

BREASTFEEDING ANTIDISCRIMINATION ACT

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Senate Bill 674 without amendment

Sponsor: Sen. Rebekah Warren

House Committee: Judiciary

Senate Committee: Judiciary

House Bill 5591 as introduced

Sponsor: Rep. Amanda Price

House Committee: Judiciary

Complete to 5-21-14

House Bill 5592 as introduced

Sponsor: Rep. Lisa Posthumus Lyons

A SUMMARY OF SENATE BILL 674 AS PASSED BY THE SENATE AND HOUSE BILLS 5591 & 5592 AS INTRODUCED

Senate Bill 674 would create the Breastfeeding Antidiscrimination Act to grant to a woman the right to breastfeed in a public place, prohibit practices that would discriminate against the woman because she was breastfeeding a child, and provide legal remedies for a woman alleging a violation of the act.

Currently, Michigan law allows local governments to prohibit public nudity within their jurisdictions, but excludes breastfeeding from the definition of the term whether or not the nipple or areola is exposed during or incidental to the feeding. However, discriminating against a woman who is breastfeeding in a public place is not specifically prohibited in statute.

House Bills 5591 and 5592 would amend the Michigan Penal Code to exempt a mother's breastfeeding of a child from state laws prohibiting open or indecent exposure of her person and also indecent or obscene conduct in public. Both bills are tie-barred to Senate Bill 674, meaning that neither bill could take effect unless Senate Bill 674 is also enacted.

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

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

Senate Bill 674: the Breastfeeding Antidiscrimination Act

The bill would mirror protections afforded in public places under the Elliot-Larsen Civil Rights Act that prohibit discrimination based on religion, race, color, national origin, age, sex, or marital status. Under the bill, except where expressly permitted by state or federal

statute (or a regulation promulgated under the statute), a person with control over a public accommodation or public service would be prohibited from doing any of the following:

- Denying the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service to a woman because she is breastfeeding a child.
- Printing, circulating, posting, mailing, or otherwise publishing a statement, advertisement, notice, or sign that indicates:
 - That the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service will be refused, withheld from, or denied a woman because she is breastfeeding a child.
 - That a woman's patronage or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable because she is breastfeeding a child.

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

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

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

FISCAL IMPACT:

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

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