

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1303 Session of 2009

INTRODUCED BY SOLOBAY, BARRAR, BRENNAN, BRIGGS, DePASQUALE,
DONATUCCI, FRANKEL, HARKINS, KOTIK, MANN, MUNDY, JOSEPHS,
FREEMAN, MURT, K. SMITH, McILVAINE SMITH AND SAMUELSON,
APRIL 21, 2009

AS REPORTED FROM COMMITTEE ON CHILDREN AND YOUTH, HOUSE OF
REPRESENTATIVES, AS AMENDED, NOVEMBER 9, 2009

AN ACT

1 Amending the act of July 8, 2007 (P.L.90, No.28), entitled "An
2 act permitting a mother the freedom to nurse her child in
3 public; and providing that breastfeeding may not be
4 considered a nuisance, indecent exposure, sexual conduct or
5 obscenity," ~~defining "breastfeeding"; and further providing~~ ←
6 ~~for workplace and for breastfeeding by employees.~~ ←
7 FURTHER PROVIDING FOR DECLARATION OF POLICY; AND PROVIDING FOR
8 DEFINITIONS, FOR WORKPLACE PROTECTION, FOR VIOLATIONS AND FOR
9 INFORMATION.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 ~~Section 1. The act of July 8, 2007 (P.L.90, No.28), known as~~ ←
13 ~~the Freedom to Breastfeed Act, is amended by adding sections to~~
14 ~~read:~~

15 Section 2.1. Definitions.

16 The following words and phrases when used in this act shall
17 have the meanings given to them in this section unless the
18 context clearly indicates otherwise:

19 "Breastfeed." The feeding of a child with breast milk
20 directly from the breast.

~~Section 5. Workplace.~~

~~Any employer, employment agency or labor organization shall not refuse to hire or employ, bar or discharge from employment, withhold pay, demote, penalize or otherwise discriminate against an individual who is lactating because the individual breastfeeds or expresses her breast milk at the workplace.~~

~~Section 6. Breastfeeding by employees.~~

~~No employer shall prohibit an employee who is lactating from expressing her breast milk during any meal period or other break period required by law to be provided by the employer or required by collective bargaining agreement.~~

~~Section 7. Information.~~

~~The Department of Health and the Department of Labor shall provide, to employees and employers, on their Internet websites information and links to other websites where employees and employers can access information concerning breastfeeding in the workplace.~~

SECTION 1. SECTION 2 OF THE ACT OF JULY 8, 2007 (P.L.90, NO.28), KNOWN AS THE FREEDOM TO BREASTFEED ACT, IS AMENDED TO READ:

SECTION 2. DECLARATION OF POLICY.

THE GENERAL ASSEMBLY FINDS THAT BREASTFEEDING A BABY IS AN IMPORTANT AND BASIC ACT OF NURTURING THAT MUST BE PROTECTED IN THE INTERESTS OF MATERNAL AND CHILD HEALTH AND FAMILY VALUES, AND INCREASED ATTENTION MUST BE PAID TO THE NEEDS OF BREASTFEEDING CHILDREN AND MOTHERS WHO BREASTFEED OR EXPRESS BREAST MILK.

SECTION 2. THE ACT IS AMENDED BY ADDING SECTIONS TO READ:

SECTION 2.1. DEFINITIONS.

THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL

HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
CONTEXT CLEARLY INDICATES OTHERWISE:

"DEPARTMENT." THE DEPARTMENT OF LABOR AND INDUSTRY OF THE
COMMONWEALTH.

"EMPLOYEE." ANY INDIVIDUAL EMPLOYED BY AN EMPLOYER.

"EMPLOYER." THE TERM SHALL HAVE THE MEANING GIVEN TO IT IN
THE ACT OF OCTOBER 27, 1955 (P.L.744, NO.222), KNOWN AS THE
PENNSYLVANIA HUMAN RELATIONS ACT.

"EMPLOYMENT AGENCY." THE TERM SHALL HAVE THE MEANING GIVEN
TO IT IN THE ACT OF OCTOBER 27, 1955 (P.L.744, NO.222), KNOWN AS
THE PENNSYLVANIA HUMAN RELATIONS ACT.

"LABOR ORGANIZATION." THE TERM SHALL HAVE THE MEANING GIVEN
TO IT IN THE ACT OF OCTOBER 27, 1955 (P.L.744, NO.222), KNOWN AS
THE PENNSYLVANIA HUMAN RELATIONS ACT.

SECTION 5. WORKPLACE PROTECTION.

AN EMPLOYER, EMPLOYMENT AGENCY OR LABOR ORGANIZATION SHALL
NOT:

(1) REFUSE TO HIRE OR EMPLOY, BAR OR DISCHARGE FROM
EMPLOYMENT, WITHHOLD PAY, DEMOTE, PENALIZE OR OTHERWISE
DISCRIMINATE AGAINST AN INDIVIDUAL:

(I) ON THE BASIS THAT THE INDIVIDUAL IS LACTATING;

OR

(II) WHO FILES A COMPLAINT IN ACCORDANCE WITH
SECTION 6.

(2) PROHIBIT AN EMPLOYEE WHO IS LACTATING FROM
EXPRESSING HER BREAST MILK DURING ANY MEAL PERIOD OR OTHER
BREAK PERIOD PROVIDED BY THE EMPLOYER, EMPLOYMENT AGENCY OR
LABOR ORGANIZATION OR REQUIRED BY COLLECTIVE BARGAINING
AGREEMENT.

SECTION 6. VIOLATIONS.

1 (A) COMPLAINTS.--AN INDIVIDUAL CLAIMING TO BE AGGRIEVED BY A
2 VIOLATION OF SECTION 5 MAY FILE A COMPLAINT WITH THE DEPARTMENT
3 WITHIN 90 DAYS AFTER THE ALLEGED VIOLATION.

4 (B) FORM.--THE DEPARTMENT SHALL DEVELOP AND POST ON ITS
5 INTERNET WEBSITE A FORM FOR INDIVIDUALS TO USE IN FILING A
6 COMPLAINT WITH THE DEPARTMENT IN RESPECT TO A VIOLATION UNDER
7 SECTION 5.

8 (C) NOTICE.--WITHIN 30 DAYS OF RECEIPT OF A COMPLAINT, THE
9 DEPARTMENT SHALL PROVIDE THE EMPLOYER, EMPLOYMENT AGENCY OR
10 LABOR ORGANIZATION WITH A COPY OF THE COMPLAINT.

11 (D) RESPONSE.--AN EMPLOYER, EMPLOYMENT AGENCY OR LABOR
12 ORGANIZATION SHALL HAVE 30 DAYS FROM RECEIPT OF THE COMPLAINT TO
13 RESPOND IN WRITING TO THE DEPARTMENT REGARDING THE COMPLAINT.

14 (E) DETERMINATION BY DEPARTMENT.--WITHIN 90 DAYS OF RECEIPT
15 OF A COMPLAINT, THE DEPARTMENT SHALL NOTIFY THE COMPLAINANT AND
16 EMPLOYER, EMPLOYMENT AGENCY OR LABOR ORGANIZATION OF A
17 DETERMINATION AS TO WHETHER A VIOLATION HAS OCCURRED AND WHETHER
18 A CIVIL PENALTY SHALL BE ASSESSED BY THE DEPARTMENT.

19 (F) PENALTIES.--UPON A DETERMINATION BY THE DEPARTMENT THAT
20 A VIOLATION HAS OCCURRED, THE DEPARTMENT MAY ASSESS A CIVIL
21 PENALTY NOT TO EXCEED \$300 FOR A FIRST VIOLATION AND \$1,000 FOR
22 EACH SUBSEQUENT VIOLATION OF SECTION 5.

23 (G) ADDITIONAL REMEDIES PRESERVED.--NOTHING IN THIS ACT
24 SHALL BE CONSTRUED TO IMPAIR ANY EXISTING STATUTORY OR COMMON
25 LAW RIGHTS, POWERS OR DUTIES OR BAR THE RELIEF OTHERWISE
26 AVAILABLE UNDER THE LAW TO THE COMPLAINANT.

27 SECTION 7. INFORMATION.

28 THE DEPARTMENT AND DEPARTMENT OF HEALTH SHALL MAKE AVAILABLE
29 TO THE GENERAL PUBLIC ON THE DEPARTMENTS' INTERNET WEBSITES
30 INFORMATION AND LINKS TO OTHER WEBSITES WHERE THE PUBLIC CAN

1 ACCESS INFORMATION CONCERNING BREASTFEEDING AND EXPRESSING
2 BREAST MILK, INCLUDING INFORMATION RELATING TO EXPRESSING BREAST
3 MILK, IN THE WORKPLACE. THE DEPARTMENT SHALL MAKE AVAILABLE ON
4 ITS INTERNET WEBSITE INFORMATION TO ASSIST AND ENCOURAGE
5 EMPLOYERS, EMPLOYMENT AGENCIES AND LABOR ORGANIZATIONS TO
6 PROVIDE A ROOM OR OTHER LOCATION IN CLOSE PROXIMITY TO THE WORK
7 AREA, OTHER THAN A TOILET STALL, WHERE AN EMPLOYEE CAN EXPRESS
8 BREAST MILK IN PRIVACY.

9 Section ~~2~~ 3. This act shall take effect in 60 days.

