

By: Representatives Ford (73rd), Hobgood-
Wilkes, Williamson, Boyd (19th)

To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1045

1 AN ACT TO CREATE A NEW SECTION OF LAW TO PROVIDE THAT LIBRARY
2 COLLECTIONS, EVENTS, PRESENTATIONS AND DISPLAYS CURATED FOR THE
3 SPECIAL NEEDS AND INTERESTS OF CHILDREN AND YOUNG TEENAGERS SHALL
4 NOT BE ALLOWED TO INCLUDE MATERIALS CONTAINING CERTAIN
5 INFORMATION; TO CREATE THE COMMISSION ON AGE APPROPRIATE LITERACY
6 TO COMPILE A LIST OF OBSCENE MATERIAL AND UPDATE THE LIST
7 ANNUALLY; TO PROVIDE THE MEMBERS OF THE COMMISSION; TO PROVIDE
8 THAT A CITIZEN OF THIS STATE WHOSE CHILD IS AFFECTED BY A
9 VIOLATION OF THIS ACT MAY FILE SUIT FOR DECLARATIVE AND INJUNCTIVE
10 RELIEF, INCLUDING ALL REASONABLE ATTORNEY'S FEES AND COSTS
11 INCURRED BY THE PARTY BRINGING THE SUIT IN THE CIRCUIT COURT WHICH
12 SHALL HAVE JURISDICTION OVER THE LIBRARY WHERE THE VIOLATION OF
13 THIS ACT OCCURS; TO PROVIDE THAT THE MISSISSIPPI LIBRARY
14 COMMISSION AND THE STATE DEPARTMENT OF EDUCATION SHALL GIVE THE
15 LIBRARY THE OPPORTUNITY TO CURE THE VIOLATION BEFORE A SUIT IS
16 BROUGHT; TO AMEND SECTION 37-1-3, MISSISSIPPI CODE OF 1972, TO
17 AMEND THE POWERS AND DUTIES OF THE STATE BOARD OF EDUCATION TO
18 COMPLY WITH THE PROVISIONS OF THIS ACT; TO BRING FORWARD SECTIONS
19 97-29-107 AND 39-3-357, MISSISSIPPI CODE OF 1972, FOR THE PURPOSE
20 OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** (1) Public library collections, events,
23 presentations and displays curated for the special needs and
24 interests of children under the age of fifteen (15) shall not
25 include obscene written or visual materials, as determined by the
26 Commission on Age Appropriate Literacy. A material is obscene if:



27 (a) To the average person, applying contemporary
28 community standards, taken as a whole, it appeals to the prurient
29 interest, that is, a lustful, erotic, shameful, or morbid interest
30 in nudity, sex or excretion; and

31 (b) The material taken as a whole lacks serious
32 literary, artistic, political or scientific value; and

33 (c) The material depicts or describes in a patently
34 offensive way, sexual contact specifically defined in
35 subparagraphs (i) through (v) below:

36 (i) Acts of sexual intercourse of any kind, normal
37 or perverted, actual or simulated;

38 (ii) Acts of masturbation;

39 (iii) Acts involving excretory functions or lewd
40 exhibition of the genitals;

41 (iv) Acts of bestiality or the fondling of sex
42 organs of animals; or

43 (v) Sexual acts of flagellation, torture or other
44 violence indicating a sadomasochistic sexual relationship.

45 (2) "Patently offensive" means so offensive on its face as
46 to affront current community standards of decency.

47 (3) "Obscene material" as described above shall not include
48 age-appropriate materials with diagrams about anatomy for science
49 or content relating to classical works of art.

50 **SECTION 2.** (1) There is hereby created the Commission on
51 Age Appropriate Literacy. The commission shall be assigned to the



52 Office of the Secretary of State for administrative purposes only.
53 The commission shall, after consultation with the State Board of
54 Education and the Mississippi Library Commission as mandated in
55 Section 3 of this act, compile a list of obscene or written
56 materials, as outlined in Section 1 of this act. The commission
57 shall consist of seventeen (17) members and shall be filled in the
58 following manner:

59 (a) The State Superintendent of Education, or his or
60 her designee, shall serve as the permanent chairperson of the
61 commission, from and after this act;

62 (b) Four (4) members shall be appointed as
63 representatives of any four Institutes of Higher Learning in the
64 State of Mississippi, specifically those institutes' Department of
65 English or Literacy. The Governor shall appoint two (2) of these
66 members and the Speaker of the House and the Lieutenant Governor
67 shall appoint one (1) each;

68 (c) Four (4) members shall be appointed who are
69 full-time educators or administrators in Mississippi public
70 schools. The Governor shall appoint two (2) of these members and
71 the Speaker of the House and the Lieutenant Governor shall appoint
72 one (1) each;

73 (d) Four (4) members shall be appointed who are
74 full-time librarians in Mississippi public libraries. The
75 Governor shall appoint two (2) of these members and the Speaker of



76 the House and the Lieutenant Governor shall appoint one (1) each;
77 and

78 (e) Four (4) members shall be appointed who are parents
79 of children in Mississippi public schools. The Governor shall
80 appoint two (2) of these members and the Speaker of the House and
81 the Lieutenant Governor shall appoint one (1) each.

82 (2) The members of the commission shall be residents of this
83 state and shall be appointed with due regard for broad geographic
84 representation.

85 (3) The commissioners shall serve a term of four (4) years
86 and eight (8) members of the commission shall constitute a quorum
87 for the transaction of the business of the commission.

88 (4) Members of the commission may not be compensated for the
89 performance of their duties except from nonstate funds that are
90 specifically available for that purpose.

91 (5) The commission shall meet and continue to update the
92 list of materials that violate this act and provide those updates
93 to public libraries and public school libraries no later than July
94 1 of each year.

95 **SECTION 3.** The State Board of Education and the Mississippi
96 Library Commission shall provide guidance and training to support
97 the members of the Commission on Age Appropriate Literacy in
98 identifying materials that violate this act.

99 **SECTION 4.** Public library collections, events, presentations
100 and displays curated for the special needs and interests of



101 children under the age of fifteen (15) shall not include obscene
102 written or visual materials contained on the list of obscene
103 materials compiled pursuant to this act.

104 **SECTION 5.** (1) A citizen of this state who believes that a
105 material is obscene and should not be displayed in public library
106 collections, events, presentations and displays curated for those
107 special needs and interests of children under the age of fifteen
108 (15) may petition the Commission on Age Appropriate Literacy to
109 have the material added to the list of obscene materials. The
110 commission shall hear the petition at its next regularly scheduled
111 meeting as long as the petition is filed more than thirty (30)
112 days before the next regularly scheduled meeting. If the petition
113 is filed after such time, then the commission may hear the
114 petition at the following meeting.

115 (2) The commission shall provide its determination as to the
116 material in writing. If the commission determines that the
117 material is not obscene as described in this act and should not be
118 included on the list of obscene materials, the petitioner may
119 appeal the decision to the Mississippi Library Commission for a
120 final determination. If the commission determines that the
121 material is obscene and should be excluded from collections,
122 events, presentations and displays curated for those special needs
123 and interests of children under the age of fifteen (15), then any
124 person may appeal the decision to the Mississippi Library
125 Commission for a final determination.



126 (3) A citizen of this state whose child is affected by a
127 violation of this act may file suit for declarative and injunctive
128 relief, including all reasonable attorney's fees and costs
129 incurred by the party bringing the suit in the circuit court which
130 shall have jurisdiction over the library where the violation of
131 this act occurs.

132 (4) Before instituting suit under this section, the party
133 adversely impacted by a violation of this act shall notify the
134 Mississippi Library Commission and the State Department of
135 Education in writing of the violation and include evidence of the
136 violation. The Mississippi Library Commission and the State
137 Department of Education shall, within thirty (30) days,
138 investigate whether the library is in violation of this act and
139 provide the chief administrative officer of the library notice of
140 the findings, including a description of the materials in
141 violation of this act. The library shall have thirty (30) days
142 from receipt of the notice to cure the violation. If the library
143 fails to cure the violation within that thirty-day time period, a
144 suit under subsection (1) of this section may proceed. The
145 findings of the Mississippi Library Commission and State
146 Department of Education shall constitute a public record under the
147 Mississippi Public Records Act of 1983.

148 (5) If the circuit court finds that a library failed to cure
149 the violation in accordance with subsection (2) of this section,
150 the circuit court shall issue a permanent injunction against the



151 library, prohibiting it from including the obscene materials in
152 its collection for those individuals aged three (3) to fifteen
153 (15).

154 **SECTION 6.** Section 37-1-3, Mississippi Code of 1972, is
155 amended as follows:

156 37-1-3. (1) The State Board of Education shall adopt rules
157 and regulations and set standards and policies for the
158 organization, operation, management, planning, budgeting and
159 programs of the State Department of Education.

160 (a) The board is directed to identify all functions of
161 the department that contribute to or comprise a part of the state
162 system of educational accountability and to establish and maintain
163 within the department the necessary organizational structure,
164 policies and procedures for effectively coordinating such
165 functions. Such policies and procedures shall clearly fix and
166 delineate responsibilities for various aspects of the system and
167 for overall coordination of the total system and its effective
168 management.

169 (b) The board shall establish and maintain a
170 system-wide plan of performance, policy and directions of public
171 education not otherwise provided for.

172 (c) The board shall effectively use the personnel and
173 resources of the department to enhance technical assistance to
174 school districts in instruction and management therein.



175 (d) The board shall establish and maintain a central
176 budget policy.

177 (e) The board shall establish and maintain within the
178 State Department of Education a central management capacity under
179 the direction of the State Superintendent of Public Education.

180 (f) The board, with recommendations from the
181 superintendent, shall design and maintain a five-year plan and
182 program for educational improvement that shall set forth
183 objectives for system performance and development and be the basis
184 for budget requests and legislative initiatives.

185 (g) The board shall, with the Mississippi Library
186 Commission, provide guidance and training to support the members
187 of the Commission on Age Appropriate Literacy as provided in
188 Section 3 of this act.

189 (2) (a) The State Board of Education shall adopt and
190 maintain a curriculum and a course of study to be used in the
191 public school districts that is designed to prepare the state's
192 children and youth to be productive, informed, creative citizens,
193 workers and leaders, and it shall regulate all matters arising in
194 the practical administration of the school system not otherwise
195 provided for.

196 (b) Before the 1999-2000 school year, the State Board
197 of Education shall develop personal living and finances objectives
198 that focus on money management skills for individuals and families
199 for appropriate, existing courses at the secondary level. The



200 objectives must require the teaching of those skills necessary to
201 handle personal business and finances and must include instruction
202 in the following:

- 203 (i) Opening a bank account and assessing the
204 quality of a bank's services;
- 205 (ii) Balancing a checkbook;
- 206 (iii) Managing debt, including retail and credit
207 card debt;
- 208 (iv) Completing a loan application;
- 209 (v) The implications of an inheritance;
- 210 (vi) The basics of personal insurance policies;
- 211 (vii) Consumer rights and responsibilities;
- 212 (viii) Dealing with salesmen and merchants;
- 213 (ix) Computing state and federal income taxes;
- 214 (x) Local tax assessments;
- 215 (xi) Computing interest rates by various
216 mechanisms;
- 217 (xii) Understanding simple contracts; and
- 218 (xiii) Contesting an incorrect billing statement.

219 (3) The State Board of Education shall have authority to
220 expend any available federal funds, or any other funds expressly
221 designated, to pay training, educational expenses, salary
222 incentives and salary supplements to licensed teachers employed in
223 local school districts or schools administered by the State Board
224 of Education. Such incentive payments shall not be considered



225 part of a school district's local supplement as defined in Section
226 37-151-5(o), nor shall the incentives be considered part of the
227 local supplement paid to an individual teacher for the purposes of
228 Section 37-19-7(1). MAEP funds or any other state funds shall not
229 be used to provide such incentives unless specifically authorized
230 by law.

231 (4) The State Board of Education shall through its actions
232 seek to implement the policies set forth in Section 37-1-2.

233 **SECTION 7.** Section 97-29-107, Mississippi Code of 1972, is
234 brought forward as follows:

235 97-29-107. (1) Sections 97-29-101 through 97-29-109 shall
236 not apply when the distribution or wholesale distribution of the
237 material, performance or device was made by:

238 (a) A person, corporation, company, partnership, firm,
239 association, business, establishment or other legal entity to a
240 person associated with an institution of higher learning, either
241 as a member of the faculty or as a matriculated student, teaching
242 or pursuing a course of study related to such material,
243 performance or device;

244 (b) A licensed physician or a licensed psychologist to
245 a person whose receipt of such material or device was authorized
246 in writing by such physician or psychologist in the course of
247 medical or psychological treatment or care;

248 (c) A person who while acting in his capacity as an
249 employee is employed on a full-time or part-time basis by (i) any



250 recognized historical society or museum accorded charitable status
251 by the federal government; (ii) any state, county or municipal
252 public library; or (iii) any library of any public or private
253 school, college or university in this state; or

254 (d) A community television antenna services system or a
255 cable television system operating pursuant to a written agreement
256 not in conflict with this paragraph granted by a county,
257 municipality or other political subdivision of this state, or by
258 an employee of such system while acting within the scope of his
259 employment, when the signal transmitting the material or
260 performance originates outside of the State of Mississippi.

261 (2) Any exemption from prosecution claimed under the
262 provisions of this section may be raised at a pretrial hearing by
263 motion, and the court shall determine whether sufficient evidence
264 exists to constitute an exemption from prosecution under the
265 provisions of Sections 97-29-101 through 97-29-109. If the motion
266 is sustained, the case shall be dismissed; provided, however, if
267 the motion is not sustained then the defendant may offer into
268 evidence at trial as an affirmative defense to conviction under
269 Sections 97-29-101 through 97-29-109 any matter which could have
270 been raised by the defendant in the motion to dismiss.

271 **SECTION 8.** Section 39-3-357, Mississippi Code of 1972, is
272 brought forward as follows:

273 39-3-357. Each accredited public library system shall
274 receive an annual allocation of state funds to supplement the



275 local appropriation and other income. Library cooperatives which
276 include accredited public library systems may receive state aid.
277 The state aid shall be used only to support library services in
278 accredited public library systems and in cooperatives including
279 accredited public library systems. The amount of the minimum
280 allocation for each public library system shall be based on
281 specific local service levels of the public library system and as
282 identified by accreditation category.

283 **SECTION 9.** This act shall take effect and be in force from
284 and after July 1, 2023.

