

108TH CONGRESS  
1ST SESSION

# H. R. 2790

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

JULY 18, 2003

Mrs. MALONEY (for herself, Mr. SHAYS, Ms. LEE, Mr. SERRANO, Mr. ABERCROMBIE, Mr. KILDEE, Ms. WOOLSEY, Ms. LORETTA SANCHEZ of California, Ms. ROYBAL-ALLARD, Ms. JACKSON-LEE of Texas, Mr. FRANK of Massachusetts, Mr. DAVIS of Illinois, and Mr. SANDERS) 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 “Breastfeeding Pro-  
5 motion Act”.

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 2003”.

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.

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

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.

11           (7) The health benefits to children from  
12 breastfeeding translate into a threefold decrease in  
13 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 the such title.

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

1           (1) to promote the health and well-being of in-  
2           fants whose mothers return to the workplace after  
3           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

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

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. 45G. 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 equip-  
13 ment 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 tax-  
20 payer or employees of the taxpayer relating to  
21 breastfeeding.

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

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:

<b>“If the recapture event occurs in:</b>	<b>The recapture percentage is:</b>
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—

5                 (A) by striking “plus” at the end of para-  
6                 graph (14),

7                 (B) by striking the period at the end of  
8                 paragraph (15) and inserting “, plus”, and

9                 (C) by adding at the end the following new  
10                paragraph:

11                “(16) the breastfeeding promotion and support  
12                credit determined under section 45G(a).”

13             (2) Subsection (d) of section 39 of such Code  
14             (relating to carryback and carryforward of unused  
15             credits) is amended by adding at the end the fol-  
16             lowing new paragraph:

17                “(11) NO CARRYBACK OF SECTION 45G CREDIT  
18                BEFORE JANUARY 1, 2003.—No portion of the un-  
19                used business credit for any taxable year which is  
20                attributable to the credit determined under section  
21                45G may be carried back to a taxable year beginning  
22                before January 1, 2003.”.

23             (3) The table of sections for subpart D of part  
24             IV of subchapter A of chapter 1 of such Code is

1 amended by adding at the end the following new  
2 item:

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

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to taxable years beginning after  
5 December 31, 2002.

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

8 **SEC. 301. SHORT TITLE.**

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

11 **SEC. 302. BREAST PUMPS.**

12 (a) PERFORMANCE STANDARDS.—The Secretary of  
13 Health and Human Services shall take such action as may  
14 be appropriate to put into effect a performance standard  
15 for breast pumps irrespective of the class to which the  
16 breast pumps have been classified under section 513 of  
17 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.  
18 360c). In establishing such standard, the Secretary shall  
19 identify those pumps appropriate for use on a regular  
20 basis in a place of employment based on the efficiency and  
21 effectiveness of the pump and on sanitation factors related  
22 to communal use. Action to put into effect a performance  
23 standard shall be taken within one year of the date of the  
24 enactment of this Act.

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

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

12 **SEC. 401. DEFINITION OF MEDICAL CARE EXPANDED TO IN-**  
 13 **CLUDE BREASTFEEDING EQUIPMENT AND**  
 14 **SERVICES.**

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

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

23 (b) QUALIFIED BREASTFEEDING EQUIPMENT AND  
 24 SERVICES.—Subsection (d) of section 213 of such Code

1 (relating to definitions) is amended by adding at the end  
2 the following new paragraph:

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

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

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

15           (b) EFFECTIVE DATE.—The amendment made by  
16 this section shall apply to taxable years beginning after  
17 December 31, 2002.

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