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Summary of State Breastfeeding Laws and Related Issues

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Summary of State Breastfeeding Laws and Related Issues

Updated January 12, 2005

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Summary of State Breastfeeding Laws and Related Issues

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.

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Summary of State Breastfeeding Laws and Related Issues

Introduction¹

One of the stated objectives of the U.S. Public Health Service, as outlined in their 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 It has been reported that in 2000, more than 68 percent of mothers were breastfeeding their infants immediately after delivery, and it is reported that the number of nursing mothers is increasing.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

¹ See CRS Report RL32002, *Breast-feeding: Impact on Health, Employment and Society* by Donna V. Porter (July 18, 2003).

² *Healthy People 2010*, Washington, DC: U.S. Department of Health and Human Services, Public Health Service (2000).

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 *Id.*

⁵ See generally the websites for the Center for Disease Control: [<http://www.cdc.gov/breastfeeding>] and the National Women’s Health Information Centers’ Resources on Breastfeeding: [<http://www.4woman.gov/breastfeeding>].

⁶ See American Academy of Pediatrics homepage at [<http://www.aap.org/advocacy/bf/brhist.htm>].

⁷ *Id.*

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.

Nursing mothers have asserted rights in a variety of lawsuits—under a number of legal theories, some successful¹¹--but the centrality of state breastfeeding laws in defining legal protection is evident. For example, a recent case focused on whether a store could ban a mother from nursing her child in public (in its large store).¹² The lower court granted summary judgment in favor of the store,¹³ and the plaintiff mothers and infants appealed. The court of appeals found that a store's ban on breastfeeding was not sex discrimination in violation of either the state's public accommodation statute or title VII of the federal Civil Rights Act of 1964.¹⁴ Ohio, the state where the litigation occurred, does not have a statute concerning the rights of mothers to breastfeed their children in public places.

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

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 For example, a Borders bookstore employee requested a nursing mother to leave. Later, the company privately settled a lawsuit with the mother and affirmed that nursing mothers were welcome in their stores worldwide. Betsy Hart, *And Now, Breast-Feeding Rights?*, Scripps Howard News Service (April 4, 2002). Hilary Von Rohr, Note, *Access to Justice: The Social Responsibility of Lawyers: Recent Development: Lactation Litigation and the ADA Solution: A Response to Martinez v. NBC*, 4 Wash. U.J.L. & Pol’y 341 (2000); Shana M. Chrstrup, *Breastfeeding in the American Workplace*, 9 Am. U.J. Gender Soc. Pol’y & L. 471 (2001).

¹² *Derungs v. Wal-Mart Stores, Inc.*, 374 F.3d 428 (6th Cir. 2004). In this case, the publicly nursing mother was asked to either nurse in a restroom, or to leave the store.

¹³ *Derungs v. Wal-Mart Stores, Inc.*, 141 F.Supp.2d 884 (S.D. Ohio 2000).

¹⁴ See note 12.

to enact comprehensive breastfeeding legislation was Florida in 1993.¹⁵ 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.¹⁶ 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, thirty-eight states and Puerto Rico have some type of legislation dealing with the protection of nursing mothers and/or the promotion of breastfeeding.

During 2004, numerous state legislatures considered proposals on breastfeeding. Three states enacted laws--which for the first time provided guidance and some protection for breastfeeding mothers in their jurisdictions.¹⁷ *Colorado* enacted a law which encourages breastfeeding and permits a mother to breastfeed in any location she has a right to be. *Nebraska* enacted a law which provides a means for a nursing mother to request to be excused from jury service. *Oklahoma* enacted legislation which recognizes that breastfeeding is a basic right and that a mother may breastfeed her baby in any place where she is otherwise authorized to be. In addition, the Oklahoma law exempts breastfeeding from certain crimes and punishments and provision is made to allow breastfeeding mothers to request an exemption from jury service. Illinois strengthened its breastfeeding legislation with the enactment of the "Right to Breastfeed Act,"¹⁸ which provides that a mother may breastfeed her baby wherever the mother is authorized to be. A unique provision of this law enables a nursing mother who is 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, to bring an action to enjoin further denials of the right to breastfeed. If the mother prevails

¹⁵ 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.

¹⁶ 1994 Fla. Laws ch. 217, Fla. SB 1668. Codified at Fla. Stat. §§ 383.011, 383.015, 383.016, 383.311, 383.318.

¹⁷ Summaries and citations to these laws follow in the charts.

¹⁸ Ill. P.A. 93-942 (2004), Enacted Aug. 16, 2004.

in her action, the law provides that she is to be awarded reasonable attorneys' fees and reasonable litigation expenses.

Summary of State Breastfeeding Legislation

Below is a summary of state laws concerning breastfeeding.¹⁹ 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.²⁰ A chart has been prepared summarizing the existing state²¹ 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.²²

Alaska

Alaska Stat. § 01.10.060 (Michie 2000) 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 (Michie 2000) 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.

California

Cal. Labor Code § 1030 (West 2002) 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.

¹⁹ Although not a state, Puerto Rico has been included in this analysis.

²⁰ 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.”

²¹ The term breastfeeding is sometimes hyphenated (breast-feeding) in certain state statutes. For purposes of uniformity in this report, the hyphen is deleted.

²² Further information concerning jury duty exemptions for nursing mothers may be found at [<http://www.familyfriendlyjuryduty.org>].

Cal. Labor Code § 1031 (West 2002) 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 (West 2002) 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 (West 2002) 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 (West 2002) 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 (West 2002) 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 (West 2002) provides authority for a mother to breastfeed her child in any location.

Cal. Health and Safety Code §§ 123360, 123365 (West 2002) 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)*²³ 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)*²⁴ 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 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.

²³ Provision not codified at this time.

²⁴ While this provision is not a state statute, it is a significant rule of court in an important and influential state.

Colorado

Colo. Rev. Stat. 25-6-301; 25-6-302 (2004) 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 (West 2003) 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)(West 2002) forbids resorts and other public accommodations from limiting or restricting a mother's right to breastfeed.

Conn. Gen. Stat. Ann. §53-34b(West 2001) states that no person may restrict or limit the right of a mother to breastfeed her child.

Delaware

Del. Code Ann. tit. 31 § 310 (2002) 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.

Florida

Fla. Stat. Ann. § 383.011 (West 2002) provides for programs for the encouragement of breastfeeding.

Fla. Stat. Ann. § 383.015 (West 2002) 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 (West 2002) authorizes the use of a "baby friendly" designation for certain facilities supporting breastfeeding.

Fla. Stat. Ann. § 383.311 (West 2002) establishes education and orientation centers dealing with the encouragement of breastfeeding.

Fla Stat. Ann. § 383.318 (West 2002) establishes birth centers dealing with instruction in breastfeeding.

Fla. Stat. Ann. § 800.02 (West 2000) exempts breastfeeding from the definition of an unnatural and lascivious act.

Fla. Stat. Ann. § 800.03 (West 2000) exempts breastfeeding from a statute dealing with the exposure of sexual organs.

Fla. Stat. Ann. § 800.04(8) (West 2002) exempts breastfeeding from a statute dealing with lewd or lascivious offenses.

Fla. Stat. Ann. § 827.071 (West 2002) 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 (West 2002) provides that a mother's breastfeeding of her baby is not under any circumstance "harmful to minors."

Georgia

Ga. Code Ann. § 31-1-9 (2004) 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 (2001) 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) (Michie 2002) 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 (Michie 2002) 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 (Michie 2002) 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) (Michie 2004) 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)*²⁵ 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 (West 2001) 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 (West 2001) allows the State Department of Public Health to conduct an educational breastfeeding public information campaign.

20 Ill. Comp. Stat. Ann. § 1305/10-25 (West 2002) 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 (West 2001) provides that breastfeeding a child is not an act of public indecency.

Indiana

Ind. Code § 16-35-6-1 (2003) allows a woman to breastfeed her child anywhere the law allows her to be.

Iowa

Iowa Code Ann. § 607A.5 (West 2002) 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 (West 2002) 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

²⁵ Enacted August 16, 2004.

under this section irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breastfeeding.

Louisiana

*2002 La. House Concurrent Resolution 35*²⁶ establishes a joint study concerning the requirement of insurance coverage for outpatient lactation support for new mothers.

La. Rev. Stat. Ann. 51 § 2247.1 (West 2002) 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) (West 2004) 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 (West 2002) 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 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) (West 2004) 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 (West 2001) 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 (West 1999) 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.

²⁶ Provision not codified at this time.

Maryland

Md. Code Ann., Tax-Gen. § 11-211(b)(19)(2002) 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 (2003) 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 breast-feed her child.

Michigan

Mich. Comp. Laws Ann. §§ 41.181, 67.1(aa), 117.4i, and 117.5h (West 2002) 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. § 727.27a (West 2002) 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*²⁷ 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 (West 2002) 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 (West 2002) 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 (West 2003) provides that breastfeeding is exempted from the statutory definition of indecent exposure.

Missouri

Mo. Ann. Stat. § 191.918 (West 2002) allows mothers to breastfeed, with “appropriate discretion,” in any private or public location.

²⁷ Provision not codified at this time.

Mo. Ann. Stat. § 191.915 (West 2002) provides that all ambulatory surgical centers and hospitals providing obstetrical care are to give new mothers, where appropriate, information on breastfeeding. All obstetrical or gynecological physicians must give patients information on breastfeeding.

Montana

Mont. Code Ann. § 50-19-501 (2002) provides that the breastfeeding of a child in any location, public or private, cannot be considered a nuisance, indecent exposure, sexual conduct, or obscenity.

Nebraska

Neb. Rev. Stat. § 25-1601 (2004) 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 (Michie 2001) 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 (Michie 2001) 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 (Michie 2002) 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 (2002) 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.

New Jersey

N.J. Rev. Stat. Ann. § 26:4B-4 (2002) 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 (Michie 2002) states that a mother may breastfeed her child wherever she is authorized to be.

New York

N.Y. Civil Rights Law § 79-e (McKinney 2002) 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 (McKinney 2002) 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 (McKinney 2002) exempts breastfeeding from laws governing indecent exposure and from laws prohibiting the promotion of indecent exposure.

North Carolina

N.C. Gen. Stat. § 14-190.9 (1999) states that a breastfeeding mother is not in violation of indecent exposure laws at any time.

Oklahoma

Okla. Stat. tit. 63, § 1-234.1 (2004) 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.

Okla. Stat. 2001, § 28 (2004) provides that breastfeeding mothers may request to be exempted from service as jurors.

Oregon

Or. Rev. Stat. § 109.001 (1999) allows a woman to breastfeed in a public place.

Or. Rev. Stat. §§ 10.050 (1999) permits a breastfeeding woman to be excused from acting as a juror, upon the approval of a written request.

Puerto Rico²⁸

23 P.R. Laws Ann. § 43-1 (2002) requires that shopping malls, airports, and government centers that serve the public must have accessible areas designed for the

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

breastfeeding of infants. Provision is made for compliance for newly designed and existing buildings.

29 P.R. Laws Ann. §§ 478, 478a-478h (2002) 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 § 23-72-1 (2001) guarantees that Department of Health notices on the consumption of fish contaminated with mercury are made available to consumers and explain the dangers to women who expect to be pregnant, are pregnant, or are breastfeeding.

R.I. Gen. Laws § 11-45-1 (2000) excludes mothers engaged in breastfeeding from disorderly conduct laws.

R.I. Gen. Laws § 23-13.2-1 (2003) sets out workplace policies protecting a woman's choice to breastfeed. Appropriate definitions are provided.

South Dakota

S.D. Codified Laws § 22-22-24.1 (2002) exempts breastfeeding in public from indecent exposure statutes.

Tennessee

Tenn. Code Ann. § 50-1-305 (1999) 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.

Texas

Tex. Health & Safety Code Ann. § 161.071 (Vernon 2002) 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. (Vernon 2001) 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.

To be codified at Tex. Ins. Code Ann. §§ 1366.051 et seq. (added by Acts 2003, 78th Leg., ch. 1274, § 3; effective date April 2005). 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.

Utah

Utah Code Ann. § 17-15-25 (1999) 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 (1999) states that a breastfeeding woman is not in violation of any obscene or indecent exposure law.

Utah Code Ann. § 76-9-702 (2002) 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 (1999) 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 (1999) 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 (1997) 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)(2002) 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 (2002) guarantees a woman the right to breastfeed her child on any property owned, leased, or controlled by the state.

Va. Code § 18.2-387 (1996) exempts breastfeeding a child in any public place or place where others are present from indecent exposure statute.

*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 (2002) provides that the act of breastfeeding or expressing breast milk is not indecent exposure.

Wash. Rev. Code Ann. § 43.70.640 (West 2002) 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.

Wisconsin

Wisc. Stat. Ann. §§ 944.17(3), 944.20(2) and 948.10(2) (West 2001) provides that breastfeeding does not violate criminal statutes on indecent or obscene exposure.

Wyoming

2003 Wy. *H.J.R. 5*³¹ (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.

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

³⁰ Provision not codified at this time.

³¹ *Id.*

Comparative Chart of Existing State Breastfeeding Legislation

States	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						
CALIFORNIA		X		X	X <i>[Rule of Court]</i>	X	X
COLORADO		X					
CONNECTICUT		X		X			
DELAWARE		X					
DISTRICT OF COLUMBIA	X						

States	No Legislation	Mothers permitted to breastfeed in any public or private location	Breastfeeding exempted from public indecent laws	Laws relating to breastfeeding in the workplace	Laws exempting breastfeeding mothers from jury duty	Implemented or encouraged development of a breastfeed- ing awareness education campaign	Optional State enforcement or implementa- tion of various breastfeed- ing programs
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						
KENTUCKY	X						
LOUISIANA		X				X	
MAINE		X					
MARYLAND		X					

States	No Legislation	Mothers permitted to breastfeed in any public or private location	Breastfeeding exempted from public indecent laws	Laws relating to breastfeeding in the workplace	Laws exempting breastfeeding mothers from jury duty	Implemented or encouraged development of a breastfeed- ing awareness education campaign	Optional State enforcement or implementa- tion of various breastfeed- ing programs
MASSACHUSETTS	X						
MICHIGAN			X				
MINNESOTA		X		X	X		X
MISSISSIPPI	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				

States	No Legislation	Mothers permitted to breastfeed in any public or private location	Breastfeeding exempted from public indecent laws	Laws relating to breastfeeding in the workplace	Laws exempting breastfeeding mothers from jury duty	Implemented or encouraged development of a breastfeed- ing awareness education campaign	Optional State enforcement or implementa- tion of various breastfeed- ing programs
NORTH CAROLINA		X	X				
NORTH DAKOTA	X						
OHIO	X						
OKLAHOMA		X	X		X		
OREGON		X			X		
PENNSYLVANIA	X						
PUERTO RICO				X			
RHODE ISLAND			X	X			
SOUTH CAROLINA	X						
SOUTH DAKOTA			X				
TENNESSEE				X			

States	No Legislation	Mothers permitted to breastfeed in any public or private location	Breastfeeding exempted from public indecent laws	Laws relating to breastfeeding in the workplace	Laws exempting breastfeeding mothers from jury duty	Implemented or encouraged development of a breastfeed- ing awareness education campaign	Optional State enforcement or implementa- tion of various breastfeed- ing programs
TEXAS		X		X		X	
UTAH			X				
VERMONT		X				X	
VIRGINIA		X	X				X
WASHINGTON			X	X			
WEST VIRGINIA	X						
WISCONSIN			X				
WYOMING —the breastfeeding law of Wyoming does not fit into any of these categories.	<i>See note at left.</i>						

Conclusion

In recent years, there has been an expansion in the practice of breastfeeding. As a consequence of this growing trend, thirty-eight states and Puerto Rico 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. Twenty-five states permit mothers to breastfeed in any public or private location where the mother is legally entitled to be: California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Minnesota, Missouri, Nevada, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Texas, Vermont, and Virginia. Sixteen states exempt breastfeeding from public indecency laws: Alaska, Florida, Illinois, Michigan, Montana, Nevada, New Hampshire, New York, North Carolina, Oklahoma, Rhode Island, South Dakota, Utah, Virginia, Washington, and Wisconsin. Ten states and Puerto Rico have laws related to breastfeeding in the workplace: California, Connecticut, Georgia, Hawaii, Illinois, Minnesota, Rhode Island, Tennessee, Texas, and Washington. Seven states exempt breastfeeding mothers from jury duty: California,³² Idaho, Iowa, Minnesota, Nebraska, Oregon, and Oregon. Seven states 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.

³² By court rule.