To amend the Civil Rights Act of 1964 to protect breastfeeding by new mothers; to provide for a performance standard for breast pumps; and to provide tax incentives to encourage breastfeeding.

IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 2009

Mrs. MALONEY (for herself, Mrs. CAPPs, Mr. OLVER, Mr. FRANK of Massachusetts, Ms. ROYBAL-ALLARD, Mr. LEVIN, Mr. MEEKS of New York, Ms. KAPTUR, Mr. SNYDER, Ms. SCHWARTZ, and Mr. MORAN of Virginia) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Energy and Commerce and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Civil Rights Act of 1964 to protect breastfeeding by new mothers; to provide for a performance standard for breast pumps; and to provide tax incentives to encourage breastfeeding.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Breastfeeding Promotion Act of 2009”.

1
(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—AMENDMENTS TO THE CIVIL RIGHTS ACT OF 1964

Sec. 101. Findings; purposes.
Sec. 102. Amendments to title VII of the Civil Rights Act of 1964.

TITLE II—CREDIT FOR EMPLOYER EXPENSES FOR PROVIDING APPROPRIATE ENVIRONMENT ON BUSINESS PREMISES FOR EMPLOYED MOTHERS TO BREASTFEED OR EXPRESS MILK FOR THEIR CHILDREN

Sec. 201. Allowance of credit for employer expenses for providing appropriate environment on business premises for employed mothers to breastfeed or express milk for their children.

TITLE III—SAFE AND EFFECTIVE BREAST PUMPS

Sec. 301. Short title.
Sec. 302. Breast pumps.

TITLE IV—DEFINITION OF MEDICAL CARE IN INTERNAL REVENUE CODE EXPANDED TO INCLUDE BREASTFEEDING EQUIPMENT AND SERVICES

Sec. 401. Definition of medical care expanded to include breastfeeding equipment and services.

3 TITLE I—AMENDMENTS TO THE CIVIL RIGHTS ACT OF 1964

4 SEC. 101. FINDINGS; PURPOSES.

5 (a) Findings.—Congress finds the following:

6 (1) Women with infants and toddlers are a rapidly growing segment of the labor force today.

7 (2) Statistical surveys of families show that over 50 percent of mothers with children less than 1 year of age are in the labor force.

8 (3) The American Academy of Pediatrics recommends that mothers breastfeed exclusively for six months but continuing for at least the 1st year of
a child’s life and that arrangements be made to allow a mother’s expressing of milk if mother and child must separate.

(4) Research studies show that children who are not breastfed have higher rates of mortality, meningitis, some types of cancers, asthma and other respiratory illnesses, bacterial and viral infections, diarrhoeal diseases, ear infections, allergies, and obesity.

(5) Research studies have also shown that breastmilk and breastfeeding have protective effects against the development of a number of chronic diseases, including juvenile diabetes, lymphomas, Crohn’s disease, celiac disease, some chronic liver diseases, and ulcerative colitis.

(6) Maternal benefits of breastfeeding include a reduced risk for postpartum hemorrhage and decreased risk for developing osteoporosis, ovarian cancer, and premenopausal breast cancer.

(7) The health benefits to children from breastfeeding translate into a threefold decrease in parental absenteeism due to infant illness.

(8) Congress intended to include breastfeeding and expressing breast milk as protected conduct under the amendment made by the Pregnancy Dis-
crimination Act of 1978 to title VII of the Civil
Rights Act of 1964.

(9) Although title VII of the Civil Rights Act of
1964, as so amended, applies with respect to “preg-
nancy, childbirth, or related medical conditions”, a
few courts have failed to reach the conclusion that
breastfeeding and expressing breast milk in the
workplace are covered by such title.

(b) PURPOSES.—The purposes of this title are—

(1) to promote the health and well-being of in-
fants whose mothers return to the workplace after
childbirth, and

(2) to clarify that breastfeeding and expressing
breast milk in the workplace are protected conduct
under the amendment made by the Pregnancy Dis-

SEC. 102. AMENDMENTS TO TITLE VII OF THE CIVIL RIGHTS
ACT OF 1964.

Section 701(k) of the Civil Rights Act of 1964 (42
U.S.C. 2000e(k)) is amended—

(1) by inserting “(including lactation)” after
“childbirth”, and

(2) by adding at the end the following: “For
purposes of this subsection, the term ‘lactation’
means a condition that may result in the feeding of a child directly from the breast or the expressing of milk from the breast.”

**TITLE II—CREDIT FOR EMPLOYER EXPENSES FOR PROVIDING APPROPRIATE ENVIRONMENT ON BUSINESS PREMISES FOR EMPLOYED MOTHERS TO BREASTFEED OR EXPRESS MILK FOR THEIR CHILDREN**

**SEC. 201. ALLOWANCE OF CREDIT FOR EMPLOYER EXPENSES FOR PROVIDING APPROPRIATE ENVIRONMENT ON BUSINESS PREMISES FOR EMPLOYED MOTHERS TO BREASTFEED OR EXPRESS MILK FOR THEIR CHILDREN.**

(a) In general.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following new section:
SEC. 45R. CREDIT FOR EMPLOYER EXPENSES INCURRED TO FACILITATE EMPLOYED MOTHERS WHO BREASTFEED OR EXPRESS MILK FOR THEIR CHILDREN.

“(a) In general.—For purposes of section 38, the breastfeeding promotion and support credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified breastfeeding promotion and support expenditures of the taxpayer for such taxable year.

“(b) Dollar limitation.—The credit allowable under subsection (a) for any taxable year shall not exceed $10,000.

“(c) Qualified breastfeeding promotion and support expenditure.—For purposes of this section—

“(1) In general.—The term ‘qualified breastfeeding promotion and support expenditure’ means any amount paid or incurred in connection with a trade or business of the taxpayer—

“(A) for breast pumps and other equipment specially designed to assist mothers who are employees of the taxpayer to breastfeed or express milk for their children but only if such pumps and equipment meet such standards (if any) prescribed by the Secretary of Health and Human Services, and
“(B) for consultation services to the taxpayer or employees of the taxpayer relating to breastfeeding.

“(2) Costs of other exclusive use property included.—Such term includes any amount paid or incurred for the acquisition or lease of tangible personal property (not described in paragraph (1)(A)) which is exclusively used by mothers who are employees of the taxpayer to breastfeed or express milk for their children unless such property is located in any residence of the taxpayer or any employee of the taxpayer.

“(d) Recapture of Credit.—

“(1) In general.—If, during any taxable year, any property for which a credit was allowed under this section is disposed of or otherwise ceases to be used by the taxpayer as required by this section, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the recapture percentage of the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero any credit determined under this section with respect to such property. The
preceding sentence shall not apply to property leased
to the taxpayer.

“(2) Recapture percentage.—For purposes
of this subsection, the recapture percentage shall be
determined in accordance with the following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>Recapture Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1</td>
<td>100</td>
</tr>
<tr>
<td>Year 2</td>
<td>60</td>
</tr>
<tr>
<td>Year 3</td>
<td>30</td>
</tr>
<tr>
<td>Year 4 or thereafter</td>
<td>0</td>
</tr>
</tbody>
</table>

The references to years in the preceding table are
references to the consecutive taxable years beginning
with the taxable year in which the property is placed
in service by the taxpayer as year 1.

“(3) Certain rules to apply.—Rules similar
to the rules of paragraphs (3) and (4), and subpara-
graphs (B) and (C) of paragraph (5), of section
50(a) shall apply for purposes of this subsection.

“(e) Special rules.—For purposes of this sec-
tion—

“(1) Aggregation rules.—For purposes of
subsection (b), all persons which are treated as a
single employer under subsection (a) or (b) of sec-
tion 52 shall be treated as a single taxpayer, and the
dollar amount contained in such subsection shall be
allocated among such persons under regulations pre-
scribed by the Secretary.
“(2) REDUCTION IN BASIS.—Rules similar to the rules of paragraphs (1) and (2) of section 50(e), and section 1016(a)(19), shall apply with respect to property for which a credit is determined under this section.

“(3) OTHER DEDUCTIONS AND CREDITS.—No deduction or credit shall be allowed under any other provision of this chapter with respect to any expenditure for which a credit is determined under this section.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b) of such Code is amended by striking “plus” at the end of paragraph (34), by striking the period at the end of paragraph (35) and inserting “, plus”, and by adding at the end the following new paragraph:

“(36) the breastfeeding promotion and support credit determined under section 45R(a).”.

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding at the end the following new item:

“Sec. 45R. Credit for employer expenses incurred to facilitate employed mothers who breastfeed or express milk for their children.”.
(c) **Effective Date.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

**TITLE III—SAFE AND EFFECTIVE BREAST PUMPS**

**SEC. 301. SHORT TITLE.**

This title may be cited as the “Safe and Effective Breast Pumps Act”.

**SEC. 302. BREAST PUMPS.**

(a) **Performance Standards.**—The Secretary of Health and Human Services shall take such action as may be appropriate to put into effect a performance standard for breast pumps irrespective of the class to which the breast pumps have been classified under section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c). In establishing such standard, the Secretary shall identify those pumps appropriate for use on a regular basis in a place of employment based on the efficiency and effectiveness of the pump and on sanitation factors related to communal use. Action to put into effect a performance standard shall be taken within one year of the date of the enactment of this Act.

(b) **Compliance Policy Guide.**—The Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall issue a compliance policy
guide which will assure that women who want to
breastfeed a child are given full and complete information
respecting breast pumps.

**TITLE IV—DEFINITION OF MEDICAL CARE IN INTERNAL REVENUE CODE EXPANDED TO INCLUDE BREASTFEEDING EQUIPMENT AND SERVICES**

**SEC. 401. DEFINITION OF MEDICAL CARE EXPANDED TO INCLUDE BREASTFEEDING EQUIPMENT AND SERVICES.**

(a) In General.—Paragraph (1) of section 213(d) of the Internal Revenue Code of 1986 (defining medical care) is amended by striking “or” at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting “, or”, and by inserting after subparagraph (D) the following:

“(E) qualified breastfeeding equipment and services.”.

(b) Qualified Breastfeeding Equipment and Services.—Subsection (d) of section 213 of such Code (relating to definitions) is amended by adding at the end the following new paragraph:

“(12) QUALIFIED BREASTFEEDING EQUIPMENT AND SERVICES.—For purposes of paragraph (1)(E),
the term ‘qualified breastfeeding equipment and services’ means—

“(A) breast pumps and other equipment specially designed to assist a mother to breastfeed or express milk for her child but only if such pumps and equipment meet the standards (if any) prescribed by the Secretary of Health and Human Services, and

“(B) consultation services relating to breastfeeding.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

TITLE V—PRIVACY FOR BREASTFEEDING MOTHERS

SEC. 501. PRIVACY FOR BREASTFEEDING MOTHERS.

(a) IN GENERAL.—Section 7 of the Fair Labor Standards Act (29 U.S.C. 207) is amended by adding at the end the following:

“(r)(1) An employer shall provide reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child’s birth each time such employee has need to do so. The employer shall make reasonable efforts to provide a place, other than a bathroom, that is shielded from view and free from intrusion from
co-workers and the public, which may be used by an em-
ployee to express breast milk. An employer shall not be
required to compensate an employee for any work time
spent for such purpose.

“(2) For purposes of this subsection, the term ‘em-
ployer’ means an employer as defined in section 3(d) who
employs 50 or more employees for each working day dur-
ing each of 20 or more calendar workweeks in the current
or preceding calendar year.”.

(b) PENALTY.—Section 16(b) of such Act (29 U.S.C.
216(b)) is amended by inserting after the first sentence
the following: “Any employee who is harmed by a violation
of section 7(r) of this Act may bring an action to enjoin
such violation and to recover such equitable relief as may
be appropriate to effectuate the purposes of such sec-
tion.”.