

By: Senator(s) Frazier, Albritton

To: Public Health and
Welfare; Judiciary, Division
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SENATE BILL NO. 2419
(As Sent to Governor)

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 ESTABLISH AN AFFIRMATIVE RIGHT TO BREAST-FEED; TO AMEND SECTION
4 19-5-103, MISSISSIPPI CODE OF 1972, TO CONFORM THERETO; TO AMEND
5 SECTION 97-29-31, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
6 BREAST-FEEDING DOES NOT CONSTITUTE INDECENT EXPOSURE; TO AMEND
7 SECTIONS 97-35-3 AND 97-35-7, MISSISSIPPI CODE OF 1972, TO PROVIDE
8 THAT BREAST-FEEDING DOES NOT CONSTITUTE DISORDERLY CONDUCT; TO
9 AMEND SECTION 97-35-11, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
10 BREAST-FEEDING DOES NOT CONSTITUTE INDECENT EXPOSURE; TO AMEND
11 SECTION 97-35-15, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
12 BREAST-FEEDING DOES NOT CONSTITUTE ANY BREACH OF THE PEACE; TO
13 AMEND SECTION 13-5-23, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A
14 MOTHER WITH A CHILD 12 MONTHS OF AGE OR YOUNGER MAY BE EXCUSED
15 FROM JURY SERVICE; TO REQUIRE THE STATE BOARD OF HEALTH TO
16 PROMULGATE REGULATIONS FOR CHILD CARE FACILITIES TO PROMOTE
17 BREAST-FEEDING BY THE MOTHERS OF THE CHILDREN BEING CARED FOR; TO
18 PROHIBIT DISCRIMINATION AGAINST A BREAST-FEEDING MOTHER WHO USES
19 HER LAWFUL BREAK TIME TO EXPRESS MILK; TO AMEND SECTION 43-20-8,
20 MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

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

25 SECTION 2. The following shall be codified as Section
26 17-25-7, Mississippi Code of 1972:

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

32 SECTION 3. A mother may breast-feed her child in any
33 location, public or private, where the mother is otherwise
34 authorized to be, without respect to whether the mother's breast
35 or any part of it is covered during or incidental to the
36 breast-feeding.

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

39 19-5-103. (1) In accordance with the provisions of Section
40 19-3-41, providing that additional powers may be conferred upon
41 the boards of supervisors, the board of supervisors of any county
42 bordering on the Gulf of Mexico and having two (2) judicial
43 districts and the board of supervisors of any county adjacent to
44 any county of this or any adjoining state wherein is located a
45 city having a population in excess of two hundred thousand
46 (200,000), according to the latest federal census, are hereby
47 empowered to promulgate, adopt and enforce ordinances which are
48 necessary and reasonable for the protection of public health and
49 the maintenance of order in relation to the advertisement, the
50 offering of services and the dispensation for compensation of
51 personal services in establishments known as massage parlors and
52 to promulgate, adopt and enforce ordinances which are necessary
53 and reasonable for the protection of public health and the
54 maintenance of order in relation to public displays of nudity.

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

65 For the purposes of this section, the term "nudity" means
66 uncovered, or less than opaquely covered, postpubertal human
67 genitals, pubic areas, the postpubertal human female breast below
68 a point immediately above the top of the areola, or the covered
69 human male genitals in a discernibly turgid state. For purposes

70 of this definition, a female breast is considered uncovered if the
71 nipple only or the nipple and areola only are uncovered, however,
72 the term "nudity" does not include a woman's breast-feeding of her
73 child whether or not the breast or any part of it is exposed as
74 any element of breast-feeding.

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

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

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

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

95 97-29-31. A person who willfully and lewdly exposes his
96 person, or private parts thereof, in any public place, or in any
97 place where others are present, or procures another to so expose
98 himself, is guilty of a misdemeanor and, on conviction, shall be
99 punished by a fine not exceeding Five Hundred Dollars (\$500.00) or
100 be imprisoned not exceeding six (6) months, or both. It is not a
101 violation of this statute for a woman to breast-feed.

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

104 97-35-3. (1) Whoever with intent to provoke a breach of the
105 peace, or under circumstances such that a breach of the peace may
106 be occasioned thereby:

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

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

126 (c) While in or on any public bus, taxicab or other
127 vehicle engaged in transporting members of the public for a fare
128 or charge, causes a disturbance or does or says, respectively, any
129 of the matters or things mentioned in paragraph (b) supra, to,
130 toward, or in the presence of any other passenger on said vehicle,
131 or any person outside of said vehicle or in the process of
132 boarding or departing from said vehicle, or any employee engaged
133 in and about the operation of such vehicle, or

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

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

149 (3) The act of breast-feeding shall not constitute
150 disorderly conduct.

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

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

155 97-35-7. (1) Whoever, with intent to provoke a breach of
156 the peace, or under such circumstances as may lead to a breach of
157 the peace, or which may cause or occasion a breach of the peace,
158 fails or refuses to promptly comply with or obey a request,
159 command, or order of a law enforcement officer, having the
160 authority to then and there arrest any person for a violation of
161 the law, to:

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

165 (b) Arise, if lying or sitting down, and move to a
166 point designated by said officer outside the immediate area of, or

167 which is affected by the occurrences at, the place of issuing such
168 order, command or request, or

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

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

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

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

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

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

189 (i) Act or do or refrain from acting or doing as
190 ordered, requested or commanded by said officer to avoid any
191 breach of the peace at or near the place of issuance of such
192 order, request or command, shall be guilty of disorderly conduct,
193 which is made a misdemeanor and, upon conviction thereof, such
194 person or persons shall be punished by a fine of not more than
195 Five Hundred Dollars (\$500.00) or imprisonment in the county jail
196 for not more than six (6) months, or by both such fine and
197 imprisonment.

198 (2) Any person who causes, or aids, or encourages, or abets
199 another to violate, or in violating, any provision of subsection

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

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

215 (4) The act of breast-feeding shall not constitute
216 disorderly conduct.

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

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

221 97-35-11. Any person who enters the dwelling house of
222 another, or the yard or curtilage thereof, or upon the public
223 highway, or any other place near such premises, and in the
224 presence or hearing of the family or the possessor or occupant
225 thereof, or of any member thereof, makes use of abusive, profane,
226 vulgar or indecent language, or is guilty of any indecent exposure
227 of his or her person at such place, shall be punished for a
228 misdemeanor. The act of breast-feeding shall not constitute
229 indecent exposure.

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

232 97-35-15. (1) Any person who disturbs the public peace, or
233 the peace of others, by violent, or loud, or insulting, or
234 profane, or indecent, or offensive, or boisterous conduct or
235 language, or by intimidation, or seeking to intimidate any other
236 person or persons, or by conduct either calculated to provoke a
237 breach of the peace, or by conduct which may lead to a breach of
238 the peace, or by any other act, shall be guilty of a misdemeanor,
239 and upon conviction thereof, shall be punished by a fine of not
240 more than Five Hundred Dollars (\$500.00) or by imprisonment in the
241 county jail not more than six (6) months, or both.

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

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

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

248 **[Until January 1, 2008, this section shall read as follows:]**

249 13-5-23. All qualified persons shall be liable to serve as
250 jurors, unless excused by the court for one (1) of the following
251 causes:

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

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

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

260 (d) When the potential juror is a breast-feeding
261 mother.

262 An excuse of illness under paragraph (a) may be made to the
263 clerk of court outside of open court by providing the clerk with
264 either a certificate of a licensed physician or an affidavit of

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

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

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

284 **[From and after January 1, 2008, this section shall read as**
285 **follows:]**

286 13-5-23. (1) All qualified persons shall be liable to serve
287 as jurors, unless excused by the court for one (1) of the
288 following causes:

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

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

294 (c) When the potential juror is a breast-feeding
295 mother.

296 (2) An excuse of illness under subsection (1)(a) of this
297 section may be made to the clerk of court outside of open court by

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

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

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

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

316 (iii) Suffer physical hardship that would result
317 in illness or disease.

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

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

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

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

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

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

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

350 **SECTION 11.** The Department of Health shall promulgate
351 regulations to ensure that licensed child care facilities shall be
352 required to comply with the following:

353 (a) Breast-feeding mothers, including employees, shall
354 be provided a sanitary place that is not a toilet stall to
355 breast-feed their children or express milk. This area shall
356 provide an electrical outlet, comfortable chair, and nearby access
357 to running water.

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

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

365 (d) Breast-feeding promotion information will be
366 displayed in order to positively promote breast-feeding to the
367 clients of the facility.

368 (e) Such other requirements as the Board of Health
369 finds desirable or necessary to promote and protect
370 breast-feeding.

371 **SECTION 12.** No employer shall prohibit an employee from
372 expressing breast milk during any meal period or other break
373 period provided by the employer.

374 **SECTION 13.** Section 43-20-8, Mississippi Code of 1972, is
375 amended as follows:

376 43-20-8. (1) The licensing agency shall have powers and
377 duties as set forth below, in addition to other duties prescribed
378 under this chapter:

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

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

385 (c) Set and collect fees and penalties as provided for
386 in this chapter; and

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

389 (2) Child care facilities shall assure that parents have
390 welcome access to the child care facility at all times and shall
391 comply with the provisions of Senate Bill No. 2419, 2006 Regular
392 Session.

393 (3) Each child care facility shall develop and maintain a
394 current list of contact persons for each child provided care by
395 that facility. An agreement may be made between the child care

396 facility and the child's parent, guardian or contact person at the
397 time of registration to inform the parent, guardian or contact
398 person if the child does not arrive at the facility within a
399 reasonable time.

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

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

421 (6) The licensing agency shall have the authority to exclude
422 a particular crime or crimes or a substantiated finding of child
423 abuse and/or neglect as disqualifying individuals or entities for
424 prospective or current employment or licensure.

425 (7) The licensing agency and its agents, officers,
426 employees, attorneys and representatives shall not be held civilly
427 liable for any findings, recommendations or actions taken under
428 this section.

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

437 **SECTION 14.** This act shall take effect and be in force from
438 and after its passage.