

Breastfeeding Laws in Vermont: A Primer

The health benefits for mothers and babies that stem from breastfeeding are virtually uncontested. Doctors, midwives, and formula manufacturers alike dutifully recite the slogan that “breast is best.”¹ Nevertheless, only 56 percent of new mothers in this country breastfeed² as compared to much higher rates in other developed countries.³ These figures vary widely from state to state.⁴ For example, in Utah, 80 percent of children start off breastfeeding, while that figure in Louisiana is 27.5 percent.⁵ Vermont stacks up in the top of the middle with 65.9 percent of mothers ever breastfeeding.⁶ By six months, only 32.9 percent are still breastfeeding.

Heeding the call to action, state legislatures have stepped in to address the problem.⁷ Currently forty-seven states have laws that protect breastfeeding in public places in some form or another, and no state prohibits breastfeeding in public.⁸ State laws address several categories of behavior: (1) breastfeeding in public⁹; (2) jury duty exemption for breastfeeding mothers¹⁰; (3) breastfeeding as a custody consideration¹¹; (4) and miscellaneous provisions.¹² The federal government has also repeatedly expressed its support for mothers who need to breastfeed in federal buildings or on federal property.¹³

In addition, some states prohibit private citizens from interfering with nursing mothers’ abilities to nurse in public.¹⁴ Five states provide for a private right of action such that women can recover damages from persons who discriminate on the basis of breastfeeding.¹⁵ Most of these laws include the right to cover attorneys’ fees and costs.¹⁶

This article examines Vermont’s place in the national context of laws relating to breastfeeding.

Origins of Vermont’s First Breastfeeding Law

In 2000, Margaret O’Toole, a registered nurse and lactation consultant first approached the House Health and Welfare Committee concerning breastfeeding legislation.¹⁷ The Committee authored

a resolution creating the Vermont Breastfeeding Study Commission.¹⁸ That summer, a split Commission concluded that there was no need for breastfeeding legislation.¹⁹ Nonetheless, a Montpelier La Leche League leader convinced her senators to sponsor a bill, and in January of 2001, Senator Doyle of Washington County, Senator McCormack of Windsor County, Senator Cummings of Washington County, and Senator Scott of Washington County introduced S.156.²⁰ In its original form, the bill exempted breastfeeding women from jury duty, protected breastfeeding women in places of public accommodation, and included breastfeeding as a factor to be considered in making custody determinations in divorce proceedings.²¹ The Senate referred the bill to the Senate Health and Welfare committee. When returned to the Senate floor for its second reading, the bill had acquired an extensive set of findings,²² and a new section exempting breastfeeding from the definition of “Lewd and Lascivious” conduct in title 13.²³ The bill eventually passed the Senate, and the House referred it to the House Judiciary Committee.²⁴

When the Legislature returned the following January, the House Judiciary Committee took testimony on the bill. The Committee expressed a variety of concerns. First, members noted that no law prohibited breastfeeding in public, so they wondered whether the bill was necessary.²⁵ Proponents encouraged testimony from women who had been removed from public places, including restaurants, day-care centers, and public buildings, because they were feeding their children.²⁶ Stakeholders in the business community testified in opposition to the bill, concerned that it would place an undue burden on employers, and that it would disconcert customers.²⁷ In addition, many expressed concern that a bill allowing breastfeeding in public would be a gateway to public nudity.²⁸

On Monday, April 15, 2002, the bill emerged from committee vastly changed.²⁹ House Judiciary’s amendment struck all of the Senate’s

text and replaced it with a one-sentence finding and a one-sentence addition to Vermont’s Public Accommodations Act (“VPAA”)³⁰ that read: “[n]otwithstanding any other provision of law, a mother may breastfeed her child in any location or place of public accommodation in which the mother would otherwise be permitted to bottle-feed her child.”³¹ The bill had its second reading in the House on April 17, 2002, and passed the next day.³²

A conference committee then faced the task of reconciling the two drafts. In its final version, the bill maintained the House Judiciary’s basic text, but it added a third section directing the Vermont Human Rights Commission (“HRC”) to “develop and distribute materials that provide information regarding a woman’s legal right to breastfeed her child in a place of public accommodation. Special attention shall be given to notifying public accommodation membership organizations.”³³ The permissive provision allowing a woman to breastfeed wherever she and her child are allowed to be was not to become effective until after the Commission had had an opportunity to notify and educate places of public accommodation.³⁴

Delta Flight 6160: The First Test of the VPAA’s New Provision

One of the lingering concerns expressed by members of the House Judiciary Committee upon passage of S.156 was that the HRC would be overwhelmed with complaints from mothers alleging they had suffered discrimination while breastfeeding.³⁵ Contrary to those concerns, there has been just one complaint filed pursuant to the breastfeeding provision of the VPAA since it became effective in 2003.³⁶

In October 2006, Vermont made international news when a flight attendant on Delta Flight 6160 at the Burlington International Airport asked Emily Gillette to cover herself with a blanket while breastfeeding her child.³⁷ Ms. Gillette refused, and was promptly asked to leave the flight.³⁸ Public outcry

followed, including a national “nurse-in,” in which breastfeeding mothers across the nation protested by gathering at airports’ Delta counters to breastfeed their babies.³⁹

Less than a month after the incident, Ms. Gillette filed with the HRC a Charge of Public Accommodations Discrimination, pursuant to 9 V.S.A. § 4502(j), against Delta Air Lines and Freedom Airlines, which operated Flight 6160.⁴⁰ The charge alleged that Delta and Freedom violated the VPAA by discriminating against Ms. Gillette by not allowing her on the flight because she was breastfeeding.⁴¹

Delta and Freedom responded to Ms. Gillette’s charge with letters that were treated by the HRC as motions to dismiss based on factual and legal arguments. First, the airlines argued that the VPAA is federally preempted by the Airline Deregulation Act of 1978.⁴² The Airline Deregulation Act expressly preempts a state law “having the force and effect of law related to price, route, or service of an air carrier.”⁴³ In its motion to dismiss, Freedom asserted that the VPAA acts as “an attempt to regulate those services provided by [the airlines].”⁴⁴ Ms. Gillette argued in response that protection of civil rights does not interfere with an airline’s services.⁴⁵ The HRC agreed.⁴⁶ After an analysis of relevant case law, the HRC found that “there [was] not even a close case of preemption.”⁴⁷ In its decision, the HRC went so far as to point out that the only case cited by the airlines in support of their federal preemption argument actually supported Ms. Gillette.⁴⁸

The airlines’ factual argument is based on events that are disputed by Ms. Gillette. According to the airlines, after Ms. Gillette and her family were removed from Flight 6160, the captain of Flight 6160 told a TSA agent that he would allow Ms. Gillette to return to the flight.⁴⁹ The airlines allege that, while this comment was not made to Ms. Gillette, it was made in her presence.⁵⁰ Ms. Gillette allegedly refused to re-board.⁵¹ Ms. Gillette, on the other hand, denies that this occurred.⁵² Instead, according to Ms. Gillette, the captain apologized to her, and said that there was nothing he could do, because he could not overrule a flight attendant’s decision.⁵³

Although the airlines lost their legal argument, the factual dispute triggered a factual investigation by the HRC. Nearly a year after the HRC made its legal determination, it concluded its factual investigation. The investigation found that discrimination occurred.⁵⁴ The investigation report, which issued in

late March of 2008, found “reasonable grounds” to believe Freedom Airlines, operating connector flights for Delta, discriminated against Gillette. “The investigator did not find grounds to hold Delta accountable, however, because Delta successfully argued that Freedom was operating as an independent contractor.”⁵⁵ This investigation took roughly twice as long as the average such investigation conducted by the HRC.⁵⁶

“Generally, I’m very proud that we live in a state that not only recognizes this right as a civil right, but that has a law protecting it,” Boepple said. “I’m disappointed it’s taken this long, but I don’t blame the law. The HRC has inadequate staffing to overcome the kind of road blocks the airlines have thrown up.”⁵⁷ Attorneys for Delta and Freedom did not respond to our phone calls.

A meeting on the case between the parties and the HRC is scheduled for late March.⁵⁸ At this meeting, the HRC will make a final determination by majority vote as to whether or not there are reasonable grounds to believe that lawful discrimination occurred.⁵⁹ After this meeting, there will be a six-month period for settlement.⁶⁰ If there is no settlement, then the HRC will determine whether to bring suit against one or both of the airlines, or dismiss the case.⁶¹ It is clear from the ruling in the Gillette case, that if a mother refuses to cover up, the business may not remove her without risking a discrimination charge.⁶²

Rights and Duties of Businesses

Around the country, laws protecting breastfeeding deal with businesses in two categories: businesses as public accommodations and businesses as employers. In Vermont, the law currently deals only with the former, but pending legislation would apply to employers as well. In this section we address the critical concerns for places of public accommodations and employers.

1. Public Accommodations

Under the VPAA, “public accommodation” is a broadly-defined term that encompasses schools, restaurants, stores, or any “establishment or other facility at which services, facilities, goods privileges, advantages, benefits or accommodations are offered to the general public.”⁶³ If a business falls into this category, then it has obligations to both its employees and the general

public.

In Vermont, the scope of places a mother may breastfeed extends to “any place of public accommodation in which the mother and child would otherwise have a legal right to be.”⁶⁴ The VPAA gives mothers the ability to file a charge of discrimination with the HRC as Ms. Gillette did, or to “bring an action for injunctive relief and compensatory and punitive damages and any other appropriate relief” in superior court.⁶⁵ Where a claimant brings a civil action, the court can award costs and attorneys fees to an aggrieved person who prevails.⁶⁶ Thus, a business would be inviting a lawsuit for removing a woman because she was breastfeeding. While nothing in the law indicates that an employer cannot ask a woman to cover up, a business, concerned about breastfeeding on the premises, must be careful about the manner in which it approaches the mother and child.⁶⁷

In 2006, *Mothering Magazine* and other advocates created the international breastfeeding symbol, and corresponding recommended guidelines for businesses.⁶⁸ While untested against Vermont’s breast-feeding law, a business might use these recommendations as a guide. For example, a business might designate certain parts of its premises as “breastfeeding friendly.”⁶⁹ In such a case, the business might then be justified in asking a woman in a different part of the business to avail herself of the “breastfeeding friendly” section.

2. Employers

At the time of printing, there is no Vermont law concerning breastfeeding specific to employers. However, during the 2008 legislative session, several lawmakers introduced a bill protecting a nursing mother’s right to express milk while at work.⁷⁰ Rep. Maxine Jo Grad, an attorney and former chair of the Vermont Commission on Women, is lead sponsor. The bill requires an employer to provide an employee within three years of giving birth with uncompensated time to express milk, and to make a reasonable effort to provide appropriate private space for the purpose of expressing milk that is not a bathroom stall or small storage area.⁷¹ The bill allows for an exemption if providing time for expression of milk “would seriously disrupt the employer’s operations.”⁷² The General, Housing and Military Affairs Committee took up the bill, and received supportive testimony on it in February.⁷³ The bill is currently awaiting action in the Senate.

Vermont is also home to the Breastfeeding Friendly Employer Project. The Project, which is under the umbrella of the Vermont Department of Health, was born from the 2001 recommendations of the Vermont Breastfeeding Study Commission.⁷⁴ The Project both advocates and educates. As part of its work, the Project oversees the designation of Breastfeeding Friendly Employer. According to Karen Flynn, Project Coordinator, 140 Vermont businesses have been awarded the designation of Breastfeeding Friendly Employer.⁷⁵ To earn this designation, a business must at minimum provide its employees with both a flexible schedule for expressing milk and a private, sanitary space to do so.⁷⁶

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¹ See B. Polhamus et al., *Pediatric Nutrition Surveillance 2004 Report*, U.S. Dep't. of Health & Human Services, Centers for Disease Control and Prevention (2006) at 2-3, available at http://www.cdc.gov/pednss/pdfs/Ped_NSS_2004_Summary.pdf; LAURA A. JANA & JENNIFER SHU, *HEADING HOME WITH YOUR NEWBORN: FROM BIRTH TO REALITY 7* (2005); Enfamil, <http://www.enfamil.com/BreastfeedingKit>; Similac, <http://welcomeaddition.com/feedingbaby/breastfeeding.aspx> (Enfamil and Similac are the leading formula brands).

² Polhamus et al., *supra* note 1, at 2-3.

³ For example in Sweden 98 percent of new mothers breastfeed their newborns. LAURA A. JANA & JENNIFER SHU, *supra* note 1.

⁴ Polhamus et al, *supra* note 1, at 2.

⁵ *Id.*

⁶ *Id.*

⁷ Some doctors (and many mothers) posit that the United States' low breastfeeding rates have less to do with supportive breastfeeding legislation for breastfeeding in public and more to do with family leave policies. LAURA A. JANA & JENNIFER SHU, *supra* note 1, at 7 (suggesting that Sweden's 98 percent breastfeeding rate may be connected to the two years of maternity leave mothers are granted). While federal legislation on this issue is unlikely, it is worth noting that bills increasing family leave are currently pending in the Vermont House Health and Welfare committee.

⁸ Ala. Code § 22-1-13 (2006); Alaska Stat. § 01.10.060(b) (1998) (exempting breastfeeding from the definitions of "lewd conduct," "lewd touching," "immoral conduct," "indecent conduct,"); Alaska Stat. § 29.25.080 (1998) (prohibiting municipalities from enacting bans on breastfeeding in public); Ariz. Rev. Stat. Ann. § 13-1402 (2006) (removing breastfeeding from indecent exposure

Breastfeeding Etiquette with Cindy Post Senning of the Emily Post Institute

1. Is it o.k. to talk to a woman while she is breastfeeding her baby?

When feeding a baby—whether by breastfeeding or by bottle—it's ideal for a mother to be engaged with her baby. If you think about it, it's customary when we're eating to focus on the people we're eating with.

That said, yes, it's perfectly o.k. to talk to a woman who is breastfeeding. If you feel uncertain, depending on the setting and circumstances, you might say, "Is this an ok time to talk?" or perhaps "Do you need a few for minutes with the baby?" Give the mother the choice to opt out.

2. Should I avert my eyes from the baby to avoid looking at the mother's breast?

The basics of good conversation include eye contact. Your conversation is with the mom, not with the baby. So, your eye focus should be on her. But remember to act as you naturally would. If the baby spit up, you'd look. Don't avert your eyes unnaturally.

3. Is it appropriate to ask a breastfeeding woman to cover herself?

No. That would be offensive. If you feel uncomfortable, the best thing to do is excuse yourself. You could say something like, "I can see you're feeding the baby. I can come back in a few minutes."

4. How can I be a good hostess to a breastfeeding guest?

The very best setting for a nursing baby is a quiet place. To help provide this, a good hostess or host might offer, "Please feel free to use a quiet place to feed the baby. Might I suggest the guest bedroom" or another quiet space. A mom could excuse herself as she leaves the room by saying, "Excuse me while I feed (or quiet) the baby."

5. What are some common breastfeeding etiquette blunders, and what are appropriate responses to inappropriate comments?

Etiquette and good manners have three fundamental principles: respect, consideration, and honesty. These are the core of building and strengthening relationships. Even if someone else isn't using these principles, you should.

Probably the most common breastfeeding blunder is someone saying about an older baby, "You're still breastfeeding?" A response could be, "Breastfeeding has worked really well for us" or "I see that as something between me and the baby." And then move on to another topic, such as a traditional small talk topic. State it from your own perspective, don't offend the other person, and then use a small talk subject changer.

Another inappropriate comment to make to a breastfeeding mother is: "You're baby's hungry again?" A mother could respond with the truthful explanation that sometimes the baby nurses because it's a comfort to her.

Another breastfeeding blunder relates to unnecessary overexposure. It would be unwise to ignore that in our society breasts have become sexual objects. For that reason, unnecessary overexposure could make others uncomfortable. You certainly don't want your baby to feel confronted. Babies sense discord. To avoid this, I recommend making an effort to be modest.

From a telephone interview conducted by Charity Clark on January 25, 2008. The Emily Post Institute, created by Emily in 1946 and run today by third generation family members, serves as a "civility barometer" for American society and continues Emily's work. That work has grown to address the societal concerns of the 21st century including business etiquette, raising polite children, and civility in America.

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laws); Ariz. Rev. Stat. Ann. § 41-1443 (2006) (protecting breastfeeding in places of public accommodation); Ark. Code Ann. § 5-14-112 (2007) (indecent exposure); Ark. Code Ann. § 20-27-2001 (2007) (breastfeeding in public); Cal. Civ. Code § 43.3 (1997) (public accommodation); Cal. Code Civ. Proc. § 210.5 (2000) (jury duty); Cal. Lab. Code § 1030, 1031, 1032, 1033 (2001) (employer regulations); Colo. Rev. Stat. § 25-6-302 (2004) (public accommodations); Conn. Gen. Stat. § 46a-64(1997) (defining discriminatory practice) Conn. Gen. Stat. § 53-34b (1997) ("No person may restrict or limit the right of a mother to breast-feed her child"); Conn. Gen. Stat. § 31-40w (2001) (protecting pumping at work); Del. Code Ann. tit. 31 § 310 (1997) (public accommodation); Fla. Stat. § 383.015 (1993) (public accommodations); Fla. Stat. §§ 800.02, 800.03, 800.04, 827.071 (1993) (exempting breastfeeding from definition of criminal statutes and child abuse); Ga. Code Ann. § 31-1-9 (1999) (public accommodation); Ga. Code Ann. § 34-1-6 (1999) (employer regulations); Haw. Rev. Stat. §§ 489-21, 489-22 (2000) (public accommodation and private right of action); Haw. Rev. Stat. §§ 378-2, 378-10.2 (2005) (employer regulations); Haw. Rev. Stat. §§ 571-46.5 (2005) (child custody considerations); Idaho Code Ann. §§ 2-209, 2-212 (1996) (jury duty exemption); Ill. Comp. Stat. 137/10 (1995) (public accommodation and private right of action); Ill. Comp. Stat. 5/11-9 (1995) (exempting from public indecency); Ill. Comp. Stat. 260/1 (2001) (employer regulations); Ill. Comp. Stat. 305/10.3 (jury duty exemption); Ind. Code. § 16-35-6-1 (2003) (public accommodation); Iowa Code § 607A.5 (2002) (jury duty exemption); Iowa Code § 135.30A (2002) (public accommodation); Kan. Stat. Ann. 43-158 (2006) (public accommodations and exemption from jury service); Ken. Rev. Stat. 29A.100 (2007) (not lewd conduct, municipalities cannot prohibit and no person shall interfere); La. Rev. Stat. Ann. § 51:2247.1 (2001) (public accommodation); La. Rev. Stat. Ann. § 46:1413(E) (2001) (prohibiting child care facilities from discriminating based on whether child is breastfed); Me. Rev. Stat. Ann. tit. 5 § 4634 (2001) (public accommodation); Me. Rev. Stat. Ann. 19 § 1653(P) (child custody); Md. Code § 20-801 (2003) (public accommodation); Md. Code Ann. § 11-211 (2001) (exempting breastfeeding paraphernalia from sales tax); Mich. Comp. Laws § 41.181, §§ 67.1, 117.4i, 117.5h (1994) (exempting from criminal code); Mich. Comp. Laws § 722.27a (1970) (child custody); Minn. Stat. § 145.905 (1998) (public accommodation); Minn. Stat. § 181.939 (1998) (employer regulations); Miss. Code Ann. § 17-25-7 (2006) (public accommodation); Miss. Code Ann. §§ 19-5-103, 97-29-31, 97-35-3, 97-35-7, 97-35-11, 97-35-15 (2006) (exempting from criminal code); Miss. Code Ann. § 13-5-23 (2006) (jury duty exemption) (this bill also authorized the Mississippi Department of Health to draft rules to prohibit employers from preventing women from expressing milk during their breaks); Mo. Rev. Stat. § 191.918 (1999) (women are allowed to breastfeed in places of public accommodations "with as much discretion as possible"); Mont. Code Ann. §§ 39-2-215, 39-3-216 (2007) (requiring state government to provide places for employees to express milk and prohibiting discrimination on the basis of breastfeeding); Mont. Code Ann. § 50-

19-501 (1999) (removing breastfeeding from criminal code and preventing municipalities from prohibiting breastfeeding); Neb. Rev. Stat. § 25-1601 (2004) (jury duty); Nev. Rev. Stat. §§ 201.210, 201.220 (1995) (removing from criminal code); Nev. Rev. Stat. § 201.232 (1995) (public accommodation); N.H. Rev. Stat. Ann. § 132:10-d (1999) (not illegal and to restrict is discriminatory); N.J. Stat. Ann. §§ 26:4B-4 & 5 (1997) (public accommodation and enforcement); N.M. Stat. § 28-20-2 (2007) (employer regulations); N.M. Stat. § 28-20-1 (1999) (public accommodation); N.Y. Civ. Rights Law § 79-e (1994) (public accommodation); N.Y. Labor Law § 206-c. (2007) (right of nursing mothers to express breast milk); N.C. Gen. Stat. § 14-190.9 (1993) (public accommodation codified under indecent exposure); Ohio Rev. Code Ann. § 3781.55 (2005) (public accommodation); Okla. Stat. tit 63 § 1-234.1 (2004) (public accommodation); Okla. Stat. tit. 38 § 28 (2001) (jury duty); Okla. Stat. tit. 40 § 435 (2006) (employer regulations); Or. Rev. Stat. § 109.001 (1999) (public accommodation); Or. Rev. Stat. § 10.050 (1999) (jury duty); 2005 OR LAWS Ch. 466, SB 618 (2006) (employer regulations); 35 Pa. Cons. Stat. §§ 636.2 - 636.4 (2007) (public accommodation); R.I. Gen. Laws § 11-45-1 (1998) (not disorderly conduct); R. I. Gen. Laws § 23-13.2-1 (2003) (employer regulations); S.C. Code Ann. § 20-7-97 (2006) (public accommodation, not indecent exposure); S.D. Codified Laws § 22-22-24 (2002) (not indecent exposure); Tenn. Code Ann. § 68-58-101 through 103 (2006) (public accommodation for babies under 12 mos.); Tenn. Code Ann. § 50-1-305 (1999) (employer regulations); Tex. Health & Safety Code Ann. §§ 165.001-165.004 (1995) (public accommodation); Tex. Health & Safety Code Ann. §§ 165.031-165.033 (1995) (employer regulations); Utah Code Ann. § 10-8-41 (2003) (not lewd act); Utah Code Ann. § 10-8-50 (2003) (not disturbance of the peace); Utah Code Ann. § 17-15-25 (2003) (right to breastfeed); Utah Code Ann. § 76-9-702 (2003) (not lewd); Utah Code Ann. § 30-3-34 (1997) (child custody); 9 V.S.A. § 4502(j) (2002) (public accommodation); 9 V.S.A. § 4506 (2002) (enforcement provision); Va. Code Ann. § 18.2-387 (1994) (not indecent exposure); Va. Code Ann. § 2.2-1147.1, (2002) (public accommodation); Va. Code Ann. § 8.01-341.1 (2002) (jury duty); Wash. Rev. Code § 9A.88.010 (2001) (not indecent exposure); Wash. Rev. Code § 43.70.640 (2001) (employer regulations); Wis. Stat. §§ 944.17, 944.20, 948.10 (1995) (exempts from criminal statutes); Wyo. Stat. Ann. § 6-4-201 (2007) (not public indecency).

⁹ E.g., N.M. Stat. § 28-20-1 (1999) (public accommodation).

¹⁰ E.g., Okla. Stat. tit. 38 § 28 (2001) (jury duty).

¹¹ E.g., Haw. Rev. Stat. §§ 571-46.5 (2005) (child custody considerations).

¹² E.g., Md. Code Ann. § 11-211 (2001) (exempting breastfeeding paraphernalia from sales tax).

¹³ See Pub. L. 108-199, 108th Cong., 2nd Sess. (2004); Pub. L. 108-7, 108th Cong., 1st Sess. § 630 (2003); Pub. L. 106-58, 106th Cong., 1st Sess. § 647 (1999). This provision is apparently not yet codified.

¹⁴ E.g., Conn. Gen. Stat. § 53-34b (1997) ("No person may restrict or limit the right of a mother to breast-feed her child"); Vt. Stat.

Ann. tit. 9 § 4502(j) (2002).

¹⁵ 9 V.S.A. § 4506 (2002).

¹⁶ *Id.*

¹⁷ Telephone interview with Margaret O'Toole, R.N., Montpelier, Vt. (Feb. 7, 2008).

¹⁸ *Id.*

¹⁹ Vermont Breastfeeding Study Commission's Report (January 2001) (on file with the authors).

²⁰ S.156, 1999 Leg., Adj. Sess. (Vt. 2000), available at <http://www.leg.state.vt.us/database/database2.cfm?Session=2000> (as introduced by Senator Doyle of Washington County, Senator McCormack of Windsor County, Senator Cummings of Washington County, and Senator Scott of Washington County).

²¹ *Id.*

²² Journal of the Senate, 2001 Leg., Reg. Sess., Tuesday April 10, 2001, available at www.leg.state.vt.us.

²³ *Id.*; lewd and lascivious conduct is defined and prohibited by 13 V.S.A. § 2601.

²⁴ Journal of the Senate, 2001 Leg., Reg. Sess., Wednesday April 11, 2001, available at www.leg.state.vt.us.

²⁵ Interview with Margaret O'Toole, R.N., *supra* note 17.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ See House Calendar, 2001 Leg., Adj. Sess., Monday April 15, 2002, available at <http://www.leg.state.vt.us>.

³⁰ 9 V.S.A. § 4602.

³¹ House Calendar, *supra* note 29.

³² Journal of the House, 2001 Leg., Adj. Sess., Thursday, April 18, 2002, available at <http://www.leg.state.vt.us>.

³³ S.156, 2001 Leg., Adj. Sess. (Vt. 2002), available at <http://www.leg.state.vt.us/docs/docs2.cfm?Session=2002> (as enacted). The education pamphlet created by the HRC, "Act 117: Affirming a mother's right to breastfeed in places of public accommodation," is on file with the authors.

³⁴ *Id.*

³⁵ Interview with Margaret O'Toole, R.N., *supra* note 17.

³⁶ Telephone interview with Robert Appel, Executive Director, Vermont Human Rights Commission, Montpelier, Vt. (Feb. 22, 2008).

³⁷ E.g., *Woman Says She Was Kicked Off Plane for Breastfeeding Baby*, BOSTON GLOBE, Nov. 14, 2006, available at http://www.boston.com/news/local/vermont/articles/2006/11/14/woman_says_she_was_kicked_off_plane_for_breast_feeding_baby.

³⁸ *Id.*

³⁹ See Cecilia Kang, *Mothers Rally to Back Breast-Feeding Rights*, WASHINGTON POST, Nov. 22, 2006, at D1; Raja Mishra, *Nursing Mother's Protest Grows*, BOSTON GLOBE, Nov. 21, 2006, available at http://www.boston.com/news/nation/articles/2006/11/21/nursing_mothers_protest_grows; Jake Aryeh Marcus, *Lactation and the Law*, MOTHERING, July/August 2007, at 48 (cover story); *Breastfeeding Case Leads to Punishment*, USA TODAY, Nov. 17, 2006.

⁴⁰ Charge of Public Accommodations Discrimination, *Gillette v. Delta Airlines Inc.*, et al., HRC Case No. PA07-0007 (HRC Oct. 13, 2006); see also Emily Bazar & Sam Hemenway, *Nursing Mom Files Complaint Against Airline*, USA TODAY, Nov. 17, 2006, available at http://www.usatoday.com/travel/news/2006-11-16-breastfeeding_x.htm.

⁴¹ *Id.*

⁴² 49 U.S.C. §§ 41701-41723. While both Delta and Freedom posited the legal argument of federal preemption, Delta declined to expand its initial assertion of a federal preemption defense, instead arguing the factual dispute. See Letter from David A. Seiler, Senior Attorney, Delta Air Lines, Inc., to Tracey Tsugawa and Jerri L. Larson, Civil Rights Investigators, HRC at n.5 (Dec. 11, 2006) (on file with authors) (HRC treated the letter as motion to dismiss).

⁴³ 49 U.S.C. § 41713(b)(1) (emphasis added).

⁴⁴ Letter from Christopher J. Pappaioanou, Director of Legal Affairs to Freedom Airlines, Inc., to Tracey Tsugawa, Civil Rights Investigator, HRC at 2 (Dec. 11, 2006) (on file with authors) (HRC treated the letter as motion to dismiss).

⁴⁵ Claimant's Memorandum in Response to Respondents' Federal Pre-emption Defense at 4, *Gillette v. Delta Airlines Inc., et al.*, HRC Case No. PA07-0007 (HRC Jan. 9, 2007).

⁴⁶ Letter from Robert Appel, Executive Director, HRC, to Christopher J. Pappaioanou, Director of Legal Affairs to Freedom Airlines, Inc. (Apr. 5, 2007) (on file with authors) (denying motion to dismiss).

⁴⁷ *Id.* at 3 (citing *Hodges v. Delta Airlines, Inc.*, 44 F.3d 334, 336 (5th Cir. 1995); *In re Commercial Airfield*, 170 Vt. 595, 752 A.2d 13 (2000)).

⁴⁸ *Id.* at 2 ("The *Hodges v. Delta Airlines* case cited by the respondent is truly inapposite to its argued position in the instant matter in that the *en banc* decision of the Fifth Circuit reversed the district court's grant of summary judgment (affirmed by a circuit panel) based on the preemption claim.").

⁴⁹ Letter from Seiler, *supra* note 43, at 3; Letter from Pappaioanou, *supra* note 45, at 4.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Telephone interview with Elizabeth A. Boepple, Witten, Woolmington, Campbell, Boepple, P.C., in Manchester, Vt. (Jan. 28, 2008).

⁵³ *Id.*; Charge of Public Accommodations Discrimination, *Gillette v. Delta Airlines Inc., et al.*, HRC Case NO. PA07-0007 (HRC Oct. 13, 2006).

⁵⁴ Telephone interview with Elizabeth A. Boepple, *supra* note 52.

⁵⁵ Sky Barsch, *Human Rights Commission to hear breast-feeding mother's complaint*, Burlington Free Press, March 26, 2008 available at <http://www.burlingtonfreepress.com/apps/pbcs.dll/article?AID=/20080326/NEWS/80326031>.

Boepple filed a response asking for that to be amended, arguing that Freedom was acting as an agent for Delta. *Id.*

⁵⁶ See telephone interview with Robert Appel, *supra* note 36 (average length of investigation is six months).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ See Rules of the Vermont Human Rights Commission, at <http://www.hrc.state.vt.us>.

⁶⁰ *Id.*

⁶¹ See *id.*

⁶² See Barsch, *supra*, note 55.

⁶³ See 9 V.S.A. § 4501(1).

⁶⁴ *Id.* § 4502(j).

⁶⁵ *Id.* § 4506(a).

⁶⁶ *Id.* § 4506(b).

⁶⁷ But see sidebar, *Breastfeeding Etiquette*

with Cindy Post Senning, Emily Post Institute.

⁶⁸ See *The International Breastfeeding Symbol*, MOTHERING, at <http://www.mothering.com/breastfeeding-symbol/activism.html>.

⁶⁹ *Id.* Notably, this section of the business should be semi-private and have a comfortable chair; see also, *Activist Update! Symbol Helps Airport Cater to Nursing Mothers*, MOTHERING, March 2007, available at http://www.mothering.com/sections/action_alerts/march2007.html#airport.

⁷⁰ H.641, 2007 Leg., Adj. Sess. (Vt. 2008) (An Act Relating to Nursing Mothers in the Workplace).

⁷¹ *Id.*

⁷² *Id.*

⁷³ Peter Hirschfield, *Further Protection for Breastfeeding Moms Considered*, BARRE-MONTPELIER TIMES ARGUS, Feb. 22, 2008, at <http://www.timesargus.com/apps/pbcs.dll/article?AID=/20080222/NEWS01/802220384/1002/NEWS01>.

⁷⁴ The Vermont Breastfeeding Study Commission was established by Resolution R.224: Joint Resolution Relating to the Importance of Breastfeeding in 2000.

⁷⁵ Telephone interview with Karen Flynn, Breastfeeding Friendly Employer Project, Burlington, Vt. (Feb. 7, 2008).

⁷⁶ Vermont Department of Health, *Becoming a Breastfeeding Friendly Employer*, available at <http://healthvermont.gov/family/breastfeed/employers.aspx>.

