

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 538

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO CIVIL RIGHTS; PROVIDING LEGISLATIVE INTENT AND LEGISLATIVE
2 FINDINGS; AMENDING CHAPTER 59, TITLE 67, IDAHO CODE, BY THE ADDITION
3 OF A NEW SECTION 67-5909B, IDAHO CODE, TO PROHIBIT COMPULSORY GENDER
4 LANGUAGE, TO PROVIDE A CIVIL CAUSE OF ACTION FOR VIOLATIONS, AND TO AU-
5 THORIZE RULEMAKING AUTHORITY; AND DECLARING AN EMERGENCY AND PROVIDING
6 AN EFFECTIVE DATE.
7

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. LEGISLATIVE INTENT AND LEGISLATIVE FINDINGS. (1) It is
10 the intent of the Legislature to preserve the constitutional right to free
11 speech of all people in the State of Idaho, especially as this right inter-
12 sects with the operations of governmental entities of the state of Idaho.

13 (2) It is further the intent of the Legislature to ensure that no person
14 in the State of Idaho is compelled by any governmental entity in the State of
15 Idaho to communicate statements that such citizen believes to be false. The
16 United States Supreme Court has long held that no government actor may seek
17 "to compel a person to speak its message when he would prefer to remain silent
18 or to force an individual to include other ideas with his own speech that he
19 would prefer not to include." 303 *Creative LLC v. Elenis*, 600 U.S. 570, 586
20 (2023). No person should be subjected to any coercion by any governmental
21 entity in the State of Idaho to communicate in any way statements that such
22 person prefers not to communicate. To permit a governmental entity of the
23 State of Idaho to compel speech in such a way would deprive persons within
24 this state of their fundamental right to be free from coerced speech.

25 (3) The Legislature finds that despite the United States Supreme
26 Court's clear holding that compelled speech offends the constitution, gov-
27 ernment actors across the State of Idaho and the United States as a whole
28 are not vigilantly protecting the people against such compelled speech.
29 There are increasing pressures by state government actors to compel public
30 employees, as well as students in public schools, to communicate certain
31 preferred personal titles and pronouns that many such employees and students
32 do not prefer to communicate. Specifically, to compel the use of preferred
33 personal titles and pronouns that do not correspond with the biological sex
34 of the individual seeking to be referred to by such preferred personal titles
35 or pronouns.

36 (4) To protect the people of Idaho against unlawful compelled speech,
37 the Legislature finds it expedient to codify into Idaho law a prohibition
38 on any governmental entity in the State of Idaho from compelling any public
39 employee or public school student to communicate preferred personal titles
40 and pronouns that do not correspond with the biological sex of the individ-
41 ual seeking to be referred to by such titles or pronouns. Such prohibition
42 is essential to ensure that the constitutional right to free speech of every
43 person in the State of Idaho is respected.

1 SECTION 2. That Chapter 59, Title 67, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
3 ignated as Section 67-5909B, Idaho Code, and to read as follows:

4 67-5909B. COMPULSORY GENDER LANGUAGE PROHIBITED -- PRIVATE CAUSE OF
5 ACTION -- RULEMAKING. (1) As used in this section:

6 (a) "Government employee" means a person employed by the state of
7 Idaho, or by any county, municipality, public university or community
8 college, school district, special district, or any other political sub-
9 division or governmental instrumentality of or within the state.

10 (b) "Public school" means any publicly funded school teaching kinder-
11 garten through grade 12 students that is operated and controlled by any
12 public school district organized under the laws of this state, includ-
13 ing specially chartered school districts.

14 (c) "Sex" means the classification of a person as either female or
15 male based on the organization of the body of such person for a spe-
16 cific reproductive role, as indicated by the person's sex chromosomes,
17 naturally occurring sex hormones, and internal and external genitalia
18 present at birth.

19 (d) "Student" means an individual who is enrolled on a full-time or
20 part-time basis at a public school or public institution of higher ed-
21 ucation.

22 (2) A government employee, regardless of the scope of such employee's
23 official duties, shall not be subject to adverse employment action for de-
24 clining to:

25 (a) Identify such employee's pronouns while acting within the scope of
26 employment; or

27 (b) Address a person using a name other than the person's legal name or a
28 derivative thereof, or by a preferred personal title or pronoun that is
29 inconsistent with the person's sex.

30 (3) An employee of a public school or public institution of higher ed-
31 ucation, regardless of the scope of such employee's official duties, shall
32 not:

33 (a) Knowingly and intentionally address an unemancipated minor student
34 by a name other than the student's legal name or a derivative thereof, or
35 by a preferred personal title or pronoun that is inconsistent with the
36 student's sex, without the written permission of the student's parent
37 or guardian; and

38 (b) Be subject to adverse employment action for declining to address a
39 student using a name other than the student's legal name, or a deriva-
40 tive thereof, or by a preferred personal title or pronoun that is incon-
41 sistent with a student's sex.

42 (4) A student of a public school or public institution of higher educa-
43 tion shall not be subject to adverse disciplinary action by the school or in-
44 stitution for declining to:

45 (a) Identify such student's pronouns; or

46 (b) Address a person using a name other than the person's legal name, or
47 a derivative thereof, or by a preferred personal title or pronoun that
48 is inconsistent with the person's sex.

1 (5) Any person who is harmed by a government employer, public school, or
2 public institution for higher education for violating the provisions of this
3 section shall have a private cause of action for injunctive relief, monetary
4 damages, reasonable attorney's fees and costs, and any other appropriate re-
5 lief. All civil actions brought pursuant to this section must be initiated
6 within two (2) years from the date that the violation occurs.

7 (6) The Idaho commission on human rights may adopt rules to administer
8 the provisions of this section.

9 SECTION 3. An emergency existing therefor, which emergency is hereby
10 declared to exist, this act shall be in full force and effect on and after
11 July 1, 2024.