

By: Senator(s) Branning

To: Judiciary, Division A

SENATE BILL NO. 2822

1 AN ACT TO AMEND SECTION 11-61-1, MISSISSIPPI CODE OF 1972, TO  
2 CLARIFY THE APPLICATION OF THE MISSISSIPPI RELIGIOUS FREEDOM  
3 RESTORATION ACT; 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) "Person" means and includes any:

45 (i) Natural person in his or her individual  
46 capacity, regardless of religious affiliation;

47 (ii) Natural person in his or her capacity as a  
48 religious leader, clergy or minister;

49 (iii) Artificial person, including, but not  
50 limited to, a religious organization, religious-based foster or  
51 adoptive agency or private entity; and

52 (iv) Foster or adoptive parent.

53 (5) (a) Government shall not substantially burden a  
54 person's exercise of religion even if the burden results from a  
55 rule of general applicability, except as provided in paragraph (b)  
56 of this subsection. In the case of:

57 (i) A religious leader, clergy or minister, or  
58 religious organization, the government shall not discriminate  
59 against or substantially burden a person's exercise of religion,  
60 which includes, but is not limited to, the person's provision of  
61 or refusal to conduct matrimonial, formation, celebration or  
62 recognition of any marriage based upon or in a manner consistent  
63 with the person's sincerely held religious belief or moral  
64 conviction.

65 (ii) An individual or private entity, the  
66 government shall not discriminate against or substantially burden



67 the free exercise of religion, which includes, but is not limited  
68 to, the person's provision of or refusal to provide  
69 marriage-related goods or services of any nature based upon or in  
70 a manner consistent with the individual's or entity's sincerely  
71 held religious belief or moral conviction.

72 (iii) A religious-based foster or adoptive agency  
73 that advertises, provides or facilitates adoption, foster-care or  
74 related services, the government shall not discriminate against or  
75 substantially burden the free exercise of religion, which  
76 includes, but is not limited to, the agency's provision of or the  
77 refusal to provide adoption or foster-care services or the  
78 instruction or raising of a child or children based upon or in a  
79 manner consistent with the agency's sincerely held religious  
80 belief or moral conviction.

81 (iv) Foster and adoptive parents who the state  
82 grants custody of a foster or adoptive child, or who seeks custody  
83 from the state, the government shall not discriminate against nor  
84 prohibit the free exercise of religion, which includes, but is not  
85 limited to, the parents' instruction or raising of a child or  
86 children based upon or in a manner consistent with the parents'  
87 sincerely held religious belief or moral conviction.

88 (b) Government may substantially burden a person's  
89 exercise of religion only if it demonstrates that application of  
90 the burden to the person:



91 (i) Is in furtherance of a compelling governmental  
92 interest; and

93 (ii) Is the least restrictive means of furthering  
94 that compelling governmental interest.

95 (6) A person whose religious exercise has been burdened in  
96 violation of this section may assert that violation as a claim or  
97 defense in a judicial proceeding and obtain appropriate relief  
98 against the government, as defined by subsection (4) of this  
99 section. Standing to assert a claim or defense under this section  
100 shall be the same as the general rules of standing under Article  
101 III of the United States Constitution.

102 (7) (a) This section applies to all state laws, rules,  
103 regulations and any municipal or county ordinances, rules or  
104 regulations and the implementation of those laws, whether  
105 statutory or otherwise, and whether adopted before or after July  
106 1, 2014.

107 (b) Any such law, rule, regulation or ordinances  
108 adopted after July 1, 2014, shall be subject to this section  
109 unless such law explicitly excludes such application by reference  
110 to this section.

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

113 (9) Nothing in this section shall be construed to affect,  
114 interpret, or in any way address that portion of the First  
115 Amendment prohibiting laws respecting the establishment of



116 religion. Granting government funding, benefits, or exemptions,  
117 to the extent permissible under the Establishment Clause, shall  
118 not constitute a violation of this section. As used in this  
119 subsection, the term "granting," used with respect to government  
120 funding, benefits, or exemptions, does not include the denial of  
121 government funding, benefits, or exemptions.

122 (10) Nothing in this section shall create any rights by an  
123 employee against an employer if the employer is not the  
124 government.

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

