

By: Senator(s) Younger, Seymour

To: Judiciary, Division A

SENATE BILL NO. 2093

1 AN ACT TO AMEND SECTION 11-61-1, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THAT RELIGIOUS LEADERS ARE NOT REQUIRED TO PERFORM
3 SAME-SEX MARRIAGES; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 11-61-1, Mississippi Code of 1972, is
6 amended as follows:

7 11-61-1. (1) This section shall be known and may be cited
8 as the Mississippi Religious Freedom Restoration Act.

9 (2) The Mississippi Legislature finds the following:

10 (a) The framers of the Constitution, recognizing free
11 exercise of religion as an unalienable right, secured its
12 protection in the First Amendment to the Constitution;

13 (b) Laws "neutral" toward religion may burden religious
14 exercise as surely as laws intended to interfere with religious
15 exercise;

16 (c) Government should not substantially burden
17 religious exercise without compelling justification;



18 (d) In *Employment Division v. Smith*, 494 U.S. 872
19 (1990), the United States Supreme Court virtually eliminated the
20 requirement that the government justify burdens on religious
21 exercise imposed by laws neutral toward religion; and

22 (e) The compelling interest test as set forth in prior
23 federal court rulings is a workable test for striking sensible
24 balances between religious liberty and competing prior
25 governmental interests.

26 (3) The purposes of this section are as follows:

27 (a) To restore the compelling interest test as set
28 forth in *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Wisconsin v.*
29 *Yoder*, 406 U.S. 205 (1972), and to guarantee its application in
30 all cases where free exercise of religion is substantially
31 burdened; and

32 (b) To provide a claim or defense to persons whose
33 religious exercise is substantially burdened by government.

34 (4) As used in this section, the following words shall have
35 the following meanings:

36 (a) "Government" means any branch, department, agency,
37 instrumentality or political subdivision of the State of
38 Mississippi and any official or other person acting under color of
39 law of the State of Mississippi.

40 (b) "Demonstrates" means to meet the burdens of going
41 forward with the evidence and of persuasion.



42 (c) "Exercise of religion" means the exercise of
43 religion under the First Amendment to the Constitution.

44 (d) "Religious leader" means an individual who is
45 associated with and is acting on behalf of a religious
46 organization, including a member of clergy, a minister, a pastor,
47 a priest, a rabbi, an imam or a spiritual advisor.

48 (5) (a) Except as provided in paragraph (b) of this
49 subsection, government shall not substantially burden:

50 (i) A person's exercise of religion even if the
51 burden results from a rule of general applicability * * *;

52 (ii) A religious leader's exercise of religion by
53 requiring him to perform or solemnize any marriage inconsistent
54 with a sincerely held religious belief that marriage is the union
55 of one man and one woman.

56 (b) Government may substantially burden a person's or
57 religious leader's exercise of religion only if it demonstrates
58 that application of the burden to the person:

59 (i) Is in furtherance of a compelling governmental
60 interest; and

61 (ii) Is the least restrictive means of furthering
62 that compelling governmental interest.

63 (6) A person whose religious exercise has been burdened in
64 violation of this section may assert that violation as a claim or
65 defense in a judicial proceeding and obtain appropriate relief
66 against the government, as defined by subsection (4) of this



67 section. Standing to assert a claim or defense under this section
68 shall be the same as the general rules of standing under Article
69 III of the United States Constitution.

70 (7) (a) This section applies to all state laws, rules,
71 regulations and any municipal or county ordinances, rules or
72 regulations and the implementation of those laws, whether
73 statutory or otherwise, and whether adopted before or after July
74 1, 2014.

75 (b) Any such law, rule, regulation or ordinances
76 adopted after July 1, 2014, shall be subject to this section
77 unless such law explicitly excludes such application by reference
78 to this section.

79 (8) Nothing in this section shall be construed to authorize
80 any government to burden any religious belief.

81 (9) Nothing in this section shall be construed to affect,
82 interpret, or in any way address that portion of the First
83 Amendment prohibiting laws respecting the establishment of
84 religion. Granting government funding, benefits, or exemptions,
85 to the extent permissible under the Establishment Clause, shall
86 not constitute a violation of this section. As used in this
87 subsection, the term "granting," used with respect to government
88 funding, benefits, or exemptions, does not include the denial of
89 government funding, benefits, or exemptions.



90 (10) Nothing in this section shall create any rights by an
91 employee against an employer if the employer is not the
92 government.

93 (11) Nothing in this section shall be construed to suggest
94 that any state law adopted before July 1, 2016, requires a
95 religious leader to perform or solemnize any marriage inconsistent
96 with a religious belief that marriage is the union of one man and
97 one woman.

98 **SECTION 2.** This act shall take effect and be in force from
99 and after July 1, 2016.

