

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: SB 650

INTRODUCER: Senator Book

SUBJECT: Retail Establishments and Shopping Centers

DATE: March 24, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>TR</u>	_____
3.	_____	_____	<u>RC</u>	_____

**I. Summary:**

SB 650 requires at least one parking space to be designated for use by expectant mothers in parking lots of retail establishments and shopping centers containing more than 100 parking spaces. Expectant mother parking spaces must be located as closely as possible to parking spaces designated for use by persons with disabilities.

The bill directs the Department of Transportation to establish requirements for signage and markings of parking spaces designated for use by expectant mothers.

The bill also requires retail establishments and shopping centers containing a parking lot with more than 100 parking spaces to provide and maintain a breastfeeding area located within the establishment or shopping center. The breastfeeding area must be a room or other location, where a woman may breastfeed or express breast milk. The area must be shielded from view, free from intrusion, and accessible for persons with disabilities, including those who use a wheelchair. The area must also have a door that can be locked and a place to sit. The bill specifies that the breastfeeding area may not be located in a restroom or dressing room.

The bill takes effect July 1, 2017.

**II. Present Situation:**

**Florida Law Relating to Breastfeeding**

The Centers for Disease Control and Prevention (CDC) reports that approximately 224,000 babies were born in Florida in 2015,<sup>1</sup> and previous studies estimate between 70-80% of the

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<sup>1</sup> The Centers for Disease Control and Prevention, *National Vital Statistics Reports, Vol. 65, No. 3*, (June 2, 2016), available at [https://www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr65\\_03.pdf](https://www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr65_03.pdf) (last visited March 24, 2017).

babies born in Florida are breastfed at least once after birth.<sup>2</sup>

Florida law acknowledges “breastfeeding a baby is an important and basic act of nurture which must be encouraged in the interests of maternal and child health and family values.”<sup>3</sup> In furtherance of this goal, mothers in Florida have the affirmative right to breastfeed in any public or private location where the mother is authorized to be.<sup>4</sup> Mothers in Florida are also legally protected from being charged with sexual offenses for breastfeeding, such as lewdness,<sup>5</sup> indecent exposure,<sup>6</sup> and sexual conduct.<sup>7</sup>

### **Federal Law Relating to Breastfeeding**

The federal Fair Labor Standards Act<sup>8</sup> requires employers to provide nursing employees a reasonable amount of break time to express breast milk for 1 year after the birth of the child. The employer is also required to provide the nursing mother with a place, other than a bathroom, to express breast milk. The place must be shielded from view and intrusion by co-workers and the public. However, an employer is only required to provide the space for the duration of time the space may be needed by an employee, and the law does not apply to employers that employ less than 50 employees if the requirements would impose undue hardship on the employer.<sup>9</sup>

### **Designated Parking Spaces for Expectant Mothers**

Unless an expectant mother qualifies for a disabled parking permit, Florida law does not currently require parking accommodations to be made for expectant mothers. However, businesses may choose to designate a parking space for expectant mothers. The University of Central Florida allows faculty, staff, and students to obtain an expectant mother parking space in their third trimester of pregnancy.<sup>10</sup> The county of Miami-Dade issues “baby stroller permits” for individuals traveling with a baby and a stroller. The baby stroller permit is issued until one month before the child’s third birthday and allows individuals with the permit to park in spaces designated for baby stroller parking throughout participating cities within the county.<sup>11</sup>

### **Designated Parking Spaces for Individuals with Disabilities**

The federal Americans with Disabilities Act (ADA) requires businesses to make reasonable accommodations for persons with disabilities.<sup>12</sup> Businesses must adhere to specific design and

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<sup>2</sup> National Immunization Surveys provided by The Centers for Disease Control and Prevention include breastfeeding data and statistics by state. See [https://www.cdc.gov/breastfeeding/data/nis\\_data/](https://www.cdc.gov/breastfeeding/data/nis_data/) (last visited March 24, 2017).

<sup>3</sup> Section 383.015, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 800.02, F.S.

<sup>6</sup> Section 800.03, F.S.

<sup>7</sup> Section 775.0847, F.S.

<sup>8</sup> See 29 U.S.C. 201, *et seq.*

<sup>9</sup> U.S. Department of Labor Wage and Hour Division, *Fact Sheet #73: Break Time for Nursing Mothers under the FLSA* (August 2013), available at <https://www.dol.gov/whd/regs/compliance/whdfs73.pdf> (last visited March 24, 2017).

<sup>10</sup> <https://womenfaculty.afia.ucf.edu/2015/11/10/ucf-expectant-mothers-parking-application/>

<sup>11</sup> <http://www.miamidade.gov/information/baby-stroller-permit.asp>

<sup>12</sup> See 42 U.S.C. 12101-12213.

construction standards that promote accessibility.<sup>13</sup> For instance, the ADA requires accessible seating, entryways, and parking spaces to be provided for disabled individuals that use wheelchairs.

The ADA requires a minimum number of designated accessible parking spaces to be designated for persons with disabilities based on the total number of parking spaces in a parking lot. The ADA parking space requirements are summarized in the following table:

Total Number of Spaces in Parking Lot	Minimum Number of Accessible Spaces
1 to 25	
26 to 50	1
51 to 75	2
76 to 100	3
101 to 150	4
151 to 200	5
201 to 300	6
301 to 400	7
401 to 500	8
501 to 1000	9
1001 and over	20, plus 1 for each 100, or fraction thereof, – over 1000 <sup>14</sup>

Florida incorporates the federal ADA accessibility requirements in the Florida Americans With Disabilities Accessibility Implementation Act (the act)<sup>15</sup> and the Florida Accessibility Code for Building Construction<sup>16</sup> in order to establish standards that promote accessibility for persons with disabilities. The standards apply to buildings, structures, and facilities in the state<sup>17</sup> and are enforced by local governments.<sup>18</sup>

The act also establishes state standards for providing accessible parking spaces to persons with disabilities. Accessible parking spaces must be designed and marked for the exclusive use of individuals who have been issued a disabled parking permit by the Department of Highway Safety and Motor Vehicles (DHSMV).<sup>19</sup> For places with multiple entrances or multiple retail stores, the act requires accessible parking spaces to be dispersed in order to ensure disabled parking spaces are nearest to an accessible entrance.<sup>20</sup>

Accessible parking spaces must be clearly distinguishable as spaces designated for persons with disabilities. Accessible parking spaces are required to be at least 12 feet wide, prominently

<sup>13</sup> U.S. Department of Justice, *2010 ADA Standards for Accessible Design* (Sept. 15, 2010) available at <https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm> (last visited March 24, 2017).

<sup>14</sup> *Id.* at Table 208.2 Parking Spaces.

<sup>15</sup> See ss. 553.501-553.513, F.S.

<sup>16</sup> Section 553.503, F.S.

<sup>17</sup> Section 553.504, F.S.

<sup>18</sup> See s. 553.513, F.S.

<sup>19</sup> Section 553.5041(3), F.S.

<sup>20</sup> Section 553.5041(4), F.S.

outlined in blue ink, and located near an accessible route so users are not compelled to walk or wheel behind other parked vehicles. A permanent sign, approved by the Department of Transportation, must be posted at each parking space designated for use by persons with disabilities. The sign must bear the international symbol of accessibility and must also be captioned: “PARKING BY DISABLED PERMIT ONLY.”<sup>21</sup>

In addition to the ADA requirements, the act sets forth additional standards for the number of accessible parking spaces as follows:

- One accessible parking space in the immediate vicinity of a publicly owned or leased building that houses a governmental entity or a political subdivision;
- One accessible parking space for each 150 metered on-street parking spaces provided by state-agencies and political subdivisions; and
- The number of parking spaces for persons who have disabilities must be increased on the basis of demonstrated and documented need.<sup>22</sup>

### ***Disabled Parking Permits in Florida***

The DHSMV is tasked with issuing disabled parking permits in the state of Florida.<sup>23</sup> An individual with a disability, causing long-term or temporary mobility impairment, must apply to the DHSMV in order to receive a disabled parking permit. The application requires a licensed physician to certify the applicant’s claim of being disabled.<sup>24</sup>

To qualify for a permanent disabled parking permit, which may be issued for a period of up to 4 years, the applicant must have a long-term disability. The application requires a licensed physician to certify the applicant is legally blind or has any of the following disabilities that render the applicant unable to walk 200 feet without stopping to rest:

- Inability to walk without the use of an assistive device, such as a brace, cane crutch, or prosthetic device;
- The need to permanently use a wheelchair;
- Restriction by lung disease to the extent the individual’s forced (respiratory) expiratory volume for 1 second, when measured by spirometry, is less than 1 liter, or the individual’s arterial oxygen is less than 60mm/hg on room air at rest;
- Use of portable oxygen; or
- Restriction by cardiac condition to the extent that the person’s functional limitations are classified in certain severity classes set by the American Heart Association.<sup>25</sup>

To qualify for a temporary disabled parking permit, a licensed physician must certify the applicant has a temporary disability. A temporary disability is one that exists for a period of 6 months or less, and limits or impairs the applicant’s sight or ability to walk. The DHSMV issues temporary disabled parking permits for a period not to exceed 6 months.<sup>26</sup> Under current law, an expectant mother, with a temporary inability to walk caused by her pregnancy, may be eligible to

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<sup>21</sup> Sections 553.5041(5) and (6), F.S.

<sup>22</sup> Section 553.5041(4), F.S.

<sup>23</sup> See s. 320.0848, F.S.

<sup>24</sup> Section 320.0848(1)(b)2., F.S.

<sup>25</sup> Section 320.0848(2), F.S.

<sup>26</sup> Section 320.0848(3), F.S.

park in designated spaces located close to the entrance of certain buildings if she were to apply and receive a temporary disabled parking permit from the DHSMV.

The same accessible parking spaces are available for use by individuals issued permanent disabled parking permits and individuals issued temporary disabled parking permits. Disabled parking permits must be displayed on a motor vehicle parked in an accessible parking space designated for persons with disabilities.<sup>27</sup> Individuals approved for permanent disabled parking permits receive a placard or specialty license plate containing the international symbol of accessibility.<sup>28</sup> Individuals approved for a temporary disabled parking permit receive placards of a different color than the permanent disabled parking permits placards and temporary permits must conspicuously display the expiration date of the permit.<sup>29</sup>

It is a misdemeanor of the first degree for an individual to knowingly provide false or misleading information on an application for a disabled parking permit.<sup>30</sup> It is a misdemeanor of the second degree for an individual to fraudulently obtain or unlawfully display a disabled parking permit while occupying a disabled parking space or access aisle.<sup>31</sup> Florida law authorizes law enforcement officers and parking enforcement officers to confiscate a disabled parking permit from any person who fraudulently obtains or uses the permit. A disabled parking permit may also be confiscated if it is expired, defaced, or has been reported as lost or stolen.<sup>32</sup>

### III. Effect of Proposed Changes:

**Section 1** of the bill requires at least one parking space to be designated for expectant mothers in parking lots of retail establishments and shopping centers containing more than 100 parking spaces. The expectant mother parking spaces must be located as close as possible to parking spaces designated for use by persons with disabilities. The bill specifies parking spaces designated for use by persons with disabilities shall take precedence over parking spaces designated for use by expectant mothers.

The bill directs the Department of Transportation to establish requirements for signage and markings to designate the parking spaces for use by expectant mothers.

**Section 2** of the bill amends the state's goal of encouraging maternal and child health and family values by requiring retail establishments or shopping centers having a parking lot containing more than 100 parking spaces to provide and maintain a breastfeeding area. A "breastfeeding area" is "a room or other location in a retail establishment or shopping center which:

- Provides a location shielded from view and free from intrusion by the public where a woman may breastfeed or express breast milk;
- Has a door that can be locked;
- Includes a place to sit;

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<sup>27</sup> Sections 320.0848 (2) and (3), F.S.

<sup>28</sup> Section 320.0848 (2), F.S.

<sup>29</sup> Section 320.0848(3), F.S.

<sup>30</sup> Section 320.0848(6), F.S.

<sup>31</sup> Parking access aisles are reserved for the temporary, exclusive use of persons who have disabled parking permits and are subject to width and accessibility requirements. *See* ss. 320.0848(7) and 553.5041, F.S.

<sup>32</sup> Section 320.0848(8), F.S.

- Is readily accessible to and useable by persons with disabilities, including persons who use wheelchairs, as required under the Americans with Disabilities Act of 1990; and
- Is not located in a restroom or dressing room.”

**Section 3** of the bill provides an effective date of July 1, 2017.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Retail establishments and shopping centers with parking lots containing more than 100 parking spaces will incur costs associated with designating required parking spaces for expectant mothers and providing breastfeeding areas.

C. Government Sector Impact:

The Department of Transportation may incur costs associated with creating requirements for the signage and markings of expectant mother parking spaces.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

##### Expectant Mother Parking Spaces

The bill requires parking lots of shopping centers and retail establishments to designate at least one parking space for expectant mothers. Although the bill requires the Department of Transportation to create signage and markings requirements, the bill does not specify which party is responsible for designating and maintaining the expectant mother parking space. Additionally, the bill does not provide definitions for the terms “shopping center” or “retail

establishment.” Without defining these terms, it is unclear which businesses are subject to the requirements of the bill.

#### Breastfeeding Area

The bill requires shopping centers and retail establishments with more than 100 parking spaces to provide breastfeeding areas. Without defining “shopping center” or “retail establishment” it is unclear which businesses are subject to the bill, especially if multiple businesses exist within one shopping center. The bill does not address whether a building’s developer, owner, or tenant is subject to the breastfeeding area requirements. For this reason, it is unclear if the bill will conflict with existing leasing or development contracts that do not currently provide a breastfeeding area.

#### Enforcement

The bill does not provide a mechanism to enforce the expectant mother parking spaces or the breastfeeding areas required by the bill. Unlike existing laws regulating disabled parking spaces, the bill does not make it a crime to improperly park in spaces designated for expectant mothers. The bill also does not address which entity will ensure a breastfeeding area is provided or if a penalty would be imposed against a shopping center or retail establishment that fails to provide a breastfeeding area that meets the criteria required by the bill.

#### Effective Date

The effective date of July 1, 2017, may not provide sufficient time to implement the requirements of the bill. The Department of Transportation will likely need additional time to develop signage and markings for the expectant mother parking spaces. Shopping centers and retail establishments subject to the bill may also need additional time to establish breastfeeding areas that are accessible to individuals with disabilities.

### **VIII. Statutes Affected:**

This bill substantially amends sections 316.1966 and 383.015 of the Florida Statutes.

### **IX. Additional Information:**

#### **A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

#### **B. Amendments:**

None.