

By: Senator(s) Doty

To: Public Health and
Welfare; Accountability,
Efficiency, Transparency

SENATE BILL NO. 2707

1 AN ACT TO REQUIRE THE STATE DEPARTMENT OF HEALTH TO ADOPT
2 REGULATIONS TO LICENSE LACTATION PROFESSIONALS; TO AUTHORIZE THE
3 DEPARTMENT TO ASSESS LICENSURE FEES; TO PRESCRIBE CRIMINAL
4 PENALTIES; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** It is the intent of the Legislature to proclaim
7 that the state's traditionally low breastfeeding rates remain
8 lowest in the nation because of insufficient lactation promotion,
9 education, and counseling among pregnant women.

10 **SECTION 2.** "Lactation (also known as breastfeeding)
11 professional" is defined as a health-care professional who
12 specializes in prenatal and postnatal breastfeeding promotion,
13 education, and/or counseling in one or more of the following
14 settings: clinic, hospital and client's home. Lactation is the
15 medical term for yielding of milk by the mammary glands which
16 leads to breastfeeding. Human milk is secreted by the mammary
17 glands, which are located within the fatty tissue of the breast.
18 The hormone oxytocin is produced in response to the birth of a new
19 baby, and it both stimulates uterine contractions and begins the



lactation process. Human milk contains the ideal amount of nutrients for the infant, and provides important protection from diseases through the mother's natural defenses.

SECTION 3. (1) The Legislature of the State of Mississippi acknowledges that extensive research demonstrates the wide-ranging and compelling benefits of breastfeeding for infants, mothers, families and communities, federal support for breastfeeding, and breastfeeding obstacles, including:

(a) Numerous health benefits to the child, such as lower incidences of SIDS, childhood obesity, asthma, allergies and diabetes, as well as increased intelligence and parental attachment;

(b) Numerous health benefits to the mother, such as decreased rates of breast cancer, ovarian cancer, postpartum hemorrhage, and reduced rates of obesity through increased postpartum weight loss;

(c) Significant economic and social benefits to the state, such as reduced health-care costs, and reduced employee absenteeism for care attributable to child illness, as well as direct saving to families, as the United States Surgeon General estimates that the average family can save between One Thousand Two Hundred Dollars (\$1,200.00) and One Thousand Five Hundred Dollars (\$1,500.00) during a baby's first year of life through breastfeeding;



44 (2) The Legislature also recognizes, despite these numerous
45 benefits, that Mississippi has one of the lowest breastfeeding
46 rates in the country and acknowledges that mothers in Mississippi
47 face many barriers to breastfeeding:

48 (a) One (1) of these barriers is breastfeeding
49 education, which many studies and reports have found to be a
50 significant obstacle that inhibits the practice of breastfeeding.
51 Many mothers are ill-informed about the benefits of breastfeeding
52 and their rights as a breastfeeding mother because there is no
53 systemic effort in place to reach mothers during the prenatal
54 stage.

55 (b) In addition, many mothers who choose to breastfeed
56 do not receive adequate breastfeeding support from trained and
57 skilled lactation professionals upon leaving the hospital and
58 returning home. Mississippi's very low three- and six-month
59 exclusive breastfeeding duration rates of twenty-eight and
60 eight-tenths percent (28.8%) and ten and one-tenths percent
61 (10.1%), which are the fourth and second lowest, respectively, in
62 the nation.

63 (c) For instance, black women, who make up
64 approximately thirty-eight percent (38%) of women in Mississippi,
65 continue to have the lowest rates of breastfeeding initiation
66 sixty percent (60%) and continuation at six (6) months
67 twenty-eight percent (28%) and twelve (12) months thirteen percent
68 (13%) compared with all other racial/ethnic groups in the United



69 States. A sixteen (16) percentage-point gap in the prevalence of
70 continued breastfeeding for six (6) months has been consistent
71 since 1990 between black and white women. Black women, thirty-two
72 percent (32%), are more likely than most minority groups to
73 provide formula supplementation by two (2) days of life.
74 Currently, black women are not meeting any of the Healthy People
75 2020 objectives for breastfeeding. Major and frequent barriers to
76 breastfeeding reported by low-income minority women include
77 language and literacy barriers and lack of maternal access to
78 information that promotes and supports breastfeeding.

79 (d) These mothers reported that they need more specific
80 information about what to expect and how to address possible
81 complications during breastfeeding. Supporting previous findings,
82 these mothers voiced concerns about differential treatment from
83 health-care providers with regard to breastfeeding encouragement
84 and information. These results are particularly troubling because
85 it is well-documented that women who are encouraged by health-care
86 professionals are more likely to initiate breastfeeding.

87 (e) The Patient Protection and Affordable Care Act of
88 2010 (ACA) provides two (2) major provisions to encourage and
89 support mothers to achieve their breastfeeding goals: (i)
90 reasonable break time to express milk, and (ii) health insurance
91 preventive benefits to defray the costs associated with providing
92 breast milk to infants, including coverage of breastfeeding
93 education and supplies in nongrandfathered health insurance plans.



Breastfeeding benefits for nongrandfathered health insurance plans include prenatal and postnatal counseling by a trained provider in conjunction with each child. The benefits are available at no cost share to consumers. Women may access comprehensive lactation support and counseling from "trained providers."

(f) Most insurers require that "trained providers" are licensed health professionals, namely physicians and nurse practitioners. However, these professionals typically do not have the necessary knowledge, training, skills and time to successfully support breastfeeding mothers. Moreover, they do not provide home visitation support, which is crucial during the first forty-eight (48) through seventy-two (72) hours postpartum as it is during this period that breastfeeding mothers experience difficulties and are likely to discontinue breastfeeding. In addition, physicians in Mississippi are less likely to encourage their pregnant patients to breastfeed.

(g) Current research shows breastfeeding conversations between physicians and their patients are infrequent at twenty-nine percent (29%) of visits and extremely brief (mean of thirty-nine (39) seconds). Results also revealed that obstetrician-gynecological residents were least likely to discuss breastfeeding with their patients. For example, fifty-five percent (55%) of ob-gyns surveyed agreed that formula feeding is an acceptable option that will not harm the infant. Physicians with high proportions of black or low-income patients reported



lower rates of breastfeeding initiation or continuation at three (3), six (6) or twelve (12) months.

(h) Despite the ACA's requirement to provide "comprehensive lactation support," insurance companies have not established networks of lactation providers. In these instances, the plan typically refers women to their obstetrician or to the child's pediatrician, neither of whom usually offers lactation counseling. In some cases, women report that insurance companies have one (1) in-network lactation provider (usually located in a hospital) to serve all of the plan's enrollees. Moreover, in the case of hospital-based lactation consultants, hospital policy often restricts these providers to in-patient clients, which means women cannot access these health professionals once they are discharged from the hospital. The lack of a provider network for lactation counseling means that women must turn to out-of-network providers to get help with breastfeeding. Federal guidance clearly allows women to obtain required preventive services, including breastfeeding benefits through out-of-network providers, at no cost-sharing when the plan does not maintain a network of appropriate providers.

(i) Currently, in order to receive support from a lactation consultant, breastfeeding mothers are required to pay for lactation support at the point of service and seek reimbursement from their insurers. This places a huge and unintended financial burden on the mother, especially the working



144 poor who do not qualify for Women, Infants, and Children (WIC)
145 breastfeeding services. It also reduces the likelihood of a
146 breastfeeding mother to seek lactation support. This barrier
147 could be eliminated through licensure of the lactation
148 professional, and it would potentially increase the number of
149 breastfeeding clients she can serve. It would create a
150 significant incentive for more lactation consultants to offer this
151 service.

152 (j) Mississippi's birth rate is sixty-four percent
153 (64%), among the highest in the nation. In contrast, there are
154 nineteen (19) registered International Board Certified Lactation
155 Consultants (IBCLCs) and approximately thirty-five (35) certified
156 Lactation Consultants (CLCs) practicing in Mississippi, hence, a
157 severe shortage in lactation professionals. Mississippi hospitals
158 solely rely on International Board Certified Lactation Consultants
159 (IBCLC). There are a mere one and eighty-one one hundredths
160 (1.81) IBCLCs per one thousand (1,000) live births in Mississippi;
161 consequently, there are not enough lactation consultants to meet
162 the growing needs of Mississippi mothers and infants.
163 Additionally, IBCLCs that work within the hospital settings are
164 often registered nurses who sometimes perform nursing duties in
165 addition to providing limited breastfeeding assistance only after
166 birth and during the mother's hospital stay. According to the
167 CDC, only fifty-one percent (51%) of hospital lactation staff
168 makes phone calls to their patients and none perform home visits,



which is crucial during the first forty-eight (48) through seventy-two (72) hours of postpartum when women tend to experience breastfeeding difficulties that often lead to cessation. In addition, only forty-three percent (43%) of hospitals report that breastfeeding patients return for a follow-up visit. Also, ninety-four percent (94%) of hospitals in Mississippi refer their breastfeeding patients to WIC lactation professionals.

SECTION 4. The Legislature of the State of Mississippi acknowledges that:

(1) In Mississippi, Women, Infant, and Children (WIC) remains the Number 1 source of breastfeeding information and support, but its participation rates have dropped significantly over the last seven (7) years. Also, WIC only serves the low-income population. From 2008 to 2015, WIC experienced a twenty-one and six-tenths percent (21.6%) and six percent (6%) decrease in the number of pregnant women and breastfeeding women, respectively, who participated in the program. These reductions have created a greater void for breastfeeding services in the private sector.

(2) Creating a licensed lactation consultant workforce would provide self-employment opportunities, including breastfeeding education, supplies and support for significantly more Mississippi mothers of all socioeconomic statuses. Also, this licensure would increase tax revenue for the State of Mississippi.



(3) Therefore, the Legislature declares the intent of this act is to significantly increase the number of lactation professionals in the State of Mississippi, especially within underserved communities, which often have the lowest breastfeeding rates and access to breastfeeding support. We expect that licensure will provide a financial incentive for more women to become Certified Lactation Counselors and International Board Certified Lactation Consultants and deliver breastfeeding education, promotion and support during the prenatal and postpartum stages of life within diverse settings such as: communities, workplaces, clinics, hospitals and homes.

SECTION 5. The Mississippi State Department of Health (SDH) is authorized and directed to formulate, promulgate and enforce regulations and standards for the following:

- (a) The licensing of lactation professionals;
- (b) Standards and specifications for education, training, knowledge and experience required for licensure as a lactation professional. In determining these requirements, the agency shall give due consideration to the criteria established by the Mississippi State Department of Health WIC Breastfeeding Program and other standards established by professional organizations, such as the Academy of Lactation Policy and Practice and the International Board of Lactation Consultant Examiners, that specialize in breastfeeding education and training;



(c) Establish the scope of lactation care, education and services;

(d) Establishment of a minimum standard of care for providing breastfeeding education and counseling services, including continuing education and assessment;

(e) Establishment of nonrefundable application fee and license renewal. Fees collected pursuant to this law shall be utilized by the Mississippi State Department of Health to fund licensure positions responsible for ensuring criteria is met and cover costs associated with a statewide breastfeeding promotional and educational program;

(f) Establish guidelines and training to satisfy the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and

(g) Persons and practices exempt. (i) Nothing in this act shall be construed to prevent qualified members of other health professions from performing functions consistent with the established standards of their respective professions; provided, however, that these professionals do not publicly define or describe themselves as lactation professionals licensed to practice breastfeeding care and services within clinical and home settings.

(ii) Nothing in this act shall be construed to prevent the practice of lactation education, promotion and care by



persons preparing for practice under the supervision of a
licensee.

(iii) Breastfeeding care and services provided by
breastfeeding professionals who are employed by the Federal
Special Supplemental Nutrition Program for Women, Infants, and
Children (WIC) program are exempt from licensing requirements when
services are delivered to the WIC population but are required to
meet licensing requirements when providing breastfeeding care to
the private sector.

SECTION 6. Enforcement. (1) This act shall be enforced by
the Mississippi State Department of Health.

(2) Any person who violates the provisions of this act or
rules and regulations established by the Mississippi State
Department of Health in pursuance of this act, shall be fined not
more than One Thousand Dollars (\$1,000.00) and may have her
license suspended or revoked when found to have engaged in
unprofessional conduct. Fines collected pursuant to this act
shall be utilized to provide statewide breastfeeding promotion and
education.

SECTION 7. This act shall take effect and be in force from
and after July 1, 2019.

