



Ohio Legislative Service Commission

Bill Analysis

Nick Thomas

S.B. 68

131st General Assembly
(As Introduced)

Sens. Tavares, Thomas

BILL SUMMARY

- Requires insurers providing prescription drug coverage to provide benefits for drugs, devices, or services related to contraception for women.
- Prohibits workplace discrimination related to reproductive health decisions.

CONTENT AND OPERATION

Overview

The bill requires insurers to provide benefits for drugs, devices, or services related to contraception. The bill applies to health insuring corporations, sickness and accident insurers, and public employee benefit plans. The bill also prohibits workplace discrimination based on reproductive health decisions.

Insurance coverage

The bill requires certain insurers to provide coverage for contraceptive drugs, devices, and services. The bill applies to health insuring corporations, sickness and accident insurers, and public employee benefit plans that provide prescription drug coverage. The bill does not appear to apply to multiple employee benefit plans, commonly referred to as MEWAs.

Under the bill, insurers must provide coverage for prescription drugs or devices that have been approved by the U.S. Food and Drug Administration for use as contraception for women. Additionally, consultations, examinations, procedures, and medical services provided on an outpatient basis that are related to contraception are also required to be covered. Such coverage is to be provided without a deductible, copayment, coinsurance payment, or other fee. In other words, such drugs, devices, or

services are to be provided at no cost to the covered individual.¹ Contraception for men is not required to be covered.

The bill exempts from these requirements religious employers and religious, nonprofit "eligible organizations" that provide health insurance coverage.² The bill specifies that for-profit corporations operating in Ohio are subject to the bill's requirements.³

Discrimination provisions

The bill prohibits workplace discrimination based on reproductive health decisions. Specifically, the bill stipulates that it is an unlawful, discriminatory practice under Ohio's Civil Rights Law to take any employment action that negatively affects an employee because of any reproductive health decision made by the employee, or the employee's dependent or because of the employer's personal beliefs about reproductive drugs, devices, or services or the insurance coverage of such. In contrast to the bill's requirements on health insurance coverage, this provision appears to apply to both men and women alike.⁴

Enforcement

Charges filed with Ohio's Civil Rights Commission

Under continuing law, any person may file a charge with Ohio's Civil Rights Commission alleging that another person has engaged or is engaging in an unlawful discriminatory practice. In the case of certain specified charges under continuing law (those that allege unlawful discriminatory practices not related to housing) or a charge of an unlawful discriminatory practice created in the bill, the charge must be in writing and under oath and must be filed with the Commission within six months after the alleged unlawful discriminatory practice was committed. The Commission may investigate the charge and may initiate further action in accordance with procedures specified in continuing law. The Commission may also conduct a preliminary investigation upon its own initiative relating to those unlawful discriminatory practices in current law or an unlawful discriminatory practice created by the bill. Although continuing law requires that the Commission must first attempt to induce compliance with Ohio's Civil Rights Law through informal methods, if the Commission ultimately

¹ R.C. 1751.68(A) and (B) and 3923.84(A) and (B).

² R.C. 1751.68(C) and 3923.84(C).

³ R.C. 1751.68(D) and 3923.84(D).

⁴ R.C. 4112.02(A).



determines that an unlawful discriminatory practice has occurred, after a hearing the Commission may issue an order to remedy the situation, including a cease and desist order or an order requiring back pay, reinstatement, or hiring.⁵

Civil penalties

Under continuing law, a person who violates Ohio's Civil Rights Law is subject to a civil action for damages, injunctive relief, or any other appropriate relief. Under the bill, an employer who engages in employment discrimination based on reproductive health decisions may be subject to this civil penalty.⁶

Exemption from review by the Superintendent of Insurance

The coverage required under this bill may be considered mandated health benefits. Under section 3901.71 of the Revised Code, no mandated health benefits legislation enacted by the General Assembly may be applied to any policy, contract, plan, or other arrangement providing sickness and accident or other health benefits until the Superintendent of Insurance determines, pursuant to a hearing conducted in accordance with the Administrative Procedure Act, that the provision can be applied fully and equally in all respects to (1) employee benefit plans subject to regulation by the federal Employee Retirement Income Security Act of 1974 (ERISA) and (2) employee benefit plans established or modified by the state or any political subdivision of the state, or by any agency or instrumentality of the state or any political subdivision of the state. The bill includes a provision that exempts its requirements from this restriction.⁷

Section 3901.71 of the Revised Code defines "mandated health benefits" as any required coverage, or required offering of coverage, for the expenses of specified services, treatments, or diseases under any policy, contract, plan, or other arrangement providing sickness and accident or other health benefits to policyholders, subscribers, or members.

Definitions

The bill creates the following definitions:

"Religious employer" means an employer that is a nonprofit, religious organization that is exempted from filing an annual tax return.

⁵ R.C. 4112.05, not in the bill.

⁶ R.C. 4112.99, not in the bill.

⁷ R.C. 1751.68(A) and 3923.84(A).



"Eligible organization" means an organization that meets all of the following:

- The organization opposes providing coverage for some or all of any contraceptive services required to be covered under Patient Protection and Affordable Care Act of 2010 on account of religious objections;
- The organization is organized and operates as a nonprofit entity;
- The organization holds itself out as a religious organization;
- The organization self-certifies that it meets the requirements listed above to the U.S. Secretary of Health and Human Services.⁸

HISTORY

ACTION	DATE
Introduced	02-23-15

S0068-I-131.docx/emr

⁸ R.C. 1751.68(C)(1) and 3923.84(C)(1), and 45 C.F.R. 147.131(b), not in the bill.

