



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

## House Committee on Finance

### S.B. 532, S.D. 1, H.D.1 Relating to Breastfeeding in the Workplace

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.  
Director of Health

April 4, 2013

1 **Department's Position:** The Department of Health (DOH) supports this measure but defers to the  
2 Department of Labor and Industrial Relations for implementation.

3 **Fiscal Implications:** None to the DOH.

4 **Purpose and Justification:** The purpose of this bill is to require employers to provide a reasonable  
5 break time and a clean place for breastfeeding employees to express milk in order to maintain milk  
6 supply and continue breastfeeding.

7 The DOH supports the health benefits that this bill would bring, including protecting infants and  
8 children from significant acute and chronic diseases; reducing the risk of obesity throughout the life  
9 span; and for women who breastfeed a reduced risk of breast cancer, ovarian cancer, type 2 diabetes,  
10 postpartum depression, and cardiovascular disease.

11 The current version includes a one-year cap on the length of time a woman would be eligible for  
12 the breastfeeding break. We would like to note that current medical recommendations call for exclusive  
13 breastfeeding for the first six months of life and continued breastfeeding for at least the next six months,  
14 during which time appropriate complementary foods are added to the infant's diet. Both the duration  
15 and the exclusivity of breastfeeding are important.

1           Employment plays a key role in a woman’s decisions about infant feeding. A woman’s career  
2 plans have the most significant impact on both whether she breastfeeds exclusively and for how long she  
3 breastfeeds. Working outside the home negatively affects both initiation and duration of breastfeeding.  
4 Women employed full time are less likely to initiate breastfeeding and to continue breastfeeding once  
5 they return to work. Only 25 percent of employed women with children under age 1 combine working  
6 and breastfeeding for at least a month. There is ample evidence that a supportive worksite environment  
7 with a private place to express milk and access to a quality breast pump helps women feel more  
8 confident in continuing to breastfeed after returning to work, and that lack of accommodations  
9 contributes to shorter breastfeeding duration. Women who do not express milk regularly experience a  
10 drop in milk supply that leads to early weaning.

11           Lactation support at work also provides benefits to the employer. Lactation programs are cost-  
12 effective, showing a \$3 return on \$1 investment. By supporting lactation at work, employers can reduce  
13 turnover, lower recruitment and training costs, cut rates of absenteeism, boost morale and productivity,  
14 and reduce health care costs.

15           The DOH supports passage of S.B. 532, S.D. 1, H.D. 1 due to the health benefits of  
16 breastfeeding.

17           Thank you for the opportunity to provide testimony.

18



**STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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HONOLULU, HAWAII 96813  
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April 4, 2013

To: The Honorable Sylvia Luke, Chair,  
The Honorable Scott Y. Nishimoto, Vice Chair,  
The Honorable Aaron Ling Johanson, Vice Chair, and  
Members of the House Committee on Finance

Date: Thursday, April 4, 2013  
Time: 2:00 p.m.  
Place: Conference Room 308, State Capitol

From: Dwight Y. Takamine, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: S.B. No. 532, S.D. 1, H.D. 1 Relating to Breastfeeding in the Workplace**

**I. OVERVIEW OF PROPOSED LEGISLATION**

This measure requires employers to provide adequate place and time at the workplace to express breast milk within the first year of giving birth. The proposal allows employers with less than an undesignated number of employees to be exempt if they can show undue hardship. It also provides for a private right of action for enforcement including attorney fees, damages, and penalties of an undesignated amount for each violation. Effective July 1, 2013.

The DLIR supports this proposal.

**II. CURRENT LAW**

Expressing breast milk during a break or meal period is a protected activity under Part I, Section 378-10, Hawaii Revised Statutes. (HRS).

**III. COMMENTS ON THE SENATE BILL**

This measure emphasizes how important the mother-child connection in the development and success of Hawaii keiki. Requiring employers to provide the opportunity to express milk benefits our community and will assist in some of the challenges working mothers face.

House Draft 1 maintains the new part in the Employment Practices Law, Chapter 378, Hawaii Revised Statutes (HRS), from Senate Draft 1, which requires employers to provide adequate place and time at the workplace to express breast milk within the first year of giving birth. It provides a private right of action for enforcement and damages and also provides a penalty of an unspecified amount per violation to be deposited into the general fund.

DLIR supports placing this provision in a new part of Employment Practices, Chapter 378 rather than the Wage and Hour Law, Chapter 387, which expands the applicability to those mothers who are considered exempt from the Wage and Hour Law, and the Federal Labor Standards Act (FLSA). This broad coverage follows the existing law under Part I, Chapter 378, HRS, which applies to all employees.

At the federal level, under the Patient Protection and Affordable Care Act (P.L. 11-148) and Amendments to Section 7 of the Federal Labor Standards Act, (FLSA), only employers and employees subject to FLSA would be subject to the law. This excludes many professional, managerial or supervisory employees who would be considered exempt. It also excludes other types of workers who are exempt from FLSA like domestic workers.

By providing a private right of action in an appropriate court a nursing mother can get the necessary relief granted as needed on a case by case basis, with opportunity to recover attorney fees. Whether the action is in small claims or circuit court to obtain a simple injunction or bring a class action, this new private action provides opportunity for nursing mothers to identify the damages and relief they seek.



Testimony to the Committee on Finance  
State Capitol, Conference Room 308 at 2:00pm  
April 4, 2013

**RE: OPPOSE SB532 SD1 HD1 RELATING BREASTFEEDING**

Dear Chair Luke, Vice Chairs Nishimoto & Johanson, and Committee Members:

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce. I am writing on behalf of our organization to Oppose this bill.

While well intended, this bill could have harmful ramifications on businesses, including increasing the cost of doing business and administrative burdens. Further, the bill is broadly written and vague on many key points that would help us better understand the financial impact on businesses, such as:

- What is considered to be a reasonable amount of time for employees to express milk? It can take a considerable amount of time at times.
- Are current breaks and meal times applied to this reasonable amount of time? If not, who will cover the additional time and who is supposed to pay for that? Will the employee make up the time spent expressing milk, extending their day?
- "Need" to express is not defined. Often when one is breastfeeding, the cry of another child can start milk flowing. Is that a "need"? Is feeling uncomfortable a "need"? How many interruptions might a business experience over the course of a day? Since the bill provide accommodations for up to one full year after a child is born, imagine what happens if a business employs several women who are breastfeeding at the same time.
- While there is a provision for businesses with fewer than (some unknown number of) employees to be exempt if the employer can show that the requirements under subsection (a) would impose an undue hardship by causing the employer significant difficulty or expense in relation to the size, financial resources, nature, or structure of the employer's business, that effort of proof will be a burden on employers. Further, who would they show this to and what level of information is required?

Other concerns include the fact the all businesses are included, which can cause extreme hardships for small businesses and that this bill seeks to provide this mandate for a full year when many women stop breast feeding for a number of reasons. What if they stopped breastfeeding, do they still receive the break accommodation. And, how would the employer know if they stopped breastfeeding?

While in concept of increasing the numbers of breastfed children and for longer periods is a good idea, it is unfair to put this burden on the backs of businesses and continually ask them to pay more and more.

Therefore, we Oppose this bill.

Sincerely,

Pamela Tumpap  
President

HAWAII  
STATE  
COMMISSION  
ON THE  
STATUS  
OF  
WOMEN



Chair  
LESLIE WILKINS

COMMISSIONERS:

ELENA CABATU  
ADRIENNE KING  
CARMILLE LIM  
AMY MONK  
LISA ELLEN SMITH  
CAROL ANNE PHILIPS

Executive Director  
Cathy Betts, JD

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235 S. Beretania #407  
Honolulu, HI 96813  
Phone: 808-586-5758  
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April 4, 2013

**Testimony in Support of SB 532, SD1, HD 1, Relating to Breastfeeding in the Workplace**

**To:** Honorable Sylvia Luke, Chair  
Honorable Scott Y. Nishimoto, Vice Chair  
Honorable Aaron Ling Johanson, Vice Chair  
Members of the House Committee on Finance

**From:** Cathy Betts, Executive Director, Hawai'i State Commission on the Status of Women

**Re:** Testimony in Support of SB 532, SD 1, HD 1

The Hawai'i State Commission on the Status of Women is in strong support of SB 532. We prefer the SD 1 language and believe that the HD 1 amendments weaken the bill. However, the Commission supports protections for breastfeeding mothers in the workforce. Additionally, this bill presents various economic benefits while are presented below. In 2009, 50% of all mothers with children younger than twelve months old were employed. 69% of those women worked full time.<sup>1</sup> Breastfeeding women face many difficult challenges when returning to work. Many women are forced to discontinue breastfeeding upon returning to work because they are unable to take breaks. Some women simply cease breastfeeding because they are fearful of losing their job. Some women are given the proposition of expressing breast milk in unsanitary restrooms (although requiring the use of a restroom for expressing milk is a violation of existing law) or in locations lacking privacy.

Many employers do not recognize the many economic benefits that follow when female employees are provided reasonable time to express breast milk. Among the benefits are lower health care costs, lower absenteeism and lower turnover rates. Employees whose employers provide breastfeeding support report improved morale, better satisfaction with their employment and higher productivity.<sup>2</sup> 24 states, the District of Columbia and Puerto Rico all have laws protecting breastfeeding women in the workplace.<sup>3</sup> While SB 532, SD1 aims to protect breastfeeding women, the Commission does not believe that a civil right of action adequately protects breastfeeding women who are just returning to work. Filing a civil right of action seems overly burdensome and costly and it is highly unlikely that a mother just returning to work would avail herself to this kind of remedy. Thank you for this opportunity to testify.

Cathy Betts  
Hawaii State Commission on the Status of Women

<sup>1</sup> United States Department of Labor, Bureau of Labor Statistics, Table 6 , Employment Status of Mothers (2006).

<sup>2</sup> United States Department of Health and Human Services, The Business Case for Breastfeeding, Health Resources and Services Administration (2008).

<sup>3</sup> National Conference of State Legislatures, Breastfeeding Laws (May 2011).



# HAWAI‘I CIVIL RIGHTS COMMISSION

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

April 4, 2013  
2:00 p.m.  
Room 308

To: The Honorable Sylvia Luke, Chair  
and Members of the House Committee on Finance

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

Re: S.B. No. 532, S.D.1, H.D.1

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.

S.B. No. 532, S.D.1, H.D.1, requires employers with an unspecified number of employees to provide a reasonable break time for one year after the birth of a child and a private location for breastfeeding employees to express breast milk. It also imposes posting requirements, an unspecified fine for each violation and a private right of action. Employers with less than the unspecified number of employees are exempt from these requirements only if the requirements pose an undue hardship. S.B. No. 532, S.D.1, H.D.1, places these protections under a new section of HRS Chapter 378 and deletes the

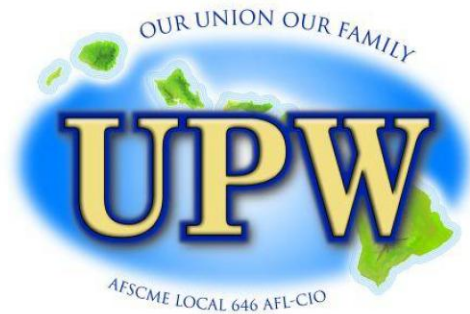
breastfeeding provisions in H.R.S. §378-10. The bill thus conforms state law on breastfeeding and expression of breast milk in the workplace to the federal law provisions of the Fair Labor Standards Act.

The HCRC supports S.B. No. 532, S.D.1, H.D.1, and the removal of the breastfeeding and expression of breast milk in the workplace requirements from Chapter 378, Part I and HCRC jurisdiction, because they are health and safety protections, not civil rights protections within the enforcement mandate and expertise of the HCRC.

The HCRC suggests that the breastfeeding requirements apply to all employers with one or more employees, unless the requirements pose an undue hardship. The HCRC also suggests a \$1,000 fine for each violation plus attorneys fees.

Thank you for consideration of these suggested amendments.





THE HAWAII STATE HOUSE OF REPRESENTATIVES  
The Twenty-Seventh Legislature  
Regular Session of 2013

COMMITTEE ON FINANCE

The Honorable Rep. Sylvia Luke, Chair  
The Honorable Rep. Scott Y. Nishimoto, Vice Chair  
The Honorable Rep. Aaron Ling Johanson, Vice Chair

DATE OF HEARING: Thursday, April 4, 2013  
TIME OF HEARING: 2:00 P.M.  
PLACE OF HEARING: Conference Room 308

**TESTIMONY ON SB532 SD1 HD1 RELATING TO BREASTFEEDING IN THE  
WORKPLACE**

By DAYTON M. NAKANELUA,  
State Director of the United Public Workers,  
AFSCME Local 646, AFL-CIO ("UPW")

My name is Dayton M. Nakanelua and I am the State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive representative for approximately 14,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

The UPW supports SB532 SD1 HD1 that requires certain employers to provide reasonable time and private location for breastfeeding employees to express breast milk; requires covered employers to post a notice; and establishes a civil fine of an unspecified amount.

This measure would support working mothers and their babies, as breast milk has been linked to better mother and infant health. Formula-fed babies are at a greater risk of necrotizing enterocolitis, lower respiratory infections, asthma, obesity, and type 2 diabetes, among other illnesses (per womenshealth.gov). Mothers who breastfeed also tend to take less sick leave, as their babies are ill less often.

For the reasons stated above, we ask that the Committee pass this measure.

Thank you for the opportunity to testify.

To: The Honorable Sylvia Luke, Chair,  
The Honorable, Rep. Scott Y. Nishimoto, Vice Chair  
and Rep. Aaron Ling Johanson, Vice Chair  
Members of the House Committee on **Finance**

Date: Thursday, April 4th, 2013  
Time: 2:00 p.m.  
Place: Conference Room 308, State Capitol

From: Amer. Acad. Of Pediatrics, Hawaii Chapter  
Breastfeeding Coordinator.  
**Sylvia R. Pager, MD, MS,FAAP, FABM, IBCLC**

Re: **SB 532; SD 1 ; HD2 Relating to Breastfeeding in the Workplace**

### **In Support.**

- Breastfeeding provides many **benefits to businesses** as well as to mothers, babies, and the Public Health.
- **Money is saved** when infants are breastfed more exclusively for a longer period.
- Most new mothers need to return to work soon giving after birth, usually for economic reasons, in the absence of a maternity leave policy in this country. This provides an obstacle to successfully continuing to provide breastmilk, without supplements, for the recommended first six months of life, continuing beyond, with other foods.
- While **90% of our new mothers try to breastfeed**, almost half of them have quit by 3 months, and **only 20% get to 6 months** still providing only breastmilk to their infants. **Pumping is not easy.**
- Lactating breasts are responsive to needs, but shut down when not emptied regularly, often difficult to continue in the workplace. Hence the inclusion of breastfeeding protection and support in the **federal Healthcare law.**
- This law is intended to enhance the protections provided in the federal law, and since most of our businesses are small, should reflect that fact, by including protection for a larger proportion of our employees, **most of whom work in small businesses. The “less than 20” therefore should be re-instated.**
- Many factors contribute to breastfeeding success, and **community support and recognition of the value of breastfeeding** rank highly.
- We commend your interest in supporting our breastfeeding mothers, and encourage passage onwards of this bill.

Thank you for the opportunity to testify.

Sylvia R. Pager, MD, MS, FAAP, FABM, IBCLC  
Pediatrics, Breastfeeding Medicine  
Assoc. Clin. Prof., Dept. of Pediatrics  
JABSOM, University of Hawaii  
AAP Hawaii Chapter Breastfeeding Coord.  
1380 Lusitana St. Ste 907, Honolulu, Hawaii, 96813,  
Tel: 808 524-2885 w, 732-2384 h, 389-8155 c; Fax: 808 524-2886 w, 739-1600 h





To: Representative Sylvia Luke, Chair

Representative Scott Nishimoto, Vice Chair

Representative Aaron Ling Johanson, Vice Chair

Members of the House Committee on Finance

From: Deb Trankel, RNC, BSN, CLC, IBCLC

President, Breastfeeding Hawaii

Date: Thursday, April 4, 2013 2pm Room 308

RE: SB 532 SD1 HD1

Representative Luke, Representative Nishimoto, Representative Johanson and the members of the House Committee on Finance, **Breastfeeding Hawaii stands in support of SB 532 SD1 HD1 "Relating to Breastfeeding in the Workplace" with the following amendments for your consideration:**

- 1). 5 or more employees/business (5 or more employees/business covers 50% of all businesses in State of Hawaii according to DBET 2010 statistics), and**
- 2). \$1000 fine per violation.**

Though the House Committees on Judiciary and Labor and Public Employment took out the above 2 parts of the SB 532, we feel very strongly that they need to be put back in for the following reasons. First, all employers with employees no matter the number/business, need to make every effort to assist a breastfeeding

female employee to provide breastmilk for her infant by providing the time and a clean, private place at the worksite to pump. Employers reap many cost saving benefits by supporting their female breastfeeding employee, such as: 1) decreased turnover, 2) decreased sick time, 3) decreased health care costs, and 4) increased employee morale. Female breastfeeding employees and their infants are healthier thereby keeping the woman on the job and not at home caring for a sick infant.

Second, the monetary figure of \$1000 for each violation is a fair figure for similar offenses in our community according to our sources.

Breastfeeding Hawaii stands ready in our community to assist the Chamber of Commerce and specific businesses with practical suggestions on how to meet the needs of their female breastfeeding employees. We have many national resources as well to provide examples of how other employers with small numbers of employees, were able to meet the needs of these women.

We encourage the House Committee on Finance to pass this Bill out of committee with our suggested amendments above stated

Thank you for the opportunity to share our suggestions on this important piece of legislation

Sincerely,

Deb Trankel, RNC, BSN, CLC, IBCLC.

## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, April 03, 2013 12:11 PM  
**To:** FINTestimony  
**Cc:** nokumura@vipfoodservice.com  
**Subject:** Submitted testimony for SB532 on Apr 4, 2013 14:00PM

### **SB532**

Submitted on: 4/3/2013

Testimony for FIN on Apr 4, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nelson Okumura	VIP Foodservice	Oppose	No

Comments: We oppose this bill. While well intended will increase costs of doing business in Hawaii.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)