

LATE TESTIMONY



HAWAI'I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 ·PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

March 14, 2012
10:00 a.m.
Room 016

To: The Honorable Clayton Hee, Chair
and Members of the Senate Committee on Judiciary and Labor

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai'i Civil Rights Commission

Re: H.B. No. 2228, H.D.2

The Hawai'i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai'i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

H.B. No. 2228, H.D.2 requires employers with 20 or more employees to make reasonable efforts to provide a clean location for breastfeeding employees to express breast milk in privacy and imposes posting requirements and a \$50 for each violation. H.B. No. 2228, H.D.2 places this requirement in H.R.S. Chapter 387 and moves other breastfeeding provisions out of H.R.S. §378-10 and places them in Chapter 387 as well.

H.B. No. 2228, H.D.2 conforms state law on breastfeeding and expression of breast milk in the workplace to the federal law provisions of the Fair Labor Standards Act (FLSA, 29 U.S.C. §207(r)), which require an employer to provide a place, other than a bathroom, that is shielded from view and free from intrusions from coworkers and the public for an employee to express breast milk. The FLSA requirements, which took effect in 2010, apply to employers with 50 or more employees. FLSA protections for breastfeeding fall under the jurisdiction of the U.S. Department of Labor (DOL) Wage and Hour Division.

The HCRC supports the intent of H.B. No. 2228, H.D.2 and the removal of the proposed breastfeeding and expression of breast milk in the workplace requirements from Chapter 378, Part I, because they are not civil rights protections within the enforcement mandate and expertise of the HCRC. They are similar to the protections that fall under the federal FLSA and jurisdiction of the US DOL. These new state requirements should be placed under the jurisdiction of and enforcement agency that has health and safety expertise and capacity to determine what is a sufficiently “clean” location under the requirements of the new law.

LATE TESTIMONY



March 13, 2012

TO: Senator Clayton Hee, Chair, Senator Maile S.L. Shimabukuro, Vice Chair and Members of the Committee on Judiciary and Labor

FROM: Jackie Berry, Executive Director

RE: **HB 2228, HD2**

Hearing: Wednesday, March 14, 2012

Honorable Chairperson Hee, Vice Chairperson Shimabukuro and Members of the Committee on Judiciary and Labor

HMHB is a statewide coalition of public and private agencies and individuals committed to the improvement of maternal and infant health status in Hawaii through education, coordination and advocacy. **HMHB is testifying today in support of HB 2228 HD2 Relating to Breastfeeding in the Workplace which would require employers to provide a clean and private location for new mothers to express breast milk and to post signs informing employees of their right to breastfeed in the workplace.**

Many new mothers are faced with difficult choices when returning to the workplace, including the ability to continue breastfeeding. According to the US Department of Healthy Human Services Office on Women's Health, breastfeeding can help improve an infant's immune system, protecting them from germs and illness. It may also prevent illness such as ear infections stomach viruses, asthma, obesity, type's 1 and 2 diabetes, childhood leukemia, and some respiratory infections. Mothers also benefit as it lowers the risk of breast and ovarian cancer, type 2 diabetes, and reduces postpartum depression.

Healthy Mothers Healthy Babies Coalition of Hawaii strong supports providing the information and tools to all women needed to raise healthy and strong families and we believe expanding this requirement to an employer of any size will benefit more Hawaii's working mothers.

We urge your support of this bill.

Mahalo for your consideration of this bill and our testimony.

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March 14, 2012

Testimony in Support: HB 2228 HD2

To: Chair Clayton Hee, Vice Chair Maile Shimabukuro, and Members of the Senate Committee on Judiciary and Labor

From: Katie Reardon Polidoro, Director of Government Relations & Public Affairs

Re: Testimony in Support of HB 2228 HD2, Relating to Breastfeeding in the Workplace

Thank you for hearing HB 2228 HD2. Planned Parenthood of Hawaii (PPHI) strongly supports this bill, which would require employers to provide a clean and private location for new mothers to express breast milk and to post signs informing employees of their right to breastfeed in the workplace.

Many new mothers are faced with difficult choices when returning to the workplace, including the ability to continue breastfeeding. The health benefits of breast milk for both infants and mothers have long been established. According to the US Department of Health and Human Services Office on Women's Health, breastfeeding can help improve an infant's immune system, protecting her from germs and illness. It may also prevent illness such as ear infections, stomach viruses, asthma, obesity, types 1 and 2 diabetes, childhood leukemia, and some respiratory infections.¹ Mothers also benefit from breastfeeding, as it lowers the risk of breast and ovarian cancer, type 2 diabetes, and reduces post partum depression.²

As the flow of breast milk is slowed by less frequent feeding, returning to the workplace may mean ceasing breastfeeding for some women. Employees who are offered a clean and safe space at work to express milk are able to work without compromising their ability to breastfeed. Currently, the Fair Labor Standards Act requires that employers with more than 50 employees provide reasonable break time for employees to breastfeed as well as a private and clean space for expressing breast milk, other than a bathroom.³ HB 2228 HD2 would expand this requirement to an employer of more than 20 employees, therefore benefiting more of Hawaii's working mothers.

The bill would also require employers to make postings visible to employees informing them of their right to express breast milk at work. PPHI believes that this posting will benefit many employees who are not currently aware that they have this right, as well as serve as a strong reminder to employers.

PPHI believes in providing all individuals with the information and tools they need to raise healthy and strong families. Accordingly, we support HB 2228 HD2 and we ask this Committee to pass it. Thank you.

¹ US Dept. of Health and Human Services, Office of Women's Health, *Breastfeeding Fact Sheet*, <http://www.womenshealth.gov/publications/our-publications/fact-sheet/breastfeeding.cfm#a>

² Id.

³ Fair Labor Standards Act, 29 U.S.C. §207(r)(1) (2010)



Committee: Committee on Judiciary and Labor
Hearing Date/Time: Wednesday, March 14, 2012, 10:00 a.m.
Place: Room 016
Re: Testimony of the ACLU of Hawaii in strong support of H.B. 2228, HD2
Relating to the Breastfeeding in the Workplace

Dear Chair Hee and Members of the Committee on Judiciary and Labor:

The ACLU of Hawaii writes in support of H.B. 2228, HD2, which promotes equality for women, by implementing workplace policies and practices that appropriately reflect the realities of pregnancy, childbirth, and breastfeeding in many women's lives.

Numerous barriers remain to women's continued workforce participation and advancement once they have children, with both short- and long-term consequences for women's earning potential and economic security.¹ Insufficient support for breastfeeding for women who return to the paid workforce after the arrival of a baby is among these barriers. These were among the concerns that animated the enactment of the amendment to the Patient Protection and Affordable Care Act, Public Law 111-148 ("Affordable Care Act"). Citing the growing percentage of women who return to work within three to six weeks of giving birth, Senator Merkley characterized the provision as "simply an act of human decency to protect their right to continue [to] breastfeed after they return to work. . . [t]o help meet their basic needs with [] regard to the care and nourishment of their children."² He also cited health benefits for infants and nursing mothers, and savings in health care costs that could be expected as a result of the provision.³ Moreover, this provision of the Affordable Care Act reflects a strong policy on the part of the federal government, stretching back at least a quarter of a century, of promoting breastfeeding,

¹ See generally Pamela Stone, *Opting Out? Why Women Really Quit Careers and Head Back Home* (2007) (discussing structural barriers to professional women's continued advancement in the workplace after having children); Sylvia Ann Hewlett, *On-Ramps and Off-Ramps: Keeping Women on the Road to Success* (2007) (documenting that women who took a 2.2 to 3 year break from the workforce lost 18% to 37% of their earning power, and that only 40% were then able to return to paid full-time work despite a desire to do so); Marianne Bertrand *et al.*, *Dynamics of the Gender Gap for Young Professionals in the Financial and Corporate Sectors*, 2 *Am. Econ. J.: Applied Econ.* 229, 252 (2010) (documenting increasing gap in career progress for female as compared to male M.B.A.s following graduation, and concluding that "[t]he presence of children is the main contributor to the lesser job experience, greater career discontinuity, and shorter work hours for female MBAs").

² Markup Hearing on H.R. 3590 Before the S. Comm. on Health, Education, Labor, & Pensions, 111th Cong., 1st Sess. (Jun. 23, 2009) (comments of Senator Merkley, Senate Sponsor).

³ *Id.*

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Hon. Sen. Hee, Chair, JDL Committee
and Members Thereof
March 14, 2012
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including women's ability to continue breastfeeding upon return to the paid workforce.⁴ From the first federal summit on breastfeeding in 1984 to the signing of the World Health Organization *Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding* in 1990,⁵ to as recently as this year, when the Surgeon General issued a "Call to Action to Support Breastfeeding" outlining steps that various sectors might take to improve breastfeeding rates, promotion of breastfeeding has been a "key public health issue in the United States."⁶

In light of the legislative concerns motivating this provision of the Fair Labor Standards Act (FLSA), and the strong federal public policy in favor of breastfeeding promotion, we strongly urge this Committee to pass H.B. 2228, HD2 and ensure that employers provide breastfeeding women with an appropriate space in their place of employment to express their breast milk.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Sincerely,

Laurie A. Temple
Staff Attorney

⁴ See United States Department of Health and Human Services, Office of the Surgeon General, *The Surgeon General's Call to Action to Support Breastfeeding* at 5 (2011) [hereinafter "Surgeon General's Call to Action"] (discussing Federal Policy on Breastfeeding).

⁵ See Department of Health and Human Services, Office of Women's Health, *HHS Blueprint for Action on Breastfeeding* (2000), <http://www.womenshealth.gov/archive/breastfeeding/programs/blueprints/bluprntbk2.pdf>; United Nations Children's Fund, World Health Organization, *Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding* (1990) (Adopted by U.S. at WHO/UNICEF policymakers' meeting *Breastfeeding in the 1990s: A Global Initiative*, co-sponsored by the United States Agency for International Development and the Swedish International Development Authority (SIDA), in Florence, Italy), <http://www.unicef.org/programme/breastfeeding/innocenti.htm>.

⁶ *Surgeon General's Call to Action, supra*, at v.

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