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**REPORT ON LEGISLATION BY
THE SEX AND LAW COMMITTEE**

**A.7202-A
S.5183**

**M. of A. Gunther
Sen. Hannon**

AN ACT to amend the public health law, in relation to the breastfeeding mother's bill of rights

THIS BILL IS APPROVED

The Sex and Law Committee of the New York City Bar Association supports A.7202-A/S.5183, which would amend the Breastfeeding Mother's Bill of Rights ("BMBOR")¹ to include notice of the rights established by Section 206-c of the New York State Labor Law (the "Expressing at Work Bill"). We applaud the New York State Legislature for the passage of the BMBOR, as well as the Expressing at Work Bill, and the State's ongoing commitment to increasing the rates of breastfeeding among new mothers in New York State. We believe, however, that to realize its full intent, the BMBOR should be amended to inform new mothers of their rights to express breast milk in the workplace.

BREAST MILK IS BEST

State laws across the country, along with federal legislation,² reflect the consensus view that breast milk is the best and most complete source of nutrition for infants. Both the American Academy of Pediatrics³ and the U.S. Surgeon General⁴ recommend that babies be exclusively breastfed for the first six months of life, and that breastfeeding continue through the first year, because breast milk contains the ideal combination of carbohydrates, proteins, and fats, as well as the digestive enzymes, minerals, vitamins, and hormones that infants require.⁵ Mothers who

¹ N.Y. Publ. Health L. § 2505-a.

² See 29 U.S.C. 207(r). Effective March 23, 2010, the Patient Protection and Affordable Care Act amended the Fair Labor Standards Act to require employers to provide a nursing mother reasonable break time to express breast milk after the birth of her child and to provide a place for an employee to express breast milk.

³ American Academy of Pediatrics, Breastfeeding and the Use of Human Milk Policy Statement, 129 Pediatrics 3, e832 (2012), found at <http://pediatrics.aappublications.org/content/129/3/e827.full.pdf+html> (last visited June 9, 2015).

⁴ HHS Blueprint for Action on Breastfeeding, Department of Health and Human Services Office on Women's Health, found at <https://www.womenshealth.gov/archive/breastfeeding/programs/blueprints/bluprntbk2.pdf> (last visited June 9, 2015).

⁵ Id.

wish to breastfeed, however, continue to face significant challenges. Undoubtedly, foremost among these challenges is the transition to work outside the home.

In 2014, over 57% of mothers with an infant under one year old were participating in the national work force.⁶ Full-time employment at 12 weeks postpartum is one of the strongest predictors for the discontinuance of breastfeeding: working moms nurse an average of 16 weeks, whereas nonworking moms nurse an average of 25 weeks.⁷ In a September 2009 letter, the New York State Department of Health Commissioner Richard F. Daines cited the importance of breastfeeding and acknowledged New York State's low percentage of breastfeeding mothers at three months and six months after birth.⁸ Research suggests that the lack of support for breastfeeding mothers at work contributes to the decline in breastfeeding when new mothers return to work.⁹ Conversely, when mothers' breastfeeding efforts are supported in the workplace, working mothers breastfeed at rates comparable to stay-at-home mothers.¹⁰ This challenge may be particularly acute for low-income women, among whom breastfeeding rates are far lower than for middle and upper-income women¹¹ and for whom, if they are working in non-professional jobs, it may be even more difficult to pump breast milk without access to private areas or unrestricted break time.

NEW YORK LAW RECOGNIZES THE IMPORTANCE OF BREASTFEEDING

The New York State Legislature addressed concerns about continued breastfeeding among working mothers when it passed the Expressing at Work Bill in January 2007. Pursuant to this bill, which was supported by our Committee,¹² a mother's right to express milk at work in New York is protected under Section 206-c of the New York State Labor Law. Under this section, employers are required to provide reasonable time and private space to their employees who wish to express milk during the workday.¹³ Employers are also prohibited from discriminating against employees who choose to express breast milk in the workplace.¹⁴ New

⁶ Employment Characteristics of Families in 2014, United States Department of Labor Bureau of Labor Statistics, found at <http://www.bls.gov/news.release/famee.nr0.htm> (last visited June 9, 2015).

⁷ CBS News Correspondent Emily Senay, January 24, 2001, New Study Finds Breastfeeding Delivers Health Benefits for Children.

⁸ Call to Increase Breastfeeding in New York State, State of New York Department of Health, found at <http://mail.ny.acog.org/website/DainesIncreaseBreastfeeding.pdf> (last visited June 9, 2015).

⁹ Id.

¹⁰ See Rona Cohen and Marsha B. Mrtek, The Impact of Two Corporate Lactation Programs on the Incidence and Duration of Breast-feeding by Employed Mothers, American Journal of Health Promotion, July/August 1994, Vol. 8, No. 6, located at <http://www.mchservicesinc.com/art2.pdf> (last visited June 9, 2015).

¹¹ According to a 2008 report by the Centers for Disease Control, the proportion of infants who were ever breastfed was lower among infants whose families had lower income (57%) compared with infants whose families had higher income status (74%). See Breastfeeding in the United States: Findings from the National Health and Nutrition Examination Surveys, 1996-2006, located at <http://www.cdc.gov/nchs/data/databriefs/db05.pdf> (last visited June 9, 2015).

¹² See http://www.nycbar.org/pdf/report/expressed_breast_milk.pdf (last visited June 9, 2015).

¹³ N.Y.S. Labor L. § 206-c.

¹⁴ Id.

York is now one of twenty-seven states that offer protections to nursing mothers in the workplace.¹⁵

In 2009, the Legislature passed the BMBOR. The BMBOR mandates that maternal health care facilities provide information to mothers who have recently given birth about the benefits of breastfeeding and their rights to breastfeed.¹⁶ The bill does not, however, explicitly require the dissemination of information about the rights of nursing mothers to pump breast milk in the workplace pursuant to the 2007 law. Most fundamental among the enumerated rights in the BMBOR is the right to “breastfeed your baby in any location, public or private, where you are otherwise authorized to be.”¹⁷ In addition, the BMBOR provides that women have the right to “receive information about safely collecting and storing” breast milk.¹⁸ For those working mothers who choose to breastfeed their infants, information about the right to breastfeed or express milk in the workplace is essential to exercising these important rights and increasing New York’s percentage of breastfed infants. Without important information about the right to breastfeed or express milk in the workplace, these post-discharge rights contained in the BMBOR will prove meaningless to the many working mothers who wish to continue to breastfeed their children. As more working mothers learn of their right to express milk at work, more will choose to breastfeed their babies while working.¹⁹

Thus, given the well-established health benefits of breast milk for infants, and New York’s long-standing support of the rights of nursing mothers, we strongly urge the passage of A.7202-A/S.5183 to enhance awareness through the BMBOR of the important rights established by the Expressing at Work Bill.

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¹⁵ Breastfeeding State Laws, National Conference of State Legislatures, March 31, 2015, found at <http://www.ncsl.org/research/health/breastfeeding-state-laws.aspx> (last visited June 9, 2015).

¹⁶ See N.Y. Publ. Health L. § 2505-a(3).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Although information about Labor-Law § 206-c can be found on the Department of Health and Department of Labor websites using various searches, there can be no question that including such information in the BMBOR itself is the most direct and effective way to reach nursing mothers.