

By Senator Margolis

35-892-03

See HB 25

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A bill to be entitled  
An act relating to prevention of discrimination  
in prescription plans; requiring certain  
employers to ensure that prescription plans  
include certain coverage, are comprehensive,  
and do not discriminate on the basis of gender;  
providing for penalties; providing an effective  
date.

WHEREAS, Title VII of the United States Civil Rights  
Act makes it unlawful for an employer "to fail or refuse to  
hire or to discharge any individual, or otherwise to  
discriminate against any individual with respect to his or her  
compensation, terms, conditions, and privileges of employment  
because of such individual's race, color, religion, sex, or  
national origin.", and

WHEREAS, the Pregnancy Discrimination Act of 1978  
amended section 701 of the Civil Rights Act to provide that  
"The terms 'because of sex' or 'on the basis of sex' include,  
but are not limited to, because of or 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....", and

WHEREAS, the United States Equal Employment Commission  
found that two employers' exclusions of prescription  
contraceptive drugs and devices in their respective health  
plans were discriminatory on the basis of sex and pregnancy in

1 direct violation of Title VII of the Civil Rights Act as  
2 amended by the Pregnancy Discrimination Act, and

3 WHEREAS, the United States District Court Western  
4 District of Washington at Seattle found in Jennifer Erickson  
5 v. The Bartell Drug Company, 141 F. Supp. 2d 1266, that the  
6 employer's exclusion of prescription contraception from its  
7 prescription plan is inconsistent with the requirements of  
8 Title VII as amended by the Pregnancy Discrimination Act, and

9 WHEREAS, the Supreme Court of the United States has  
10 held in Shaw v. Delta Airlines, 463 US 85 (1983), that the  
11 states play a significant role in the enforcement of Title VII  
12 and therefore, under Shaw, state fair employment laws  
13 governing employment benefits are not preempted by ERISA  
14 insofar as such laws prevent conduct that is also unlawful  
15 under Title VII, NOW, THEREFORE,

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17 Be It Enacted by the Legislature of the State of Florida:

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19 Section 1. Any employer that offers employees a  
20 comprehensive prescription benefit plan in connection with  
21 providing health care coverage shall ensure that the  
22 prescription benefit plan includes coverage for contraceptive  
23 drugs and devices, provides comprehensive coverage for  
24 employees of both genders, and does not discriminate based  
25 upon sex-based characteristics of the employees. Any employer  
26 who fails to comply with the requirements of this section  
27 shall be subject to the administrative and civil remedies  
28 provided in section 760.11, Florida Statutes.

29 Section 2. This act shall take effect upon becoming a  
30 law.

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