



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

In reply, please refer to:
File:

House Committee on Judiciary
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

March 19, 2013

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

3 **Fiscal Implications:** None to the Department of Health.

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

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.labor.hawaii.gov
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

March 19, 2013

To: The Honorable Karl Rhoads, Chair,
The Honorable Sharon E. Har, Vice Chair, and
Members of the House Committee on Judiciary

Date: Tuesday, March 19, 2013
Time: 2:00 p.m.
Place: Conference Room 325, 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 and the housekeeping amendment to 378-2(a)(7) as suggested by the Hawaii Civil Rights Commission.

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 House Committee on Judiciary
Tuesday, March 19, 2013 at 2:00 P.M.
Conference Room 325, State Capitol**

**RE: SENATE BILL 532 SD 1 HD 1 RELATING TO BREASTFEEDING IN THE
WORKPLACE**

Chair Rhoads, Vice Chair Har, and members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **has some concerns on SB 532 SD 1 HD 1 Relating to Breastfeeding in the Workplace.**

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

We believe that SB 532 SD 1 HD 1 is a duplication of federal law and that this bill is not necessary.

Effective March 23, 2010, the Patient Protection and Affordable Care Act amended the FLSA to require employers to provide a nursing mother reasonable break time to express breast milk after the birth of her child. The amendment also requires that employers provide a place for an employee to express breast milk.

The Chamber understands and supports women in the workplace. Should this duplicating bill move forward, we do have some specific concerns on SB 532 SD 1 HD 1.

- Complaints should be handled by the Department of Labor and Industrial Relations and not the courts. Having complaints go through the court system only increases cost for both the employee and employer.
- We believe the penalty language be permissive and not mandatory. The investigating staff of the Department of Labor and Industrial Relations should have the discretion on assessing the penalty.

Like the federal law, we appreciate the exemption for small businesses be continued for employers with less than 50 employees where there is undue hardship to comply. This will help small businesses that do not have the resources to fully comply with the bill. Also as in federal law, we request that it is only mandated for one year after the birth of the child.

Thank you for the opportunity to express our views.

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

Email:
DHS.HSCSW@hawaii.gov
Visit us at:
humanservices.hawaii.gov
/hscsw/

235 S. Beretania #407
Honolulu, HI 96813
Phone: 808-586-5758
FAX: 808-586-5756

March 19, 2013

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

To: Honorable Karl Rhoads, Chair
Honorable Sharon Har, Vice-Chair
Members of the House Committee on Judiciary

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. In 2009, 50% of all mothers with children younger than twelve months old were employed. 69% of those women worked full time.¹ 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.² 24 states, the District of Columbia and Puerto Rico all have laws protecting breastfeeding women in the workplace.³ 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
Executive Director
Hawaii State Commission on the Status of Women

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

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

³ 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

March 19, 2013
2:00 p.m.
Room 325

To: The Honorable Karl Rhoads, Chair
and Members of the House Committee on Judiciary

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.

In addition, while the bill deletes the breastfeeding provisions in HRS § 378-10, in order to completely delete all the breast feeding provisions from HRS Chapter 378 Part I, HRS § 378-2(a)(7) should also be deleted.

The HCRC therefore recommends that Sections 3, 4 and 5 of S.B. 532, S.D.1, H.D.1, be amended in an H.D.2 as follows:

SECTION 3. Section 378-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) It shall be an unlawful discriminatory practice:
- (1) Because of race, sex, including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, or domestic or sexual violence victim status if the domestic or sexual

violence victim provides notice to the victim's employer of such status or the employer has actual knowledge of such status:

- (A) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment;
- (B) For any employment agency to fail or refuse to refer for employment, or to classify or otherwise to discriminate against, any individual;
- (C) For any employer or employment agency to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, that expresses, directly or indirectly, any limitation, specification, or discrimination;
- (D) For any labor organization to exclude or expel from its membership any individual or

- to discriminate in any way against any of its members, employer, or employees; or
- (E) For any employer or labor organization to refuse to enter into an apprenticeship agreement as defined in section 372-2; provided that no apprentice shall be younger than sixteen years of age;
- (2) For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any individual because the individual has opposed any practice forbidden by this part or has filed a complaint, testified, or assisted in any proceeding respecting the discriminatory practices prohibited under this part;
- (3) For any person, whether an employer, employee, or not, to aid, abet, incite, compel, or coerce the doing of any of the discriminatory practices forbidden by this part, or to attempt to do so;
- (4) For any employer to violate the provisions of section 121-43 relating to nonforfeiture for absence by members of the national guard;
- (5) For any employer to refuse to hire or employ or to bar or discharge from employment any

individual because of assignment of income for the purpose of satisfying the individual's child support obligations as provided for under section 571-52;

- (6) For any employer, labor organization, or employment agency to exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association; or

~~[(7) For any employer or labor organization to refuse to hire or employ, bar or discharge from employment, withhold pay from, demote, or penalize a lactating employee because the employee breastfeeds or expresses milk at the workplace. For purposes of this paragraph, the term "breastfeeds" means the feeding of a child directly from the breast;]~~

- ~~[-(8)]~~ (7) For any employer to refuse to hire or employ, bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment of any individual because of the individual's credit history or

credit report, unless the information in the individual's credit history or credit report directly relates to a bona fide occupational qualification under section 378-3(2).

SECTION [~~3~~]4. Section 378-10, Hawaii Revised Statutes, is repealed.

~~["~~§378-10~~ **Breastfeeding.** No employer shall prohibit an employee from expressing breastmilk during any meal period or other break period required by law to be provided by the employer or required by collective bargaining agreement."]~~

SECTION [4]5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION [~~5~~]6. This Act shall take effect on July 1, 2013.

Thank you for consideration of these suggested amendments.



SB532 SD1 HD1
RELATING TO BREASTFEEDING IN THE WORKPLACE
House Committee on Judiciary

March 19, 2013

2:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB532 SD1 HD1, which would require certain employers to provide reasonable time and a clean location for breastfeeding employees to express breast milk in privacy. It would also require posting a notice to inform employees of their right to express breast milk in the workplace, and establishes a civil fine for employers who do not comply.

OHA's strategic priorities include Maui Ola (Health), which represents our commitment to improve the conditions of Native Hawaiians and quality of life by reducing the onset of chronic diseases.

Studies have shown that there are many health benefits to breastfeeding, which include reducing the risk of chronic diseases for the infant and mother. More specifically, the U.S. Department of Health & Human Services – Office of Women's Health (OWH) indicates that breast milk reduces the risks of chronic diseases in infants by lowering the risks for respiratory infections, diabetes, obesity, and childhood leukemia. Additionally, lactating mothers reduce their risk for diabetes, breast cancer, ovarian cancer, and postpartum depression.

Furthermore, breastfeeding benefits society and the environment. According to the OWH, the United States could save \$13 billion per year in medical care costs because breastfed infants typically require fewer doctors' visits, prescriptions, and hospitalizations. At the same time, breastfeeding fosters a more productive workforce because it would prevent mothers from having to take leave for a sick infant. OWH also states that breastfeeding helps the environment, as there would be a reduction in waste from formula packaging and bottles.

Currently, the U.S. Fair Labor Standards Act requires that employers with more than 50 employees provide a break for employees who wish to express breast milk. While we appreciate the federal policy, SB532 SD1 HD1 establishes a mechanism to improve the status quo at the state level by encouraging employers to provide a sanitary and private accommodation in the workplace for working mothers who choose to breastfeed.

OHA urges the committee to **PASS** SB532 SD1 HD1. Mahalo for the opportunity to testify.

March 18, 2013

Testimony in Support: SB 532 SD1 HD1

To: Chair Karl Rhoads, Vice Chair Sharon Har, and Members of the House Committee on Judiciary
From: Katie Reardon Polidoro, Director of Government Relations & Public Affairs
Re: Testimony in Support of HB 532 SD1 HD1, Relating to Breastfeeding in the Workplace

Thank you for hearing HB SB 532 SD1 HD1. Planned Parenthood of Hawaii (PPHI) supports this bill, which would require employers to provide a clean and private location for new mothers to express breast milk in the workplace.

We do provide one comment. We believe that the amendment added by the Senate that creates a civil right of action as employees' sole remedy is overly burdensome. By taking away the possibility of an administrative remedy through the Department of Labor, the bill now requires a new mother to enforce her right to express breast milk at work by taking the time consuming and costly route of filing suit against her employer, often jeopardizing her employment. This process will no doubt discourage women from taking advantage of this law.

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

PPHI believes in providing all individuals with the information and tools they need to raise healthy and strong families. Accordingly, we support SB 532 SD1 HD1 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#>

² Id.

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



March 19, 2013

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON JUDICIARY
ON SB 532 SD1 HD1 RELATING TO BREAST FEEDING IN THE WORKPLACE**

Thank you Chair Rhoads and committee members. I am Gareth Sakakida, Managing Director of the Hawaii Transportation Association (HTA) with over 400 transportation related members throughout the state of Hawaii.

HTA requests an exception from this bill for employees whose regular duties require them to be on the road, while they are on the road.

It is impossible for employers of commercial drivers to ensure a sanitary and private area to express milk while the driver is making deliveries. These employers only have control over their own terminals, they have no control over facilities their drivers make deliveries to.

Furthermore, drivers cannot stop and park their tractor trailers, trucks, buses, etc., for any appreciable length of time, anywhere. Even in a legal loading zone there are time limits to remain in the space.

This rule could render the employment of female drivers untenable.

Thank you.



To: Representative Karl Rhoades, Chair
Representative Sharon E. Har, Vice Chair
Members of the Judiciary Committee

From: Deb Trankel, RNC, BSN, CLC, IBCLC
President, Breastfeeding Hawaii

Date: Tuesday, March 19, 2013 2pm Room 325

RE: SB 532 SD1 HD1

Representative Rhoades, Representative Har and Members of the House Judiciary Committee, **Breastfeeding Hawaii stands in support of SB 532 SD1HDI “Relating to Breastfeeding in the Workplace” with the following amendments for your consideration: to reinstate in this Bill, 1). coverage of 20 employees/ business and 2). a fine of \$1000 per violation.**

We feel it is extremely important for all businesses in the State of Hawaii to support women employees who wish to continue breastfeeding by expressing their breastmilk in the workplace. This is done by providing the time and private place to accomplish this task. Employers reap many cost saving benefits supporting their female employees in this way such as: 1) decreased turnover, 2) decreased sick time, 3) decrease health care costs, and 4) increased moral of employees. Female breastfeeding employees and their infants are healthier as well keeping the woman on the job and not at home caring for a sick infant.

Also, since over 80% of businesses in the State of Hawaii have greater than 20 employees, we ask that you reinstate in the next Draft that those businesses with 20 employees/business or more be included and that it be mandatory for them. A law covering this number of employees per business will include a greater number of female breastfeeding employees than the present Federal Law-Affordable Care Act.

Last we feel it is important to reinstate the monetary figure of \$1000 for each violation of the future law. We feel this is a fair figure.

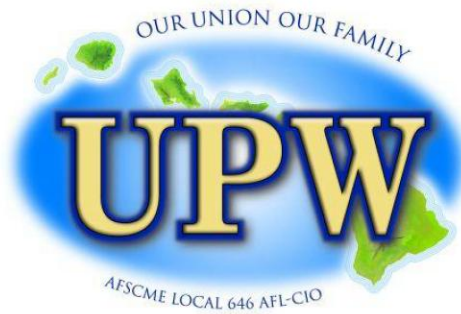
Breastfeeding Hawaii stands ready in our community to assist the Chamber of Commerce and specific businesses with practical suggestions on how to comply with this new law.

We encourage the Judiciary Committee to include our suggested amendments and pass it out of Committee.

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

Sincerely,

Deb Trankel, RNC, BSN, CLC, IBCLC



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

COMMITTEE ON JUDICIARY

The Honorable Rep. Karl Rhoads, Chair
The Honorable Rep. Sharon Har, Vice Chair

DATE OF HEARING: Tuesday, March 19, 2013
TIME OF HEARING: 2 p.m.
PLACE OF HEARING: Conference Room 325

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")

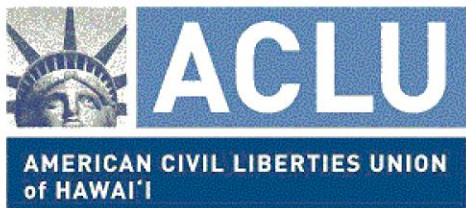
My name is Dayton M. Nakanelua and I am the State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive representative for approximately 14,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health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



Committee: Committee on Judiciary
Hearing Date/Time: Tuesday, March 19, 2013, 2:00 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawaii in Support of S.B. 532, S.D.1, H.D.1, Relating to Breastfeeding in the Workplace

Dear Chair Rhoads and Members of the Committee on Judiciary:

In order to ensure full equality for women, workplace policies and practices must 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

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.*

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawaii'i 96801
T: 808-522-5900
F: 808-522-5909
E: office@acluhawaii.org
www.acluhawaii.org

Chair Rhoads and Members of the Committee on
Judiciary
March 19, 2013
Page 2 of 2

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, to promote breastfeeding, 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 expand the requirements of H.R.S. §378-10 to ensure that employers provide breastfeeding women with an appropriate space in their place of employment to express their breast milk.

Sincerely,

Laurie A. Temple
Staff Attorney and Legislative Program Director
ACLU of Hawaii

The American Civil Liberties Union ("ACLU") is our nation's guardian of liberty – working daily in courts, legislatures and communities to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country.

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.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808-522-5900
F: 808-522-5909
E: office@acluhawaii.org
www.acluhawaii.org



THE LEAGUE
OF WOMEN VOTERS OF HAWAII

March 18, 2013

Testimony in **support** of SB 532, SD1, HD1

House of Representatives
Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice Chair

Tuesday, March 19, 2013
2:00 P. M.
Conference Room 325
State Capitol

The League of Women Voters Hawaii stands in support of SB 532, SD1, HD1 requiring an appropriate and assessable location within a woman's work environment to breastfeed or express breast milk. This bill would require the employer to provide this accommodation and should that not occur, suggests a fine or civil rights action for not doing so.

Breastfeeding a newborn provides countless health benefits, not only at the time but in the future. Many women return to work within the first year of their child's life and are forced to use unsanitary and unsatisfactory facilities. This is unacceptable. There must be a way for a woman to have such a place in a very timely manner, as interruption in breastfeeding reduces supply and can lead to the inability to produce breast milk.

The possibility of having to file a civil rights action is cumbersome and places undue stress on the working mother. A fine could be paid by the employer but would that correct the situation?

We do stand in support of this bill. It provides health benefits to child and mother.

Thank you for allowing me to testify.
Joy A Marshall, RN



THE LEAGUE
OF WOMEN VOTERS OF HAWAII

LWV-Hawaii



March 19, 2013

To: Rep. Karl Rhoads, Chair; Rep. Sharon Har, Vice Chair and
Members of the Committee on Judiciary

From: Jeanne Y. Ohta, Co-Chair

RE: SB 532 SD1 HD1 Relating to Breastfeeding in the Workplace
Hearing: Tuesday, March 19, 2013, 2:00 p.m., Room 325

Position: Support

The Hawai'i State Democratic Women's Caucus writes in support of SB 532 SD1 HD1 Breastfeeding in the Workplace which requires certain employers to provide reasonable time and a clean and private location for breastfeeding employees to express breast milk in privacy.

The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawaii's women and girls. It is because of this mission, the Women's Caucus supports this measure.

Only one in five children in Hawai'i¹ receives the absolute minimum of six months exclusive breastfeeding, as recommended by the American Academy of Pediatrics and the World Health Organization to reduce risk of obesity, diabetes, infectious disease, asthma, allergies and certain childhood cancers. Women who breastfeed their children benefit too, with lower rates of breast and ovarian cancer, metabolic syndrome and type 2 diabetes. Society benefits with lower health insurance costs. Employers benefit with lower absenteeism on the job and less employee turnover.

However, we believe that the amendment added by the Senate that creates a civil right of action as the employee's sole remedy is overly burdensome. The bill now requires a new mother to enforce her right to express breast milk at work by finding an attorney who will take her case; taking the time consuming and costly route of filing suit against her employer; and perhaps jeopardize her employment. This process will no doubt discourage women from taking advantage of this law.

According to the 2011 Data Book, 62% of Hawaii's women are in the labor force. Because of our high cost of living, two-wage earners in households are very common. Children deserve the best start to a healthy life as possible. Allowing for accommodations to women who are breastfeeding is a common-sense solution. We respectfully request that the committee pass this measure.

¹ The CDC Breastfeeding Report Card 2012: www.cdc.gov/breastfeeding/data/



LATE

Hawaii Women's Coalition

COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Sharon E. Har, Vice Chair

DATE: Tuesday, March 19, 2013

TIME: 2:00 p.m.

PLACE: Conference Room 325

SUPPORT FOR SB 532 – BREASTFEEDING IN THE WORKPLACE

Aloha Chair Rhoads, Vice Chair Har and Committee Members,

The Hawai'i Women's Coalition is in strong support of this measure that mandates employers to provide reasonable time and a private location for breastfeeding employees to express breast milk. It is in the best interests of the State of Hawai'i as well as that of our employers and employees that this measure be passed and implemented.

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. Twenty-four states, the District of Columbia and Puerto Rico all have laws protecting breastfeeding women in the workplace.

Here are the facts. In 2009, 50% of all mothers with children younger than twelve months old were employed. **69% of those women worked full time.** 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.

While SB 532, SD1 aims to protect breastfeeding women, the Coalition, along with a host of community organizations, 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 is overly burdensome, costly and clearly designed to prevent women from breastfeeding the work place. This is discriminatory against women.

Please pass a clean bill that doesn't put the onus of enforcement on the vulnerable working mothers of Hawaii.

Mahalo,

Ann S. Freed

Co-Chair Women's Coalition

95-227 Waikalani Dr. A403

Mililani, HI 96789

808-623-5676

March 19, 2013 – Tuesday
2:00PM
House Conference Room 325



To: Hawaii House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Sharon Har, Vice Chair

From:

Re: SB 532 – Relating to Breastfeeding in the Workplace

Aloha Chair Karl Rhoads, Vice Chair Sharon Har, and Members of the House Committee on Judiciary:

My name is Megan Cagasan, and I am currently an undergraduate public health student and citizen of Hawaii. I am strongly in favor of supporting SB 532, which would require employers to provide necessary break times and a private location for mothers to express breast milk to their babies for up to one year after birth. Passing this bill would create significant health benefits for Hawaii's mothers and children.

Maternal and child healthcare is an integral aspect of health that must not be overlooked, including giving new mothers the chance to breastfeed their infants. Research has consistently indicated that there are health benefits of breastfeeding for both mothers and newborn babies, yet statistics have shown a significant decrease of expressing breast milk after the baby's first 6 months of life. According to the Centers for Disease Control and Prevention (2012) statistics on Hawaii, only 51% of women breastfeed at the 6 month mark, which then decreases to 32% at 12 months.¹ This shocking decrease in breastfeeding needs to be addressed by making this important health benefit accessible to working women. By providing women and babies the time and place to do this, they would be able to avoid associated health risks of not breastfeeding. For instance, babies who are breastfed have a reduced risk of Type 1 diabetes, childhood leukemia, atopic dermatitis, and sudden infant death syndrome. As for the health benefits of mothers, they have a lower risk of Type 2 diabetes, breast cancer, ovarian cancer, and postpartum depression.² Taking on preventative measures would promise better health outcomes for Hawaii's population and even increase work productivity because women would miss work less often as a consequence of their infants being healthier.

I strongly support this bill because providing the time and private location to express breast milk to infants offers Hawaii long-term health benefits. Passing this bill would surely encourage women to keep breastfeeding throughout their infants first year of life and influence Hawaii's community to support maternal and child healthcare. Mahalo for your time and consideration of this bill.

Sincerely,
Megan Cagasan
98-1670 Laauhuahua Pl. Pearl City, HI 96782
(808) 203-8398

¹ Centers for Disease Control and Prevention, Breastfeeding Report Card 2012, United States: Outcome Indicators, <http://www.cdc.gov/breastfeeding/data/reportcard2.htm>

² US Department of Health and Human Services, Office of Women's Health (2010), *Why breastfeeding is important*, <http://www.womenshealth.gov/breastfeeding/why-breastfeeding-is-important/>