

111TH CONGRESS
1ST SESSION

S. 1244

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 SENATE OF THE UNITED STATES

JUNE 11, 2009

Mr. MERKLEY introduced the following bill; which was read twice and referred to the Committee on Finance

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.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Breastfeeding Promotion Act of 2009”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

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.

TITLE V—PRIVACY FOR BREASTFEEDING MOTHERS

Sec. 501. Privacy for breastfeeding mothers.

1 **TITLE I—AMENDMENTS TO THE**
2 **CIVIL RIGHTS ACT OF 1964**

3 **SEC. 101. FINDINGS; PURPOSES.**

4 (a) FINDINGS.—Congress finds the following:

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

6 (2) Statistical surveys of families show that
7 over 50 percent of mothers with children less than
8 1 year of age are in the labor force.

9 (3) The American Academy of Pediatrics recommends that mothers breastfeed exclusively for 6
10 months and continue breastfeeding for at least the
11 first year of a child's life, and that arrangements be
12
13

1 made to allow a mother's expressing of milk if moth-
2 er and child must separate.

3 (4) Research studies show that children who are
4 not breastfeed have higher rates of mortality, menin-
5 gitis, some types of cancers, asthma and other res-
6 piratory illnesses, bacterial and viral infections,
7 diarrhoeal diseases, ear infections, allergies, and obe-
8 sity.

9 (5) Research studies have also shown that
10 breastmilk and breastfeeding have protective effects
11 against the development of a number of chronic dis-
12 eases, including juvenile diabetes, lymphomas,
13 Crohn's disease, celiac disease, some chronic liver
14 diseases, and ulcerative colitis.

15 (6) Maternal benefits of breastfeeding include a
16 reduced risk for postpartum hemorrhage and de-
17 creased risk for developing osteoporosis, ovarian can-
18 cer, and premenopausal breast cancer.

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

22 (8) Congress intended to include breastfeeding
23 and expressing breast milk as protected conduct
24 under the amendment made to title VII of the Civil
25 Rights Act of 1964 by the Act entitled "An Act to

1 amend title VII of the Civil Rights Act of 1964 to
2 prohibit sex discrimination on the basis of preg-
3 nancy”, approved October 31, 1978 (commonly
4 known as the “Pregnancy Discrimination Act”).

5 (9) Although title VII of the Civil Rights Act of
6 1964, as so amended, applies with respect to “preg-
7 nancy, childbirth, or related medical conditions”, a
8 few courts have failed to reach the conclusion that
9 breastfeeding and expressing breast milk in the
10 workplace are covered by such title.

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

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

15 (2) to clarify that breastfeeding and expressing
16 breast milk in the workplace are protected conduct
17 under the amendment made by the Act commonly
18 known as the “Pregnancy Discrimination Act” to
19 title VII of the Civil Rights Act of 1964.

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

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

24 (1) by inserting “(including lactation)” after
25 “childbirth”; and

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

6 **TITLE II—CREDIT FOR EM-**
 7 **PLOYER EXPENSES FOR PRO-**
 8 **VIDING APPROPRIATE ENVI-**
 9 **RONMENT ON BUSINESS**
 10 **PREMISES FOR EMPLOYED**
 11 **MOTHERS TO BREASTFEED**
 12 **OR EXPRESS MILK FOR THEIR**
 13 **CHILDREN**

14 **SEC. 201. ALLOWANCE OF CREDIT FOR EMPLOYER EX-**
 15 **PENSES FOR PROVIDING APPROPRIATE ENVI-**
 16 **RONMENT ON BUSINESS PREMISES FOR EM-**
 17 **PLOYED MOTHERS TO BREASTFEED OR EX-**
 18 **PRESS MILK FOR THEIR CHILDREN.**

19 (a) **IN GENERAL.**—Subpart D of part IV of sub-
 20 chapter A of chapter 1 of the Internal Revenue Code of
 21 1986 (relating to business related credits) is amended by
 22 adding at the end the following new section:

1 **“SEC. 45R. CREDIT FOR EMPLOYER EXPENSES INCURRED**
2 **TO FACILITATE EMPLOYED MOTHERS WHO**
3 **BREASTFEED OR EXPRESS MILK FOR THEIR**
4 **CHILDREN.**

5 “(a) IN GENERAL.—For purposes of section 38, the
6 breastfeeding promotion and support credit determined
7 under this section for the taxable year is an amount equal
8 to 50 percent of the qualified breastfeeding promotion and
9 support expenditures of the taxpayer for such taxable
10 year.

11 “(b) DOLLAR LIMITATION.—The credit allowable
12 under subsection (a) for any taxable year shall not exceed
13 \$10,000.

14 “(c) QUALIFIED BREASTFEEDING PROMOTION AND
15 SUPPORT EXPENDITURE.—For purposes of this section—

16 “(1) IN GENERAL.—The term ‘qualified
17 breastfeeding promotion and support expenditure’
18 means any amount paid or incurred in connection
19 with a trade or business of the taxpayer—

20 “(A) for breast pumps and other equip-
21 ment specially designed to assist mothers who
22 are employees of the taxpayer to breastfeed or
23 express milk for their children but only if such
24 pumps and equipment meet such standards (if
25 any) prescribed by the Secretary of Health and
26 Human Services, and

1 “(B) for consultation services to the tax-
2 payer or employees of the taxpayer relating to
3 breastfeeding.

4 “(2) COSTS OF OTHER EXCLUSIVE USE PROP-
5 ERTY INCLUDED.—Such term includes any amount
6 paid or incurred for the acquisition or lease of tan-
7 gible personal property (not described in paragraph
8 (1)(A)) which is exclusively used by mothers who are
9 employees of the taxpayer to breastfeed or express
10 milk for their children unless such property is lo-
11 cated in any residence of the taxpayer or any em-
12 ployee of the taxpayer.

13 “(d) RECAPTURE OF CREDIT.—

14 “(1) IN GENERAL.—If, during any taxable year,
15 any property for which a credit was allowed under
16 this section is disposed of or otherwise ceases to be
17 used by the taxpayer as required by this section,
18 then the tax of the taxpayer under this chapter for
19 such taxable year shall be increased by an amount
20 equal to the recapture percentage of the aggregate
21 decrease in the credits allowed under section 38 for
22 all prior taxable years which would have resulted
23 solely from reducing to zero any credit determined
24 under this section with respect to such property. The

1 preceding sentence shall not apply to property leased
2 to the taxpayer.

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

“If the recapture event occurs in:	The recapture percentage is:
Year 1	100
Year 2	60
Year 3	30
Year 4 or thereafter	0.

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

10 “(3) CERTAIN RULES TO APPLY.—Rules similar
11 to the rules of paragraphs (3) and (4), and subpara-
12 graphs (B) and (C) of paragraph (5), of section
13 50(a) shall apply for purposes of this subsection.

14 “(e) SPECIAL RULES.—For purposes of this sec-
15 tion—

16 “(1) AGGREGATION RULES.—For purposes of
17 subsection (b), all persons which are treated as a
18 single employer under subsection (a) or (b) of sec-
19 tion 52 shall be treated as a single taxpayer, and the
20 dollar amount contained in such subsection shall be
21 allocated among such persons under regulations pre-
22 scribed by the Secretary.

1 “(2) REDUCTION IN BASIS.—Rules similar to
2 the rules of paragraphs (1) and (2) of section 50(c),
3 and section 1016(a)(19), shall apply with respect to
4 property for which a credit is determined under this
5 section.

6 “(3) OTHER DEDUCTIONS AND CREDITS.—No
7 deduction or credit shall be allowed under any other
8 provision of this chapter with respect to any expend-
9 iture for which a credit is determined under this sec-
10 tion.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Section 38(b) of such Code is amended by
13 striking “plus” at the end of paragraph (34), by
14 striking the period at the end of paragraph (35) and
15 inserting “, plus”, and by adding at the end the fol-
16 lowing new paragraph:

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

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

“Sec. 45R. Credit for employer expenses incurred to facilitate employed moth-
ers who breastfeed or express milk for their children”.

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

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

6 **SEC. 301. SHORT TITLE.**

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

9 **SEC. 302. BREAST PUMPS.**

10 (a) PERFORMANCE STANDARDS.—

11 (1) IN GENERAL.—The Secretary of Health and
12 Human Services shall take such action as may be
13 appropriate to put into effect a performance stand-
14 ard for breast pumps irrespective of the class to
15 which the breast pumps have been classified under
16 section 513 of the Federal Food, Drug, and Cos-
17 metic Act (21 U.S.C. 360c).

18 (2) IDENTIFICATION OF PUMPS.—In estab-
19 lishing the performance standard under paragraph
20 (1), the Secretary shall identify those pumps appro-
21 priate for use on a regular basis in a place of em-
22 ployment based on the efficiency and effectiveness of
23 the pump and on sanitation factors related to com-
24 munal use.

1 (3) **TIMELINE.**—Action to put into effect the
 2 performance standard under paragraph (1) shall be
 3 taken not later than 1 year after the date of enact-
 4 ment of this Act.

5 (b) **COMPLIANCE POLICY GUIDE.**—The Secretary of
 6 Health and Human Services, acting through the Commis-
 7 sioner of Food and Drugs, shall issue a compliance policy
 8 guide that will ensure that women who want to breastfeed
 9 a child are given full and complete information respecting
 10 breast pumps.

11 **TITLE IV—DEFINITION OF MED-**
 12 **ICAL CARE IN INTERNAL REV-**
 13 **ENUE CODE EXPANDED TO**
 14 **INCLUDE BREASTFEEDING**
 15 **EQUIPMENT AND SERVICES**

16 **SEC. 401. DEFINITION OF MEDICAL CARE EXPANDED TO IN-**
 17 **CLUDE BREASTFEEDING EQUIPMENT AND**
 18 **SERVICES.**

19 (a) **IN GENERAL.**—Paragraph (1) of section 213(d)
 20 of the Internal Revenue Code of 1986 (defining medical
 21 care) is amended by striking “or” at the end of subpara-
 22 graph (C), by striking the period at the end of subpara-
 23 graph (D) and inserting “, or”, and by inserting after sub-
 24 paragraph (D) the following:

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

3 (b) QUALIFIED BREASTFEEDING EQUIPMENT AND
4 SERVICES.—Subsection (d) of section 213 of such Code
5 (relating to definitions) is amended by adding at the end
6 the following new paragraph:

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

11 “(A) breast pumps and other equipment
12 specially designed to assist a mother to
13 breastfeed or express milk for her child but only
14 if such pumps and equipment meet the stand-
15 ards (if any) prescribed by the Secretary of
16 Health and Human Services, and

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

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

1 **TITLE V—PRIVACY FOR**
2 **BREASTFEEDING MOTHERS**

3 **SEC. 501. PRIVACY FOR BREASTFEEDING MOTHERS.**

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

7 “(r)(1) An employer shall provide reasonable break
8 time for an employee to express breast milk for her nurs-
9 ing child for 1 year after the child’s birth each time such
10 employee has need to express the milk. The employer shall
11 make reasonable efforts to provide a place, other than a
12 bathroom, that is shielded from view and free from intru-
13 sion from coworkers and the public, which may be used
14 by an employee to express breast milk. An employer shall
15 not be required to compensate an employee for any work
16 time spent for such purpose.

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

22 (b) PENALTY.—Section 16(b) of such Act (29 U.S.C.
23 216(b)) is amended by inserting after the first sentence
24 the following: “In lieu of any other remedy under this sec-
25 tion or section 17, any employee who is harmed by a viola-

1 tion of section 7(r) may bring an action to enjoin such
2 violation and to recover such equitable relief as may be
3 appropriate to effectuate the purposes of such section.”.

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