MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Eubanks

To: Public Health and Human Services

HOUSE BILL NO. 587

AN ACT TO MAKE CERTAIN LEGISLATIVE FINDINGS ABOUT THE BENEFITS OF BREASTFEEDING; TO PROVIDE FOR THE LICENSURE OF BREASTFEEDING PROFESSIONALS BY THE STATE DEPARTMENT OF HEALTH; TO AUTHORIZE THE DEPARTMENT TO CHARGE APPLICATION AND LICENSURE FEES; TO PRESCRIBE CRIMINAL PENALTIES FOR VIOLATIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

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

SECTION 2. The term "breastfeeding professional" or "lactation professional" is defined as an allied health professional who specializes in prenatal and postnatal breastfeeding promotion, education and counseling in one or more of the following settings: clinic, hospital and client's home. Human milk contains the ideal amount of nutrients for the infant and provides important protection from diseases through the mother's natural defenses. Although all pregnant women lactate naturally, most do not choose to breastfeed their newborn for

various reasons, including a lack of knowledge and support during the prenatal phase and postpartum phase, respectively.

SECTION 2. (1) The Legislature acknowledges that extensive research demonstrates the wide-ranging and compelling health and economic 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 infant mortality, 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; and

(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 savings 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.

(2) The Legislature also recognizes, despite these numerous benefits, that Mississippi has one of the lowest breastfeeding

rates in the country and acknowledges that mothers in Mississippi face many barriers to breastfeeding:

(a) One (1) of these barriers is the lack of breastfeeding education during the prenatal stage, which has been found to be a significant obstacle that inhibits the initiation of breastfeeding, particularly among low-income mothers. Many mothers are ill—informed about the benefits of breastfeeding because there is no systemic effort in place to reach mothers during the prenatal stage.

(b) Many mothers who choose to breastfeed do not receive adequate breastfeeding support from breastfeeding professionals upon returning home where they are more likely to experience difficulties. Only twenty-one percent (21%) of hospital staff provide appropriate discharge planning. Mississippi's very low three- and six-month exclusive breastfeeding duration rates of twenty-nine percent (29%) and ten-percent (10%) are the fourth and second lowest, respectively, in the nation.

(c) For instance, black women, who make up approximately thirty—eight percent (38%) of women in Mississippi, continue to have the lowest rates of breastfeeding initiation, sixty percent (60%) and continuation at six (6) months twenty-eight percent (28%) and twelve (12) months thirteen percent (13%), compared with all other racial/ethnic groups in the United States. A sixteen (16%) percentage-point gap in the prevalence of

continued breastfeeding for six (6) months has been consistent since 1990 between black and white women. Black women, thirty-two percent (32%), are more likely than most minority groups to provide formula supplementation by two (2) days of life. Currently, black women are not meeting any of the Healthy People 2020 objectives for breastfeeding. Major and frequent barriers to breastfeeding reported by low income women include health literacy barriers and lack of access to information that promotes and supports breastfeeding.

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

(e) The Patient Protection and Affordable Care Act of 2010 (ACA) provides two (2) major provisions to encourage and support mothers to achieve their breastfeeding goals: (i) reasonable break time to express milk, and (ii) health insurance preventive benefits to defray the costs associated with providing breast milk to infants, including coverage of breastfeeding 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 breastfeeding support and counseling from "trained providers."

(f) Most insurers require that "trained providers" be 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 (a 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 breastfeeding support, insurance companies have not established networks of breastfeeding providers. In these instances, the plan typically refers women to their obstetrician or to the child's pediatrician, neither of whom usually offers breastfeeding counseling. In some cases, women report that insurance companies have one (1) in-network breastfeeding provider (usually located in a hospital) to serve all of the plan's enrollees. Moreover, in the case of hospital staff, hospital policy often restricts these providers to inpatient clients, so breastfeeding mothers cannot access these health professionals once they are discharged from the hospital. The lack of a provider network for breastfeeding counseling means that mothers 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 to receive support from a breastfeeding consultant, but breastfeeding mothers are required to pay 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 poor who do not qualify for Women, Infants and Children (WIC) breastfeeding

services. It also reduces the likelihood of a breastfeeding mother to seek support. This barrier could be eliminated through licensure of the breastfeeding professional, and it would potentially increase the number of prospective breastfeeding clients who are reached. It would create a significant incentive for more breastfeeding professionals to offer this service during prenatal and postpartum phases.

(j) Mississippi's birthrate is sixty-four percent (64%), among the highest in the nation. In contrast, there are approximately sixteen (16) registered International Board Certified Lactation Consultants (IBCLCs) and two hundred and eight (208) Certified Lactation Consultants (CLCs) practicing in Mississippi, a severe shortage in breastfeeding professionals. There are a mere one and eighty-one one hundredths (1.81) IBCLCs per one thousand (1,000) live births in Mississippi; therefore, there are not enough IBCLCs to meet the growing needs of Mississippi mothers and infants. Additionally, IBCLCs tend to work within the hospital settings and are primarily registered nurses who sometimes perform nursing duties in addition to providing limited breastfeeding assistance during the mother's hospital stay. According to the Centers for Disease Control, only fifty-one percent (51%) of hospital staff make 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 the postpartum period when mothers 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 breastfeeding professionals.

SECTION 3. The Legislature of the State of Mississippi acknowledges that:

(a) In Mississippi, Women, Infant and Children (WIC) remains the number one source of breastfeeding information and support, but its participation rates have dropped significantly over the last seven (7) years. 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.

(b) Creating a licensed breastfeeding consultant workforce would provide professional opportunities outside of the hospital and WIC, including breastfeeding education, supplies and support for significantly more Mississippi mothers of all socioeconomic statuses. Also, this licensure would reduce medical costs and increase tax revenue for the State of Mississippi.

(c) Therefore, the Legislature declares the intent of this act is to significantly increase the number of breastfeeding professionals in the State of Mississippi. Licensure will provide

a financial incentive for more women to become breastfeeding professionals to 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 4. The State Department of Health is authorized and directed to formulate, promulgate and enforce regulations and standards for the following:

(a) The licensing of breastfeeding professionals; and

(b) Standards and specifications for education, training, knowledge and experience required for licensure as a breastfeeding professional. In determining these requirements, the department shall give due consideration to the criteria established by the department's WIC Breastfeeding Program and other standards established by professional organizations that specialize in breastfeeding education and training;

(c) Establishment of the scope of breastfeeding 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 a nonrefundable application fee and license renewal fee. Fees collected under this act shall be used by the department to fund licensure positions that are responsible for ensuring criteria is met and cover costs

associated with a statewide breastfeeding promotional and educational program;

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

(g) Persons and practices exempt from licensure.

(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 that these professionals do not publicly define or describe themselves as breastfeeding or 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 breastfeeding education, promotion and care by persons preparing for practice under the supervision of a licensed breastfeeding professional.

(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), hospitals and clinics are exempt from licensing requirements when services are delivered to the WIC, hospital and clinic populations, but are required to meet licensing requirements when providing breastfeeding care to the private sector.

SECTION 5. (1) This act shall be administered and enforced by the State Department of Health.

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

SECTION 6. This act shall take effect and be in force from and after July 1, 2021.