

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

1440

2001 HOUSE HUMAN SERVICES

HB 1440

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1440

House Human Services Committee

Conference Committee

Hearing Date January 29, 2001

Tape Number	Side A	Side B	Meter #
Tape 1	X		0 to 4590
Tape 3	X		0 to 1260
Committee Clerk Signature <i>Cornie Easton</i>			

Minutes:

Chairman Price, Vice Chairman Devlin, Rep. Dosch, Rep. Galvin, Rep. Klein, Rep. Pollert, Rep. Porter, Rep. Tieman, Rep. Weiler, Rep. Weisz, Rep. Cleary, Rep. Metcalf, Rep. Niemeier, Rep. Sandvig

Chairman Price: Open hearing on HB 1440.

Rep. Niemeier: Presented Bill. (See written testimony.) This bill requires only minor adjustments in the work day for the lactating employee, and could result in lifetime benefits to the family. I ask for a favorable vote from the committee.

Rep. Weiler: When the mother is at work, does someone bring the back to the work place or does she leave the work place?

Rep. Niemeier: The mother would pump her milk, store it, and take it home so her day care provider would use it to feed the baby the next day. The baby doesn't come in at all.

Vice Chairman Devlin: We all agree with the importance of breast feeding. Where are we running into problems? I've never heard of a business that doesn't allow this.

Rep. Niemeier: I don't have the numbers, but I'm sure there are some that don't.

Vice Chairman Devlin: You don't have any numbers. Why is this bill needed? Apparently there is a problem that you can estimate 20% or 50% of the mothers aren't allowed to do this. Can someone provide those numbers so I can understand the need for this bill?

Rep. Niemeier: Yes.

Rep. Galvin: The word "reasonable" appears three times, isn't that a word that could be widely interpreted?

Rep. Niemeier: I would hope employers would negotiate.

Rep. Tieman: You mentioned about 20 states have this law. What if employee-employer have a disagreement, what would they do?

Rep. Niemeier: There aren't any fines or recourse built into the bill. I hope it wouldn't come to that.

Rep. Porter: Sec. 1, line 10 - I'm thinking of office buildings where there isn't a special space available? What would happen in those situations?

Rep. Niemeier: We're hoping a reasonable effort would be made.

Rep. Porter: Don't you think that's already being done, and that just putting it into statute mandates an employer to do something they are already doing?

Rep. Niemeier: Because this isn't statute, discourages mothers from making the commitment to breast feed.

Rep. Porter: What about storage after the extraction? This is not addressed in this legislation. Where would storage take place?

Rep. Niemeier: Mothers could bring one of the little coolers to store and transport back home again. If there aren't accommodations at the work place, the mother could use this option.

Chairman Price: It says "violation of this section" - what are the penalties? What if you had an employee that refused to use their break time and wanted two breaks?

Senator Christenson: Sponsor of the Bill. I am here as a professional working mother. This bill is about kids. Secondly, this bill is about moms to have peace of mind. Some women don't have another option but to work. Employers will have a more productive employer, and this is a statute that represents quality of life.

Chairman Price: Most businesses have employee hand books. Could this be covered in the employer's policy? Something that would make it clear to employer-employee.

Senator Christenson: Yes, the idea of negotiations is probably the most important element of this bill.

Rep. Galvin: Who exactly would it apply to? Is it entirely mechanical extraction, or is the child at the work place?

Senator Christenson: This does not address the working mother with the child in the work place.

Rep. Niemeier: Those kinds of issues will be addressed by the Health Department.

Jill Leppert: Division of Maternal and Child Health of the State Department of Health. (See support of HB 1440 in written testimony.) Presented information on what is involved in expressing milk.

Vice Chairman Devlin: Last sentence in your testimony you said "lack of support is one of the factors in breast feeding rates". Do you have any statistics that show there is a problem in North Dakota?

Jill Leppert: We don't have actual statistics, just anecdotes talking with mothers.

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Karen Ehrens: LRD, North Dakota Dietetic Association. (See support of HB 1440 in written testimony.) There are a lot of diseases that can be prevented if mothers breast feed. I am also a working mother who has breast fed. Both mothers and employers will benefit from this legislation.

Melissa Olson: I am a working mother. I pumped at work for 10 months and it worked well in my office. I shortened my lunch break to take longer breaks to pump.

Rep. Porter: Do you work in private sector or government?

Melissa Olson: I work in government.

Rep. Porter: I'm thinking of businesses that have one office, a reception area, and one bathroom. How would they make reasonable effort to provide a room?

Melissa Olson: I would ask to use their office or there are privacy screens that can be used.

Linda Beckler: Health Nurse, Custer Health. (See support of HB 1440 in written testimony.) This bill gives a voice to women that aren't supported by their employer.

Chairman Price: Under this bill, what would you expect the local McDonalds to do?

Linda Beckler: Ask your employer what would be reasonable. Could possibly use their office space.

Vice Chairman Devlin: You said too many employers are not supportive. Can you give me any numbers at all?

Linda Beckler: No, mostly anecdotal. Possibly a third of the women I've talked to.

Chairman Price: Close hearing on HB 1440.

#### **COMMITTEE WORK:**

Vice Chairman Devlin: Let's go to HB 1440.

Rep. Porter: Under the way that this bill is currently written it seems to use words like reasonable, and shall, and make reasonable efforts. The part that came to question was "an employer that makes a reasonable efforts to comply with this section is not in violation of this section". There was no mention of what violation to this section would do to an employer, or what they would be in violation of.

Mr. Bachmeier: Is your question "how to be enforced"?

Rep. Porter: I guess the question is "can it be enforced"?

Mr. Bachmeier: I guess I saw some difficulty as it is written in that regard. It refers to violation of chapter 34-01, which doesn't have a penalty associated with it so I don't know what violation of that chapter would entail. There are a couple of specific sections under 34-01 that do have specific penalties and each of those says they are criminal penalties - criminal misdemeanors, but those penalties don't apply specifically to that entire chapter.

Rep. Porter: What would your interpretation be of the part of the bill that says "an employer shall make reasonable efforts to provide a room or other location in close proximity" - what would your definition of reasonable efforts be?

Mr. Bachmeier: I don't know that I have a definition for that.

Vice Chairman Devlin: Essentially what you're saying is that there isn't a penalty for this specific situation.

Mr. Bachmeier: The Commissioner of Labor has specific authority over specific chapters and sections of that title.

Rep. Porter: Has there been any complaints outlining the problems in this area?

Mr. Bachmeier: I haven't specifically taken any complaints personally.

Rep. Tieman: Are you aware of any penalties other states have set?

Mr. Bachmeier: If another state has a provision of this kind that contains a penalty, I'm not familiar with other state laws.

Rep. Tieman: If a law like that was passed, would that be a matter of record?

Mr. Bachmeier: Certainly.

Rep. Niemeier: Does the statute have to have a penalty?

Rep. Bachmeier: No, but it could.

Rep. Niemeier: There are three states that addressed nursing in the work place and have passed that legislation, which is Minnesota, Hawaii, and Tennessee. The other states have addressed breast feeding legislation and most of those are in the area of indecent exposure laws to allow breast feeding in public places and to amend the indecent exposure law. You don't see any problem in having a statute like this that is user friendly for both of the parties involved in those provisions?

Rep. Bachmeier: It could be a problem if it results in complaints that are unenforceable.

Rep. Cleary: I don't see what is wrong with putting it in the statutes. I would say that it was just an educational piece so people are aware of it.

Rep. Bachmeier: I would encourage every group of employers to provide this because it would be a good business practice.

Rep. Metcalf: Would this law give the individual any civil penalty or access to the civil court?

Rep. Bachmeier: It doesn't specifically provide a right to private action, but I don't know the answer to that. Presumably a violation of law could go to a court.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1440 A

House Human Services Committee

Conference Committee

Hearing Date February 6, 2001

Tape Number	Side A	Side B	Meter #
Tape 2	X		5600 to end
Tape 2		X	0 to 2330
Committee Clerk Signature <i>Cerme Easton</i>			

Minutes:

**COMMITTEE WORK:**

Vice Chairman Devlin: Let's take 1440.

Rep. Porter: I talked with a number of people on this particular issue, and I couldn't find anybody who didn't agree that they would bend over backwards to accommodate the nursing mother. It is very important their employees are back to work when they can be, and that they would do whatever necessary to make sure that the accommodations are made. I have also talked to a number of people that said "I don't know what I would do in my business - I am in a strip Mall where I have one office where myself and my bookkeeper sit - we have a public bathroom down the hall that everybody shares and I don't have any other square footage in my building and I don't have any idea what I would do if this bill was passed because I don't know what the definition of reasonable is, and I don't know what the definition of a reasonable effort would be in my business." I just don't know that it is necessary to have this bill. I think that it is

important for employers to work with their employees, and it is important for them to make accommodations that keep their employees at work, but there is not penalty and using the words reasonable and reasonable effort three different times in the bill makes it unenforceable. I have a problem with the way the whole bill is written.

Rep. Niemeier: I think that we do want to encourage that segment of the employers who may have a question about that. There are more and more young women returning to the work force after they have had their baby, and we includes the TANF mothers as well. This helps all of those young mothers if they have some accommodation on this. The fact that it says reasonable just seems to me it is kind of a user friendly thing between the employer and the employee. If it isn't going to work out, it isn't and that is what they will have to accept. I think this raises the awareness of the need for some of these moms. We know there are the constraints of time and work duties, but I think they can work it out. This is really a pro-family bill - something that supports both the mother and the infant. The intent of the bill is to be user friendly and there is no need for penalties, and it is to raise awareness and to encourage those employers who haven't been inclined to give this service some consideration. It costs no money and so it is a simple bill and an easy way to support moms.

Rep. Cleary: If an employer has an office, I would think for 15 minutes at the most, the mother could use his office. I would not think that would be so difficult to arrange. I think in most places there would be somewhere to set up.

Rep. Weiler: I remember in all of the testimony that we heard, there were several times the question was brought up if they had any data to support that the employers were not allowing the employees to do this - they were never able to answer the question, or they never had any data.

