Alan Van Dyne *Legislative Service Commission*

S.B. 41

126th General Assembly
(As Introduced)

Sens. Clancy, Prentiss, Fedor, Cates, Spada, Wilson, Jr., Wachtmann, Mumper, Armbruster, Jacobson, Austria, Coughlin, Goodman, Gardner, Brady, Hagan, Miller

BILL SUMMARY

- Provides that a mother is entitled to breast-feed her baby in any location of a place of public accommodation.

CONTENT AND OPERATION

Breast-feeding permitted in places of public accommodation

The bill provides that 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]

[1] *This is the same definition of "place of public accommodation" found in R.C. 4112.01. Only one Ohio Supreme Court case has addressed the places the Legislature may have intended to encompass in the omnibus clause of this statute ("any other place of public accommodation or amusement of which the accommodations, advantages, facilities, or privileges are available to the public"). In Ohio Civ. Rights Com. v. Lysyj (1974), 38 Ohio St.2d 217, 220, the Court concluded that a trailer park that offers its facilities and accommodations, including rental space for trailers and mobile homes, to the public on a nonsocial, sporadic, impersonal, and nongratuitous basis is a place of "public accommodation." In reaching this conclusion, the Court looked at all of the places specifically delineated in the statute and found that they all displayed certain similar attributes that the trailer park displayed--specifically, each place offered accommodations, advantages, facilities, or privileges to a substantial public as well as*

COMMENT

The United States Sixth Circuit Court of Appeals ruled in 2004 that a Wal-Mart policy that prohibits women from breast-feeding infants in public 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."

This decision was handed down after three women alleged that Wal-Mart had discriminated against them on the basis of sex and age under Ohio law because Wal-Mart employees advised the women that they could breast-feed only in restrooms. The women 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 U.S. District Court in Dayton granted the retailer's motion for summary judgment. 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

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accommodations to the public on a nonsocial, sporadic, impersonal, and nongratuitous basis.

[2] *Derungs, Gore, Baird v. WAL-MART STORES, INC.*, 374F.3d 428, 440 (6th Cir. 2004).

[3] *42 U.S.C. §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)).*

because it had been overruled by statute and subsequent Supreme Court decisions. The Sixth Circuit Court disagreed and upheld the district court's ruling.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-01-05	p. 140

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