

107TH CONGRESS
1ST SESSION

H. R. 285

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

JANUARY 30, 2001

Mrs. MALONEY of New York introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Education and the Workforce, and Energy 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 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 2001”.

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 for at least the
15 1st year of a child’s life and that arrangements be
16 made to allow a mother’s expressing of milk if moth-
17 er and child must separate.

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

24 (5) Research studies have also shown that
25 breastmilk and breastfeeding have protective effects

1 against the development of a number of chronic dis-
2 eases, including juvenile diabetes, lymphomas,
3 Crohn's disease, celiac disease, some chronic liver
4 diseases, and ulcerative colitis.

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

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

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

17 (9) Although title VII of the Civil Rights Act of
18 1964, as so amended, applies with respect to “preg-
19 nancy, childbirth, or related medical conditions”, a
20 few courts have failed to reach the conclusion that
21 breastfeeding and expressing breast milk in the
22 workplace are covered by the such title.

23 (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. 45E. 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 the product of—

6 “(1) \$10,000, and

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

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

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

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

23 “(B) for consultation services to the tax-
24 payer or employees of the taxpayer relating to
25 breastfeeding.

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

10 “(d) RECAPTURE OF CREDIT.—

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

1 “(2) RECAPTURE PERCENTAGE.—For purposes
2 of this subsection, the recapture percentage shall be
3 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.

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

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

12 “(e) SPECIAL RULES.—For purposes of this
13 section—

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

21 “(2) REDUCTION IN BASIS.—Rules similar to
22 the rules of paragraphs (1) and (2) of section 50(e),

1 and section 1016(a)(19), shall apply with respect to
2 property for which a credit is determined under this
3 section.

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

9 (b) CONFORMING AMENDMENTS.—

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

11 (A) by striking “plus” at the end of para-
12 graph (12),

13 (B) by striking the period at the end of
14 paragraph (13) and inserting “, plus”, and

15 (C) by adding at the end the following new
16 paragraph:

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

19 (2) Subsection (d) of section 39 of such Code
20 (relating to carryback and carryforward of unused
21 credits) is amended by adding at the end the fol-
22 lowing new paragraph:

23 “(9) NO CARRYBACK OF SECTION 45E CREDIT
24 BEFORE JANUARY 1, 2000.—No portion of the un-
25 used business credit for any taxable year which is

1 attributable to the credit determined under section
 2 45E may be carried back to a taxable year beginning
 3 before January 1, 2000.”.

4 (3) The table of sections for subpart D of part
 5 IV of subchapter A of chapter 1 of such Code is
 6 amended by adding at the end the following new
 7 item:

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

8 (c) EFFECTIVE DATE.—The amendments made by
 9 this section shall apply to taxable years beginning after
 10 December 31, 2000.

11 **TITLE III—SAFE AND EFFECTIVE** 12 **BREAST PUMPS**

13 **SEC. 301. SHORT TITLE.**

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

16 **SEC. 302. BREAST PUMPS.**

17 (a) PERFORMANCE STANDARDS.—The Secretary of
 18 Health and Human Services shall take such action as may
 19 be appropriate to put into effect a performance standard
 20 for breast pumps irrespective of the class to which the
 21 breast pumps have been classified under section 513 of
 22 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
 23 360c). In establishing such standard, the Secretary shall
 24 identify those pumps appropriate for use on a regular

1 basis in a place of employment based on the efficiency and
2 effectiveness of the pump and on sanitation factors related
3 to communal use. Action to put into effect a performance
4 standard shall be taken within one year of the date of the
5 enactment of this Act.

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

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

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

20 (a) IN GENERAL.—Paragraph (1) of section 213(d)
21 of the Internal Revenue Code of 1986 (defining medical
22 care) is amended by striking “or” at the end of subpara-
23 graph (C), by striking the period at the end of subpara-
24 graph (D) and inserting “, or”, and by adding at the end
25 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 such 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 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall apply to taxable years beginning after
21 December 31, 2000.

○