

109TH CONGRESS  
1ST SESSION

# H. R. 2122

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.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 5, 2005

Mrs. MALONEY (for herself, Ms. LEE, Mr. WEXLER, Mr. SCHIFF, Ms. WOOLSEY, Mr. SANDERS, Mr. MILLER of North Carolina, Mr. PAYNE, Ms. JACKSON-LEE of Texas, Mr. KILDEE, Ms. ROYBAL-ALLARD, Mr. CONYERS, Mr. SHAYS, Mr. OWENS, Mr. CROWLEY, and Mr. McGOVERN) 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 the Workforce, 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

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# 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.**

4       This Act may be cited as the “Pregnancy Discrimina-  
5       tion Act Amendments of 2005”.

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

3       **SEC. 101. SHORT TITLE.**

4       This title may be cited as the “Pregnancy Discrimi-  
5       nation Act Amendments of 2005”.

6       **SEC. 102. FINDINGS; PURPOSES.**

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

8               (1) Women with infants and toddlers are a rap-  
9               idly growing segment of the labor force today.

10              (2) Statistical surveys of families show that  
11              over 50 percent of mothers with children less than  
12              1 year of age are in the labor force.

13              (3) The American Academy of Pediatrics rec-  
14              ommends that mothers breastfeed exclusively for six  
15              months but continuing for at least the 1st year of  
16              a child’s life and that arrangements be made to  
17              allow a mother’s expressing of milk if mother and  
18              child must separate.

19              (4) Research studies show that children who are  
20              not breastfed have higher rates of mortality, menin-  
21              gitis, some types of cancers, asthma and other res-  
22              piratory illnesses, bacterial and viral infections,  
23              diarrhoeal diseases, ear infections, allergies, and obe-  
24              sity.

7 (6) Maternal benefits of breastfeeding include a  
8 reduced risk for postpartum hemorrhage and de-  
9 creased risk for developing osteoporosis, ovarian can-  
10 cer, and premenopausal breast cancer.

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

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

19 (9) Although title VII of the Civil Rights Act of  
20 1964, as so amended, applies with respect to “preg-  
21 nancy, childbirth, or related medical conditions”, a  
22 few courts have failed to reach the conclusion that  
23 breastfeeding and expressing breast milk in the  
24 workplace are covered by such title.

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

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

4 (2) to clarify that breastfeeding and expressing  
5 breast milk in the workplace are protected conduct  
6 under the amendment made by the Pregnancy Dis-  
7 crimination Act of 1978 to title VII of the Civil  
8 Rights Act of 1964.

## 9 SEC. 103. AMENDMENT TO TITLE VII OF THE CIVIL RIGHTS

10 ACT OF 1964.

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

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

1 **TITLE II—CREDIT FOR EM-**  
2 **PLOYER EXPENSES FOR PRO-**  
3 **VIDING APPROPRIATE ENVI-**  
4 **RONMENT ON BUSINESS**  
5 **PREMISES FOR EMPLOYED**  
6 **MOTHERS TO BREASTFEED**  
7 **OR EXPRESS MILK FOR THEIR**  
8 **CHILDREN**

9 **SEC. 201. ALLOWANCE OF CREDIT FOR EMPLOYER EX-**  
10 **PENSES FOR PROVIDING APPROPRIATE ENVI-**  
11 **RONMENT ON BUSINESS PREMISES FOR EM-**  
12 **PLOYED MOTHERS TO BREASTFEED OR EX-**  
13 **PRESS MILK FOR THEIR CHILDREN.**

14 (a) **IN GENERAL.**—Subpart D of part IV of sub-  
15 chapter A of chapter 1 of the Internal Revenue Code of  
16 1986 (relating to business related credits) is amended by  
17 adding at the end the following new section:

18 **“SEC. 45I. CREDIT FOR EMPLOYER EXPENSES INCURRED**  
19 **TO FACILITATE EMPLOYED MOTHERS WHO**  
20 **BREASTFEED OR EXPRESS MILK FOR THEIR**  
21 **CHILDREN.**

22 “(a) **IN GENERAL.**—For purposes of section 38, the  
23 breastfeeding promotion and support credit determined  
24 under this section for the taxable year is an amount equal  
25 to 50 percent of the qualified breastfeeding promotion and

1 support expenditures of the taxpayer for such taxable  
2 year.

3       “(b) DOLLAR LIMITATION.—The credit allowable  
4 under subsection (a) for any taxable year shall not exceed  
5 \$10,000.

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

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

12           “(A) for breast pumps and other equipment  
13 specially designed to assist mothers who  
14 are employees of the taxpayer to breastfeed or  
15 express milk for their children but only if such  
16 pumps and equipment meet such standards (if  
17 any) prescribed by the Secretary of Health and  
18 Human Services, and

19           “(B) for consultation services to the taxpayer  
20 or employees of the taxpayer relating to  
21 breastfeeding.

22       “(2) COSTS OF OTHER EXCLUSIVE USE PROPERTY INCLUDED.—Such term includes any amount  
23 paid or incurred for the acquisition or lease of tangible personal property (not described in paragraph  
24 25

1 (1)(A)) which is exclusively used by mothers who are  
 2 employees of the taxpayer to breastfeed or express  
 3 milk for their children unless such property is lo-  
 4 cated in any residence of the taxpayer or any em-  
 5 ployee of the taxpayer.

6 “(d) RECAPTURE OF CREDIT.—

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

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

| “If the recapture event occurs in: | The recap-<br>ture per-<br>centage is: |
|------------------------------------|--|
| Year 1 .....                       | 100                                    |
| Year 2 .....                       | 60                                     |
| Year 3 .....                       | 30                                     |
| Year 4 or thereafter .....         | 0.                                     |

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

5           “(3) CERTAIN RULES TO APPLY.—Rules similar  
6       to the rules of paragraphs (3) and (4), and subpara-  
7       graphs (B) and (C) of paragraph (5), of section  
8       50(a) shall apply for purposes of this subsection.

9           “(e) SPECIAL RULES.—For purposes of this sec-  
10      tion—

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

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

23           “(3) OTHER DEDUCTIONS AND CREDITS.—No  
24       deduction or credit shall be allowed under any other  
25       provision of this chapter with respect to any expend-

1       iture for which a credit is determined under this sec-  
2       tion.”.

3       (b) CONFORMING AMENDMENTS.—

4           (1) Section 38(b) of such Code is amended by  
5       striking “plus” at the end of paragraph (18), by  
6       striking the period at the end of paragraph (19) and  
7       inserting “, plus”, and by adding at the end the fol-  
8       lowing new paragraph:

9           “(20) the breastfeeding promotion and support  
10      credit determined under section 45I(a).”.

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

“See. 45I. Credit for employer expenses incurred to facilitate employed mothers  
who breastfeed or express milk for their children.”.

15           (c) EFFECTIVE DATE.—The amendments made by  
16      this section shall apply to taxable years beginning after  
17      December 31, 2004.

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

20      **SEC. 301. SHORT TITLE.**

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

1 **SEC. 302. BREAST PUMPS.**

2 (a) PERFORMANCE STANDARDS.—The Secretary of  
3 Health and Human Services shall take such action as may  
4 be appropriate to put into effect a performance standard  
5 for breast pumps irrespective of the class to which the  
6 breast pumps have been classified under section 513 of  
7 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.  
8 360c). In establishing such standard, the Secretary shall  
9 identify those pumps appropriate for use on a regular  
10 basis in a place of employment based on the efficiency and  
11 effectiveness of the pump and on sanitation factors related  
12 to communal use. Action to put into effect a performance  
13 standard shall be taken within one year of the date of the  
14 enactment of this Act.

15 (b) COMPLIANCE POLICY GUIDE.—The Secretary of  
16 Health and Human Services, acting through the Commis-  
17 sioner of Food and Drugs, shall issue a compliance policy  
18 guide which will assure that women who want to  
19 breastfeed a child are given full and complete information  
20 respecting breast pumps.

1   **TITLE IV—DEFINITION OF MED-**  
2   **ICAL CARE IN INTERNAL REV-**  
3   **ENUE CODE EXPANDED TO**  
4   **INCLUDE BREASTFEEDING**  
5   **EQUIPMENT AND SERVICES**

6   **SEC. 401. DEFINITION OF MEDICAL CARE EXPANDED TO IN-**  
7                   **CLUDE BREASTFEEDING EQUIPMENT AND**  
8                   **SERVICES.**

9               (a) **IN GENERAL.**—Paragraph (1) of section 213(d)  
10 of the Internal Revenue Code of 1986 (defining medical  
11 care) is amended by striking “or” at the end of subparagraph  
12 (C), by striking the period at the end of subparagraph  
13 (D) and inserting “, or”, and by inserting after sub-  
14 paragraph (D) the following:

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

17               (b) **QUALIFIED BREASTFEEDING EQUIPMENT AND**  
18 **SERVICES.**—Subsection (d) of section 213 of such Code  
19 (relating to definitions) is amended by adding at the end  
20 the following new paragraph:

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

1                   “(A) breast pumps and other equipment  
2                   specially designed to assist a mother to  
3                   breastfeed or express milk for her child but only  
4                   if such pumps and equipment meet such stand-  
5                   ards (if any) prescribed by the Secretary of  
6                   Health and Human Services, and

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

9                   (c) EFFECTIVE DATE.—The amendments made by  
10                   this section shall apply to taxable years beginning after  
11                   December 31, 2004.

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