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To: Judiciary A

HOUSE BILL NO. 527

1 AN ACT TO CREATE NEW SECTION 17-25-7, MISSISSIPPI CODE OF
2 1972, TO PREEMPT LOCAL REGULATIONS OF PUBLIC BREAST-FEEDING; TO
3 ASSERT AN AFFIRMATIVE RIGHT TO BREAST-FEED AND TO PROVIDE CIVIL
4 PENALTIES FOR VIOLATION OF THAT RIGHT; TO AMEND SECTION 19-5-103,
5 MISSISSIPPI CODE OF 1972, TO CONFORM THERETO; TO AMEND SECTION
6 97-29-31, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT BREAST-FEEDING
7 DOES NOT CONSTITUTE INDECENT EXPOSURE; TO AMEND SECTIONS 97-35-3
8 AND 97-35-7, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
9 BREAST-FEEDING DOES NOT CONSTITUTE DISORDERLY CONDUCT; TO AMEND
10 SECTION 97-35-11, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
11 BREAST-FEEDING DOES NOT CONSTITUTE INDECENT EXPOSURE; TO AMEND
12 SECTION 97-35-15, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
13 BREAST-FEEDING DOES NOT CONSTITUTE ANY BREACH OF THE PEACE; TO
14 AMEND SECTION 13-5-23, MISSISSIPPI CODE OF 1972, TO ADD A MOTHER'S
15 BREAST-FEEDING STATUS AS AN EXCUSE FROM JURY SERVICE; AND FOR
16 RELATED PURPOSES.

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

18 **SECTION 1.** The following shall be codified as Section
19 17-25-7, Mississippi Code of 1972:

20 17-25-7. No county, municipality or other political
21 subdivision shall enact any ordinance restricting a woman's right
22 to breast-feed her child until such time as the state may
23 authorize a county, municipality or other political subdivision to
24 enact such an ordinance.

25 **SECTION 2.** (1) A mother may breast-feed her child in any
26 location, public or private, where the mother is otherwise
27 authorized to be, without respect to whether the mother's breast
28 or any part of it is covered during or incidental to the
29 breast-feeding.

30 (2) The chancery courts shall have the authority to enforce
31 the provisions of this section and shall have the authority to
32 issue injunctions and writs of mandamus to accomplish that
33 purpose. The court may impose a civil penalty upon any violator
34 in a sum not to exceed all reasonable expenses incurred by the

35 person or persons in bringing suit to enforce this section. If
36 the court finds that a violation was willful and knowing, the
37 court may impose a further civil penalty not to exceed One Hundred
38 Dollars (\$100.00).

39 **SECTION 3.** Section 19-5-103, Mississippi Code of 1972, is
40 amended as follows:

41 19-5-103. (1) In accordance with the provisions of Section
42 19-3-41, providing that additional powers may be conferred upon
43 the boards of supervisors, the board of supervisors of any county
44 bordering on the Gulf of Mexico and having two (2) judicial
45 districts and the board of supervisors of any county adjacent to
46 any county of this or any adjoining state wherein is located a
47 city having a population in excess of two hundred thousand
48 (200,000), according to the latest federal census, are hereby
49 empowered to promulgate, adopt and enforce ordinances which are
50 necessary and reasonable for the protection of public health and
51 the maintenance of order in relation to the advertisement, the
52 offering of services and the dispensation for compensation of
53 personal services in establishments known as massage parlors and
54 to promulgate, adopt and enforce ordinances which are necessary
55 and reasonable for the protection of public health and the
56 maintenance of order in relation to public displays of nudity.

57 (2) For the purposes of this section, the term "massage
58 parlor" shall mean any premises where a person manipulates, rubs,
59 caresses, touches, massages, kneads, palpates or otherwise
60 physically contacts the body or part or area of the body of
61 another person. The term "massage parlor" shall not include
62 gymnasias or other premises wherein persons engage in bona fide
63 athletic or conditioning activities, duly licensed barbershop,
64 beauty parlor, chiropractic clinic or other premises of a person
65 practicing a vocation or profession regulated and licensed by the
66 state.

67 For the purposes of this section, the term "nudity" means
68 uncovered, or less than opaquely covered, postpubertal human
69 genitals, pubic areas, the postpubertal human female breast below
70 a point immediately above the top of the areola, or the covered
71 human male genitals in a discernibly turgid state. For purposes
72 of this definition, a female breast is considered uncovered if the
73 nipple only or the nipple and areola only are uncovered, however,
74 the term "nudity" does not include a woman's breast-feeding of her
75 child whether or not the breast or any part of it is exposed as
76 any element of breast-feeding.

77 For the purposes of this section, the term "public display"
78 means the exposing, exhibiting, revealing, or in any fashion
79 displaying the nude human body or any representation thereof in
80 any location in such a manner that it may be readily seen by the
81 public by normal unaided vision and the term also means any play,
82 motion picture, dance, show or other presentation, whether
83 pictured, animated or live, performed before an audience and which
84 in whole or in part depicts or reveals nudity or sexual conduct.

85 (3) Ordinances adopted pursuant to this section shall
86 comport with the elements of due process and shall include but not
87 be limited to specificity, adequate notice, right to hearing,
88 right to counsel, right to appeal adverse findings to a judicial
89 authority and penalties rationally related to prohibited acts.

90 (4) Boards of supervisors proposing such ordinances shall
91 publish and post notice of such intentions not less than twenty
92 (20) days prior to the holding of a public hearing whereat the
93 purposes and substance of such ordinances shall be fully
94 discussed.

95 **SECTION 4.** Section 97-29-31, Mississippi Code of 1972, is
96 amended as follows:

97 97-29-31. A person who willfully and lewdly exposes his
98 person, or private parts thereof, in any public place, or in any
99 place where others are present, or procures another to so expose

100 himself, is guilty of a misdemeanor and, on conviction, shall be
101 punished by a fine not exceeding Five Hundred Dollars (\$500.00) or
102 be imprisoned not exceeding six (6) months, or both. It is not a
103 violation of this statute for a woman to breast-feed her child.

104 **SECTION 5.** Section 97-35-3, Mississippi Code of 1972, is
105 amended as follows:

106 97-35-3. (1) Whoever with intent to provoke a breach of the
107 peace, or under circumstances such that a breach of the peace may
108 be occasioned thereby:

109 (a) Crowds or congregates with others in or upon shore
110 protecting structure or structures, or a public street or public
111 highway, or upon a public sidewalk, or any other public place, or
112 in any hotel, motel, store, restaurant, lunch counter, cafeteria,
113 sandwich shop, motion picture theatre, drive-in, beauty parlor,
114 swimming pool area, or any sports or recreational area or place,
115 or any other place of business engaged in selling or serving
116 members of the public, or in or around any free entrance to any
117 such place of business or public building, or to any building
118 owned by another individual, or a corporation, or a partnership or
119 an association, and who fails or refuses to disperse and move on,
120 or disperse or move on, when ordered so to do by any law
121 enforcement officer of any municipality, or county, in which such
122 act or acts are committed, or by any law enforcement officer of
123 the State of Mississippi, or any other authorized person, or

124 (b) Insults or makes rude or obscene remarks or
125 gestures, or uses profane language, or physical acts, or indecent
126 proposals to or toward another or others, or disturbs or obstructs
127 or interferes with another or others, or

128 (c) While in or on any public bus, taxicab, or other
129 vehicle engaged in transporting members of the public for a fare
130 or charge, causes a disturbance or does or says, respectively, any
131 of the matters or things mentioned in paragraph (b) supra, to,
132 toward, or in the presence of any other passenger on said vehicle,

133 or any person outside of said vehicle or in the process of
134 boarding or departing from said vehicle, or any employee engaged
135 in and about the operation of such vehicle, or

136 (d) Refuses to leave the premises of another when
137 requested so to do by any owner, lessee, or any employee thereof,
138 shall be guilty of disorderly conduct, which is made a
139 misdemeanor, and, upon conviction thereof, shall be punished by a
140 fine of not more than Two Hundred Dollars (\$200.00), or
141 imprisonment in the county jail for not more than four (4) months,
142 or by both such fine and imprisonment.

143 (2) If any person shall be guilty of disorderly conduct as
144 defined herein and such conduct shall lead to a breach of the
145 peace or incite a riot in any of the places herein named, and as a
146 result of said breach of the peace or riot another person or
147 persons shall be maimed, killed or injured, then the person guilty
148 of such disorderly conduct as defined herein shall be guilty of a
149 felony, and upon conviction such person shall be imprisoned in the
150 Penitentiary not longer than ten (10) years.

151 (3) The act of breast-feeding shall not constitute
152 disorderly conduct.

153 (4) The provisions of this section are supplementary to the
154 provisions of any other statute of this state.

155 **SECTION 6.** Section 97-35-7, Mississippi Code of 1972, is
156 amended as follows:

157 97-35-7. (1) Whoever, with intent to provoke a breach of
158 the peace, or under such circumstances as may lead to a breach of
159 the peace, or which may cause or occasion a breach of the peace,
160 fails or refuses to promptly comply with or obey a request,
161 command, or order of a law enforcement officer, having the
162 authority to then and there arrest any person for a violation of
163 the law, to:

164 (a) Move or absent himself and any vehicle or object
165 subject to his control from the immediate vicinity where the
166 request, command or order is given, or

167 (b) Arise, if lying or sitting down, and move to a
168 point designated by said officer outside the immediate area of, or
169 which is affected by the occurrences at, the place of issuing such
170 order, command, or request, or

171 (c) Refrain from lying down or sitting down at, or in
172 the immediate vicinity of, the place where said order, request or
173 command is given, or

174 (d) Refrain from obstructing, with his body or any part
175 thereof, or in any manner, the lawful movement or passage of any
176 vehicle, or

177 (e) Refrain from placing, or permitting, or cooperating
178 with another to place, his body or any part thereof, in front of
179 or behind any vehicle, in such manner as to interfere with, or
180 prevent its movement or block its path in lawful movement, or

181 (f) Refrain from chaining or tying or binding himself
182 or another to any object or person, or

183 (g) Unbind, unchain or loosen himself, or remove
184 himself, from any chain or other means whereby he may be prevented
185 from moving away from the place or the immediate vicinity where he
186 may be when such officer issues said order, request or command, or

187 (h) Walk or move to, enter and remain in, either or
188 both, as may be directed by such officer, any police or other
189 vehicle operated by any law enforcement officer or department, or
190 any other vehicle designated by such an officer, or

191 (i) Act or do or refrain from acting or doing as
192 ordered, requested or commanded by said officer to avoid any
193 breach of the peace at or near the place of issuance of such
194 order, request or command, shall be guilty of disorderly conduct,
195 which is made a misdemeanor and, upon conviction thereof, such
196 person or persons shall be punished by a fine of not more than

197 Five Hundred Dollars (\$500.00) or imprisonment in the county jail
198 for not more than six (6) months, or by both such fine and
199 imprisonment.

200 (2) Any person who causes, or aids, or encourages, or abets
201 another to violate, or in violating, any provision of subsection
202 (1) hereof, shall be guilty of disorderly conduct which is made a
203 misdemeanor and, upon conviction thereof, such person or persons
204 shall be punished by a fine of not more than Five Hundred Dollars
205 (\$500.00) or imprisonment in the county jail for not more than six
206 (6) months, or by both such fine and imprisonment.

207 (3) If any person alone or in concert with others violates
208 subsections (1) or (2) hereof, or both, under such circumstances
209 or in such a manner as to evince a willful and wanton disregard
210 for the life or safety of another and if as a result thereof
211 another person or persons be injured, maimed or killed, the person
212 or persons so violating subsections (1) or (2) hereof, or both,
213 shall be guilty of a felony and, upon conviction thereof, such
214 person or persons shall be imprisoned in the State Penitentiary
215 not longer than five (5) years or be fined not more than Two
216 Thousand Dollars (\$2,000.00), or both such fine and imprisonment.

217 (4) The act of breast-feeding shall not constitute
218 disorderly conduct.

219 (5) The provisions of this section are supplementary to the
220 provisions of any other statutes of this state.

221 **SECTION 7.** Section 97-35-11, Mississippi Code of 1972, is
222 amended as follows:

223 97-35-11. Any person who enters the dwelling house of
224 another, or the yard or curtilage thereof, or upon the public
225 highway, or any other place near such premises, and in the
226 presence or hearing of the family or the possessor or occupant
227 thereof, or of any member thereof, makes use of abusive, profane,
228 vulgar or indecent language, or is guilty of any indecent exposure
229 of his or her person at such place, shall be punished for a

230 misdemeanor. The act of breast-feeding shall not constitute
231 indecent exposure.

232 **SECTION 8.** Section 97-35-15, Mississippi Code of 1972, is
233 amended as follows:

234 97-35-15. (1) Any person who disturbs the public peace, or
235 the peace of others, by violent, or loud, or insulting, or
236 profane, or indecent, or offensive, or boisterous conduct or
237 language, or by intimidation, or seeking to intimidate any other
238 person or persons, or by conduct either calculated to provoke a
239 breach of the peace, or by conduct which may lead to a breach of
240 the peace, or by any other act, shall be guilty of a misdemeanor,
241 and upon conviction thereof, shall be punished by a fine of not
242 more than Five Hundred Dollars (\$500.00), or by imprisonment in
243 the county jail not more than six (6) months, or both.

244 (2) The act of breast-feeding shall not constitute a breach
245 of the peace.

246 (3) The provisions of this section are supplementary to the
247 provisions of any other statute of this state.

248 **SECTION 9.** Section 13-5-23, Mississippi Code of 1972, is
249 amended as follows:

250 **[Until January 1, 2007, this section shall read as follows:]**

251 13-5-23. All qualified persons shall be liable to serve as
252 jurors, unless excused by the court for one (1) of the following
253 causes:

254 (a) When the juror is ill, or when on account of
255 serious illness in the juror's family, the presence of the juror
256 is required at home,

257 (b) When the juror's attendance would cause a serious
258 financial loss to the juror or to the juror's business, * * *

259 (c) When the juror is under an emergency, fairly
260 equivalent to those mentioned in the foregoing paragraphs (a) and
261 (b), or

262 (d) When the potential juror is a mother who is
263 breast-feeding her child.

264 An excuse of illness under paragraph (a) may be made to the
265 clerk of court outside of open court by providing the clerk with
266 either a certificate of a licensed physician or an affidavit of
267 the juror, stating that the juror is ill or that there is a
268 serious illness in the juror's family. The test of an excuse
269 under paragraph (b) shall be whether, if the juror were
270 incapacitated by illness or otherwise for a week, some other
271 persons would be available or could reasonably be procured to
272 carry on the business for the week, and the test of an excuse
273 under paragraph (c) shall be such as to be the fair equivalent,
274 under the circumstances of that prescribed under paragraph (b).
275 In cases under paragraphs (b), (c) and (d), the excuse must be
276 made by the juror, in open court, under oath.

277 It shall be unlawful for any employer or other person to
278 persuade or attempt to persuade any juror to avoid jury service,
279 or to intimidate or to threaten any juror in that respect. So to
280 do shall be deemed an interference with the administration of
281 justice and a contempt of court and punishable as such.

282 But a tales juror, save when drawn and retained for the week,
283 shall not be compelled to serve two (2) days successively unless
284 the case in which the juror is impaneled continues longer than one
285 (1) day. Grand jurors shall serve until discharged by the court.

286 **[From and after January 1, 2007, this section shall read as**
287 **follows:]**

288 13-5-23. (1) All qualified persons shall be liable to serve
289 as jurors, unless excused by the court for one (1) of the
290 following causes:

291 (a) When the juror is ill and, on account of the
292 illness, is incapable of performing jury service; * * *

293 (b) When the juror's attendance would cause undue or
294 extreme physical or financial hardship to the prospective juror or
295 a person under his or her care or supervision; or

296 (c) When the potential juror is a mother who is
297 breast-feeding her child.

298 (2) An excuse of illness under subsection (1)(a) of this
299 section may be made to the clerk of court outside of open court by
300 providing the clerk with a certificate of a licensed physician,
301 stating that the juror is ill and is unfit for jury service, in
302 which case the clerk may excuse the juror. If the excuse of
303 illness is not supported by a physician's certificate, a judge of
304 the court for which the individual was called to jury service
305 shall decide whether to excuse an individual under subsection
306 (1)(a) of this section.

307 (3) (a) The test of an excuse under subsection (1)(b) of
308 this section for undue or extreme physical or financial hardship
309 shall be whether the individual would either:

310 (i) Be required to abandon a person under his or
311 her personal care or supervision due to the impossibility of
312 obtaining an appropriate substitute caregiver during the period of
313 participation in the jury pool or on the jury; or

314 (ii) Incur costs that would have a substantial
315 adverse impact on the payment of the individual's necessary daily
316 living expenses or on those for whom he or she provides the
317 principal means of support; or

318 (iii) Suffer physical hardship that would result
319 in illness or disease.

320 (b) "Undue or extreme physical or financial hardship"
321 does not exist solely based on the fact that a prospective juror
322 will be required to be absent from his or her place of employment
323 or business.

324 (c) A judge of the court for which the individual was
325 called to jury service shall decide whether to excuse an
326 individual under subsection (1)(b) of this section.

327 (d) A person asking to be excused based on a finding of
328 undue or extreme physical or financial hardship must take all
329 actions necessary to have obtained a ruling on that request by no
330 later than the date on which the individual is scheduled to appear
331 for jury duty.

332 (e) A person asking a judge to grant an excuse under
333 subsection (1)(b) of this section shall be required to provide the
334 judge with documentation such as, but not limited to, federal and
335 state income tax returns, medical statements from licensed
336 physicians, proof of dependency or guardianship and similar
337 documents, which the judge finds to clearly support the request to
338 be excused. Failure to provide satisfactory documentation shall
339 result in a denial of the request to be excused.

340 (f) In cases under subsection (1)(c) of this section,
341 the excuse must be made by the juror in open court under oath.

342 (4) After two (2) years, a person excused from jury service
343 shall become eligible once again for qualification as a juror
344 unless the person was excused from service permanently. A person
345 is excused from jury service permanently only when the deciding
346 judge determines that the underlying grounds for being excused are
347 of a permanent nature.

348 (5) A tales juror shall not be compelled to serve two (2)
349 days successively unless the case in which the juror is impaneled
350 continues longer than one (1) day. Grand jurors shall serve until
351 discharged by the court.

352 **SECTION 10.** This act shall take effect and be in force from
353 and after its passage.