

Honolulu, Hawaii

MAR - 1 2013

RE: S.B. No. 532
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 532 entitled:

"A BILL FOR AN ACT RELATING TO BREASTFEEDING IN THE
WORKPLACE, "

begs leave to report as follows:

The purpose and intent of this measure is to require
employers to provide a reasonable break time and clean place for
breastfeeding employees to express breastmilk in order to maintain
breastmilk supply and continue breastfeeding. Specifically, this
measure:

- (1) Adds a new section to chapter 387, Hawaii Revised
Statutes, to:
 - (A) Require certain employers to provide a reasonable
break time and clean location to an employee to
express breastmilk for a nursing child each time
the employee has a need to express breastmilk;
 - (B) Require covered employers to post a notice, in a
conspicuous place accessible to employees,
regarding the opportunity to express breastmilk;
 - (C) Establish an unspecified civil fine for each
violation; and



- (D) Exempt employers who employ fewer than fifty employees from providing accommodations to express breastmilk if the requirement imposes an undue hardship; and
- (2) Repeals section 378-10, Hawaii Revised Statutes, which prohibits an employer from prohibiting an employee to express breastmilk during any meal period or other break period required by law or collective bargaining agreement.

Your Committee received testimony in support of this measure from the Department of Labor and Industrial Relations; Department of Health; Office of Hawaiian Affairs; Hawai'i Civil Rights Commission; Hawaii State Commission on the Status of Women; American Civil Liberties Union of Hawai'i; Breastfeeding Hawaii; Planned Parenthood of Hawaii; United Public Workers, AFSCME Local 646, AFL-CIO; American Academy of Pediatrics, Hawaii Chapter; Women's Caucus, Hawaii State Democratic Party of Hawaii; and four individuals. Testimony in opposition to this measure was submitted by the Police Department, City and County of Honolulu; and one individual. The Chamber of Commerce of Hawaii and Hawaii Transportation Association submitted comments on this measure.

Your Committee finds that in Hawaii, over ninety percent of new mothers, which is much higher than the national average, intend to breastfeed their babies. The American Academy of Pediatrics and many other similar professional organizations recommend for infants within the first six months of life to be given only breastmilk for nourishment. Unfortunately, six months after birth, only about sixteen percent of infants are exclusively breastfed, little more than the thirteen percent national average. The Surgeon General addressed this public health problem by issuing a call to action in support of breastfeeding that included hospitals and healthcare practices, family and societal attitudes, and support in the workplace. This measure enables the State to respond to this call to action by requiring an employer with fifty or more employees to make reasonable efforts to provide a clean location for breastfeeding employees to express breastmilk in privacy.

Your Committee notes that the Department of Labor and Industrial Relations submitted proposed language that creates a new part under chapter 378, Hawaii Revised Statutes, that requires employers to provide an adequate place and time at the workplace



to express breastmilk and provides civil cause of action and a penalty of \$1,000 for each violation. The Department noted that the suggested language is similar to the federal requirements under the Fair Labor Standards Act, but the suggested language covers more employers and employees than the federal law.

Your Committee also notes the concerns raised in the testimony submitted by the Police Department of the City and County of Honolulu that this measure does not limit the duration that expressing breastmilk would be required after the date of the birth of the employee's child. The Police Department indicated that without a time limitation, an employer could be required to provide break times to their employees for multiple years after the birth of each employee's child.

Accordingly, your Committee has amended this measure by:

- (1) Deleting section 2 and inserting language suggested by the Department of Labor and Industrial Relations that adds a new part to chapter 378, Hawaii Revised Statutes, to:
 - (A) Add definitions of "employee", "employer", and "person";
 - (B) Require certain employers to provide a reasonable break time for an employee to express milk for the employee's nursing child for one year after the birth of a child and a location, other than the restroom, that is shielded from view and free from intrusions from coworkers and the public that may be used by an employee to express breastmilk;
 - (C) Require covered employers to post a notice regarding the opportunity to express breastmilk in a conspicuous place accessible to employees;
 - (D) Exempt an employer who has fewer than twenty employees if the employer can show that providing the opportunity to express breastmilk at the workplace would impose an undue hardship by causing the employer significant difficulty or expense in relation to the size, financial resources, nature, or structure of the employer's business; and



634

- (E) Establish a civil cause of action for injunctive relief or damages for a plaintiff within two years after the occurrence of the alleged violation and a civil penalty of \$1,000 to each violation;
- (2) Inserting an effective date of July 1, 2050, to encourage further discussion; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 532, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 532, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,




CLAYTON HEE, Chair



The Senate
Twenty-Seventh Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* <div style="font-size: 1.2em; font-family: cursive;">SB 532</div>	Committee Referral: <div style="font-size: 1.2em; font-family: cursive;">JDL</div>	Date: <div style="font-size: 1.2em; font-family: cursive;">2/26/13</div>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"> <input type="checkbox"/> Pass, unamended 2312 </div> <div style="text-align: center;"> <input checked="" type="checkbox"/> Pass, with amendments 2311 </div> <div style="text-align: center;"> <input type="checkbox"/> Hold 2310 </div> <div style="text-align: center;"> <input type="checkbox"/> Recommit 2313 </div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
GABBARD, Mike	✓			
IHARA, Jr., Les	✓			
SLOM, Sam			✓	
TOTAL	4		1	
Recommendation: <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted </div>				
Chair's or Designee's Signature: <div style="font-size: 1.5em; font-family: cursive; margin-top: 10px; text-align: center;">  </div>				
Distribution: <div style="display: flex; justify-content: space-between; font-size: 0.8em;"> <div>Original File with Committee Report</div> <div>Yellow Clerk's Office</div> <div>Pink Drafting Agency</div> <div>Goldenrod Committee File Copy</div> </div>				

***Only one measure per Record of Votes**