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# SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

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**Bill No:** AB 2785 **Hearing Date:** June 27, 2018  
**Author:** Rubio  
**Version:** May 25, 2018  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Brandon Darnell

**Subject:** Student services: lactation accommodations.

## SUMMARY

This bill requires the California Community Colleges (CCC) and the California State University (CSU), and encourages a satellite campus of CCC or CSU, and the University of California to, provide reasonable accommodations on their respective campuses for a lactating student to express breast milk, breast-feed an infant child, or address other needs related to breast-feeding.

## BACKGROUND

Existing law:

- 1) Requires every employer, including the state and any political subdivision, to provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The break time must, if possible, run concurrently with any break time already provided to the employee. Break time for an employee that does not run concurrently with the rest time authorized for the employee is to be unpaid. (Labor Code § 1030)
- 2) Requires employers to make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private. The room or location may include the place where the employee normally works if it otherwise meets the requirements of this section. (LC § 1031)
- 3) Prohibits discriminatory practices in employment or housing accommodations on the basis of sex, and defines "sex" to include breast-feeding or medical conditions related to breast-feeding. (Government Code § 12926)
- 4) Require a school operated by a school district or a county office of education, the California School for the Deaf, the California School for the Blind, and a charter school to provide reasonable accommodations to a lactating pupil on a school campus to express breast milk, breast-feed an infant child, or address other needs related to breast-feeding. (Education Code § 222)
- 5) Defines "harassment and other discrimination on the basis of sex" to include specified practices such as the exclusion of any person from any program or activity or employment because of pregnancy or related conditions. (EC § Section 230)

- 6) Requires, through regulation, local educational agencies to adopt uniform complaint procedures through which the public can register complaints regarding educational programs and rights. (California Code of Regulations, Title 5, § 4600, et seq.)

## ANALYSIS

This bill requires the California Community Colleges (CCC) and the California State University (CSU), and encourages a satellite campus of CCC or CSU, and the University of California to, provide reasonable accommodations on their respective campuses for a lactating student to express breast milk, breast-feed an infant child, or address other needs related to breast-feeding. Specifically, this bill:

- 1) Specifies that reasonable accommodations include, but are not limited to, all of the following:
  - a) Access to a private and secure room, other than a restroom, to express breast milk or breast-feed an infant child. The room would be required to have a comfortable place to sit and have a table or shelf to place a breast pump or any other equipment used to express breast milk.
  - b) Permission to bring onto a college or university campus a breast pump and any other equipment used to express breast milk.
  - c) Access to a power source for a breast pump or any other equipment used to express breast milk.
- 2) Authorizes a campus of the CCC or CSU to use an existing facility satisfy the requirement in (1) above.
- 3) Specifies that students shall not incur an academic penalty as a result of their use of the reasonable accommodations specified in this section, and shall be provided the opportunity to make up any work missed due to such use.
- 4) Requires the respective educational institution, upon the construction of a new campus of the CCCs or the CSU; the replacement, expansion, or renovation involving plumbing of an existing building regularly used by the student body, including a student center; or the construction of a new building designed for use by students, to provide a sink in addition to the reasonable accommodations described above, in a room in the newly constructed campus or building, or in a room in the replaced, expanded, or renovated building.
- 5) Specifies that the requirement in (4) only applies to an educational institution if the room on the education institution's campus currently designated for a lactating student to express breast milk or breast-feed an infant child does not have a sink.
- 6) Specifies that nothing in the provisions above requires an existing room designated for a lactating student to express breast milk or breast-feed an infant child to have a sink.

- 7) Requires the lactation accommodations to be available to a student whenever a student is required to be present on campus.
- 8) Authorizes a complaint of noncompliance with the requirements above to be filed consistent with specified provisions of California Code of Regulations relating to Nondiscrimination in programs receiving state financial assistance through the Chancellor or Board of Governors of the California Community Colleges (CCCs). If the complaint is found to have merit, the campus or appropriate appellate body is required to provide a remedy to the affected student.
- 9) Authorizes a complaint of noncompliance with the requirements above to be filed consistent with the procedures established pursuant to Executive Order No. 1097, dated October 5, 2016, or the appropriate successor document, issued by the Office of the Chancellor of the California State University (CSU). If the complaint is found to have merit, the campus, or upon appeal, the Office of the Chancellor of the CSU, is required to provide a remedy to the affected student.
- 10) Specifies that none of these provisions infringe on any right to breast-feed in public.
- 11) Requires these provisions to be implemented by the CCCs and the CSU, and urges the University of California to implement these requirements, by January 1, 2020.

**STAFF COMMENTS**

- 1) Need for the bill. According to the author, "A parent needs to be able to nurse or pump milk every 2-3 hours to establish and maintain a healthy milk flow for their child. For students who choose to nurse or pump milk for their children, California Community Colleges and California State University (CSU) campuses fail to provide consistent and adequate lactation accommodations across all campuses to nurse or pump. This can leave a student with equally unsatisfactory options – to nurse or pump in spaces that potentially jeopardize their safety and comfort, to stop lactation before they would otherwise choose to, or to quit attending classes altogether.

Several state and federal laws prohibit sex discrimination and include a prohibition on discrimination against a student based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions, including Title IX, California Education Code, California Sex Equity in Education Act, and the Unruh Civil Rights Act. Furthermore, pregnancy and childbirth recovery related conditions must be provided with the same support services available to other students with similar medical needs.

California Labor Code § 1031 requires that lactating school staff be provided with lactation accommodation and California Education Code § 690 requires that accommodations be provided to students in K-12 public schools. However, this code section does not extend to students in California Community Colleges or on California State University campuses."

- 2) ***Importance of breastfeeding.*** The American Academy of Pediatrics, in its policy statements on breastfeeding and the use of human milk, states: “Breastfeeding and human milk are the normative standards for infant feeding and nutrition. Given the documented short- and long-term medical and neurodevelopmental advantages of breastfeeding, infant nutrition should be considered a public health issue and not only a lifestyle choice. The American Academy of Pediatrics reaffirms its recommendation of exclusive breastfeeding for about 6 months, followed by continued breastfeeding as complementary foods are introduced, with continuation of breastfeeding for 1 year or longer as mutually desired by mother and infant. Medical contraindications to breastfeeding are rare. Infant growth should be monitored with the World Health Organization (WHO) Growth Curve Standards to avoid mislabeling infants as underweight or failing to thrive. Hospital routines to encourage and support the initiation and sustaining of exclusive breastfeeding should be based on the American Academy of Pediatrics-endorsed WHO/UNICEF “Ten Steps to Successful Breastfeeding.” National strategies supported by the US Surgeon General’s Call to Action, the Centers for Disease Control and Prevention, and The Joint Commission are involved to facilitate breastfeeding practices in US hospitals and communities. Pediatricians play a critical role in their practices and communities as advocates of breastfeeding and thus should be knowledgeable about the health risks of not breastfeeding, the economic benefits to society of breastfeeding, and the techniques for managing and supporting the breastfeeding dyad. The “Business Case for Breastfeeding” details how mothers can maintain lactation in the workplace and the benefits to employers who facilitate this practice.”
- 3) ***Existing rights for employees and students.*** Both state and federal law require employers to provide reasonable accommodations to lactating employees, including break time and the provision of private space (other than a restroom stall) in which to express breast milk or breast-feed. Existing law prohibits discriminatory practices in employment or housing accommodations on the basis of sex, and defines “sex” to include breast-feeding or medical conditions related to breast-feeding. Title IX prohibits discrimination on the basis of sex in all aspects of education, but does not explicitly reference breast-feeding.

This bill generally mirrors state and federal requirements that employees be provided reasonable accommodation to express breast milk or breast-feed. AB 302 (Garcia, 2015) required that accommodations be provided students in K-12 public schools, yet that same explicit provision does not exist currently for students in the California Community Colleges (CCC) or the California State University (CSU).

- 4) ***Author’s amendment for complaint process.*** The CSU and CCC both have explicit processes of complaint and appeal for cases of discrimination. This bill expressly authorizes students to file complaints of noncompliance, and requires the Chancellor’s Office of a respective system to provide an appropriate accommodation. However, in response to California State University’s (CSU) concerns regarding the specific reference in the bill, the author would like to amend the bill to more accurately reference the CSU’s complaint process. Staff

recommends that the bill be amended to reflect the author's intent, as shown below:

~~“(h)(2) (2) A complaint of noncompliance with the requirements of this section may be filed consistent with the procedures established pursuant to Executive Order No. 1097, dated October 5, 2016, or the appropriate successor document, issued by the Office of the Chancellor of the California State University. If the complaint is found to have merit, the campus, or upon appeal, the Office of the Chancellor of the California State University, shall provide a remedy to the affected student. by the California State University for complaints by students of discrimination based on disability, gender, or other applicable characteristics, and shall be afforded any remedies entitled to pursuant to those procedures.”~~

- 5) ***New construction and renovations.*** This bill requires that campuses of the California State University (CSU) and the California Community College (CCC) install a sink into their lactation rooms or locations upon the construction of a new campus, the construction of a new building designed for use by students, or upon the replacement, expansion, or renovation *involving plumbing* of an existing building. As noted in the Assembly Higher Education Committee's analysis, “the CSU and CCC raised concerns specifically with the broad nature of a “renovation,” given that even a small renovation project could trigger a mandated sink installation.” Committee staff recommended that the author continue working with stakeholders to identify clear and specific instances where a renovation would trigger the installation of a sink, and the bill was subsequently amended to add the “involving plumbing” qualification. However, staff is informed that the CSU and CCC retain concerns regarding potential costs of these provisions. Accordingly, *the committee may wish to consider encouraging* the author to continue to work with the stakeholders regarding this issue.
- 6) Related and previous legislation. SB 937 (Weiner) requires that all employers provide a space meeting certain specifications for employees with a desire to express breast milk in private, including the construction of lactation rooms in a tenant improvement project on the interior of a building that has at least 15,000 square feet of employee workspace if the project costs more than \$1 million, with additional lactation rooms required based upon square footage and occupant loads in areas designated as employee workspace. SB 937 is scheduled to be heard by the Assembly Business and Professions Committee on June 26, 2018.

AB 302 (Garcia, Chapter 690, Statutes of 2015) requires that schools provide reasonable accommodations to breastfeeding students on school campuses.

## SUPPORT

American Association of University Women of California  
 American Civil Liberties Union of California  
 American College of Obstetricians and Gynecologists  
 BreastfeedLA: The Breastfeeding Task Force of Greater Los Angeles  
 California Federation of Teachers  
 California Teachers Association  
 California WIC Association

California Women's Law Center  
Children Now  
County Health Executives Association of California  
First 5 California  
Health Officers Association of California  
International Board of Lactation Consultant Examiner (IBLCE)  
Nursing Mothers Counsel, Inc.  
Student Senate for California Community Colleges  
The Women's Foundation of California, Women's Policy Institute  
University of California Student Association

**OPPOSITION**

None received

**-- END --**