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To: Judiciary A

HOUSE BILL NO. 527
(As Passed the House)

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; TO REQUIRE
16 THE STATE BOARD OF HEALTH TO PROMULGATE REGULATIONS FOR CHILD-CARE
17 FACILITIES TO PROMOTE BREAST-FEEDING BY THE MOTHERS OF THE
18 CHILDREN BEING CARED FOR; TO AMEND SECTION 43-20-8, MISSISSIPPI
19 CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

21 **SECTION 1.** It is the intent of the Legislature to proclaim
22 that breast milk is life sustaining and the perfect food to ensure
23 optimal growth, development and survival of Mississippi children.

24 **SECTION 2.** The following shall be codified as Section
25 17-25-7, Mississippi Code of 1972:

26 **17-25-7.** No county, municipality or other political
27 subdivision shall enact any ordinance restricting a woman's right
28 to breast-feed her child until such time as the state may
29 authorize a county, municipality or other political subdivision to
30 enact such an ordinance.

31 **SECTION 3.** (1) A mother may breast-feed her child in any
32 location, public or private, where the mother is otherwise
33 authorized to be, without respect to whether the mother's breast
34 or any part of it is covered during or incidental to the
35 breast-feeding providing there is appropriate discretion used.

36 (2) The chancery courts shall have the authority to enforce
37 the provisions of this section and shall have the authority to
38 issue injunctions and writs of mandamus to accomplish that
39 purpose. The court may impose a civil penalty upon any violator
40 in a sum not to exceed all reasonable expenses incurred by the
41 person or persons in bringing suit to enforce this section. If
42 the court finds that a violation was willful and knowing, the
43 court may impose a further civil penalty not to exceed One Hundred
44 Dollars (\$100.00).

45 **SECTION 4.** Section 19-5-103, Mississippi Code of 1972, is
46 amended as follows:

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

63 (2) For the purposes of this section, the term "massage
64 parlor" shall mean any premises where a person manipulates, rubs,
65 caresses, touches, massages, kneads, palpates or otherwise
66 physically contacts the body or part or area of the body of
67 another person. The term "massage parlor" shall not include
68 gymnasias or other premises wherein persons engage in bona fide

69 athletic or conditioning activities, duly licensed barbershop,
70 beauty parlor, chiropractic clinic or other premises of a person
71 practicing a vocation or profession regulated and licensed by the
72 state.

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

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

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

96 (4) Boards of supervisors proposing such ordinances shall
97 publish and post notice of such intentions not less than twenty
98 (20) days prior to the holding of a public hearing whereat the
99 purposes and substance of such ordinances shall be fully
100 discussed.

101 **SECTION 5.** Section 97-29-31, Mississippi Code of 1972, is
102 amended as follows:

103 97-29-31. A person who willfully and lewdly exposes his
104 person, or private parts thereof, in any public place, or in any
105 place where others are present, or procures another to so expose
106 himself, is guilty of a misdemeanor and, on conviction, shall be
107 punished by a fine not exceeding Five Hundred Dollars (\$500.00) or
108 be imprisoned not exceeding six (6) months, or both. It is not a
109 violation of this statute for a woman to breast-feed.

110 **SECTION 6.** Section 97-35-3, Mississippi Code of 1972, is
111 amended as follows:

112 97-35-3. (1) Whoever with intent to provoke a breach of the
113 peace, or under circumstances such that a breach of the peace may
114 be occasioned thereby:

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

130 (b) Insults or makes rude or obscene remarks or
131 gestures, or uses profane language, or physical acts, or indecent
132 proposals to or toward another or others, or disturbs or obstructs
133 or interferes with another or others, or

134 (c) While in or on any public bus, taxicab, or other
135 vehicle engaged in transporting members of the public for a fare
136 or charge, causes a disturbance or does or says, respectively, any
137 of the matters or things mentioned in paragraph (b) supra, to,
138 toward, or in the presence of any other passenger on said vehicle,
139 or any person outside of said vehicle or in the process of
140 boarding or departing from said vehicle, or any employee engaged
141 in and about the operation of such vehicle, or

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

149 (2) If any person shall be guilty of disorderly conduct as
150 defined herein and such conduct shall lead to a breach of the
151 peace or incite a riot in any of the places herein named, and as a
152 result of said breach of the peace or riot another person or
153 persons shall be maimed, killed or injured, then the person guilty
154 of such disorderly conduct as defined herein shall be guilty of a
155 felony, and upon conviction such person shall be imprisoned in the
156 penitentiary not longer than ten (10) years.

157 (3) The act of breast-feeding shall not constitute
158 disorderly conduct.

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

161 **SECTION 7.** Section 97-35-7, Mississippi Code of 1972, is
162 amended as follows:

163 97-35-7. (1) Whoever, with intent to provoke a breach of
164 the peace, or under such circumstances as may lead to a breach of
165 the peace, or which may cause or occasion a breach of the peace,
166 fails or refuses to promptly comply with or obey a request,

167 command, or order of a law enforcement officer, having the
168 authority to then and there arrest any person for a violation of
169 the law, to:

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

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

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

180 (d) Refrain from obstructing, with his body or any part
181 thereof, or in any manner, the lawful movement or passage of any
182 vehicle, or

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

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

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

193 (h) Walk or move to, enter and remain in, either or
194 both, as may be directed by such officer, any police or other
195 vehicle operated by any law enforcement officer or department, or
196 any other vehicle designated by such an officer, or

197 (i) Act or do or refrain from acting or doing as
198 ordered, requested or commanded by said officer to avoid any
199 breach of the peace at or near the place of issuance of such

200 order, request or command, shall be guilty of disorderly conduct,
201 which is made a misdemeanor and, upon conviction thereof, such
202 person or persons shall be punished by a fine of not more than
203 Five Hundred Dollars (\$500.00) or imprisonment in the county jail
204 for not more than six (6) months, or by both such fine and
205 imprisonment.

206 (2) Any person who causes, or aids, or encourages, or abets
207 another to violate, or in violating, any provision of subsection
208 (1) hereof, shall be guilty of disorderly conduct which is made a
209 misdemeanor and, upon conviction thereof, such person or persons
210 shall be punished by a fine of not more than Five Hundred Dollars
211 (\$500.00) or imprisonment in the county jail for not more than six
212 (6) months, or by both such fine and imprisonment.

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

223 (4) The act of breast-feeding shall not constitute
224 disorderly conduct.

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

227 **SECTION 8.** Section 97-35-11, Mississippi Code of 1972, is
228 amended as follows:

229 97-35-11. Any person who enters the dwelling house of
230 another, or the yard or curtilage thereof, or upon the public
231 highway, or any other place near such premises, and in the
232 presence or hearing of the family or the possessor or occupant

233 thereof, or of any member thereof, makes use of abusive, profane,
234 vulgar or indecent language, or is guilty of any indecent exposure
235 of his or her person at such place, shall be punished for a
236 misdemeanor. The act of breast-feeding shall not constitute
237 indecent exposure.

238 **SECTION 9.** Section 97-35-15, Mississippi Code of 1972, is
239 amended as follows:

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

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

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

254 **SECTION 10.** Section 13-5-23, Mississippi Code of 1972, is
255 amended as follows:

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

257 13-5-23. All qualified persons shall be liable to serve as
258 jurors, unless excused by the court for one (1) of the following
259 causes:

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

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

265 (c) When the juror is under an emergency, fairly
266 equivalent to those mentioned in the foregoing paragraphs (a) and
267 (b).

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

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

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

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

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

294 13-5-23. (1) All qualified persons shall be liable to serve
295 as jurors, unless excused by the court for one (1) of the
296 following causes:

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

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

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

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

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

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

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

324 (iii) Suffer physical hardship that would result
325 in illness or disease.

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

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

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

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

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

348 (4) After two (2) years, a person excused from jury service
349 shall become eligible once again for qualification as a juror
350 unless the person was excused from service permanently. A person
351 is excused from jury service permanently only when the deciding
352 judge determines that the underlying grounds for being excused are
353 of a permanent nature.

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

358 **SECTION 11.** The Department of Health shall promulgate
359 regulations to ensure that licensed child-care facilities shall be
360 required to comply with the following:

361 (a) Breast-feeding mothers, including employees, shall
362 be provided a private and sanitary place that is not a toilet

363 stall to breast-feed their children or express milk. This area
364 shall provide an electrical outlet, comfortable chair, and nearby
365 access to running water.

366 (b) A refrigerator will be made available for storage
367 of expressed breast milk following guidelines from the American
368 Academy of Pediatrics and Centers for Disease Control in ensuring
369 that breast milk is properly treated to avoid waste. Universal
370 precautions are not required in handling human milk.

371 (c) Staff shall be trained in the safe and proper
372 storage and handling of human milk.

373 (d) Breast-feeding promotion information will be
374 displayed in order to positively promote breast-feeding to the
375 clients of the facility.

376 (e) Such other requirements as the Board of Health
377 finds desirable or necessary to promote and protect
378 breast-feeding.

379 **SECTION 12.** Section 43-20-8, Mississippi Code of 1972, is
380 amended as follows:

381 43-20-8. (1) The licensing agency shall have powers and
382 duties as set forth below, in addition to other duties prescribed
383 under this chapter:

384 (a) Promulgate rules and regulations concerning the
385 licensing and regulation of child-care facilities as defined in
386 Section 43-20-5;

387 (b) Have the authority to issue, deny, suspend, revoke,
388 restrict or otherwise take disciplinary action against licensees
389 as provided for in this chapter;

390 (c) Set and collect fees and penalties as provided for
391 in this chapter; and

392 (d) Have such other powers as may be required to carry
393 out the provisions of this chapter.

394 (2) Child-care facilities shall assure that parents have
395 welcome access to the child-care facility at all times and shall

396 comply with the provisions of House Bill No. 527, 2006 Regular
397 Session.

398 (3) Each child-care facility shall develop and maintain a
399 current list of contact persons for each child provided care by
400 that facility. An agreement may be made between the child-care
401 facility and the child's parent, guardian or contact person at the
402 time of registration to inform the parent, guardian or contact
403 person if the child does not arrive at the facility within a
404 reasonable time.

405 (4) Child-care facilities shall require that, for any
406 current or prospective caregiver, all criminal records, background
407 and sex offender registry checks and current child abuse registry
408 checks are obtained. In order to determine the applicant's
409 suitability for employment, the applicant shall be fingerprinted.
410 If no disqualifying record is identified at the state level, the
411 fingerprints shall be forwarded by the Department of Public Safety
412 to the FBI for a national criminal history record check.

413 (5) The licensing agency shall require to be performed a
414 criminal records background check and a child abuse registry check
415 for all operators of a child-care facility and any person living
416 in a residence used for child-care. The Department of Human
417 Services shall have the authority to disclose to the State
418 Department of Health any potential applicant whose name is listed
419 on the Child Abuse Central Registry or has a pending
420 administrative review. That information shall remain confidential
421 by all parties. In order to determine the applicant's suitability
422 for employment, the applicant shall be fingerprinted. If no
423 disqualifying record is identified at the state level, the
424 fingerprints shall be forwarded by the Department of Public Safety
425 to the FBI for a national criminal history record check.

426 (6) The licensing agency shall have the authority to exclude
427 a particular crime or crimes or a substantiated finding of child

428 abuse and/or neglect as disqualifying individuals or entities for
429 prospective or current employment or licensure.

430 (7) The licensing agency and its agents, officers,
431 employees, attorneys and representatives shall not be held civilly
432 liable for any findings, recommendations or actions taken under
433 this section.

434 (8) All fees incurred in compliance with this section shall
435 be borne by the child-care facility. The licensing agency is
436 authorized to charge a fee that includes the amount required by
437 the Federal Bureau of Investigation for the national criminal
438 history record check in compliance with the Child Protection Act
439 of 1993, as amended, and any necessary costs incurred by the
440 licensing agency for the handling and administration of the
441 criminal history background checks.

442 **SECTION 13.** This act shall take effect and be in force from
443 and after its passage.