

By: Senator(s) Hill, Chism, Seymour

To: Labor; Government Structure

SENATE BILL NO. 2373

1 AN ACT TO ENACT THE MISSISSIPPI WORKPLACE SAFETY ACT; TO  
 2 DEFINE RELEVANT TERMS; TO PREVENT INSPECTORS AUTHORIZED UNDER THE  
 3 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION OR OTHER APPLICABLE  
 4 LAW TO SELECT A NONEMPLOYEE REPRESENTATIVE EXCEPT UNDER CERTAIN  
 5 CIRCUMSTANCES; TO PROVIDE REQUIREMENTS FOR HIRING ACCEPTABLE  
 6 NONEMPLOYEE REPRESENTATIVES; TO PROVIDE RELIEF FOR AGGRIEVED  
 7 EMPLOYERS; TO ALLOW EMPLOYERS TO ASSERT VIOLATIONS OF THIS ACT IN  
 8 JUDICIAL OR ADMINISTRATIVE PROCEEDINGS; TO INSTITUTE A FINE FOR A  
 9 KNOWING VIOLATION OF THIS ACT; TO PROHIBIT USE OF SOVEREIGN  
 10 IMMUNITY AS AN AFFIRMATIVE DEFENSE IN ANY ACTION PURSUANT TO THIS  
 11 ACT; TO NOTE THAT THIS ACT IS SEVERABLE; TO PROVIDE FOR JUDICIAL  
 12 DECISIONS NAMING THIS ACT INVALID, UNDULY BURDENSOME, OR  
 13 UNCONSTITUTIONALLY VAGUE; TO ALLOW THE LEGISLATURE AND THE  
 14 GOVERNOR TO INTERVENE AS A MATTER OF RIGHT IN ANY CASE WHERE THE  
 15 CONSTITUTIONALITY OF THIS ACT IS CHALLENGED; AND FOR RELATED  
 16 PURPOSES.

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

18 **SECTION 1.** This act shall be known and may be cited as the  
 19 "Mississippi Workplace Safety Act."

20 **SECTION 2.** For purposes of this act, the following words  
 21 shall have the meanings ascribed herein unless the context clearly  
 22 requires otherwise:

23 (a) "Employer" means a person engaged in a business  
 24 affecting commerce who has employees, but does not include the



25 United States or this state or political subdivision of this  
26 state.

27 (b) "Employee" means personnel of an employer who works  
28 in a business of his or her employer which affects commerce.

29 (c) "Person" means any person employed by the  
30 government, acting as an agent, contractor or official of the  
31 government or acting under color of state law.

32 (d) "Government" means:

33 (i) The State of Mississippi or a political  
34 subdivision of the state;

35 (ii) Any agency of the state or of a political  
36 subdivision of the state, including a branch, department, agency,  
37 bureau, board, instrumentality, court or political subdivision of  
38 the state;

39 (iii) Any person or official acting under color of  
40 state law; or

41 (iv) Any private party or third party suing under  
42 or enforcing a law, ordinance, rule or regulation of the state or  
43 political subdivision of the state.

44 **SECTION 3.** (1) Notwithstanding 29 CFR Section 1903.8(c), or  
45 any other rule, regulation or interpretation of the Occupational  
46 Safety and Health Act of 1970, no person authorized under the  
47 Occupational Safety and Health Administration (OSHA) of the U.S.  
48 Department of Labor, or any other applicable federal or state law,  
49 to conduct inspections, or otherwise act as a Compliance Safety



50 and Health Officer, shall be permitted to select a representative  
51 authorized by an individual who is not an employee of the  
52 employer, except where good cause has been shown that:

53 (a) The nonemployee representative possesses industry  
54 specific and applicable expertise and experience in reducing  
55 worker illness, injury or death:

56 (i) The nonemployee representative possesses  
57 industry specific and applicable technical education, expertise  
58 and experience essential to an effective and thorough physical  
59 inspection of the workplace; or

60 (ii) The nonemployee representative possesses  
61 specific and applicable language skills essential to an effective  
62 and thorough physical inspection of the workplace.

63 (b) The nonemployee representative is unlikely to  
64 interfere with a fair and orderly physical inspection of the  
65 workplace.

66 (c) The nonemployee representative is not reasonably  
67 known to be employed by, affiliated with, or under contract with a  
68 competitor of the employer and is not likely to encounter  
69 proprietary information or trade secrets of the employer.

70 (2) The credentials of the nonemployee representative must  
71 be documented in writing and provided to the employer prior to the  
72 opening conference of the physical inspection.

73 (3) An employer is not required to pay for the services of  
74 any nonemployee representative.



75 (4) An employer may request a warrant before permitting the  
76 entry or continued participation of a nonemployee representative.

77 **SECTION 4.** An aggrieved employer must first seek injunctive  
78 relief to prevent or remedy a violation of this act or the effects  
79 of a violation of this act. If injunctive relief is granted by  
80 the court and the injunction is thereafter violated, the aggrieved  
81 party may seek the following:

82 (a) Compensatory damages for pecuniary and nonpecuniary  
83 losses;

84 (b) Nominal damages;

85 (c) Reasonable attorney's fees and other litigation  
86 costs; and

87 (d) Any other appropriate relief, except that only  
88 declaratory relief and injunctive relief shall be available  
89 against a private person not acting under color of state law.

90 **SECTION 5.** (1) An employer may assert a violation of this  
91 act as a claim against the government in any judicial or  
92 administrative proceeding, or as defense in any judicial or  
93 administrative proceeding without regard to whether the proceeding  
94 is brought by or in the name of the government, any private person  
95 or any other party.

96 (2) An action under this act may be commenced, and relief  
97 may be granted, in a court of the state without regard to whether  
98 the person commencing the action has sought or exhausted available  
99 administrative remedies.



100 (3) A person who knowingly violates this act, as determined  
101 by a preponderance of the evidence, is punishable by a civil  
102 penalty of an amount equal to, but not more than, Ten Thousand  
103 Dollars (\$10,000.00) per violation.

104 (4) Sovereign immunity shall not be an affirmative defense  
105 in any action pursuant to this act.

106 **SECTION 6.** (1) It is the intent of the Legislature that  
107 every provision, section, subsection, paragraph, sentence, clause,  
108 phrase or word in this act and every application of the provisions  
109 in this act is severable from each other. If application of any  
110 provision in this act to any person, group of persons, or  
111 circumstances is found by a competent court to be invalid, the  
112 remaining applications of that provision to all other persons and  
113 circumstances shall be severed and may not be affected. All  
114 constitutionally valid applications of this act shall be severed  
115 from any applications that a court finds to be invalid, leaving  
116 the valid applications in force, because it is the Legislature's  
117 intent and priority that the valid applications be allowed to  
118 stand alone. Even if a reviewing court finds a provision of this  
119 statute to impose an undue burden in a large or substantial  
120 fraction of relevant cases, the applications that do not represent  
121 an undue burden shall be severed from the remaining provisions and  
122 shall remain in force, and shall be treated as if the Legislature  
123 had enacted a section limited to the persons, group of persons, or  
124 circumstances for which the section's application does not present



125 an undue burden. The Legislature further declares that it would  
126 have passed this section and each provision, section, subsection,  
127 paragraph, sentence, clause, phrase or word, and all  
128 constitutional applications of this section, without regard to the  
129 fact that any provision, section, subsection, paragraph, sentence,  
130 clause, phrase or word, or applications of this act, were to be  
131 declared unconstitutional or to represent an undue burden.

132 (2) If this act is found by any competent court to be  
133 invalid or to impose an undue burden as applied to any person,  
134 group of persons, or circumstances, the prohibition shall apply to  
135 that person or group of persons or circumstances on the earliest  
136 date on which this section can be constitutionally applied.

137 (3) If any provisions of this act are found by a competent  
138 court to be unconstitutionally vague, then the applications of the  
139 provision that do not present constitutional vagueness problems  
140 shall be severed and remain in force.

141 **SECTION 7.** The Legislature, through one or more sponsors of  
142 this act duly appointed by resolution of their respective chamber,  
143 may intervene as a matter of right in any case in which the  
144 constitutionality of this act is challenged. The Governor may  
145 also intervene as a matter of right in any case in which the  
146 constitutionality of this act is challenged.

147 **SECTION 8.** This act shall take effect and be in force from  
148 and after July 1, 2024.

