



Summary of State Breastfeeding Laws and Related Issues

Douglas Reid Weimer
Legislative Attorney

June 26, 2009

Congressional Research Service

7-5700

www.crs.gov

RL31633

Summary

The practice of breastfeeding has expanded in recent years. Various legal issues have accompanied this development. The primary legal issues concern: 1) the ability of working mothers to breastfeed their children and/or to express milk during working hours; and 2) nursing and/or the expression of milk in public or semi-public places such as restaurants, public transportation facilities, and other locations where the public is present. Certain states have enacted legislation addressing breastfeeding in the workplace and exempting nursing mothers from laws dealing with indecent exposure and/or criminal behavior. Some states have enacted laws which excuse nursing mothers from jury service. State laws vary considerably in their scope and coverage. This report summarizes the various state laws concerning breastfeeding.

Contents

Introduction	1
Development of State Breastfeeding Laws—1993 to the Present Day	2
Summary of State Breastfeeding Legislation	3
Alabama	3
Alaska.....	3
Arizona.....	3
Arkansas.....	3
California.....	4
Colorado.....	5
Connecticut.....	5
Delaware	5
District of Columbia.....	5
Florida	5
Georgia.....	6
Hawaii	6
Idaho	7
Illinois	7
Indiana.....	7
Iowa	8
Kansas	8
Kentucky	8
Louisiana	8
Maine	9
Maryland	9
Massachusetts	9
Michigan	9
Minnesota	10
Mississippi.....	10
Missouri.....	10
Montana.....	11
Nebraska.....	11
Nevada	11
New Hampshire	11
New Jersey	12
New Mexico	12
New York.....	12
North Carolina	13
North Dakota	13
Ohio	13
Oklahoma	13
Oregon.....	13
Pennsylvania.....	14
Puerto Rico	14
Rhode Island.....	14
South Carolina	14
South Dakota	14

Tennessee	14
Texas	15
U.S. Virgin Islands	15
Utah.....	15
Vermont	16
Virginia.....	16
Washington	16
Wisconsin	17
Wyoming	17
Conclusion.....	21

Tables

Table 1. Comparative Chart of Existing State Breastfeeding Legislation	18
--	----

Contacts

Author Contact Information	21
----------------------------------	----

Introduction¹

One of the stated objectives of the U.S. Public Health Service, as outlined in its report *Healthy People 2010*, is to increase the proportion of mothers who breastfeed their children.² The national objective set forth in the report is to strive for a 75% participation rate of nursing mothers in the early postpartum period, a 50% participation rate of nursing mothers in the period after the infant reaches six months of age, and a 25% participation rate of nursing mothers at the age of one year. Many health care professionals encourage breastfeeding as the optimal form of nutrition for infants for at least the first six months of life.³ Reports show that in 2005, more than 74 % of infants were being breastfed immediately after delivery—a number that continues to increase.⁴

Breastfeeding is generally considered to be beneficial to both mother and child.⁵ Research has indicated that the special composition of human milk enhances cognitive and visual development and lowers the risk and severity of a variety of acute childhood illnesses and chronic diseases, including diarrhea, lower respiratory infection, otitis media, bacteremia, bacterial meningitis, urinary tract infection, necrotizing enterocolitis, lymphoma, and digestive diseases.⁶ Research has also demonstrated health benefits to mothers who breastfeed, such as reduced risk of breast and ovarian cancer and osteoporosis.⁷ The American Academy of Pediatrics and the American Dietetic Association have reported that breastfeeding may reduce health care costs and employee absenteeism for care which is attributable to child illness.⁸ It has been reported that breastfeeding may be economically beneficial.⁹

Because of the growing incidence of women in the workforce, certain issues have arisen concerning working mothers and breastfeeding. It may be necessary for a working mother to express¹⁰ milk during working hours, and/or to breastfeed her child during working hours. Other issues concern nursing and/or the expression of milk in public or semi-public places such as restaurants, public transportation facilities, and other locations where the public is present. Various states have enacted legislation and/or adopted court rules relating to nursing mothers and jury duty.¹¹ Over the years Congress has also considered legislation concerning the rights of

¹ This report was prepared/updated with the assistance of Kyle Ishmael-Marquis, law clerk, American Law Division.

² *Healthy People 2010*, Washington, DC: U.S. Department of Health and Human Services, Public Health Service (2000). See CRS Report RL32002, *Breast-feeding: Impact on Health, Employment and Society*, by Donna V. Porter.

³ Leah Oliver and Hy G.A. Park, Maternal and Child Health, A Snapshot for State Legislatures 19 (2004)(cited to afterward as “Maternal and Child Health”).

⁴ See generally the websites for the Center for Disease Control at <http://www.cdc.gov/breastfeeding>.

⁵ *Id.* and the National Women’s Health Information Centers’ Resources on Breastfeeding at <http://www.4woman.gov/breastfeeding>.

⁶ See American Academy of Pediatrics homepage at <http://www.aap.org/healthtopics/breastfeeding.cfm>.

⁷ *Id.*

⁸ Maternal and Child Health at 19.

⁹ *Id.* It has been reported that formula (for one child) may cost \$800 per year. A Kaiser Permanente study (1995) concluded that infants who were breastfed for a minimum of six months experienced \$1,435 less health care claims than formula fed infants in the first year of life.

¹⁰ A nursing mother “expresses” or extracts breast milk through a vacuum pump device for later feeding to the child.

¹¹ See CRS Report RL32928, *Breastfeeding and Jury Duty: State Laws, Court Rules, and Related Issues*, by Douglas Reid Weimer (May 17, 2005).

breastfeeding mothers.¹² In the 111th Congress, H.R. 2819 and S. 1244, the proposed Breastfeeding Promotion Acts of 2009, were introduced on June 11, 2009.

Development of State Breastfeeding Laws—1993 to the Present Day

As breastfeeding has become more common, legal concerns have arisen on applying state decency laws and other laws concerning public nudity and exposure to nursing mothers. Because of these concerns, a wide range of state laws have been enacted to deal with issues involving various aspects of breastfeeding. The first state to enact comprehensive breastfeeding legislation was Florida in 1993.¹³ This legislation removed breastfeeding from the criminal statutes and created a new law that stated that breastfeeding was an important and basic act of nature that needed to be encouraged in the interests of maternal and child health. The law provided that a woman had a right to breastfeed in any place where she had a right to be. This legislation served as a model for legislation subsequently enacted by other states.

In 1994, Florida enacted the first state legislation on breastfeeding mothers having the support and cooperation of their employers.¹⁴ While this law did not require all employers to accommodate nursing mothers (such as providing for a location to lactate), it set out the reasons why breastfeeding was very important. The law also established a study to look at the feasibility of breastfeeding guidelines for employers.

Most of the state breastfeeding laws permit mothers to breastfeed in any public or private location and/or provide that breastfeeding does not constitute indecent exposure or other criminal behavior. Some states have vested nursing mothers with certain rights, including rights in the workplace. For example, Hawaii prohibits employers from discriminating against a mother who breastfeeds or expresses milk at the workplace. Other states exempt nursing mothers from jury service. The current body of state breastfeeding laws varies from jurisdiction to jurisdiction. At the current time, West Virginia is the only state without some type of legislation dealing with the protection of nursing mothers and/or the promotion of breastfeeding.

In recent years, eleven state legislatures have adopted some version of breastfeeding legislation for the first time. Two of these states have taken larger rather than incremental steps by enacting many provisions at once to provide protection to nursing mothers that is comparable to most other states.¹⁵ In 2007, Arkansas enacted laws that permitted mothers to breastfeed in public without being subject to any public indecency laws. The legislature also established laws relating to breastfeeding in the workplace. Likewise, Mississippi enacted similar provisions in addition to exempting breastfeeding mothers from jury duty in 2006.

¹² See CRS Report RL32908, *Breastfeeding: Federal Legislation*, by Douglas Reid Weimer (May 5, 2005).

¹³ 1993 Fla. Laws ch. 4, Fla. HB 231. Originally codified at Fla. Stat. § 383.015, §§ 800.02 to 800.04, § 847.001. See below for current codification.

¹⁴ 1994 Fla. Laws ch. 217, Fla. SB 1668. Codified at Fla. Stat. §§ 383.011, 383.015, 383.016, 383.311, 383.318.

¹⁵ Summaries and citations to these laws follow in the charts.

Summary of State Breastfeeding Legislation

Below is a summary of state laws concerning breastfeeding.¹⁶ Each law is cited and is followed by a brief summary of its provisions. The report does not cover certain commemorative state legislation relating to breastfeeding.¹⁷ A chart has been prepared summarizing the existing state¹⁸ breastfeeding laws and grouping the laws into six categories.

It should be considered that if a state does not have specific legislation authorizing or affirming breastfeeding in public, it does not mean that breastfeeding in public is necessarily prohibited. Local ordinances, which are not considered in this report, may deal with the issue. Likewise, an exemption from jury duty by a nursing mother which in some states may be covered by state statute, may also be covered in other states by court rules, local practices, or regulations.¹⁹

Alabama

Code of Ala. § 22-1-13 (Lexis 2009) permits a mother to breastfeed her child in any location, public or private, where the mother is otherwise authorized to be present.

Alaska

Alaska Stat. § 01.10.060 (Lexis 2009) provides that in the laws of the State, “lewd conduct,” “lewd touching,” “immoral conduct,” “indecent conduct,” and similar terms do not include the act of a woman breastfeeding a child in a public or private location where the woman and child are otherwise authorized to be.

Alaska Stat. § 29.25.080 (Lexis 2009) provides that breastfeeding does not constitute indecent exposure or other similar offenses. A municipality, borough, or other local government unit cannot implement ordinances banning breastfeeding, or making it a violation of a municipal ordinance.

Arizona

A.R.S. § 41-1443 (Lexis 2008) provides that a mother is entitled to breastfeed in any area of a public place or a place of public accommodation where the mother is otherwise lawfully present.

Arkansas

A.C.A. § 5-14-112 (Lexis 2008) provides that a woman is not in violation of indecent exposure for breastfeeding a child in a public place or any place where other individuals are present.

¹⁶ Although not a state, Puerto Rico, Washington, D.C. and the U.S. Virgin Islands have been included in this analysis.

¹⁷ For example, States may have enacted legislation designating a certain day as “Breastfeeding Day.” E.g., Cal. Assembly Con. Res. 95 (1996) proclaimed the week of August 1 through 7, 1996, as “Breastfeeding Awareness Week.”

¹⁸ The term breastfeeding is sometimes hyphenated (breast-feeding) in certain state statutes. For purposes of uniformity in this report, the hyphen is deleted.

¹⁹ Further information concerning jury duty exemptions for nursing mothers may be found at <http://www.familyfriendlyjuryduty.org>.

A.C.A. § 20-27-2001 (Lexis 2008) provides that a woman may breastfeed a child in a public place or any place where other individuals are present.

2009 Ark. ALS 621 requires employers to provide unpaid break time and reasonable locations for expressing breast milk.

California

Cal. Labor Code § 1030 (Lexis 2008) requires that employers provide break time for an employee to express milk for the employee's infant child. The break time, if possible, is to run concurrently with any break time already provided to an employee.

Cal. Labor Code § 1031 (Lexis 2008) requires that an employer make reasonable efforts to provide a room or other location, other than a toilet stall, for employees to express milk in private.

Cal. Labor Code § 1032 (Lexis 2008) states that an employer is not required to provide break time if "to do so would seriously disrupt the operations of the employer."

Cal. Labor Code § 1033 (Lexis 2008) provides a civil penalty and for the issuance of a citation by the Labor Commissioner. Violations of provisions relating to breastfeeding are not considered misdemeanors.

Cal. Civil Proc. Code § 210.5 (Lexis 2008) permits the mother of a nursing child to postpone jury duty for one year and explicitly eliminates the requirement for the mother to have to appear in person to request the postponement. The one year period may be extended upon the written request of the mother.

Cal. Health and Safety Code § 1647 (Lexis 2008) provides that the procurement, processing, distribution, or use of human milk for human consumption constitutes the rendition of a service.

Cal. Civil Code § 43.3 (Lexis 2008) provides authority for a mother to breastfeed her child in any location.

Cal. Health and Safety Code §§ 123360, 123365, 1257.9 (Lexis 2008) mandates the State Department of Health and Human Services to promote breastfeeding in public health campaigns and requires hospitals to provide lactation support and consultation to patients.

*Cal. Assembly Con. Res. 155 (1998)*²⁰ encourages the State and private employers to support and encourage the practice of breastfeeding by striving to accommodate the need of employees, and by ensuring that employees are provided with adequate facilities for breastfeeding and expressing milk for their children. The governor is authorized to declare by executive order that all State employees be provided with adequate facilities for breastfeeding and expressing milk.

*Cal. Rules of Court R. 859 (2004)*²¹ provides that a mother breastfeeding a child may request that jury service be deferred for up to one year, and may renew that request as long as she is

²⁰ Provision not codified at this time.

²¹ While this provision is not a state statute, it is a significant rule of court in an important and influential state.

breastfeeding. If the request is made in writing, under penalty of perjury, the jury commissioner must grant the request without requiring the prospective juror to appear in court.

Colorado

Colo. Rev. Stat. 25-6-301; 25-6-302 (Lexis 2008) acknowledges the beneficial effects of breastfeeding and encourages mother to breastfeed. The law permits a mother to breastfeed in any location she has a right to be.

Connecticut

Conn. Gen. Stat. Ann. § 31-40w (Lexis 2008) concerns breastfeeding in the workplace. Employers are required to provide reasonable time and private accommodations each day to an employee who needs to express breast milk for her infant child.

Conn. Gen. Stat. Ann. §46a-64(a)(3)(Lexis 2008) forbids resorts and other public accommodations from limiting or restricting a mother's right to breastfeed.

Conn. Gen. Stat. Ann. §53-34b(Lexis 2008) states that no person may restrict or limit the right of a mother to breastfeed her child.

Delaware

Del. Code Ann. tit. 31 § 310 (Lexis 2009) provides that a mother is entitled to breastfeed her child in any location of a place of public accommodation wherein the mother is otherwise permitted.

District of Columbia

D.C. Code § 2-1402.81 (Lexis 2009) encourages and supports the right of women who so choose to freely breastfeed their children.

Florida

Fla. Stat. Ann. § 383.011 (Lexis 2009) provides for programs for the encouragement of breastfeeding.

Fla. Stat. Ann. § 383.015 (Lexis 2009) permits a mother to breastfeed in any public or private location. A facility may be designated "baby-friendly" if it establishes a breastfeeding policy.

Fla. Stat. Ann. § 383.016 (Lexis 2009) authorizes the use of a "baby friendly" designation for certain facilities supporting breastfeeding.

Fla. Stat. Ann. § 383.311 (Lexis 2009) establishes education and orientation centers dealing with the encouragement of breastfeeding.

Fla. Stat. Ann. § 383.318 (Lexis 2009) establishes birth centers dealing with instruction in breastfeeding.

Fla. Stat. Ann. § 800.02 (Lexis 2009) exempts breastfeeding from the definition of an unnatural and lascivious act.

Fla. Stat. Ann. § 800.03 (Lexis 2009) exempts breastfeeding from a statute dealing with the exposure of sexual organs.

Fla. Stat. Ann. § 800.04(8) (Lexis 2009) exempts breastfeeding from a statute dealing with lewd or lascivious offenses.

Fla. Stat. Ann. § 827.071 (Lexis 2009) provides that a mother's breastfeeding of her baby does not constitute "sexual conduct" within the context of child abuse statutes.

Fla. Stat. Ann. § 847.001 (Lexis 2009) provides that a mother's breastfeeding of her baby is not under any circumstance "harmful to minors."

Georgia

Ga. Code Ann. § 31-1-9 (Lexis 2009) provides that the breastfeeding of a baby is an important and basic act of nurture which should be encouraged in the interests of maternal and child health. A mother may breastfeed her baby in any location where the mother and baby are otherwise authorized to be.

Ga. Code Ann. § 34-1-6 (Lexis 2009) permits employers to provide reasonable, unpaid break time for employees to express breast milk and provides that employers may make reasonable efforts to provide a private location other than a toilet stall for an employee to express milk.

Hawaii

Hawaii Rev. Stat. Ann. § 378-2(7) (Lexis 2009) provides that it shall be an unlawful or discriminatory practice for an employer or labor organization to refuse to hire or discharge from employment, or otherwise penalize a lactating employee because the employee breastfeeds or expresses milk at the workplace.

Hawaii Rev. Stat. Ann. § 378-10.2 (Lexis 2009) provides that 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 a collective bargaining agreement.

Hawaii Rev. Stat. Ann. §§ 489.21 to 489.23 (Lexis 2009) deals with breastfeeding in places of public accommodation. § 489.21 provides that it is a discriminatory practice to deny or attempt to deny public accommodations to a woman because she is breastfeeding a child. § 489.22 provides that a person injured by an unlawful discriminatory practice may bring a private cause of action and provides appropriate remedies. § 489.23 exempts the provisions dealing with breastfeeding from the purview of the civil rights commission.

Idaho

Idaho Code § 2-212(3) (Lexis 2008) permits a nursing mother to postpone her jury service until she is no longer breastfeeding. “The court shall provide that a mother nursing her child shall have service postponed until she is no longer nursing the child.”

Illinois

*Ill. P.A. 93-942 (2004)*²² is the “Right to Breastfeed Act.” It states that a mother may breastfeed her baby in any location, public or private, where the mother is otherwise authorized to be. A mother who breastfeeds her child in a place of worship shall follow the appropriate norms within that place of worship. Section 15 provides that a woman denied the right to breastfeed by the owner or manager of a public or private location, other than a private residence or place of worship, may bring an action to enjoin future denials of the right to breastfeed. If the woman prevails in her suit, she shall be awarded reasonable attorney’s fees and reasonable litigation expenses.

820 Ill. Comp. Stat. Ann. §§ 260/1; 260/5; 260/10; 260/15; 260/19 (Lexis 2009) deals with nursing mothers in the workplace. The employer is required to provide reasonable break time and private accommodation (other than a toilet stall) each day to an employee who needs to express breast milk for her infant child.

20 Ill. Comp. Stat. Ann. § 2310/2310/442 (Lexis 2009) allows the State Department of Public Health to conduct an educational breastfeeding public information campaign.

20 Ill. Comp. Stat. Ann. § 1305/10-25 (Lexis 2009) provides that the State Department of Human Services may include a program of lactation support services as part of the benefits and services provided for pregnant and breastfeeding participants in the Women, Infants and Children Nutrition Program. The program may include payment for various breastfeeding-related supplies.

720 Ill. Comp. Stat. Ann. § 5/11-9 (Lexis 2009) provides that breastfeeding a child is not an act of public indecency.

Indiana

Ind. Code § 16-35-6-1 (Lexis 2009) allows a woman to breastfeed her child anywhere the law allows her to be.

2008 Ind. ALS 13 (Lexis 2008) provides that the state, political subdivisions, and other employers that employ six or more individuals shall provide for reasonable paid breaks for an employee to express breast milk for the employee’s infant child.

²² Enacted August 16, 2004.

Iowa

Iowa Code Ann. § 607A.5 (Lexis 2008) permits a mother who is breastfeeding and who is responsible for the daily care of the child and is not regularly employed to be excused from serving on a jury.

Iowa Code Ann. § 135.30A (Lexis 2008) provides that a woman may breastfeed the woman's own child in any public or private location where the mother and the child otherwise are authorized to be present, except the private home or residence of another if the mother's breastfeeding is likely to be viewed by and affront the owner or any occupant of the private home or residence. A mother may breastfeed her child under this section irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breastfeeding.

Kansas

K.S.A. § 43-158 (Lexis 2008) permits a mother breastfeeding her child to postpone jury service until such mother is no longer breastfeeding the child.

K.S.A. § 65-1,248 (Lexis 2008) supports and encourages a mother's choice to breastfeed and permits a mother to breastfeed in any place she has a right to be.

Kentucky

KRS § 29A.100 (Lexis 2009) permits a mother breastfeeding her child to postpone jury service until such mother is no longer breastfeeding the child.

KRS § 211.755 (Lexis 2009) provides that a mother may breastfeed her child in any location, public or private, where the mother is otherwise authorized to be.

Louisiana

2002 La. House Concurrent Resolution 35²³ establishes a joint study concerning the requirement of insurance coverage for outpatient lactation support for new mothers.

La. Rev. Stat. Ann. 51 § 2247.1 (Lexis 2009) prohibits discrimination against mothers who breastfeed their babies. Provides that a mother may breastfeed her baby in any place of public accommodation, resort, or amusement, and clarifies that breastfeeding is not a violation of the law.

La. Rev. Stat. Ann. 46 § 1409(B)(5) (Lexis 2009) prohibits any child care facility from discriminating against breastfed babies. This provision is repeated at *La. Rev. Stat. Ann. 46 § 1413(E) (West 2004)* for the purposes of rules and regulations for child care facilities.

La. Rev. Stat. Ann. 40 § 2213 (Lexis 2009) provides qualification requirements and a registry for "lactation consultants." Such a consultant is an allied health care provider who, by meeting eligibility requirements and passing an examination administered by the International Board of

²³ Provision not codified at this time.

Lactation Consultant Examiners (IBLCE), possesses the skills, knowledge, and attitudes to provide breastfeeding assistance to babies and to mothers.

La. Rev. Stat. Ann. 46 § 1413(E) (Lexis 2009) provides that child care facilities cannot discriminate on the basis of various characteristics of the child, including whether a child is being breast fed.

Maine

Me. Rev. Stat. Ann. tit. 5, § 4634 (Lexis 2008) amends the Maine Human Rights Act to declare that a mother has the right to breastfeed her baby in any location, whether public or private, as long as she is otherwise authorized to be in that location.

Me. Rev. Stat. Ann. tit. 19-a, § 1653 (Lexis 2008) is intended to protect the health and well being of a nursing infant of separated or divorcing parents. The law adds the situation of whether the mother is breastfeeding an infant under one year of age to the list of factors that a judge must consider in deciding parental rights and responsibilities.

Maryland

Md. Code Ann., Tax-Gen. § 11-211(b)(19) (Lexis 2009) exempts personal property that is manufactured for the purpose of initiating, supporting, or sustaining breastfeeding from the sales tax and from use tax.

Md. Code Ann., Health-Gen. § 20-801 (Lexis 2009) permits a woman to breastfeed her child in any public or private place under specified circumstances and prohibits restrictions on breastfeeding. A person may not restrict or limit the right of a mother to breastfeed her child.

Massachusetts

ALM GL ch. 111, § 221 (Lexis 2009) permits a mother to breastfeed her child in any public place or establishment or place which is open to and accepts or solicits the patronage of the general public and where the mother and her child may otherwise lawfully be present, without such act being considered lewd, indecent, immoral, or unlawful conduct.

Michigan

Mich. Comp. Laws Ann. §§ 41.181, 67.1(aa), 117.4i, and 117.5h (Lexis 2009) exclude a woman breastfeeding a baby, whether or not the nipple or areola is exposed during, or incidental to the feeding, from the public nudity laws.

Mich. Comp. Laws Ann. § 722.27a (Lexis 2009) concerns child custody. Among the factors to be considered for “parenting time” is whether the child is a nursing child less than six months of age, or less than one year of age if the child receives substantial nutrition through nursing.

Minnesota

2000 *Minn. Laws Ch. 269*²⁴ allows a nursing mother, upon request, to be excused from jury service if she is not employed outside of her home and if she is responsible for the daily care of the child.

Minn. Stat. Ann. § 181.939 (Lexis 2008) states that an employer must provide reasonable unpaid break time each day to an employee who needs to express breast milk for her infant child. The employer must make reasonable effort to provide a room or other location where the employee can express her milk in privacy and sanitary conditions.

Minn. Stat. Ann. § 145.905 (Lexis 2008) provides that a mother may breastfeed in any location, public, or private, where the mother and child are otherwise authorized to be, irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breastfeeding.

Minn. Stat. Ann. § 617.23 (Lexis 2008) provides that breastfeeding is exempted from the statutory definition of indecent exposure.

Minn. Stat. § 145.894 (Lexis 2008) provides for the commissioner of health to develop and implement education programs which include a campaign to promote breast feeding.

Mississippi

Miss. Code Ann. § 13-5-23 (Lexis 2008) excuses breastfeeding mothers from serving as jurors.

Miss. Code Ann. § 17-25-7 (Lexis 2008) protects a mother against any ordinance that restricts a woman's right to breastfeed.

Miss. Code Ann. § 43-20-31 (Lexis 2008) promotes and protects breastfeeding by regulating licensed child care facilities' compliance with safe and proper breastfeeding practices.

Miss. Code Ann. § 71-1-5 (Lexis 2008) prohibits discrimination against breastfeeding mothers who use lawful break time to express milk.

Miss. Code Ann. § 97-29-31 (Lexis 2008) provides that the act of breastfeeding shall not constitute indecent exposure.

Miss. Code Ann. § 97-35-7 (Lexis 2008) provides that the act of breastfeeding shall not constitute disorderly conduct.

Missouri

Mo. Ann. Stat. § 191.918 (Lexis 2009) allows mothers to breastfeed, with "as much discretion as possible," in any private or public location.

Mo. Ann. Stat. § 191.915 (Lexis 2009) provides that all ambulatory surgical centers and hospitals providing obstetrical care are to give new mothers, where appropriate, information on

²⁴ Provision not codified at this time.

breastfeeding. All obstetrical or gynecological physicians must give patients information on breastfeeding.

Montana

Mont. Code Ann. § 50-19-501 (Lexis 2007) provides that the breastfeeding of a child in any location, public or private, cannot be considered a nuisance, indecent exposure, sexual conduct, or obscenity.

Mont. Code Ann. § 39-2-215 (Lexis 2007) protects breastfeeding women from unlawful discrimination by public employers and requires employers to implement a written policy that identifies the means by which breastfeeding mothers will be supported in the workplace.

2009 MT H.B. 372²⁵ provides that the undue hardship exemption from jury duty applies to breastfeeding mothers.

Nebraska

Neb. Rev. Stat. § 25-1601 (Lexis 2009) provides that a nursing mother shall be excused from jury service until she is no longer nursing her child by making such request to the court at the time the juror qualification form is filed with the jury commissioner and including with the request a physician's certificate in support of her request. The jury commissioner shall mail the mother a notification form to be completed and returned to the jury commissioner by the mother when she is no longer nursing the child.

Nevada

Nev. Rev. Stat. Ann. § 201.210 (Lexis 2009) provides that the breastfeeding of a child by the mother of the child does not constitute an act of open or gross lewdness.

Nev. Rev. Stat. Ann. § 201.220 (Lexis 2009) provides that the breastfeeding of a child by the mother of the child does not constitute an act of open and indecent or obscene exposure of her body.

Nev. Rev. Stat. Ann. § 201.232 (Lexis 2009) allows a mother to breastfeed her child in any location where the mother is otherwise authorized to be, irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breastfeeding.

New Hampshire

N.H. Rev. Stat. Ann. § 132:10-d (Lexis 2009) states that breastfeeding a child does not constitute an act of indecent exposure. It also notes that restricting or limiting the right of a mother to breastfeed her child is discriminatory.

²⁵ Approved by the Governor April 6, 2009

New Jersey

N.J. Rev. Stat. Ann. § 26:4B-4 (Lexis 2009) is a law that guarantees a mother the right to breastfeed her baby in any location of a place of public accommodation, resort or amusement wherein the mother is otherwise permitted. Provides for civil penalties (fines) for violating this law.

New Mexico

N.M. Stat. Ann. 28-20-1 (Lexis 2008) states that a mother may breastfeed her child wherever she is authorized to be.

N.M. Stat. Ann. 28-20-2 (Lexis 2008) requires an employer to provide nursing mother employees flexible break times to utilize a clean and private space for using the breast pump that is near the employee's workspace, and is not a bathroom.

2009 Bill Tracking NM H.M. 58²⁶ requests the governor's women's health advisory council to convene a task force to study the needs of breastfeeding student-mothers and make recommendations for breastfeeding accommodations in school environments.

New York

N.Y. Civil Rights Law § 79-e (Lexis 2009) guarantees a mother the right to breastfeed her baby any place she has the right to be, public or private, even if the nipple is exposed during or incidental to breastfeeding.

N.Y. Corrections Law § 611 (Lexis 2009) provides that when a woman is committed to a correctional institution and gives birth or is nursing a child in her care under one year of age, the child may accompany/remain with her in the institution.

N.Y. Penal Law §§ 245.01, 245.02 (Lexis 2009) exempts breastfeeding from laws governing indecent exposure and from laws prohibiting the promotion of indecent exposure.

N.Y. Labor Law § 206-c (Lexis 2009) requires an employer to provide reasonable unpaid break time or permit an employee to use paid break time or meal time each day to allow an employee to express breast milk for her nursing child for up to three years following child birth. The employer shall make reasonable efforts to provide a room or other location, in close proximity to the work area, where an employee can express milk in privacy.

N.Y. Public Health Law § 2505 (Lexis 2009) empowers the commissioner to adopt regulations and guidelines including, but not limited to donor standards, methods of collection, and standards for storage, and distribution of human breast milk; as well as conduct educational activities to inform the public and health care providers of the availability of human breast milk for infants.

²⁶ Pending in state legislature; passed House on 3/11/2009

North Carolina

N.C. Gen. Stat. § 14-190.9 (Lexis 2009) states that a breastfeeding mother is not in violation of indecent exposure laws at any time.

North Dakota

2009 N.D. SB 2344 exempts the act of breastfeeding from the offense of indecent exposure.²⁷

Ohio

ORC Ann. 3781.55 (Lexis 2009) entitles a mother to breastfeed her baby in any location of a place of public accommodation wherein the mother otherwise is permitted.

Oklahoma

63 Okl. St. § 1-234.1 (Lexis 2009) provides legislative recognition that breastfeeding is a basic right and that a mother may breastfeed her baby in any location where they are otherwise authorized to be. Breastfeeding is exempted from the crimes and punishments listed in the penal code.

38 Okl. St. § 28 (Lexis 2009) provides that breastfeeding mothers may request to be exempted from service as jurors.

40 Okl. St. § 435 (Lexis 2009) permits an employer to provide reasonable unpaid break time each day to an employee who needs to breastfeed or express breast milk unless to do so would create an undue hardship on the operations of the employer. An employer may make a reasonable effort to provide a private, secure, and sanitary room or other location in close proximity to the work area, other than a toilet stall.

Oregon

Or. Rev. Stat. § 109.001 (Lexis 2007) allows a woman to breastfeed in a public place.

Or. Rev. Stat. § 10.050 (Lexis 2007) permits a breastfeeding woman to be excused from acting as a juror, upon the approval of a written request.

Or. Rev. Stat. § 653.075 (Lexis 2007) recommends that every child be breastfed for at least the first 12 months of life and urges that arrangements be made for expressing breast milk if the mother and child are separated.

Or. Rev. Stat. § 653.077 (Lexis 2007) requires an employer to provide reasonable unpaid rest periods to accommodate an employee who needs to express milk for her child.

²⁷ Signed by Governor and filed with the Secretary of State.

Or. Rev. Stat § 653.256 (Lexis 2007) permits the commissioner to assess a civil penalty not to exceed \$1,000 against any person who intentionally violates ORS 653.077 or any rule adopted thereunder.

Pennsylvania

35 P.S. § 636.1 et seq. (Lexis 2008) permits mothers to breastfeed in public without penalty. Breastfeeding may not be considered a nuisance, obscenity or indecent exposure under this law.

Puerto Rico²⁸

23 P.R. Laws Ann. § 43-1 (Lexis 2008) requires that shopping malls, airports, and government centers that serve the public must have accessible areas designed for the breastfeeding of infants. Provision is made for compliance for newly designed and existing buildings.

29 P.R. Laws Ann. §§ 478, 478a-478h (Lexis 2008) provides comprehensive regulation of breastfeeding in the workplace. The statute defines terms, provides for time periods for expressing milk, details obligations for employers, and sets penalties for noncomplying employers.

Rhode Island

R.I. Gen. Laws § 23-13.2-1 (Lexis 2009) sets out workplace policies protecting a woman's choice to breastfeed. Appropriate definitions are provided.

R.I. Gen. Laws § 23-13.5-1 (Lexis 2009) provides that a woman may feed her child by bottle or breast in any place open to the public.

South Carolina

S.C. Code Ann. § 63-5-40 (Lexis 2008) permits a woman to breastfeed her child in any location where the mother and her child are authorized to be without being considered indecent exposure.

South Dakota

S.D. Codified Laws § 22-24A-2 (Lexis 2009) exempts breastfeeding in public from indecent exposure statutes.

Tennessee

Tenn. Code Ann. § 50-1-305 (Lexis 2009) requires employers to provide reasonable, unpaid break time to an employee to express breast milk and allows employers to provide a room or other private location, other than a toilet stall, for an employee to express breast milk.

²⁸ While not a state, Puerto Rico is included in this compilation.

Tenn. Code Ann. § 68-58-101 (Lexis 2009) provides a mother with the right to breastfeed her child of twelve (12) months of age or younger in any location, public or private, where the mother and child are otherwise authorized to be present.

Texas

Tex. Health & Safety Code Ann. § 161.071 (Lexis 2009) relates to the provision of donor human milk to certain infants under the medical assistance program.

Tex. Health & Safety Code Ann. §§165.001 et seq. (Lexis 2009) authorizes a woman to breastfeed her child in any location and provides for the use of a “mother-friendly” designation for employers who have policies supporting worksite breastfeeding.

Tex. Ins. Code Ann. §§ 1366.051 et seq. (Lexis 2009) This law provides that the health insurer of a maternity patient discharged before the statutory minimum stay, must be provided with post delivery services which include assistance and training in breastfeeding.

U.S. Virgin Islands

14 V.I.C. § 1022 (Lexis 2009) states that a woman’s breastfeeding a child in any public or private location where the woman’s presence is otherwise authorized does not under any circumstance constitute obscene or indecent conduct.

Utah

Utah Code Ann. § 17-15-25 (Lexis 2008) states that city and county governing bodies may not inhibit a woman’s right to breastfeed in public.

Utah Code Ann. § 76-10-1229.5 (Lexis 2008) states that a breastfeeding woman is not in violation of any obscene or indecent exposure law.

Utah Code Ann. § 76-9-702 (Lexis 2008) provides that a woman’s breastfeeding in any location where the woman otherwise may rightfully be, does not under any circumstance constitute a lewd or grossly lewd act, irrespective of whether or not the breast is covered during or incidental to feeding.

Utah Code Ann. § 10-8-41 (Lexis 2008) provides that a woman’s breastfeeding, including breastfeeding in any place where the woman otherwise may rightfully be, does not under any circumstance constitute an obscene or lewd act, irrespective of whether or not the breast is covered during or incidental to feeding.

Utah Code Ann. § 10-8-50 (Lexis 2008) provides that a woman’s breastfeeding, including breastfeeding in any location where she otherwise may rightfully be, does not under any circumstance constitute a lewd or indecent act, irrespective of whether or not the breast is covered during or incidental to feeding.

Utah Code Ann. § 30-3-34 (Lexis 2008) provides that in determining child custody and visitation schedules, the best interests of the child. The lack of reasonable alternatives of a nursing child is a

factor that the court can consider in determining whether the standard parenting (custody) schedule would apply.

Vermont

Vt. Stat. Ann. tit. 9, § 4502(j) (Lexis 2009) states that breastfeeding a child is an important, basic and natural act of nurture that should be encouraged in the interest of enhancing maternal, child and family health. The law allows a mother to breastfeed her child in any place of public accommodation in which the mother and child would otherwise have a legal right to be. The law directs the human rights commission to develop and distribute materials and to provide information regarding a woman's legal right to breastfeed her child in a place of public accommodation.

Virginia

Va. Code § 2.2-1147.1 (Lexis 2009) guarantees a woman the right to breastfeed her child on any property owned, leased, or controlled by the state.

Va. Code § 18.2-387 (Lexis 2009) exempts breastfeeding a child in any public place or place where others are present from indecent exposure statute.

Va. Code Ann. § 8.01-341.1 (Lexis 2009) provides an exemption for jury service, upon request, for "any mother who is breast-feeding a child."

*Va. Joint Resolution # 248 (1994)*²⁹ requests the Department of Medical Assistance Services to review breastfeeding issues, including lactation education and supplies for Medicaid recipients. Also set forth are the benefits of breastfeeding.

*H.J.Res. 145 (2002)*³⁰ encourages employers to recognize the benefits of breastfeeding and to provide unpaid break time and appropriate space for employees to breastfeed or express milk.

Washington

Wash. Rev. Code Ann. § 9A.88.010 (Lexis 2009) provides that the act of breastfeeding or expressing breast milk is not indecent exposure.

Wash. Rev. Code Ann. § 43.70.640 (Lexis 2009) exempts breastfeeding from indecent exposure provisions. It also provides for employer/infant friendly promotional materials relating to work places with facilities conducive to breastfeeding infants.

*2009 WA H.B. 1596*³¹ protects a woman's right to breastfeed in a place of public resort, accommodation, assemblage, or amusement.

²⁹ Apparently, this resolution is not codified in the Virginia Code.

³⁰ Provision not codified at this time.

³¹ Signed by Governor on 4/22/2009; Effective 7/26/2009

Wisconsin

Wisc. Stat. Ann. §§ 944.17(3), 944.20(2) and 948.10(2) (Lexis 2008) provides that breastfeeding does not violate criminal statutes on indecent or obscene exposure.

Wyoming

2003 *Wy. H.J.R. 5*³² (signed by the governor on February 21, 2003) encourages breastfeeding and recognizes the importance of breastfeeding to maternal and child health. The resolution commends public and private employers who provide accommodations for breastfeeding mothers.

Wyo. Stat. § 6-4-201 (Lexis 2008) provides that the act of breastfeeding an infant child, including breastfeeding in any place where the woman may legally be, does not constitute public indecency.

³² Provision not codified at this time.

Table I. Comparative Chart of Existing State Breastfeeding Legislation

State	No Legislation	Mothers permitted to breastfeed in any public or private location	Breastfeeding exempted from public indecency laws	Laws relating to breastfeeding in the workplace	Laws exempting breastfeeding mothers from jury duty	Implemented or encouraged development of a breastfeeding awareness education campaign	Optional State enforcement or implementation of various breastfeeding programs
ALABAMA		X					
ALASKA			X				
ARIZONA		X					
ARKANSAS		X	X	X			
CALIFORNIA		X		X	X [Rule of Court]	X	X
COLORADO		X					
CONNECTICUT		X		X			
DELAWARE		X					
DISTRICT OF COLUMBIA						X	
FLORIDA		X	X			X	
GEORGIA		X		X			
HAWAII		X		X			
IDAHO					X		
ILLINOIS		X	X	X		X	X
INDIANA		X					
IOWA		X			X		
KANSAS		X			X		
KENTUCKY		X			X		
LOUISIANA		X				X	
MAINE		X					

State	No Legislation	Mothers permitted to breastfeed in any public or private location	Breastfeeding exempted from public indecency laws	Laws relating to breastfeeding in the workplace	Laws exempting breastfeeding mothers from jury duty	Implemented or encouraged development of a breastfeeding awareness education campaign	Optional State enforcement or implementation of various breastfeeding programs
MARYLAND		X					
MASSACHUSETTS		X	X				
MICHIGAN			X				
MINNESOTA		X		X	X		X
MISSISSIPPI		X	X	X	X		
MISSOURI		X				X	X
MONTANA			X				
NEBRASKA					X		
NEVADA		X	X				
NEW HAMPSHIRE			X				
NEW JERSEY		X					
NEW MEXICO		X					
NEW YORK		X	X				
NORTH CAROLINA		X	X				
NORTH DAKOTA			X				
OHIO		X					
OKLAHOMA		X	X		X		
OREGON		X			X		
PENNSYLVANIA		X	X				
PUERTO RICO				X			
RHODE ISLAND			X	X			
SOUTH CAROLINA		X	X				

State	No Legislation	Mothers permitted to breastfeed in any public or private location	Breastfeeding exempted from public indecency laws	Laws relating to breastfeeding in the workplace	Laws exempting breastfeeding mothers from jury duty	Implemented or encouraged development of a breastfeeding awareness education campaign	Optional State enforcement or implementation of various breastfeeding programs
SOUTH DAKOTA			X				
TENNESSEE				X			
TEXAS		X		X		X	
U.S. VIRGIN ISLANDS		X	X				
UTAH			X				
VERMONT		X				X	
VIRGINIA		X	X		X		X
WASHINGTON			X	X			
WEST VIRGINIA	X						
WISCONSIN			X				
WYOMING		X	X				

Conclusion

In recent years, there has been an expansion in the practice of breastfeeding. As a consequence of this growing trend, Washington, D.C., the U.S. Virgin Islands, Puerto Rico and every state except West Virginia have enacted some sort of legislation associated with breastfeeding. The laws vary considerably in their scope and in their coverage. However, these state laws may be generally classified into six broad categories. Thirty-six states and the U.S. Virgin Islands permit mothers to breastfeed in any public or private location where the mother is legally entitled to be: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Vermont, Virginia, and Wyoming. Twenty-three states and the U.S. Virgin Islands exempt breastfeeding from public indecency laws: Alaska, Arkansas, Florida, Illinois, Massachusetts, Michigan, Mississippi, Montana, Nevada, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Virginia, Washington, Wisconsin, and Wyoming. Twelve states and Puerto Rico have laws related to breastfeeding in the workplace: Arkansas, California, Connecticut, Georgia, Hawaii, Illinois, Minnesota, Mississippi, Rhode Island, Tennessee, Texas, and Washington. Eleven states exempt breastfeeding mothers from jury duty: California,³³ Idaho, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Nebraska, Oregon, Oregon, and Virginia. Seven states and Washington, D.C. have implemented or encouraged the development of a breastfeeding awareness education campaign: California, Florida, Illinois, Louisiana, Missouri, Texas, and Vermont. Five states have certain optional or voluntary compliance provisions: California, Illinois, Minnesota, Missouri, and Virginia.

Author Contact Information

Douglas Reid Weimer
Legislative Attorney
dweimer@crs.loc.gov, 7-7574

³³ By court rule.