

By: Representative Weathersby (By Request)

To: Education

HOUSE BILL NO. 1176

1 AN ACT TO AMEND SECTION 37-9-59, MISSISSIPPI CODE OF 1972, TO
 2 PROHIBIT ANY SUPERINTENDENT OF SCHOOLS, HIS ADMINISTRATIVE
 3 DESIGNEE OR ANY PRINCIPAL FROM DISMISSING OR SUSPENDING ANY
 4 LICENSED SCHOOL EMPLOYEE FOR REFERRING TO ANY INDIVIDUAL STUDENT'S
 5 IMMUTABLE BIOLOGICAL SEX AS OBJECTIVELY DETERMINED BY ANATOMY AND
 6 GENETICS AT BIRTH; TO PROHIBIT ANY SUPERINTENDENT OF SCHOOLS, HIS
 7 ADMINISTRATIVE DESIGNEE OR ANY PRINCIPAL FROM REQUIRING LICENSED
 8 SCHOOL EMPLOYEES TO COMPLY WITH DIRECTIVES TO REFER TO A STUDENT
 9 BASED ON THE STUDENT'S PREFERRED IDENTITY ASSOCIATION AGAINST THE
 10 LICENSED EMPLOYEE'S RELIGIOUS BELIEF OR MORAL CONVICTION; TO BRING
 11 FORWARD SECTIONS 11-62-3, 11-62-5, 11-62-7, 11-62-9, 11-62-11,
 12 11-62-13 AND 11-62-15, MISSISSIPPI CODE OF 1972, WHICH ARE
 13 PROVISIONS OF THE "PROTECTING FREEDOM OF CONSCIENCE FROM
 14 GOVERNMENT DISCRIMINATION ACT," FOR THE PURPOSE OF POSSIBLE
 15 AMENDMENTS; TO AMEND SECTION 11-62-17, MISSISSIPPI CODE OF 1972,
 16 IN CONFORMITY TO THE PRECEDING PROVISIONS BY INCLUDING EMPLOYEES
 17 OF PUBLIC SCHOOL DISTRICTS AND CHARTER SCHOOLS IN THE DEFINITION
 18 OF STATE GOVERNMENT; AND FOR RELATED PURPOSES.

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

20 **SECTION 1.** Section 37-9-59, Mississippi Code of 1972, is
 21 amended as follows:

22 37-9-59. (1) (a) For incompetence, neglect of duty,
 23 immoral conduct, intemperance, brutal treatment of a pupil or
 24 other good cause the superintendent of schools may dismiss or
 25 suspend any licensed employee in any school district. Before
 26 being so dismissed or suspended any licensed employee shall be



27 notified of the charges against him and he shall be advised that
28 he is entitled to a public hearing upon said charges. Provided,
29 however, that a school superintendent whose employment has been
30 terminated under this section shall not have the right to request
31 a hearing before the school board or a hearing officer. Provided,
32 however, that a licensed employee in a conservator school district
33 whose employment has been terminated under this section for good
34 cause as determined by a conservator appointed by the State Board
35 of Education shall not have a right to request a hearing before
36 the school board, a hearing officer or the State Board of
37 Education. The conservator has the right to immediately terminate
38 a licensed employee under this section. In the event the
39 continued presence of said employee on school premises poses a
40 potential threat or danger to the health, safety or general
41 welfare of the students, or, in the discretion of the
42 superintendent, may interfere with or cause a disruption of normal
43 school operations, the superintendent may immediately release said
44 employee of all duties pending a hearing if one is requested by
45 the employee. In the event a licensed employee is arrested,
46 indicted or otherwise charged with a felony by a recognized law
47 enforcement official, the continued presence of the licensed
48 employee on school premises shall be deemed to constitute a
49 disruption of normal school operations. The school board, upon a
50 request for a hearing by the person so suspended or removed shall
51 set a date, time and place for such hearing which shall be not



52 sooner than five (5) days nor later than thirty (30) days from the
53 date of the request. The procedure for such hearing shall be as
54 prescribed for hearings before the board or hearing officer in
55 Section 37-9-111. From the decision made at said hearing, any
56 licensed employee shall be allowed an appeal to the chancery court
57 in the same manner as appeals are authorized in Section 37-9-113.
58 Any party aggrieved by action of the chancery court may appeal to
59 the Mississippi Supreme Court as provided by law. In the event
60 that a licensed employee is immediately relieved of duties pending
61 a hearing, as provided in this section, said employee shall be
62 entitled to compensation for a period up to and including the date
63 that the initial hearing is set by the school board, in the event
64 that there is a request for such a hearing by the employee. In
65 the event that an employee does not request a hearing within five
66 (5) calendar days of the date of the notice of discharge or
67 suspension, it shall constitute a waiver of all rights by said
68 employee and such discharge or suspension shall be effective on
69 the date set out in the notice to the employee.

70 (b) No superintendent of schools, his administrative
71 designee or any principal shall dismiss or suspend any licensed
72 employee in any school district for referring to any individual
73 student's immutable biological sex as objectively determined by
74 anatomy and genetics at time of birth despite the student's
75 preference to identify as the opposite gender after undergoing
76 stages of transition as a pansexual, transsexual or transgender,



77 whether through sex reassignment, gender identity transitioning,
78 hormonal therapy treatment or other philosophical processes.
79 Additionally, no superintendent of schools, his administrative
80 designee or any principal shall require any licensed employee to
81 comply with any directive to use a student's preferred method of
82 reference against the employee's sincerely held religious belief
83 or moral conviction, as protected under the provisions of the
84 "Protecting Freedom of Conscience from Government Discrimination
85 Act," authorized under Chapter 62, Title 11, Mississippi Code of
86 1972.

87 (2) The school board of every school district in this state
88 is * * * prohibited from denying employment or reemployment to any
89 person as a superintendent, principal or licensed employee, as
90 defined in Section 37-19-1, or as a noninstructional personnel, as
91 defined in Section 37-9-1, for the single reason that any eligible
92 child of such person does not attend the school system in which
93 such superintendent, principal, licensed employee or
94 noninstructional personnel is employed.

95 **SECTION 2.** Section 11-62-3, Mississippi Code of 1972, is
96 brought forward as follows:

97 11-62-3. The sincerely held religious beliefs or moral
98 convictions protected by this chapter are the belief or conviction
99 that:

100 (a) Marriage is or should be recognized as the union of
101 one man and one woman;



102 (b) Sexual relations are properly reserved to such a
103 marriage; and

104 (c) Male (man) or female (woman) refer to an
105 individual's immutable biological sex as objectively determined by
106 anatomy and genetics at time of birth.

107 **SECTION 3.** Section 11-62-5, Mississippi Code of 1972, is
108 brought forward as follows:

109 11-62-5. (1) The state government shall not take any
110 discriminatory action against a religious organization wholly or
111 partially on the basis that such organization:

112 (a) Solemnizes or declines to solemnize any marriage,
113 or provides or declines to provide services, accommodations,
114 facilities, goods or privileges for a purpose related to the
115 solemnization, formation, celebration or recognition of any
116 marriage, based upon or in a manner consistent with a sincerely
117 held religious belief or moral conviction described in Section
118 11-62-3;

119 (b) Makes any employment-related decision including,
120 but not limited to, the decision whether or not to hire, terminate
121 or discipline an individual whose conduct or religious beliefs are
122 inconsistent with those of the religious organization, based upon
123 or in a manner consistent with a sincerely held religious belief
124 or moral conviction described in Section 11-62-3; or

125 (c) Makes any decision concerning the sale, rental,
126 occupancy of, or terms and conditions of occupying a dwelling or



127 other housing under its control, based upon or in a manner
128 consistent with a sincerely held religious belief or moral
129 conviction described in Section 11-62-3.

130 (2) The state government shall not take any discriminatory
131 action against a religious organization that advertises, provides
132 or facilitates adoption or foster care, wholly or partially on the
133 basis that such organization has provided or declined to provide
134 any adoption or foster care service, or related service, based
135 upon or in a manner consistent with a sincerely held religious
136 belief or moral conviction described in Section 11-62-3.

137 (3) The state government shall not take any discriminatory
138 action against a person who the state grants custody of a foster
139 or adoptive child, or who seeks from the state custody of a foster
140 or adoptive child, wholly or partially on the basis that the
141 person guides, instructs or raises a child, or intends to guide,
142 instruct, or raise a child based upon or in a manner consistent
143 with a sincerely held religious belief or moral conviction
144 described in Section 11-62-3.

145 (4) The state government shall not take any discriminatory
146 action against a person wholly or partially on the basis that the
147 person declines to participate in the provision of treatments,
148 counseling, or surgeries related to sex reassignment or gender
149 identity transitioning or declines to participate in the provision
150 of psychological, counseling, or fertility services based upon a
151 sincerely held religious belief or moral conviction described in



152 Section 11-62-3. This subsection (4) shall not be construed to
153 allow any person to deny visitation, recognition of a designated
154 representative for health care decision-making, or emergency
155 medical treatment necessary to cure an illness or injury as
156 required by law.

157 (5) The state government shall not take any discriminatory
158 action against a person wholly or partially on the basis that the
159 person has provided or declined to provide the following services,
160 accommodations, facilities, goods, or privileges for a purpose
161 related to the solemnization, formation, celebration, or
162 recognition of any marriage, based upon or in a manner consistent
163 with a sincerely held religious belief or moral conviction
164 described in Section 11-62-3:

165 (a) Photography, poetry, videography, disc-jockey
166 services, wedding planning, printing, publishing or similar
167 marriage-related goods or services; or

168 (b) Floral arrangements, dress making, cake or pastry
169 artistry, assembly-hall or other wedding-venue rentals, limousine
170 or other car-service rentals, jewelry sales and services, or
171 similar marriage-related services, accommodations, facilities or
172 goods.

173 (6) The state government shall not take any discriminatory
174 action against a person wholly or partially on the basis that the
175 person establishes sex-specific standards or policies concerning
176 employee or student dress or grooming, or concerning access to



177 restrooms, spas, baths, showers, dressing rooms, locker rooms, or
178 other intimate facilities or settings, based upon or in a manner
179 consistent with a sincerely held religious belief or moral
180 conviction described in Section 11-62-3.

181 (7) The state government shall not take any discriminatory
182 action against a state employee wholly or partially on the basis
183 that such employee lawfully speaks or engages in expressive
184 conduct based upon or in a manner consistent with a sincerely held
185 religious belief or moral conviction described in Section 11-62-3,
186 so long as:

187 (a) If the employee's speech or expressive conduct
188 occurs in the workplace, that speech or expressive conduct is
189 consistent with the time, place, manner and frequency of any other
190 expression of a religious, political, or moral belief or
191 conviction allowed; or

192 (b) If the employee's speech or expressive conduct
193 occurs outside the workplace, that speech or expressive conduct is
194 in the employee's personal capacity and outside the course of
195 performing work duties.

196 (8) (a) Any person employed or acting on behalf of the
197 state government who has authority to authorize or license
198 marriages, including, but not limited to, clerks, registers of
199 deeds or their deputies, may seek recusal from authorizing or
200 licensing lawful marriages based upon or in a manner consistent
201 with a sincerely held religious belief or moral conviction



202 described in Section 11-62-3. Any person making such recusal
203 shall provide prior written notice to the State Registrar of Vital
204 Records who shall keep a record of such recusal, and the state
205 government shall not take any discriminatory action against that
206 person wholly or partially on the basis of such recusal. The
207 person who is recusing himself or herself shall take all necessary
208 steps to ensure that the authorization and licensing of any
209 legally valid marriage is not impeded or delayed as a result of
210 any recusal.

211 (b) Any person employed or acting on behalf of the
212 state government who has authority to perform or solemnize
213 marriages, including, but not limited to, judges, magistrates,
214 justices of the peace or their deputies, may seek recusal from
215 performing or solemnizing lawful marriages based upon or in a
216 manner consistent with a sincerely held religious belief or moral
217 conviction described in Section 11-62-3. Any person making such
218 recusal shall provide prior written notice to the Administrative
219 Office of Courts, and the state government shall not take any
220 discriminatory action against that person wholly or partially on
221 the basis of such recusal. The Administrative Office of Courts
222 shall take all necessary steps to ensure that the performance or
223 solemnization of any legally valid marriage is not impeded or
224 delayed as a result of any recusal.

225 **SECTION 4.** Section 11-62-7, Mississippi Code of 1972, is
226 brought forward as follows:



227 11-62-7. (1) As used in this chapter, discriminatory action
228 includes any action taken by the state government to:

229 (a) Alter in any way the tax treatment of, or cause any
230 tax, penalty, or payment to be assessed against, or deny, delay,
231 revoke, or otherwise make unavailable an exemption from taxation
232 of any person referred to in Section 11-62-5;

233 (b) Disallow, deny or otherwise make unavailable a
234 deduction for state tax purposes of any charitable contribution
235 made to or by such person;

236 (c) Withhold, reduce, exclude, terminate, materially
237 alter the terms or conditions of, or otherwise make unavailable or
238 deny any state grant, contract, subcontract, cooperative
239 agreement, guarantee, loan, scholarship, or other similar benefit
240 from or to such person;

241 (d) Withhold, reduce, exclude, terminate, materially
242 alter the terms or conditions of, or otherwise make unavailable or
243 deny any entitlement or benefit under a state benefit program from
244 or to such person;

245 (e) Impose, levy or assess a monetary fine, fee,
246 penalty or injunction;

247 (f) Withhold, reduce, exclude, terminate, materially
248 alter the terms or conditions of, or otherwise make unavailable or
249 deny any license, certification, accreditation, custody award or
250 agreement, diploma, grade, recognition, or other similar benefit,
251 position, or status from or to any person; or



252 (g) Refuse to hire or promote, force to resign, fire,
253 demote, sanction, discipline, materially alter the terms or
254 conditions of employment, or retaliate or take other adverse
255 employment action against a person employed or commissioned by the
256 state government.

257 (2) The state government shall consider accredited, licensed
258 or certified any person that would otherwise be accredited,
259 licensed or certified, respectively, for any purposes under state
260 law but for a determination against such person wholly or
261 partially on the basis that the person believes, speaks or acts in
262 accordance with a sincerely held religious belief or moral
263 conviction described in Section 11-62-3.

264 **SECTION 5.** Section 11-62-9, Mississippi Code of 1972, is
265 brought forward as follows:

266 11-62-9. (1) A person may assert a violation of this
267 chapter as a claim against the state government in any judicial or
268 administrative proceeding or as defense in any judicial or
269 administrative proceeding without regard to whether the proceeding
270 is brought by or in the name of the state government, any private
271 person or any other party.

272 (2) An action under this chapter may be commenced, and
273 relief may be granted, in a court of the state without regard to
274 whether the person commencing the action has sought or exhausted
275 available administrative remedies.



276 (3) Violations of this chapter which are properly governed
277 by Chapter 46, Title 11, Mississippi Code of 1972, shall be
278 brought in accordance with that chapter.

279 **SECTION 6.** Section 11-62-11, Mississippi Code of 1972, is
280 brought forward as follows:

281 11-62-11. An aggrieved person must first seek injunctive
282 relief to prevent or remedy a violation of this chapter or the
283 effects of a violation of this chapter. If injunctive relief is
284 granted by the court and the injunction is thereafter violated,
285 then and only then may the aggrieved party, subject to the
286 limitations of liability set forth in Section 11-46-15, seek the
287 following:

288 (a) Compensatory damages for pecuniary and nonpecuniary
289 losses;

290 (b) Reasonable attorneys' fees and costs; and

291 (c) Any other appropriate relief, except that only
292 declaratory relief and injunctive relief shall be available
293 against a private person not acting under color of state law upon
294 a successful assertion of a claim or defense under this chapter.

295 **SECTION 7.** Section 11-62-13, Mississippi Code of 1972, is
296 brought forward as follows:

297 11-62-13. A person must bring an action to assert a claim
298 under this chapter not later than two (2) years after the date
299 that the person knew or should have known that a discriminatory
300 action was taken against that person.



301 **SECTION 8.** Section 11-62-15, Mississippi Code of 1972, is
302 brought forward as follows:

303 11-62-15. (1) This chapter shall be construed in favor of a
304 broad protection of free exercise of religious beliefs and moral
305 convictions, to the maximum extent permitted by the state and
306 federal constitutions.

307 (2) The protection of free exercise of religious beliefs and
308 moral convictions afforded by this chapter are in addition to the
309 protections provided under federal law, state law, and the state
310 and federal constitutions. Nothing in this chapter shall be
311 construed to preempt or repeal any state or local law that is
312 equally or more protective of free exercise of religious beliefs
313 or moral convictions. Nothing in this chapter shall be construed
314 to narrow the meaning or application of any state or local law
315 protecting free exercise of religious beliefs or moral
316 convictions. Nothing in this chapter shall be construed to
317 prevent the state government from providing, either directly or
318 through an individual or entity not seeking protection under this
319 chapter, any benefit or service authorized under state law.

320 (3) This chapter applies to, and in cases of conflict
321 supersedes, each statute of the state that impinges upon the free
322 exercise of religious beliefs and moral convictions protected by
323 this chapter, unless a conflicting statute is expressly made
324 exempt from the application of this chapter. This chapter also
325 applies to, and in cases of conflict supersedes, any ordinance,



326 rule, regulation, order, opinion, decision, practice or other
327 exercise of the state government's authority that impinges upon
328 the free exercise of religious beliefs or moral convictions
329 protected by this chapter.

330 **SECTION 9.** Section 11-62-17, Mississippi Code of 1972, is
331 amended as follows:

332 11-62-17. As used in this chapter, the following words and
333 phrases shall have the meanings ascribed in this section unless
334 the context clearly indicates otherwise:

335 (1) "State benefit program" means any program administered
336 or funded by the state, or by any agent on behalf of the state,
337 providing cash, payments, grants, contracts, loans or in-kind
338 assistance.

339 (2) "State government" means:

340 (a) The State of Mississippi or a political subdivision
341 of the state;

342 (b) Any agency of the state or of a political
343 subdivision of the state, including a department, bureau, board,
344 commission, council, court, public school district, charter school
345 or public institution of higher education;

346 (c) Any person acting under color of state law; and

347 (d) Any private party or third party suing under or
348 enforcing a law, ordinance, rule or regulation of the state or
349 political subdivision of the state.

350 (3) "Person" means:



351 (a) A natural person, in his or her individual
352 capacity, regardless of religious affiliation or lack thereof, or
353 in his or her capacity as a member, officer, owner, volunteer,
354 employee, manager, religious leader, clergy or minister of any
355 entity described in this section;

356 (b) A religious organization;

357 (c) A sole proprietorship, or closely held company,
358 partnership, association, organization, firm, corporation,
359 cooperative, trust, society or other closely held entity operating
360 with a sincerely held religious belief or moral conviction
361 described in this chapter; or

362 (d) Cooperatives, ventures or enterprises comprised of
363 two (2) or more individuals or entities described in this
364 subsection.

365 (4) "Religious organization" means:

366 (a) A house of worship, including, but not limited to,
367 churches, synagogues, shrines, mosques and temples;

368 (b) A religious group, corporation, association, school
369 or educational institution, ministry, order, society or similar
370 entity, regardless of whether it is integrated or affiliated with
371 a church or other house of worship; and

372 (c) An officer, owner, employee, manager, religious
373 leader, clergy or minister of an entity or organization described
374 in this subsection (4).



375 (5) "Adoption or foster care" or "adoption or foster care
376 service" means social services provided to or on behalf of
377 children, including:

- 378 (a) Assisting abused or neglected children;
- 379 (b) Teaching children and parents occupational,
380 homemaking and other domestic skills;
- 381 (c) Promoting foster parenting;
- 382 (d) Providing foster homes, residential care, group
383 homes or temporary group shelters for children;
- 384 (e) Recruiting foster parents;
- 385 (f) Placing children in foster homes;
- 386 (g) Licensing foster homes;
- 387 (h) Promoting adoption or recruiting adoptive parents;
- 388 (i) Assisting adoptions or supporting adoptive
389 families;
- 390 (j) Performing or assisting home studies;
- 391 (k) Assisting kinship guardianships or kinship
392 caregivers;
- 393 (l) Providing family preservation services;
- 394 (m) Providing family support services; and
- 395 (n) Providing temporary family reunification services.

396 **SECTION 10.** This act shall take effect and be in force from
397 and after July 1, 2019.

