

By: Senator(s) Frazier, Albritton

To: Public Health and
Welfare; Judiciary, Division
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COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2419

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.** The following shall be codified as Section
23 17-25-7, Mississippi Code of 1972:

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

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

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

36 19-5-103. (1) In accordance with the provisions of Section
37 19-3-41, providing that additional powers may be conferred upon
38 the boards of supervisors, the board of supervisors of any county
39 bordering on the Gulf of Mexico and having two (2) judicial
40 districts and the board of supervisors of any county adjacent to
41 any county of this or any adjoining state wherein is located a
42 city having a population in excess of two hundred thousand
43 (200,000), according to the latest federal census, are hereby
44 empowered to promulgate, adopt and enforce ordinances which are
45 necessary and reasonable for the protection of public health and
46 the maintenance of order in relation to the advertisement, the
47 offering of services and the dispensation for compensation of
48 personal services in establishments known as massage parlors and
49 to promulgate, adopt and enforce ordinances which are necessary
50 and reasonable for the protection of public health and the
51 maintenance of order in relation to public displays of nudity.

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

62 For the purposes of this section, the term "nudity" means
63 uncovered, or less than opaquely covered, postpubertal human
64 genitals, pubic areas, the postpubertal human female breast below
65 a point immediately above the top of the areola, or the covered
66 human male genitals in a discernibly turgid state. For purposes
67 of this definition, a female breast is considered uncovered if the
68 nipple only or the nipple and areola only are uncovered, however,

69 the term "nudity" does not include a woman's breast-feeding of her
70 child whether or not the breast or any part of it is exposed as
71 any element of breast-feeding.

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

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

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

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

92 97-29-31. A person who willfully and lewdly exposes his
93 person, or private parts thereof, in any public place, or in any
94 place where others are present, or procures another to so expose
95 himself, is guilty of a misdemeanor and, on conviction, shall be
96 punished by a fine not exceeding Five Hundred Dollars (\$500.00) or
97 be imprisoned not exceeding six (6) months, or both. It is not a
98 violation of this statute for a woman to breast-feed.

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

101 97-35-3. (1) Whoever with intent to provoke a breach of the
102 peace, or under circumstances such that a breach of the peace may
103 be occasioned thereby:

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

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

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

131 (d) Refuses to leave the premises of another when
132 requested so to do by any owner, lessee, or any employee thereof,

133 shall be guilty of disorderly conduct, which is made a
134 misdemeanor, and, upon conviction thereof, shall be punished by a
135 fine of not more than Two Hundred Dollars (\$200.00), or
136 imprisonment in the county jail for not more than four (4) months,
137 or by both such fine and imprisonment.

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

146 (3) The act of breast-feeding shall not constitute
147 disorderly conduct.

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

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

152 97-35-7. (1) Whoever, with intent to provoke a breach of
153 the peace, or under such circumstances as may lead to a breach of
154 the peace, or which may cause or occasion a breach of the peace,
155 fails or refuses to promptly comply with or obey a request,
156 command, or order of a law enforcement officer, having the
157 authority to then and there arrest any person for a violation of
158 the law, to:

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

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

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

169 (d) Refrain from obstructing, with his body or any part
170 thereof, or in any manner, the lawful movement or passage of any
171 vehicle, or

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

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

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

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

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

195 (2) Any person who causes, or aids, or encourages, or abets
196 another to violate, or in violating, any provision of subsection
197 (1) hereof, shall be guilty of disorderly conduct which is made a
198 misdemeanor and, upon conviction thereof, such person or persons

199 shall be punished by a fine of not more than Five Hundred Dollars
200 (\$500.00) or imprisonment in the county jail for not more than six
201 (6) months, or by both such fine and imprisonment.

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

212 (4) The act of breast-feeding shall not constitute
213 disorderly conduct.

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

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

218 97-35-11. Any person who enters the dwelling house of
219 another, or the yard or curtilage thereof, or upon the public
220 highway, or any other place near such premises, and in the
221 presence or hearing of the family or the possessor or occupant
222 thereof, or of any member thereof, makes use of abusive, profane,
223 vulgar or indecent language, or is guilty of any indecent exposure
224 of his or her person at such place, shall be punished for a
225 misdemeanor. The act of breast-feeding shall not constitute
226 indecent exposure.

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

229 97-35-15. (1) Any person who disturbs the public peace, or
230 the peace of others, by violent, or loud, or insulting, or
231 profane, or indecent, or offensive, or boisterous conduct or

232 language, or by intimidation, or seeking to intimidate any other
233 person or persons, or by conduct either calculated to provoke a
234 breach of the peace, or by conduct which may lead to a breach of
235 the peace, or by any other act, shall be guilty of a misdemeanor,
236 and upon conviction thereof, shall be punished by a fine of not
237 more than Five Hundred Dollars (\$500.00), or by imprisonment in
238 the county jail not more than six (6) months, or both.

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

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

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

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

246 All qualified persons shall be liable to serve as jurors,
247 unless excused by the court for one (1) of the following causes:

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

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

253 (c) When the juror is under an emergency, fairly
254 equivalent to those mentioned in the foregoing paragraphs (a) and
255 (b), or

256 (d) When the potential juror is a mother of a child
257 twelve (12) months of age or younger.

258 An excuse of illness under paragraph (a) may be made to the
259 clerk of court outside of open court by providing the clerk with
260 either a certificate of a licensed physician or an affidavit of
261 the juror, stating that the juror is ill or that there is a
262 serious illness in the juror's family. The test of an excuse
263 under paragraph (b) shall be whether, if the juror were
264 incapacitated by illness or otherwise for a week, some other

265 persons would be available or could reasonably be procured to
266 carry on the business for the week, and the test of an excuse
267 under paragraph (c) shall be such as to be the fair equivalent,
268 under the circumstances of that prescribed under paragraph (b).
269 In cases under paragraphs (b), (c) and (d), the excuse must be
270 made by the juror, in open court, under oath.

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

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

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

282 13-5-23. (1) All qualified persons shall be liable to serve
283 as jurors, unless excused by the court for one (1) of the
284 following causes:

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

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

290 (c) When the potential juror is a mother of a child
291 twelve (12) months of age or younger.

292 (2) An excuse of illness under subsection (1)(a) of this
293 section may be made to the clerk of court outside of open court by
294 providing the clerk with a certificate of a licensed physician,
295 stating that the juror is ill and is unfit for jury service, in
296 which case the clerk may excuse the juror. If the excuse of
297 illness is not supported by a physician's certificate, a judge of

298 the court for which the individual was called to jury service
299 shall decide whether to excuse an individual under subsection
300 (1)(a) of this section.

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

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

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

312 (iii) Suffer physical hardship that would result
313 in illness or disease.

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

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

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

326 (e) A person asking a judge to grant an excuse under
327 subsection (1)(b) of this section shall be required to provide the
328 judge with documentation such as, but not limited to, federal and
329 state income tax returns, medical statements from licensed
330 physicians, proof of dependency or guardianship and similar

331 documents, which the judge finds to clearly support the request to
332 be excused. Failure to provide satisfactory documentation shall
333 result in a denial of the request to be excused.

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

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

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

346 **SECTION 10.** The Department of Health shall promulgate
347 regulations to ensure that licensed child care facilities shall be
348 required to comply with the following:

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

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

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

361 (d) Breast-feeding promotion information will be
362 displayed in order to positively promote breast-feeding to the
363 clients of the facility.

364 (e) Such other requirements as the Board of Health
365 finds desirable or necessary to promote and protect
366 breast-feeding.

367 **SECTION 11.** No employer shall prohibit an employee from
368 expressing breast milk during any meal period or other break
369 period provided by the employer.

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

372 43-20-8. (1) The licensing agency shall have powers and
373 duties as set forth below, in addition to other duties prescribed
374 under this chapter:

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

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

381 (c) Set and collect fees and penalties as provided for
382 in this chapter; and

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

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

389 (3) Each child care facility shall develop and maintain a
390 current list of contact persons for each child provided care by
391 that facility. An agreement may be made between the child care
392 facility and the child's parent, guardian or contact person at the
393 time of registration to inform the parent, guardian or contact
394 person if the child does not arrive at the facility within a
395 reasonable time.

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

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

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

421 (7) The licensing agency and its agents, officers,
422 employees, attorneys and representatives shall not be held civilly
423 liable for any findings, recommendations or actions taken under
424 this section.

425 (8) All fees incurred in compliance with this section shall
426 be borne by the child care facility. The licensing agency is
427 authorized to charge a fee that includes the amount required by
428 the Federal Bureau of Investigation for the national criminal

429 history record check in compliance with the Child Protection Act
430 of 1993, as amended, and any necessary costs incurred by the
431 licensing agency for the handling and administration of the
432 criminal history background checks.

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