill substantially amends ss.509.092, 760.01, 760.02, 760.05, 760.07, 760.08, and 760.10, F.S. This bill reenacts s. 760.11(1), F.S., for the purpose of incorporating the amendments made to s. 760.10, F.S.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.