

By: Senator(s) White (29th)

To: Judiciary

SENATE BILL NO. 2379

1 AN ACT RELATING TO RELIGIOUS FREEDOM; TO PROVIDE THAT THE
2 STATE OF MISSISSIPPI AND ITS POLITICAL SUBDIVISIONS SHALL NOT
3 SUBSTANTIALLY BURDEN A PERSON'S EXERCISE OF RELIGION, UNLESS IT
4 DEMONSTRATES THAT THERE IS A COMPELLING GOVERNMENTAL INTEREST AND
5 IS THE LEAST RESTRICTIVE MEANS OF FURTHERING THAT COMPELLING
6 GOVERNMENTAL INTEREST; AND FOR RELATED PURPOSES.

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

8 SECTION 1. **Short title.**

9 This act may be cited as the Religious Freedom Restoration
10 Act.

11 SECTION 2. **Definitions.**

12 In this act:

13 (a) "Demonstrates" means meets the burden of going
14 forward with the evidence and of persuasion under the standard of
15 clear and convincing evidence.

16 (b) "Exercise of religion" means an act or refusal to
17 act that is substantially motivated by religious belief, whether
18 or not the religious exercise is compulsory or central to a larger
19 system of religious belief.

20 (c) "Government" includes a branch, department, agency,
21 instrumentality and official (or other person acting under color
22 of law) of the State of Mississippi or a political subdivision of
23 the state.

24 (d) "Substantially burden" means to inhibit or curtail
25 religiously motivated practices.

26 SECTION 3. **Findings and purposes.**

27 (1) The Legislature finds the following:



28 (a) The free exercise of religion is an inherent,
29 fundamental and inalienable right secured by Section 18 of the
30 Mississippi Constitution of 1890.

31 (b) Laws "neutral" toward religion, as well as laws
32 intended to interfere with the exercise of religion, may burden
33 the exercise of religion.

34 (c) Government should not substantially burden the
35 exercise of religion without compelling justification.

36 (d) In Employment Division v. Smith, 494 U.S. 872
37 (1990), the Supreme Court virtually eliminated the requirement
38 under the First Amendment to the United States Constitution that
39 government justify burdens on the exercise of religion imposed by
40 laws neutral toward religion.

41 (e) In City of Boerne v. P.F. Flores, 65 LW 4612
42 (1997), the Supreme Court held that an act passed by Congress to
43 address the matter of burdens placed on the exercise of religion,
44 infringed on the legislative powers reserved to the states under
45 the Constitution of the United States.

46 (f) The compelling interest test, as set forth in
47 Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Varner,
48 374 U.S. 398 (1963), is a workable test for striking sensible
49 balances between religious liberty and competing governmental
50 interest.

51 (2) The purposes of this act are as follows:

52 (a) To restore the compelling interest test as set
53 forth in Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v.
54 Varner, 374 U.S. 398 (1963), and to guarantee that a test of
55 compelling governmental interest will be imposed on all state and
56 local (including home rule unit) laws, ordinances, policies,
57 procedures, practices and governmental actions in all cases in
58 which the free exercise of religion is substantially burdened.

59 (b) To provide a claim or defense to persons whose
60 exercise of religion is substantially burdened by government.



61 SECTION 4. **Free exercise of religion protected.**

62 Government shall not substantially burden a person's exercise
63 of religion, even if the burden results from a rule of general
64 applicability, unless it demonstrates that application of the
65 burden to the person (a) is both essential to further compelling
66 governmental interest; and (b) is the least restrictive means of
67 furthering that compelling governmental interest.

68 SECTION 5. **Judicial relief.**

69 If a person's exercise of religion has been burdened in
70 violation of this act, that person may assert that violation as a
71 claim or defense in a judicial proceeding and may obtain
72 appropriate relief against a government. A party who prevails in
73 an action to enforce this act against a government is entitled to
74 recover attorney's fees and costs incurred in maintaining the
75 claim or defense.

76 SECTION 6. **Application of act.**

77 (1) This act applies to all state and local laws,
78 ordinances, policies, procedures, practices and governmental
79 actions and their implementation, whether statutory or otherwise
80 and whether adopted before or after the effective date of this
81 act.

82 (2) Nothing in this act shall be construed to authorize a
83 government to burden any religious belief.

84 (3) Nothing in this act shall be construed to affect,
85 interpret, or in any way address any of the following: (a) that
86 portion of the First Amendment of the United States Constitution
87 prohibiting laws respecting the establishment of religion, or (b)
88 Section 18 of the Mississippi Constitution of 1890. Granting
89 government funding, benefits or exemptions, to the extent
90 permissible under the constitutional provisions described in items
91 (a) and (b) of this subsection, does not constitute a violation of
92 this act. In this subsection, "granting," used with respect to



93 government funding, benefits or exemptions, does not include the
94 denial of government funding, benefits or exemptions.

95 (4) The corporate authorities of a municipality or other
96 unit of local government may enact ordinances, standards, rules or
97 regulations that protect the free exercise of religion in a manner
98 or to an extent equal to or greater than the protection provided
99 in this act. If an ordinance, standard, rule or regulation
100 enacted under the authority of this section or under the authority
101 of a unit of local government's home rule powers prohibits,
102 restricts, narrows or burdens a person's exercise of religion or
103 permits the prohibition, restriction, narrowing or burdening of a
104 person's exercise of religion, that ordinance, standard, rule or
105 regulation is void and unenforceable as to that person if it (a)
106 is not in furtherance of a compelling governmental interest, and
107 (b) is not the least restrictive means of furthering that
108 governmental interest.

109 SECTION 7. This act shall take effect and be in force from
110 and after July 1, 2001.

