

By: Representative Banks

To: Judiciary A

HOUSE BILL NO. 1285

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.** The following shall be codified as Section
22 17-25-7, Mississippi Code of 1972:

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

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

33 (2) The chancery courts shall have the authority to enforce
34 the provisions of this section and shall have the authority to
35 issue injunctions and writs of mandamus to accomplish that

36 purpose. The court may impose a civil penalty upon any violator
37 in a sum not to exceed all reasonable expenses incurred by the
38 person or persons in bringing suit to enforce this section. If
39 the court finds that a violation was willful and knowing, the
40 court may impose a further civil penalty not to exceed One Hundred
41 Dollars (\$100.00).

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

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

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

68 practicing a vocation or profession regulated and licensed by the
69 state.

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

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

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

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

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

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

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

109 97-35-3. (1) Whoever with intent to provoke a breach of the
110 peace, or under circumstances such that a breach of the peace may
111 be occasioned thereby:

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

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

131 (c) While in or on any public bus, taxicab, or other
132 vehicle engaged in transporting members of the public for a fare

133 or charge, causes a disturbance or does or says, respectively, any
134 of the matters or things mentioned in paragraph (b) supra, to,
135 toward, or in the presence of any other passenger on said vehicle,
136 or any person outside of said vehicle or in the process of
137 boarding or departing from said vehicle, or any employee engaged
138 in and about the operation of such vehicle, or

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

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

154 (3) The act of breast-feeding shall not constitute
155 disorderly conduct.

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

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

160 97-35-7. (1) Whoever, with intent to provoke a breach of
161 the peace, or under such circumstances as may lead to a breach of
162 the peace, or which may cause or occasion a breach of the peace,
163 fails or refuses to promptly comply with or obey a request,
164 command, or order of a law enforcement officer, having the

165 authority to then and there arrest any person for a violation of
166 the law, to:

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

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

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

177 (d) Refrain from obstructing, with his body or any part
178 thereof, or in any manner, the lawful movement or passage of any
179 vehicle, or

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

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

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

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

194 (i) Act or do or refrain from acting or doing as
195 ordered, requested or commanded by said officer to avoid any
196 breach of the peace at or near the place of issuance of such
197 order, request or command, shall be guilty of disorderly conduct,

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

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

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

220 (4) The act of breast-feeding shall not constitute
221 disorderly conduct.

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

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

226 97-35-11. Any person who enters the dwelling house of
227 another, or the yard or curtilage thereof, or upon the public
228 highway, or any other place near such premises, and in the
229 presence or hearing of the family or the possessor or occupant
230 thereof, or of any member thereof, makes use of abusive, profane,

231 vulgar or indecent language, or is guilty of any indecent exposure
232 of his or her person at such place, shall be punished for a
233 misdemeanor. The act of breast-feeding shall not constitute
234 indecent exposure.

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

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

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

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

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

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

254 13-5-23. All qualified persons shall be liable to serve as
255 jurors, unless excused by the court for one (1) of the following
256 causes:

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

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

262 (c) When the juror is under an emergency, fairly
263 equivalent to those mentioned in the foregoing paragraphs (a) and
264 (b).

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

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

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

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

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

291 13-5-23. (1) All qualified persons shall be liable to serve
292 as jurors, unless excused by the court for one (1) of the
293 following causes:

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

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

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

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

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

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

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

321 (iii) Suffer physical hardship that would result
322 in illness or disease.

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

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

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

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

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

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

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

355 **SECTION 10.** The Department of Health shall promulgate
356 regulations to ensure that licensed child-care facilities shall be
357 required to comply with the following:

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

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

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

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

370 (d) Breast-feeding promotion information will be
371 displayed in order to positively promote breast-feeding to the
372 clients of the facility.

373 (e) Such other requirements as the Board of Health
374 finds desirable or necessary to promote and protect
375 breast-feeding.

376 **SECTION 11.** Section 43-20-8, Mississippi Code of 1972, is
377 amended as follows:

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

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

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

387 (c) Set and collect fees and penalties as provided for
388 in this chapter; and

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

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

393 comply with the provisions of House Bill _____, 2006 Regular
394 Session.

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

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

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

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

425 abuse and/or neglect as disqualifying individuals or entities for
426 prospective or current employment or licensure.

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

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

439 **SECTION 12.** This act shall take effect and be in force from
440 and after its passage.