



H.B. 554

125th General Assembly
(As Introduced)

**Reps. Clancy, Kearns, Reidelbach, Kilbane, Fessler, Setzer, Schneider,
Barrett, Chandler, Schmidt, Allen**

BILL SUMMARY

- Provides that a mother is entitled to breast-feed her baby in any location of a place of public accommodation, which includes an inn; restaurant; barbershop; theater; store or other place used for the sale of merchandise; public conveyance by air, land, or water; or other place of public accommodation or amusement open to the public.

CONTENT AND OPERATION

Breast-feeding permitted in places of public accommodation

The bill provides that, notwithstanding any provision of law to the contrary, a mother is entitled to breast-feed her baby in "any location of a place of public accommodation" in which the mother would be permitted to be, were she not breast-feeding.

Under the bill, a "place of public accommodation" means "any inn, restaurant, eating house, barbershop, public conveyance by air, land, or water, theater, store, other place for the sale of merchandise, or any other place of public accommodation or amusement of which the accommodations, advantages, facilities, or privileges are available to the public."¹

COMMENT

On June 30, 2004, the United States Sixth Circuit Court of Appeals ruled that a Wal-Mart policy that prohibits women from breast-feeding infants in public

¹ R.C. 4112.01(A)(9). (The bill specifies that "place of public accommodation" has the same meaning as in R.C. 4112.01.)

areas of the store does not amount to sex discrimination under Ohio's accommodation law.² The Court said that since breast-feeding is not covered by the federal Pregnancy Discrimination Act of 1978,³ "we find it extremely unlikely that in the context of public accommodation... an Ohio court would find regulation of breast-feeding to be prohibited as sex discrimination."

Three women shopping at Wal-Mart stores in Lebanon, Ohio, and Trotwood, Ohio, attempted to nurse their infants in public: on a bench next to a dressing room, in a layaway line, and on a bench near a portrait studio. In each instance, store employees interrupted the women to advise that they could either breast-feed in a restroom or leave the store.

The three filed a complaint alleging that Wal-Mart had discriminated against them on the basis of sex and age under Ohio law. They argued that the prohibition against sex discrimination in Ohio law governing public accommodations should be construed so as to render breast-feeding a protected activity. The statute in question, Revised Code §4112.02(G), states that it is unlawful discriminatory practice for "any proprietor or any employee, keeper, or manager of a place of public accommodation to deny to any person, except for reasons applicable alike to all person, regardless of race, color, religion, sex, national origin, disability, age, or ancestry, the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of public accommodation."

The case was removed to U.S. District Court in Dayton where the retailer's motion for summary judgment dismissal was granted. The Sixth Circuit Court affirmed the district court's decision. In dismissing the claims against Wal-Mart, the district court relied on a 1976 U.S. Supreme Court decision, *General Electric Co. v. Gilbert*,⁴ which held that discrimination based on pregnancy was not discrimination within the meaning of Title VII of the Civil Rights Act of 1964.⁵ Plaintiffs in the Ohio case had claimed the district court's reliance on the rationale of the Title VII opinion was erroneous because it had been overruled by statute

² *Derungs, Gore, Baird v. WAL-MART STORES, INC.* (2004), WL 1472716 (6th Cir.(Ohio)).

³ 42 U.S.C.A. §2000e(k).

⁴ 429 U.S. 125, 97 S.Ct. 401 (1976).

⁵ *The specific issue in that case was whether Title VII prohibited excluding pregnancy-related disabilities from an employer's disability benefit plan. The Supreme Court found that such an exclusion did not amount to unlawful discrimination on the basis of sex (429 U.S. 125, 97 S.Ct. 401 (1976)).*

and subsequent Supreme Court decisions. The Sixth Circuit Court disagreed and upheld the district court's ruling.

HISTORY

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Introduced	09-23-04	p. 2163

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