

Senate Bill 321

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies definition of "nudity" for purposes of obscenity statutes to exclude breast that is uncovered or less than opaquely covered for purpose of breast-feeding child.

Requires employers of 25 or more employees to provide unpaid rest periods to employees to express milk if providing rest periods does not cause undue hardship on operation of employer's business. Requires employer to make reasonable efforts to provide private location where employee can express milk. Provides civil penalty.

A BILL FOR AN ACT

1 Relating to breast-feeding; creating new provisions; and amending ORS 167.060, 653.077 and 653.256.

2 **Be It Enacted by the People of the State of Oregon:**

3 **SECTION 1.** ORS 167.060 is amended to read:

4 167.060. As used in ORS 167.060 to 167.095, unless the context requires otherwise:

5 (1) "Advertising purposes" means purposes of propagandizing in connection with the commercial
6 sale of a product or type of product, the commercial offering of a service, or the commercial exhibi-
7 tion of an entertainment.

8 (2) "Displays publicly" means the exposing, placing, posting, exhibiting, or in any fashion dis-
9 playing in any location, whether public or private, an item in such a manner that it may be readily
10 seen and its content or character distinguished by normal unaided vision viewing it from a public
11 thoroughfare, depot or vehicle.

12 (3) "Furnishes" means to sell, give, rent, loan or otherwise provide.

13 (4) "Minor" means an unmarried person under 18 years of age.

14 (5) "Nudity" means uncovered, or less than opaquely covered, post-pubertal human genitals,
15 pubic areas, the post-pubertal human female breast below a point immediately above the top of the
16 areola, or the covered human male genitals in a discernibly turgid state. For purposes of this defi-
17 nition, a female breast is considered uncovered if the nipple only or the nipple and areola only are
18 covered. **"Nudity" does not include a post-pubertal human female breast that is uncovered,
19 or less than opaquely covered, for the purpose of breast-feeding a child.**

20 (6) "Obscene performance" means a play, motion picture, dance, show or other presentation,
21 whether pictured, animated or live, performed before an audience and which in whole or in part
22 depicts or reveals nudity, sexual conduct, sexual excitement or sadomasochistic abuse, or which in-
23 cludes obscenities or explicit verbal descriptions or narrative accounts of sexual conduct.

24 (7) "Obscenities" means those slang words currently generally rejected for regular use in mixed
25 society, that are used to refer to genitals, female breasts, sexual conduct or excretory functions or
26 products, either that have no other meaning or that in context are clearly used for their bodily,
27 sexual or excretory meaning.
28

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (8) “Public thoroughfare, depot or vehicle” means any street, highway, park, depot or transpor-
 2 tation platform, or other place, whether indoors or out, or any vehicle for public transportation,
 3 owned or operated by government, either directly or through a public corporation or authority, or
 4 owned or operated by any agency of public transportation that is designed for the use, enjoyment
 5 or transportation of the general public.

6 (9) “Somasochistic abuse” means flagellation or torture by or upon a person who is nude or
 7 clad in undergarments or in revealing or bizarre costume, or the condition of being fettered, bound
 8 or otherwise physically restrained on the part of one so clothed.

9 (10) “Sexual conduct” means human masturbation, sexual intercourse, or any touching of the
 10 genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether
 11 alone or between members of the same or opposite sex or between humans and animals in an act
 12 of apparent sexual stimulation or gratification.

13 (11) “Sexual excitement” means the condition of human male or female genitals or the breasts
 14 of the female when in a state of sexual stimulation, or the sensual experiences of humans engaging
 15 in or witnessing sexual conduct or nudity.

16 **SECTION 2.** ORS 653.077 is amended to read:

17 653.077. (1) **As used in this section:**

18 (a) **“Reasonable efforts” means efforts that do not impose an undue hardship on the op-**
 19 **eration of an employer’s business.**

20 (b) **“Undue hardship” means significant difficulty or expense when considered in relation**
 21 **to the size, financial resources, nature and structure of the employer’s business.**

22 [(1)] (2)(a) An employer [may] shall provide reasonable unpaid rest periods to accommodate an
 23 employee who needs to express milk for her child.

24 (b) The employee shall notify the employer that the employee intends to express milk upon re-
 25 turning to work. [*The employee shall, if feasible, take the rest periods to express milk at the same time*
 26 *as rest periods that are otherwise provided to the employee. The employer may provide the employee*
 27 *up to 60 minutes in rest periods per eight-hour shift to express milk.*]

28 (c) **Unless otherwise agreed to by the employer and the employee, the employer shall**
 29 **provide the employee a 30-minute rest period to express milk during each four-hour work**
 30 **period, or the major part of a four-hour work period, to be taken by the employee approxi-**
 31 **mately in the middle of the work period.**

32 (d) **The employee shall, if feasible, take the rest periods to express milk at the same time**
 33 **as the rest periods or meal periods that are otherwise provided to the employee.**

34 (e) If the employer is required by law or contract to provide the employee with paid rest peri-
 35 ods, the employer shall treat the rest periods used by the employee for expressing milk as paid rest
 36 periods, up to the amount of time the employer is required to provide as paid rest periods. If an
 37 employee takes unpaid rest periods, the employer may allow the employee to work before or after
 38 her normal shift to make up the amount of time used during the unpaid rest periods. If the employee
 39 does not work to make up the amount of time used during the unpaid rest periods, the employer is
 40 not required to compensate the employee for that time.

41 (3) **The employee is entitled to use any paid accrued sick leave, paid accrued vacation**
 42 **leave or other paid leave that the employer offers in lieu of vacation leave during the rest**
 43 **periods used by the employee to express milk.**

44 (4) **When an employer’s contribution to an employee’s health insurance is influenced by**
 45 **the number of hours the employee works, the employer shall treat any unpaid rest periods**

1 **used by the employee to express milk as paid work time for the purpose of measuring the**
 2 **number of hours the employee works.**

3 **(5) An employer is not required to provide rest periods under this section if to do so**
 4 **would impose an undue hardship on the operation of the employer's business.**

5 [(2)(a)] **(6)(a)** An employer [may] **shall make reasonable efforts to** provide a [room or other]
 6 location, other than a public restroom or toilet stall, in close proximity to the employee's work area
 7 for the employee to express milk in private.

8 (b) The [room or other] location may include, **but is not limited to:**

9 (A) The employee's work area if the work area meets the requirements of paragraph (a) of this
 10 subsection; [or]

11 **(B) A room connected to a public restroom, such as a lounge, if the room allows the**
 12 **employee to express milk in private; or**

13 [(B)] (C) A child care facility in close proximity to the employee's work location where the
 14 employee can express milk in private.

15 [(3)] **(7)** An employer may allow an employee to temporarily change job duties if the employee's
 16 regular job duties do not allow her to express milk.

17 [(4)] **(8)** This section applies only to an employer whose employee is expressing milk for a child
 18 18 months of age or younger.

19 [(5)] **(9)** This section applies only to employers who employ 25 or more employees in the State
 20 of Oregon for each working day during each of 20 or more calendar workweeks in the year in which
 21 the rest periods are to be taken or in the year immediately preceding the year in which the rest
 22 periods are to be taken.

23 **(10) Notwithstanding ORS 653.020 (3), this section applies to individuals engaged in ad-**
 24 **ministrative, executive or professional work as described in ORS 653.020 (3).**

25 **(11) The Commissioner of the Bureau of Labor and Industries shall adopt rules to im-**
 26 **plement and enforce this section.**

27 **SECTION 3.** ORS 653.256 is amended to read:

28 653.256. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau
 29 of Labor and Industries may assess a civil penalty not to exceed \$1,000 against any person who
 30 willfully violates ORS 653.025, 653.030, 653.045, 653.050, 653.060, **653.077** or 653.261 or any rule
 31 adopted thereunder.

32 (2) Civil penalties authorized by this section shall be imposed in the manner provided in ORS
 33 183.745.

34 (3) All sums collected as penalties under this section shall be first applied toward reimbursement
 35 of costs incurred in determining the violations, conducting hearings under this section and ad-
 36 dressing and collecting [such] **the** penalties. The remainder, if any, of the sums collected as penalties
 37 under this section shall be paid over by the commissioner to the Department of State Lands for the
 38 benefit of the Common School Fund of this state. The department shall issue a receipt for the money
 39 to the commissioner.

40 **SECTION 4. The amendments to ORS 167.060, 653.077 and 653.256 by sections 1 to 3 of this**
 41 **2007 Act apply only to conduct occurring on or after the effective date of this 2007 Act.**