S T A T E O F N E W Y O R K

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I N A S S E M B L Y

February 12, 2014

Introduced by M. of A. JAFFEE, BRINDISI, ROSENTHAL, DINOWITZ, PEOPLES-STOKES, O'DONNELL, COOK, SCARBOROUGH, SKOUFIS, LIFTON, GALEF, OTIS, GOTTFRIED, BARRETT, CAHILL, PAULIN, FAHY, ABINANTI, ROSA, RUSSELL, ORTIZ, STECK -- Multi-Sponsored by -- M. of A. BRENNAN, BUCHWALD, CROUCH, GLICK, HOOPER, JACOBS, MARKEY, MILLMAN, PERRY, RIVERA, ROBERTS, WEISENBERG -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to discrimination based on an employee's or a dependent's reproductive health decision making

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The labor law is amended by adding a new section 203-e to read as follows:

S 203-E. PROHIBITION OF DISCRIMINATION BASED ON AN EMPLOYEE'S OR A DEPENDENT'S REPRODUCTIVE HEALTH DECISION MAKING. 1. AN EMPLOYER SHALL BE PROHIBITED FROM ACCESSING AN EMPLOYEE'S PERSONAL INFORMATION REGARDING THE EMPLOYEE'S OR THE EMPLOYEE'S DEPENDENT'S REPRODUCTIVE HEALTH DECISION MAKING, INCLUDING BUT NOT LIMITED TO, THE DECISION TO USE OR ACCESS A PARTICULAR DRUG, DEVICE OR MEDICAL SERVICE WITHOUT THE EMPLOYEE'S PRIOR INFORMED AFFIRMATIVE WRITTEN CONSENT.

2. AN EMPLOYER SHALL NOT DISCRIMINATE AGAINST AN EMPLOYEE WITH RESPECT TO COMPENSATION, TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT BECAUSE OF OR ON THE BASIS OF THE EMPLOYEE'S OR DEPENDENT'S REPRODUCTIVE HEALTH DECISION MAKING, INCLUDING, BUT NOT LIMITED TO, A DECISION TO USE OR ACCESS A PARTICULAR DRUG, DEVICE OR MEDICAL SERVICE, OR BECAUSE OF OR ON THE BASIS OF AN EMPLOYER'S PERSONAL BELIEFS ABOUT SUCH SERVICES.

3. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT ANY RIGHTS OF AN EMPLOYEE PROVIDED THROUGH ANY OTHER PROVISION OF LAW OR COLLECTIVE BARGAINING UNIT.

4. AN EMPLOYEE MAY BRING A CIVIL ACTION IN ANY COURT OF COMPETENT JURISDICTION AGAINST AN EMPLOYER ALLEGED TO HAVE VIOLATED THE PROVISIONS OF THIS SECTION. IN ANY CIVIL ACTION ALLEGING A VIOLATION OF THIS SECTION, THE COURT MAY:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD13701-05-4

(A) AWARD DAMAGES, INCLUDING BACK PAY, BENEFITS AND REASONABLE ATTORNEYS' FEES AND COSTS INCURRED TO A PREVAILING PLAINTIFF;

(B) AFFORD INJUNCTIVE RELIEF AGAINST ANY EMPLOYER THAT COMMITS OR PROPOSES TO COMMIT A VIOLATION OF THE PROVISIONS OF THIS SECTION;

(C) ORDER REINSTATEMENT; AND/OR

(D) AWARD LIQUIDATED DAMAGES EQUAL TO ONE HUNDRED PERCENT OF THE AWARD FOR DAMAGES PURSUANT TO SUBDIVISION (A) OF THIS SUBSECTION UNLESS AN EMPLOYER PROVES A GOOD FAITH BASIS TO BELIEVE THAT ITS ACTIONS IN VIOLATION OF THIS SECTION WERE IN COMPLIANCE WITH THE LAW.

5. ANY ACT OF RETALIATION FOR AN EMPLOYEE EXERCISING ANY RIGHTS GRANTED UNDER THIS SECTION SHALL SUBJECT AN EMPLOYER TO SEPARATE CIVIL PENALTIES UNDER THIS SECTION. FOR THE PURPOSES OF THIS SECTION, RETALIATION SHALL MEAN DISCHARGING OR OTHERWISE PENALIZING AN EMPLOYEE FOR:

(A) MAKING OR THREATENING TO MAKE, A COMPLAINT TO AN EMPLOYER, CO-WORKER, OR TO A PUBLIC BODY, THAT RIGHTS GUARANTEED UNDER THIS SECTION HAVE BEEN VIOLATED;

(B) CAUSING TO BE INSTITUTED ANY PROCEEDING UNDER OR RELATED TO THIS SECTION; OR

(C) PROVIDING INFORMATION TO, OR TESTIFYING BEFORE, ANY PUBLIC BODY CONDUCTING AN INVESTIGATION, HEARING, OR INQUIRY INTO ANY SUCH VIOLATION OF A LAW, RULE, OR REGULATION BY SUCH EMPLOYER.

S 2. This act shall take effect immediately.