

BREASTFEEDING ANTIDISCRIMINATION ACT

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5591 as enrolled
Public Act 198 of 2014
Sponsor: Rep. Amanda Price

House Bill 5592 as enrolled
Public Act 199 of 2014
Sponsor: Rep. Lisa Posthumus Lyons

Senate Bill 674 as enrolled
Public Act 197 of 2014
Sponsor: Sen. Rebekah Warren

House Committee: Judiciary
Senate Committee: Judiciary

Second Analysis (9-11-14)

BRIEF SUMMARY: Senate Bill 674 would create the Breastfeeding Antidiscrimination Act to grant to a woman the right to breastfeed in a public place. House Bills 5591 and 5592 would exempt a mother's breastfeeding of a child or expressing breast milk from state laws that prohibit open or indecent exposure of one's person and also disorderly conduct in public.

FISCAL IMPACT: The House bills could result in a reduction in costs for local courts due to a decrease in caseloads. There could also be a decrease in penal fine revenues, which would decrease funding for local libraries, which are the constitutionally-designated recipients of those revenues. The Senate bill would likely have a minor impact on civil court caseloads.

THE APPARENT PROBLEM:

Currently, Michigan law allows local governments to prohibit public nudity within their jurisdictions, but excludes breastfeeding from the definition of the term whether or not the nipple or areola is exposed during or incidental to the feeding. However, discriminating against a woman who is breastfeeding in a public place is not specifically prohibited in statute. Moreover, the state's bans on public indecency and disorderly conduct do not specifically exempt the exposure of a woman's breast when breastfeeding a child or when expressing breast milk (e.g., with a manual or electric breast pump).

The confusion over what is and isn't lawful regarding breastfeeding in public has reportedly led some mall security guards and store and restaurant employees to ask (or in some cases, demand) a mother to stop feeding her child and either move to a different location (like the restroom) or leave the premises. In some cases, as in an incident at a Harper Woods Target store in November of 2009, police have been called. Other women report being stared at, glared at, or subjected to rude comments.

Forty-five states, the District of Columbia, and the Virgin Islands have some form of law to allow women to breastfeed a child in public or private locations. The reasons for such laws are based in science – breastfeeding has many benefits, physical and emotional, for mothers and babies alike. The American Academy of Pediatrics recommends exclusive breastfeeding for the first six months of life, and increasing the numbers of mothers breastfeeding their children have been included in goals for both the Healthy People 2010 and 2020 initiatives.

Yet, according to information offered by the Health Department of Southwest Michigan, the state is in the bottom quarter of states regarding breastfeeding initiation and duration to one year. Of mothers participating in the WIC program, only about 18 percent who begin to breastfeed are still breastfeeding at six months.

Many believe that the confusion over the legal status to breastfeed or to express milk outside the home is a major contributor to the low rates of breastfeeding. Breastfeeding is not without its challenges, and the lack of support, fear of public intimidation, and uncertainty over whether they are breaking the law acts as a huge obstacle that many mothers find difficult to overcome.

It has been recommended by many in the healthcare industry and women and children's advocacy organizations that Michigan follow the lead of other states and amend its laws to create an environment more encouraging of breastfeeding.

THE CONTENT OF THE BILLS:

Senate Bill 674 would create the Breastfeeding Antidiscrimination Act to grant to a woman the right to breastfeed in a public place. House Bills 5591 and 5592 would exempt a mother's breastfeeding of a child from state laws prohibiting open or indecent exposure of her person and also disorderly conduct in public.

Senate Bill 674: the Breastfeeding Antidiscrimination Act

The bill would mirror protections afforded in public places under the Elliot-Larsen Civil Rights Act that prohibit discrimination based on religion, race, color, national origin, age, sex, or marital status. Under the bill, except where expressly permitted by state or federal statute (or a regulation promulgated under the statute), a person with control over a public accommodation or public service would be prohibited from doing any of the following:

- Denying the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service to a woman because she is breastfeeding a child.
- Printing, circulating, posting, mailing, or otherwise publishing a statement, advertisement, notice, or sign that indicates either:
 - (1) that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service will be refused, withheld from, or denied a woman because she is breastfeeding a child; or

(2) that a woman's patronage or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable because she is breastfeeding a child.

Remedies: A person alleging a violation of the act could bring a civil action for appropriate injunctive relief and/or actual or presumed damages of \$200. In addition, the court could award all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, to the complainant in the action if the court determines that the award is appropriate.

Definitions: "Place of public accommodation" would mean a business, an educational institution, or a refreshment, entertainment, recreation, health, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public.

"Public service" would mean a public facility, department, agency, board, or commission owned, operated, or managed by or on behalf of the state or a subdivision of the state, by a county, city, village, township, or independent or regional district, or by a tax-exempt private agency established to provide service to the public. Public service would not include a state or correctional facility with respect to actions or decisions regarding an individual serving a sentence of imprisonment.

House Bills 5591 and 5592 would amend the Michigan Penal Code to exempt a mother's breastfeeding of a child or expressing breast milk from state laws prohibiting open or indecent exposure of one's person and also indecent or obscene conduct in public.

House Bill 5591 would amend Section 335a (MCL 750.335a). Currently, it is crime to knowingly make any open or indecent exposure of one's person or of the person of another. Penalties can range from a one or two-year misdemeanor to life imprisonment, depending on elements of the conduct. The bill would specify that a mother's breastfeeding of a child or expressing breast milk does not constitute indecent or obscene conduct regardless of whether or not her areola or nipple is visible during or incidental to the breastfeeding or expressing of breast milk.

House Bill 5592 would similarly amend Section 167 of the Penal Code (MCL 750.167), which deals with indecent or obscene conduct in a public place as a category of disorderly conduct.

ARGUMENTS:

For:

Although state law does not ban breastfeeding in public, and local ordinances say that breastfeeding does not constitute public nudity, many people in the state continue to believe that public breastfeeding is against the law. As a result, reportedly, breastfeeding mothers have been asked to leave public places such as stores and restaurants, been ushered out of public agencies, been subjected to disapproving glares from strangers, and even had the police called on them. Women returning to work after maternity leave often

are unsure if it is OK to request a private place where they can express breast milk for a later feeding or to maintain an adequate milk supply.

The bills would address the issue by clarifying in law that discriminating against breastfeeding mothers will not be tolerated, and that public breastfeeding or expressing of breast milk is not a crime of indecent exposure or disorderly conduct.

Breastfeeding has many benefits to baby such as reducing the risk for childhood obesity, death from SIDS (by 50 percent or more), and asthma, and shields the baby from infections. Breastfeeding helps a mother return to her pre-birth weight (thus reducing the risk for adult obesity) and reduces the lifetime risk of breast cancer. In addition, breastfeeding enhances the bond between mother and child. Moreover, families can save close to \$1,500 a year by breastfeeding over buying formula. According to information submitted in committee testimony, if 90 percent of new mothers in the U.S. breastfed exclusively for six months, overall medical expenses across the nation would be reduced by \$13 billion a year!

So, creating a more "mommy friendly" social environment that supports breastfeeding and expressing of breast milk can decrease infant mortality, decrease obesity in children and women, save money for individual families, and reduce unnecessary medical expenditures borne by society. Considering such facts, it is easy to see that the bills represent good public policy, and that it is time for Michigan to join the 45 states that have already adopted pro-breastfeeding laws and enact the bill package.

For:

Creating a supportive environment for mothers to breastfeed their children in public, or express breast milk, will enable more girls and young women to see positive images of breastfeeding that is likely to help them feel comfortable choosing breastfeeding when they become mothers. Such positive modeling will enable the state to reach its goals of increasing the numbers of mothers who breastfeed to one year, or at least to six months. As already stated, the benefits to the individual mother and child, as well as to society as a whole in terms of reducing health care costs, are too monumental to ignore.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.