

By: Representative Flagg

To: Education

HOUSE BILL NO. 32

1 AN ACT TO AMEND SECTIONS 37-13-91 AND 37-15-9, MISSISSIPPI  
2 CODE OF 1972, TO INCLUDE KINDERGARTEN-AGE CHILDREN UNDER THE  
3 MISSISSIPPI COMPULSORY SCHOOL ATTENDANCE LAW; AND FOR RELATED  
4 PURPOSES.

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

6 SECTION 1. Section 37-13-91, Mississippi Code of 1972, is  
7 amended as follows:

8 37-13-91. (1) This section shall be referred to as the  
9 "Mississippi Compulsory School Attendance Law."

10 (2) The following terms as used in this section are defined  
11 as follows:

12 (a) "Parent" means the father or mother to whom a child  
13 has been born, or the father or mother by whom a child has been  
14 legally adopted.

15 (b) "Guardian" means a guardian of the person of a  
16 child, other than a parent, who is legally appointed by a court of  
17 competent jurisdiction.

18 (c) "Custodian" means any person having the present  
19 care or custody of a child, other than a parent or guardian of the  
20 child.

21 (d) "School day" means not less than five (5) and not  
22 more than eight (8) hours of actual teaching in which both  
23 teachers and pupils are in regular attendance for scheduled  
24 schoolwork.

25 (e) "School" means any public school in this state or  
26 any nonpublic school in this state which is in session each school  
27 year for at least one hundred eighty (180) school days, except  
28 that the "nonpublic" school term shall be the number of days that

29 each school shall require for promotion from grade to grade.

30 (f) "Compulsory-school-age child" means a child who has  
31 attained or will attain the age of five (5) years on or before  
32 September 1 of the calendar year and who has not attained the age  
33 of seventeen (17) years on or before September 1 of the calendar  
34 year.

35 (g) "School attendance officer" means a person employed  
36 by the State Department of Education pursuant to Section 37-13-89.

37 (h) "Appropriate school official" means the  
38 superintendent of the school district or his designee or, in the  
39 case of a nonpublic school, the principal or the headmaster.

40 (i) "Nonpublic school" means an institution for the  
41 teaching of children, consisting of a physical plant, whether  
42 owned or leased, including a home, instructional staff members and  
43 students, and which is in session each school year. This  
44 definition shall include, but not be limited to, private, church,  
45 parochial and home instruction programs.

46 (3) A parent, guardian or custodian of a  
47 compulsory-school-age child in this state shall cause the child to  
48 enroll in and attend a public school or legitimate nonpublic  
49 school for the period of time that the child is of compulsory  
50 school age, except under the following circumstances:

51 (a) When a compulsory-school-age child is physically,  
52 mentally or emotionally incapable of attending school as  
53 determined by the appropriate school official based upon  
54 sufficient medical documentation.

55 (b) When a compulsory-school-age child is enrolled in  
56 and pursuing a course of special education, remedial education or  
57 education for handicapped or physically or mentally disadvantaged  
58 children.

59 (c) When a compulsory-school-age child is being  
60 educated in a legitimate home instruction program.

61 The parent, guardian or custodian of a compulsory-school-age  
62 child described in this subsection, or the parent, guardian or  
63 custodian of a compulsory-school-age child attending any nonpublic  
64 school, or the appropriate school official for any or all children  
65 attending a nonpublic school shall complete a "certificate of  
66 enrollment" in order to facilitate the administration of this

67 section.

68 The form of the certificate of enrollment shall be prepared  
69 by the Office of Compulsory School Attendance Enforcement of the  
70 State Department of Education and shall be designed to obtain the  
71 following information only:

72 (i) The name, address, telephone number and date  
73 of birth of the compulsory-school-age child;

74 (ii) The name, address and telephone number of the  
75 parent, guardian or custodian of the compulsory-school-age child;

76 (iii) A simple description of the type of  
77 education the compulsory-school-age child is receiving and, if the  
78 child is enrolled in a nonpublic school, the name and address of  
79 the school; and

80 (iv) The signature of the parent, guardian or  
81 custodian of the compulsory-school-age child or, for any or all  
82 compulsory-school-age child or children attending a nonpublic  
83 school, the signature of the appropriate school official and the  
84 date signed.

85 The certificate of enrollment shall be returned to the school  
86 attendance officer where the child resides on or before September  
87 15 of each year. Any parent, guardian or custodian found by the  
88 school attendance officer to be in noncompliance with this section  
89 shall comply, after written notice of the noncompliance by the  
90 school attendance officer, with this subsection within ten (10)  
91 days after the notice or be in violation of this section.

92 However, in the event the child has been enrolled in a public  
93 school within fifteen (15) calendar days after the first day of  
94 the school year as required in subsection (6), the parent or  
95 custodian may at a later date enroll the child in a legitimate  
96 nonpublic school or legitimate home instruction program and send  
97 the certificate of enrollment to the school attendance officer and  
98 be in compliance with this subsection.

99 For the purposes of this subsection, a legitimate nonpublic  
100 school or legitimate home instruction program shall be those not

101 operated or instituted for the purpose of avoiding or  
102 circumventing the compulsory attendance law.

103 (4) An "unlawful absence" is an absence during a school day  
104 by a compulsory-school-age child, which absence is not due to a  
105 valid excuse for temporary nonattendance. Days missed from school  
106 due to disciplinary suspension shall not be considered an  
107 "excused" absence under this section. This subsection shall not  
108 apply to children enrolled in a nonpublic school.

109 Each of the following shall constitute a valid excuse for  
110 temporary nonattendance of a compulsory-school-age child enrolled  
111 in a public school, provided satisfactory evidence of the excuse  
112 is provided to the superintendent of the school district or his  
113 designee:

114 (a) An absence is excused when the absence results from  
115 the compulsory-school-age child's attendance at an authorized  
116 school activity with the prior approval of the superintendent of  
117 the school district or his designee. These activities may include  
118 field trips, athletic contests, student conventions, musical  
119 festivals and any similar activity.

120 (b) An absence is excused when the absence results from  
121 illness or injury which prevents the compulsory-school-age child  
122 from being physically able to attend school.

123 (c) An absence is excused when isolation of a  
124 compulsory-school-age child is ordered by the county health  
125 officer, by the State Board of Health or appropriate school  
126 official.

127 (d) An absence is excused when it results from the  
128 death or serious illness of a member of the immediate family of a  
129 compulsory-school-age child. The immediate family members of a  
130 compulsory-school-age child shall include children, spouse,  
131 grandparents, parents, brothers and sisters, including  
132 stepbrothers and stepsisters.

133 (e) An absence is excused when it results from a  
134 medical or dental appointment of a compulsory-school-age child

135 where an approval of the superintendent of the school district or  
136 his designee is gained before the absence, except in the case of  
137 emergency.

138           (f) An absence is excused when it results from the  
139 attendance of a compulsory-school-age child at the proceedings of  
140 a court or an administrative tribunal if the child is a party to  
141 the action or under subpoena as a witness.

142           (g) An absence may be excused if the religion to which  
143 the compulsory-school-age child or the child's parents adheres,  
144 requires or suggests the observance of a religious event. The  
145 approval of the absence is within the discretion of the  
146 superintendent of the school district or his designee, but  
147 approval should be granted unless the religion's observance is of  
148 such duration as to interfere with the education of the child.

149           (h) An absence may be excused when it is demonstrated  
150 to the satisfaction of the superintendent of the school district  
151 or his designee that the purpose of the absence is to take  
152 advantage of a valid educational opportunity such as travel  
153 including vacations or other family travel. Approval of the  
154 absence must be gained from the superintendent of the school  
155 district or his designee before the absence, but the approval  
156 shall not be unreasonably withheld.

157           (i) An absence may be excused when it is demonstrated  
158 to the satisfaction of the superintendent of the school district  
159 or his designee that conditions are sufficient to warrant the  
160 compulsory-school-age child's nonattendance. However, no absences  
161 shall be excused by the school district superintendent or his  
162 designee when any student suspensions or expulsions circumvent the  
163 intent and spirit of the compulsory attendance law.

164           (5) Any parent, guardian or custodian of a  
165 compulsory-school-age child subject to this section who refuses or  
166 willfully fails to perform any of the duties imposed upon him or  
167 her under this section or who intentionally falsifies any  
168 information required to be contained in a certificate of

169 enrollment, shall be guilty of contributing to the neglect of a  
170 child and, upon conviction, shall be punished in accordance with  
171 Section 97-5-39.

172       Upon prosecution of a parent, guardian or custodian of a  
173 compulsory-school-age child for violation of this section, the  
174 presentation of evidence by the prosecutor that shows that the  
175 child has not been enrolled in school within eighteen (18)  
176 calendar days after the first day of the school year of the public  
177 school which the child is eligible to attend, or that the child  
178 has accumulated twelve (12) unlawful absences during the school  
179 year at the public school in which the child has been enrolled,  
180 shall establish a prima facie case that the child's parent,  
181 guardian or custodian is responsible for the absences and has  
182 refused or willfully failed to perform the duties imposed upon him  
183 or her under this section. However, no proceedings under this  
184 section shall be brought against a parent, guardian or custodian  
185 of a compulsory-school-age child unless the school attendance  
186 officer has contacted promptly the home of the child and has  
187 provided written notice to the parent, guardian or custodian of  
188 the requirement for the child's enrollment or attendance.

189       (6) If a compulsory-school-age child has not been enrolled  
190 in a school within fifteen (15) calendar days after the first day  
191 of the school year of the school which the child is eligible to  
192 attend or the child has accumulated five (5) unlawful absences  
193 during the school year of the public school in which the child is  
194 enrolled, the school district superintendent shall report, within  
195 two (2) school days or within five (5) calendar days, whichever is  
196 less, the absences to the school attendance officer. The State  
197 Department of Education shall prescribe a uniform method for  
198 schools to utilize in reporting the unlawful absences to the  
199 school attendance officer. The superintendent, or his designee,  
200 also shall report any student suspensions or student expulsions to  
201 the school attendance officer when they occur.

202       (7) When a school attendance officer has made all attempts

203 to secure enrollment and/or attendance of a compulsory-school-age  
204 child and is unable to effect the enrollment and/or attendance,  
205 the attendance officer shall file a petition with the youth court  
206 under Section 43-21-451 or shall file a petition in a court of  
207 competent jurisdiction as it pertains to parent or child. The  
208 youth court shall expedite a hearing to make an appropriate  
209 adjudication and a disposition to ensure compliance with the  
210 Compulsory School Attendance Law, and may order the child to  
211 enroll or reenroll in school. The superintendent of the school  
212 district to which the child is ordered may assign, in his  
213 discretion, the child to the alternative school program of the  
214 school established pursuant to Section 37-13-92.

215 (8) The State Board of Education shall adopt rules and  
216 regulations for the purpose of reprimanding any school  
217 superintendents who fail to timely report unexcused absences under  
218 the provisions of this section.

219 (9) Notwithstanding any provision or implication herein to  
220 the contrary, it is not the intention of this section to impair  
221 the primary right and the obligation of the parent or parents, or  
222 person or persons in loco parentis to a child, to choose the  
223 proper education and training for such child, and nothing in this  
224 section shall ever be construed to grant, by implication or  
225 otherwise, to the State of Mississippi, any of its officers,  
226 agencies or subdivisions any right or authority to control,  
227 manage, supervise or make any suggestion as to the control,  
228 management or supervision of any private or parochial school or  
229 institution for the education or training of children, of any kind  
230 whatsoever that is not a public school according to the laws of  
231 this state; and this section shall never be construed so as to  
232 grant, by implication or otherwise, any right or authority to any  
233 state agency or other entity to control, manage, supervise,  
234 provide for or affect the operation, management, program,  
235 curriculum, admissions policy or discipline of any such school or  
236 home instruction program.

237 SECTION 2. Section 37-15-9, Mississippi Code of 1972, is  
238 amended as follows:

239 37-15-9. (1) Except as provided in subsection (2) and  
240 subject to the provision of subsection (3) of this section, no  
241 child shall be enrolled or admitted to any school which is a part  
242 of the free public school system during any school year unless  
243 such child will reach his fifth birthday on or before September 1  
244 of said school year. No pupil shall be permanently enrolled in a  
245 school in the State of Mississippi who formerly was enrolled in  
246 another public or private school within the state until the  
247 cumulative record of the pupil shall have been received from the  
248 school from which he transferred. Should such record have become  
249 lost or destroyed, then it shall be the duty of the superintendent  
250 or principal of the school where the pupil last attended school to  
251 initiate a new record.

252 (2) Subject to the provisions of subsection (3) of this  
253 section, any child who transfers from an out-of-state public or  
254 private school in which that state's law provides for a  
255 first-grade or kindergarten enrollment date subsequent to  
256 September 1, shall be allowed to enroll in the public schools of  
257 Mississippi, at the same grade level as their prior out-of-state  
258 enrollment, if:

259 (a) The parent, legal guardian or custodian of such  
260 child was a legal resident of the state from which the child is  
261 transferring;

262 (b) The out-of-state school from which the child is  
263 transferring is duly accredited by that state's appropriate  
264 accrediting authority;

265 (c) Such child was legally enrolled in a public or  
266 private school for a minimum of four (4) weeks in the previous  
267 state; and

268 (d) The superintendent of schools in the applicable  
269 Mississippi school district has determined that the child was  
270 making satisfactory educational progress in the previous state.



271           (3) When any child applies for admission or enrollment in  
272 any public school in the state, the parent, guardian or child, in  
273 the absence of an accompanying parent or guardian, shall indicate  
274 on the school registration form if the enrolling child has been  
275 expelled from any public or private school or is currently a party  
276 to an expulsion proceeding. If it is determined from the child's  
277 cumulative record or application for admission or enrollment that  
278 the child has been expelled, the school district may deny the  
279 student admission and enrollment until the superintendent of the  
280 school or his designee has reviewed the child's cumulative record  
281 and determined that the child has participated in successful  
282 rehabilitative efforts including, but not limited to, progress in  
283 an alternative school or similar program. If the child is a party  
284 to an expulsion proceeding, the child may be admitted to a public  
285 school pending final disposition of the expulsion proceeding. If  
286 the expulsion proceeding results in the expulsion of the child,  
287 the public school may revoke such admission to school. If the  
288 child was expelled or is a party to an expulsion proceeding for an  
289 act involving violence, weapons, alcohol, illegal drugs or other  
290 activity that may result in expulsion, the school district shall  
291 not be required to grant admission or enrollment to the child  
292 before one (1) calendar year after the date of the expulsion.

293           SECTION 3. This act shall take effect and be in force from  
294 and after July 1, 1999.