

105TH CONGRESS
2D SESSION

H. R. 3531

To support breastfeeding by new mothers and encourage employers to support workplace lactation programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 1998

Mrs. MALONEY of New York (for herself, Mr. McDERMOTT, Ms. CHRISTIAN-GREEN, Mr. GEJDENSON, Mr. HILLIARD, Ms. KAPTUR, Mr. LANTOS, Ms. LOFGREN, Mr. NADLER, Ms. NORTON, Mr. RUSH, Mrs. THURMAN, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Ways and Means, House Oversight, Government Reform and Oversight, and Commerce, 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 support breastfeeding by new mothers and encourage employers to support workplace lactation programs, and for other purposes.

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 “New Mothers’
5 Breastfeeding Promotion and Protection Act of 1998”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) Women with infants and toddlers are the
4 fastest growing segment of today's labor force.

5 (2) At least 50 percent of women who are em-
6 ployed when they become pregnant return to the
7 labor force by the time their children are 3 months
8 old.

9 (3) The American Academy of Pediatrics rec-
10 ommends breastfeeding for at least the first 12
11 months of a child's life. The Academy also rec-
12 ommends that arrangements be made to provide ex-
13 pressed breastmilk if mother and child must sepa-
14 rate.

15 (4) Breastmilk contains all the nutrients a child
16 needs for ideal growth and development (including
17 helpful antibodies, proteins, immune cells, and
18 growth factors that can only be found in
19 breastmilk), promotes closeness between mother and
20 child, and is easy to digest.

21 (5) Breastmilk is the first line of immunization
22 defense and enhances the effectiveness of vaccines
23 given to infants.

24 (6) Research studies show that children who are
25 not breastfed have higher rates of mortality, men-
26 ingitis, some types of cancers, asthma and other res-

1 piratory illnesses, bacterial and viral infections,
2 diarrhoeal diseases, ear infections, allergies, and obe-
3 sity.

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

10 (8) A number of recent studies have shown that
11 breastfed children have higher IQs at all ages.

12 (9) Breastfeeding promotion and support are an
13 integral part of nutrition services provided by the
14 Women, Infants, and Children (WIC) program, and
15 has been shown to reduce costs. For example, in a
16 recent cost-benefit study in the State of Colorado, it
17 was found that exclusively breastfeeding a WIC in-
18 fant saved \$161 in the first 6 months of life when
19 compared to formula-fed infants. A Medicaid savings
20 of \$112 per infant was realized by this group while
21 pharmacy costs were approximately 50 percent
22 lower.

23 (10) In 1997 the United States had one of the
24 lowest breastfeeding rates of all industrialized na-

1 tions and one of the highest rates of infant mortal-
2 ity.

3 (11) Breastfeeding has been shown to reduce
4 the mother's risk of breast and ovarian cancer, hip
5 fractures, and osteoporosis.

6 (12) Breastfeeding releases a hormone in a
7 woman's body that causes her uterus to return to its
8 normal size and shape more quickly, and reduces
9 blood loss after delivery.

10 (13) Although title VII of the Civil Rights Act
11 of 1964 (42 U.S.C. 2000e et seq.) was amended by
12 the Pregnancy Discrimination Act in 1978 to pro-
13 hibit discrimination on the basis of pregnancy, child-
14 birth, or related medical condition, courts have not
15 interpreted this amendment to include breastfeeding
16 despite the intent of the Congress to include it.

17 (14) Women who wish to continue breastfeeding
18 after returning to work have relatively few needs:
19 availability of suitable, dependable, efficient breast
20 pumps; a clean, convenient, safe, private, and com-
21 fortable location to express milk at the worksite; the
22 opportunity to pump their breasts frequently enough
23 to maintain their milk supply; and an adequate place
24 to temporarily store expressed milk.

1 (15) Many employers have seen positive results
2 from facilitating lactation programs in the work-
3 place, including low absenteeism, high productivity,
4 high company loyalty, high employee morale, and
5 lower health care costs.

6 (16) Parental absenteeism due to infant illness
7 is 3 times less among the parents of breastfed chil-
8 dren than those that are formula fed.

9 (17) Worksite programs that aim to improve in-
10 fant health may also bring about a reduction in pa-
11 rental absenteeism and health insurance costs.

12 (18) Many women do not have available to
13 them adequate facilities for expressing milk at their
14 workplace, and are forced to pump in restrooms
15 lacking privacy, comfort, and cleanliness. Many em-
16 ployees do not have access to refrigeration or other
17 adequate storage facilities for expressed milk.

18 (19) Many employers deny women the oppor-
19 tunity to breastfeed or express milk. Some women
20 have been discharged for requesting to breastfeed or
21 express milk during lunch and other regular breaks.
22 Some women have been harassed or discriminated
23 against. Some women have had their pay withheld or
24 been taken off of shift work for indicating their in-
25 tention to express milk during the workday.

1 (20) There are numerous products on the mar-
 2 ket to assist a woman in expressing milk, but not all
 3 such products are effective or efficient. There have
 4 been many reports from physicians and lactation
 5 consultants about breastfeeding failure due to the
 6 use of ineffective breast pumps.

7 **SEC. 3. AMENDMENT TO TITLE VII OF THE CIVIL RIGHTS**
 8 **ACT OF 1964.**

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

11 (1) by inserting “breastfeeding,” after “child-
 12 birth”, and

13 (2) by adding at the end the following: “For
 14 purposes of this subsection, the term ‘breastfeeding’
 15 means the feeding of a child directly from the breast
 16 or the expression of milk from the breast by a lac-
 17 tating woman.”.

18 **SEC. 4. ALLOWANCE OF CREDIT FOR EMPLOYER EXPENSES**
 19 **FOR PROVIDING APPROPRIATE ENVIRON-**
 20 **MENT ON BUSINESS PREMISES FOR EM-**
 21 **PLOYED MOTHERS TO BREASTFEED OR EX-**
 22 **PRESS MILK FOR THEIR CHILDREN.**

23 (a) IN GENERAL.—Subpart D of part IV of sub-
 24 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 (relating to business related credits) is amended by
 2 adding at the end the following new section:

3 **“SEC. 45D. CREDIT FOR EMPLOYER EXPENSES INCURRED**
 4 **TO FACILITATE EMPLOYED MOTHERS WHO**
 5 **BREASTFEED OR EXPRESS MILK FOR THEIR**
 6 **CHILDREN.**

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

13 “(b) DOLLAR LIMITATION.—The credit allowable
 14 under subsection (a) for any taxable year shall not exceed
 15 the product of—

16 “(1) \$10,000, and

17 “(2) the number determined by dividing the av-
 18 erage number of full-time employees of the taxpayer
 19 during the preceding taxable year by 8,000.

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

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

1 “(A) for breast pumps and other equip-
2 ment specially designed to assist mothers who
3 are employees of the taxpayer to breastfeed or
4 express milk for their children but only if such
5 pumps and equipment meet such standards (if
6 any) prescribed by the Secretary of Health and
7 Human Services under section 5 of the New
8 Mothers’ Breastfeeding Promotion and Protec-
9 tion Act of 1998, and

10 “(B) for consultation services to the tax-
11 payer or employees of the taxpayer relating to
12 breastfeeding.

13 “(2) COSTS OF OTHER EXCLUSIVE USE PROP-
14 ERTY INCLUDED.—Such term includes any amount
15 paid or incurred for the acquisition or lease of tan-
16 gible personal property (not described in paragraph
17 (1)(A)) which is exclusively used by mothers who are
18 employees of the taxpayer to breastfeed or express
19 milk for their children unless such property is lo-
20 cated in any residence of the taxpayer or any em-
21 ployee of the taxpayer.

22 “(d) RECAPTURE OF CREDIT.—

23 “(1) IN GENERAL.—If, during any taxable year,
24 any property for which a credit was allowed under
25 this section is disposed of or otherwise ceases to be

1 used by the taxpayer as required by this section,
 2 then the tax of the taxpayer under this chapter for
 3 such taxable year shall be increased by an amount
 4 equal to the recapture percentage of the aggregate
 5 decrease in the credits allowed under section 38 for
 6 all prior taxable years which would have resulted
 7 solely from reducing to zero any credit determined
 8 under this section with respect to such property. The
 9 preceding sentence shall not apply to property leased
 10 to the taxpayer.

11 “(2) RECAPTURE PERCENTAGE.—For purposes
 12 of this subsection, the recapture percentage shall be
 13 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.

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

18 “(3) CERTAIN RULES TO APPLY.—Rules similar
 19 to the rules of paragraphs (3) and (4), and subpara-
 20 graphs (B) and (C) of paragraph (5), of section
 21 50(a) shall apply for purposes of this subsection.

1 “(e) SPECIAL RULES.—For purposes of this
2 section—

3 “(1) AGGREGATION RULES.—For purposes of
4 subsection (b), all persons which are treated as a
5 single employer under subsection (a) or (b) of sec-
6 tion 52 shall be treated as a single taxpayer, and the
7 dollar amount contained in such subsection shall be
8 allocated among such persons under regulations pre-
9 scribed by the Secretary.

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

15 “(3) OTHER DEDUCTIONS AND CREDITS.—No
16 deduction or credit shall be allowed under any other
17 provision of this chapter with respect to any expend-
18 iture for which a credit is determined under this sec-
19 tion.”.

20 (b) CONFORMING AMENDMENTS.—

21 (1) Section 38(b) of such Code is amended—

22 (A) by striking “plus” at the end of para-
23 graph (11),

24 (B) by striking the period at the end of
25 paragraph (12) and inserting “, plus”, and

1 (C) by adding at the end the following new
2 paragraph:

3 “(13) the breastfeeding promotion and support
4 credit determined under section 45D(a).”

5 (2) Subsection (d) of section 39 of such Code
6 (relating to carryback and carryforward of unused
7 credits) is amended by adding at the end the follow-
8 ing new paragraph:

9 “(9) NO CARRYBACK OF SECTION 45D CREDIT
10 BEFORE JANUARY 1, 1999.—No portion of the un-
11 used business credit for any taxable year which is
12 attributable to the credit determined under section
13 45D may be carried back to a taxable year begin-
14 ning before January 1, 1999.”.

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

“Sec. 45D. Credit for employer expenses incurred to facilitate em-
ployed mothers who breastfeed or express milk for
their children.”

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to taxable years beginning after
21 December 31, 1998.

22 **SEC. 5. BREAST PUMPS.**

23 (a) PERFORMANCE STANDARDS.—The Secretary of
24 Health and Human Services shall take such action as may

1 be appropriate to put into effect a performance standard
 2 for breast pumps irrespective of the class to which the de-
 3 vice has been classified under section 513 of the Federal
 4 Food, Drug, and Cosmetic Act (21 U.S.C. 360c). In estab-
 5 lishing such standard, the Secretary shall identify those
 6 pumps appropriate for use on a regular basis in a place
 7 of employment based on the efficiency and effectiveness
 8 of the pump and on sanitation factors related to com-
 9 munal use. Action for a performance standard shall be
 10 taken within one year of the date of the enactment of this
 11 Act.

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

18 **SEC. 6. FAMILY AND MEDICAL LEAVE FOR NURSING MOTH-**
 19 **ERS' BREAKS.**

20 (a) PRIVATE AND PUBLIC SECTOR EMPLOYEES.—

21 (1) AMENDMENT.—Section 102(a) of the Fam-
 22 ily and Medical Leave Act of 1993 (29 U.S.C.
 23 2612(a)) is amended by adding at the end the fol-
 24 lowing:

1 “(3) NURSING MOTHERS’ BREAKS.—A lactating
2 mother who is entitled to leave under paragraph
3 (1)(A) or (1)(B) shall, during the first 12-month pe-
4 riod for which the employee is entitled to such leave
5 under paragraph (2), be given up to one hour in
6 each 8 hour work day in such period to express milk
7 for a child. The time may be taken in 2 one-half
8 hour periods or in 3 20 minute periods. For work
9 shifts longer or shorter than 8 hours proportional
10 adjustments shall be made in the time given an em-
11 ployee to express milk for a child. The time taken
12 will not be charged against the employee’s entitle-
13 ment to leave under paragraph (1). Unless otherwise
14 deemed to be compensable hours of work under ap-
15 plicable Federal, State, or local law, employers are
16 not required to compensate employees for time
17 under this paragraph. Such an employee shall give
18 the employee’s employer notice, in accordance with
19 subsection (e)(1), that the employee will want the
20 time provided by this paragraph.”.

21 (2) INTERMITTENT LEAVE.—The first sentence
22 of section 102(b) of the Family and Medical Leave
23 Act of 1993 (29 U.S.C. 2612(b)) is amended by
24 adding before the period the following: “or unless
25 the leave is taken under subsection (a)(3)”.

1 (3) REGULATIONS.—Within 180 days of the
2 date of the enactment of this Act, the Secretary of
3 Labor shall promulgate regulations for the imple-
4 mentation of the amendment made by paragraph
5 (1).

6 (b) FEDERAL EMPLOYEES.—

7 (1) GENERAL RULE.—Section 6382(a) of title
8 5, United States Code is amended by adding at the
9 end the following:

10 “(3) An employee who is a lactating mother who is
11 entitled to leave under paragraph (1)(A) or (1)(B) shall,
12 during the first 12-month period for which the employee
13 is entitled to such leave under paragraph (2), be given up
14 to one hour in each 8 hour work day in such period to
15 express milk for the child. The time may be taken in 2
16 one-half hour periods or in 3 20 minute periods. For work
17 shifts longer or shorter than 8 hours proportional adjust-
18 ments shall be made in the time given an employee to ex-
19 press milk for a child. The time taken will not be charged
20 against the employee’s entitlement to leave under para-
21 graph (1). Unless otherwise deemed to be compensable
22 hours of work under applicable Federal law, employees are
23 not required to be compensated for time under this para-
24 graph. Such an employee shall give the employee’s em-
25 ployer notice, in accordance with subsection (e)(1), that

1 the employee will want the time provided by this para-
2 graph.”.

3 (2) INTERMITTENT LEAVE.—The first sentence
4 of section 6382(b)(1) of title 5, United States Code,
5 is amended by adding before the period the follow-
6 ing: “or unless the leave is taken under subsection
7 (a)(3)”.

8 (c) PURPOSE OF AMENDMENTS.—The purpose of the
9 amendments made by this section is to establish a legal
10 minimum for the amount of time that a woman is entitled
11 to express milk at the workplace. The amendments are
12 not intended to preclude an employer from voluntarily pro-
13 viding more time for the employee to express milk or to
14 diminish any rights the woman would otherwise have pur-
15 suant to the employer’s sick leave or vacation policy or
16 under the Family and Medical Leave Act of 1993.

17 **SEC. 7. CAMPAIGN REGARDING BREASTFEEDING AND**
18 **HEALTH OF INFANTS.**

19 The Secretary of Health and Human Services, acting
20 through the Maternal and Child Health Bureau of the
21 Health Resources and Services Administration and in co-
22 operation with the Secretary of Agriculture and the heads
23 of such other Federal agencies as the Secretary of Health
24 and Human Services determines to be appropriate, shall
25 undertake a campaign aimed at health professionals and

1 the general public to promote the benefits of breastfeeding
2 for infants, mothers, and families. Activities under the
3 program shall include providing such education to public
4 and private health professionals who provide health serv-
5 ices under Federal programs (including health programs
6 for Federal employees).

7 **SEC. 8. INCREASED SUPPORT FOR BREASTFEEDING PRO-**
8 **MOTION AND SUPPORT ACTIVITIES UNDER**
9 **THE WIC PROGRAM.**

10 Section 17(h)(3) of the Child Nutrition Act of 1966
11 (42 U.S.C. 1786(h)(3)) is amended by adding at the end
12 the following:

13 “(H) Notwithstanding any provision in this sub-
14 section that requires a State agency to fund breastfeeding
15 promotion and support activities from amounts made
16 available for nutrition services and administration, a State
17 agency may use funds made available for food benefits
18 under this section (including savings from infant formula
19 cost containment) for such breastfeeding promotion and
20 support activities.”.

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