

Help working families stay healthy: Support breastfeeding mothers in the workplace

Breastfeeding is good for mothers, babies, and society.

A comprehensive, objective review and analysis of research released in 2007 by the Agency for Healthcare Research and Quality strongly supports the evidence of health benefits of breastfeeding:

- *For the child:* reduced risk of ear, skin, and respiratory infections, diarrhea, sudden infant death syndrome, and necrotizing enterocolitis; and in the longer term, reduced risk of obesity, type 1 and 2 diabetes, asthma, and childhood leukemia.
- *For the mother:* reduced risk of breast and ovarian cancers, type 2 diabetes, and postpartum depression.

Breastfeeding has significant economic and environmental benefits for families and society by improving maternal and child health and decreasing or eliminating the need to purchase expensive formula. Encouraging breastfeeding also benefits employers. Breastfed infants are healthier and therefore parents with breastfed infants have an almost three-fold reduction in absenteeism to care for sick infants.

Given all of these benefits, the American Academy of Pediatrics and the U.S. Department of Health and Human Services recommend that infants be exclusively breastfed for six months, and continue to breastfeed for the first year of life and as long afterwards as mutually desired by mother and infant.

Interest in breastfeeding is at an all-time high—74% of women breastfeed their infants at birth. Yet breastfeeding rates drop rapidly after hospital discharge. Only 43% of U.S. infants, including only 29% of African-American infants, are still breastfeeding at six months of age. More than 50% of women with infants less than one year old are in the labor force. Employed mothers are more likely to stop breastfeeding early if they do not receive the support they need in the workplace.

Co-Sponsor H.R. 2819 / S. 1244: Breastfeeding Promotion Act of 2009

Forty-nine states, the District of Columbia, Puerto Rico, and the Virgin Islands already have enacted various laws protecting breastfeeding mothers, but they are not uniform and most are not comprehensive. We are asking you to support the Breastfeeding Promotion Act of 2009 to provide a unified national policy to keep mothers, their children, and their communities healthy.

The Breastfeeding Promotion Act of 2009 includes five provisions:

1. Amends the Civil Rights Act of 1964 to protect breastfeeding women from being fired or discriminated against in the workplace.
2. Provides tax incentives for businesses that establish private lactation areas in the workplace, or provide breastfeeding equipment or consultation services to their employees.
3. Provides for a performance standard to ensure breast pumps are safe and effective.
4. Allows breastfeeding equipment and consultation services to be tax deductible for families (amends Internal Revenue Code definition of "medical care").
5. Protects the privacy of breastfeeding mothers by ensuring they have break time and a private place to pump in the workplace (applies to employers with 50 or more employees).



United States Breastfeeding
COMMITTEE
PROTECTING • PROMOTING • SUPPORTING

Breastfeeding Promotion Act of 2009: Fast Facts

H.R. 2819 – Introduced June 11, 2009

Sponsor: Carolyn Maloney (D-NY14)

Cosponsors:

Madeleine Bordallo (D-GU)
Lois Capps (D-CA23)
Gerald Connolly (D-VA11)
William Delahunt (D-MA10)
Lloyd Doggett (D-TX25)
Eliot Engel (D-NY17)
Sam Farr (D-CA17)
Barney Frank (D-MA4)
Maurice Hinchey (D-NY22)
Marcy Kaptur (D-OH9)
Dale Kildee (D-MI5)
Dennis Kucinich (D-OH10)
Barbara Lee (D-CA9)

Sander Levin (D-MI12)
Carolyn McCarthy (D-NY4)
Gregory Meeks (D-NY6)
James Moran (D-VA8)
John Olver (D-MA1)
David Price (D-NC4)
Lucille Roybal-Allard (D-CA34)
Mark Schauer (D-MI7)
Allyson Schwartz (D-PA13)
José Serrano (D-NY16)
Victor Snyder (D-AR2)
Lynn Woolsey (D-CA6)

The bill has been referred to the following committees:

House Ways and Means
House Energy and Commerce
House Education and Labor

S. 1244 – Introduced June 11, 2009

Sponsor: Jeff Merkley (D-OR)

Cosponsors:

Mark Begich (D-AK)
Al Franken (D-MN)
Kirsten Gillibrand (D-NY)
Edward Kennedy (D-MA)
Bernard Sanders (I-VT)
Charles Schumer (D-NY)

The bill has been referred to the following committees:

Senate Finance

**Cosponsors updated as of 1/13/2010.*



United States Breastfeeding
COMMITTEE

PROTECTING • PROMOTING • SUPPORTING

The Honorable Jeff Merkley
United States Senate
107 Russell Senate Office Building
Washington, DC 20510

November 10, 2009

Dear Senator Merkley:

We, the undersigned organizations, would like to thank you for introducing The Breastfeeding Promotion Act of 2009 in the Senate. By leading the charge in Congress to protect, promote, and support breastfeeding, you have demonstrated a clear commitment to our nation's mothers and children.

Human milk is the optimal source of nutrition for infants, and the United States Breastfeeding Committee joins the U.S. Department of Health and Human Services in recommending that infants be exclusively breastfed for six months, and continue to breastfeed for the first year of life and as long afterwards as mutually desired by mother and infant.

As you know, the evidence for the value of breastfeeding to children's *and* women's health is scientific, solid, and continually being reaffirmed by new research. Compared with formula-fed children, those who are breastfed have a reduced risk of ear, skin, stomach, and respiratory infections; diarrhea; sudden infant death syndrome; and necrotizing enterocolitis. In the longer term, breastfed children have a reduced risk of obesity, type 1 and 2 diabetes, asthma, and childhood leukemia. Women who breastfed their children have a reduced long-term risk of diabetes and breast and ovarian cancers. And studies are looking at the effects of breastfeeding on still other diseases and conditions in which breastfeeding may reduce the risk to mothers and infants.

Breastfeeding also provides a range of economic and environmental benefits for society. The future prosperity of our country greatly depends on the productivity of women, as workers *and* as mothers. Women's economic security and the health—emotional and physical—of mothers and families translate directly into the potential of our future workforce and the vigor of our economy.

Again, we applaud your leadership in introducing The Breastfeeding Promotion Act and stand ready to help you achieve its passage. If you wish to draw upon our assistance, please do not hesitate to contact Megan Renner with the United States Breastfeeding Committee at mrenner@usbreastfeeding.org.

Sincerely,

A handwritten signature in cursive script that reads "Joan Younger Meek".

Joan Younger Meek, MD, MS, RD, FAAP, FABM, IBCLC
Chair
United States Breastfeeding Committee

2025 M Street, NW, Suite 800 • Washington DC 20036 • Phone: (202) 367-1132 • FAX: (202) 367-2132
E-mail: office@usbreastfeeding.org • Web site: www.usbreastfeeding.org

The United States Breastfeeding Committee (USBC) is an independent nonprofit coalition of 41 nationally influential professional, educational, and governmental organizations. Representing over half a million concerned professionals and the families they serve, USBC and its member organizations share a common mission to improve the Nation's health by working collaboratively to protect, promote, and support breastfeeding. For more information on USBC, visit www.usbreastfeeding.org.

CO-SIGNERS:

National Organizations:

Academy for Educational Development
Academy of Breastfeeding Medicine
African-American Breastfeeding Alliance
American Academy of Family Physicians
American Breastfeeding Institute
American College of Nurse-Midwives
American College of Obstetricians and Gynecologists
American College of Osteopathic Pediatricians
American Nurses Association
American Public Health Association
AnotherLook
Association of Military Surgeons of the United States
Association of State & Territorial Public Health
Nutrition Directors
Association of Women's Health, Obstetric and Neonatal
Nurses
Baby-Friendly USA
Bright Future Lactation Resource Centre, Ltd.
Carolina (Global) Breastfeeding Institute,
The University of North Carolina at Chapel Hill
Coalition for Improving Maternity Services
Healthy Children Project
Human Milk Banking Association of North America
International Board of Lactation Consultant Examiners
International Lactation Consultant Association
Lamaze International
National Alliance for Breastfeeding Advocacy:
Research, Education, and Legal
National Association of Pediatric Nurse Practitioners
National Healthy Mothers, Healthy Babies Coalition
National WIC Association
U.S. Lactation Consultant Association
Wellstart International

State-Based Organizations:

Alaska Breastfeeding Coalition
Breastfeeding Coalition of Delaware
Breastfeeding Coalition of Oregon
Breastfeeding Taskforce of Nevada
Coalition of Oklahoma Breastfeeding Advocates
Colorado Breastfeeding Coalition
Connecticut Breastfeeding Coalition
DC Breastfeeding Coalition
Florida Breastfeeding Coalition
Guam Breastfeeding Coalition
Hawaii Breastfeeding Coalition
Louisiana Breastfeeding Coalition
Maryland Breastfeeding Coalition
Massachusetts Breastfeeding Coalition
Mississippi Breastfeeding Coalition
Missouri Breastfeeding Coalition
New Jersey Breastfeeding Coalition
New York Statewide Breastfeeding Coalition
North Carolina Breastfeeding Coalition
Ohio Breastfeeding Alliance
Puerto Rico Breastfeeding Committee
Rhode Island Breastfeeding Coalition
South Carolina Breastfeeding Coalition
Texas Breastfeeding Coalition
Tennessee Breastfeeding Coalition
Wyoming Breastfeeding Coalition



The Honorable Carolyn Maloney
United States House of Representatives
2332 Rayburn House Office Building
Washington, DC 20515-3214

November 10, 2009

Dear Congresswoman Maloney:

We, the undersigned organizations, would like to thank you for introducing The Breastfeeding Promotion Act of 2009 in the House. By leading the charge in Congress to protect, promote, and support breastfeeding, you have demonstrated a clear commitment to our nation's mothers and children.

Human milk is the optimal source of nutrition for infants, and the United States Breastfeeding Committee joins the U.S. Department of Health and Human Services in recommending that infants be exclusively breastfed for six months, and continue to breastfeed for the first year of life and as long afterwards as mutually desired by mother and infant.

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North Carolina Breastfeeding Coalition
Ohio Breastfeeding Alliance
Puerto Rico Breastfeeding Committee
Rhode Island Breastfeeding Coalition
South Carolina Breastfeeding Coalition
Texas Breastfeeding Coalition
Tennessee Breastfeeding Coalition
Wyoming Breastfeeding Coalition

111TH CONGRESS
1ST SESSION

H. R. 2819

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.

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”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 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 REV-
 ENUE CODE EXPANDED TO INCLUDE BREASTFEEDING EQUIP-
 MENT AND SERVICES

Sec. 401. Definition of medical care expanded to include breastfeeding equip-
 ment and services.

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

5 **SEC. 101. FINDINGS; PURPOSES.**

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

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

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

12 (3) The American Academy of Pediatrics rec-
 13 ommends that mothers breastfeed exclusively for six
 14 months but continuing for at least the 1st year of

1 a child's life and that arrangements be made to
2 allow a mother's expressing of milk if mother and
3 child must separate.

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

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

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

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

23 (8) Congress intended to include breastfeeding
24 and expressing breast milk as protected conduct
25 under the amendment made by the Pregnancy Dis-

1 crimination Act of 1978 to title VII of the Civil
2 Rights Act of 1964.

3 (9) Although title VII of the Civil Rights Act of
4 1964, as so amended, applies with respect to “preg-
5 nancy, childbirth, or related medical conditions”, a
6 few courts have failed to reach the conclusion that
7 breastfeeding and expressing breast milk in the
8 workplace are covered by such title.

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

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

13 (2) to clarify that breastfeeding and expressing
14 breast milk in the workplace are protected conduct
15 under the amendment made by the Pregnancy Dis-
16 crimination Act of 1978 to title VII of the Civil
17 Rights Act of 1964.

18 **SEC. 102. AMENDMENTS TO TITLE VII OF THE CIVIL RIGHTS**

19 **ACT OF 1964.**

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

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

24 (2) by adding at the end the following: “For
25 purposes of this subsection, the term ‘lactation’

1 means a condition that may result in the feeding of
2 a child directly from the breast or the expressing of
3 milk from the breast.”.

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

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

17 (a) IN GENERAL.—Subpart D of part IV of sub-
18 chapter A of chapter 1 of the Internal Revenue Code of
19 1986 (relating to business related credits) is amended by
20 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.—The Secretary of
11 Health and Human Services shall take such action as may
12 be appropriate to put into effect a performance standard
13 for breast pumps irrespective of the class to which the
14 breast pumps have been classified under section 513 of
15 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
16 360c). In establishing such standard, the Secretary shall
17 identify those pumps appropriate for use on a regular
18 basis in a place of employment based on the efficiency and
19 effectiveness of the pump and on sanitation factors related
20 to communal use. Action to put into effect a performance
21 standard shall be taken within one year of the date of the
22 enactment of this Act.

23 (b) COMPLIANCE POLICY GUIDE.—The Secretary of
24 Health and Human Services, acting through the Commis-
25 sioner of Food and Drugs, shall issue a compliance policy

1 guide which will assure that women who want to
 2 breastfeed a child are given full and complete information
 3 respecting breast pumps.

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

9 **SEC. 401. DEFINITION OF MEDICAL CARE EXPANDED TO IN-**
 10 **CLUDE BREASTFEEDING EQUIPMENT AND**
 11 **SERVICES.**

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

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

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

24 “(12) QUALIFIED BREASTFEEDING EQUIPMENT
 25 AND SERVICES.—For purposes of paragraph (1)(E),

1 the term ‘qualified breastfeeding equipment and
2 services’ means—

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

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

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

14 **TITLE V—PRIVACY FOR** 15 **BREASTFEEDING MOTHERS**

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

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

20 “(r)(1) An employer shall provide reasonable break
21 time for an employee to express breast milk for her nurs-
22 ing child for 1 year after the child’s birth each time such
23 employee has need to do so. The employer shall make rea-
24 sonable efforts to provide a place, other than a bathroom,
25 that is shielded from view and free from intrusion from

1 co-workers and the public, which may be used by an em-
2 ployee to express breast milk. An employer shall not be
3 required to compensate an employee for any work time
4 spent for such purpose.

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

10 (b) PENALTY.—Section 16(b) of such Act (29 U.S.C.
11 216(b)) is amended by inserting after the first sentence
12 the following: “Any employee who is harmed by a violation
13 of section 7(r) of this Act may bring an action to enjoin
14 such violation and to recover such equitable relief as may
15 be appropriate to effectuate the purposes of such sec-
16 tion.”.

○

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

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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 rap-
6 idly growing segment of the labor force today.

7 (2) Statistical surveys of families show that
8 over 50 percent of mothers with children less than
9 1 year of age are in the labor force.

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

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.”.

○