

By: Turner, Blackmon, Simmons, Johnson
(38th)

To: Education; Juvenile
Justice

SENATE BILL NO. 3043
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 37-13-91, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT CERTAIN LAW ENFORCEMENT OFFICERS SHALL BE
3 AUTHORIZED TO INVESTIGATE AND FILE PETITIONS IN THE PROPER COURT
4 AGAINST PARENT OR CHILD UNDER THE PROVISIONS OF THE MISSISSIPPI
5 COMPULSORY SCHOOL ATTENDANCE LAW; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

26 (e) "School" means any public school in this state or
27 any nonpublic school in this state which is in session each school

28 year for at least one hundred eighty (180) school days, except
29 that the "nonpublic" school term shall be the number of days that
30 each school shall require for promotion from grade to grade.

31 (f) "Compulsory-school-age child" means a child who has
32 attained or will attain the age of six (6) years on or before
33 September 1 of the calendar year and who has not attained the age
34 of seventeen (17) years on or before September 1 of the calendar
35 year.

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

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

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

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

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

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

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

62 The parent, guardian or custodian of a compulsory-school-age
63 child described in this subsection, or the parent, guardian or
64 custodian of a compulsory-school-age child attending any nonpublic

65 school, or the appropriate school official for any or all children
66 attending a nonpublic school shall complete a "certificate of
67 enrollment" in order to facilitate the administration of this
68 section.

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

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

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

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

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

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

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

98 the certificate of enrollment to the school attendance officer and
99 be in compliance with this subsection.

100 For the purposes of this subsection, a legitimate nonpublic
101 school or legitimate home instruction program shall be those not
102 operated or instituted for the purpose of avoiding or
103 circumventing the compulsory attendance law.

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

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

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

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

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

128 (d) An absence is excused when it results from the
129 death or serious illness of a member of the immediate family of a
130 compulsory-school-age child. The immediate family members of a

131 compulsory-school-age child shall include children, spouse,
132 grandparents, parents, brothers and sisters, including
133 stepbrothers and stepsisters.

134 (e) An absence is excused when it results from a
135 medical or dental appointment of a compulsory-school-age child
136 where an approval of the superintendent of the school district or
137 his designee is gained before the absence, except in the case of
138 emergency.

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

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

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

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

164 intent and spirit of the compulsory attendance law.

165 (5) Any parent, guardian or custodian of a
166 compulsory-school-age child subject to this section who refuses or
167 willfully fails to perform any of the duties imposed upon him or
168 her under this section or who intentionally falsifies any
169 information required to be contained in a certificate of
170 enrollment, shall be guilty of contributing to the neglect of a
171 child and, upon conviction, shall be punished in accordance with
172 Section 97-5-39.

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

190 (6) If a compulsory-school-age child has not been enrolled
191 in a school within fifteen (15) calendar days after the first day
192 of the school year of the school which the child is eligible to
193 attend or the child has accumulated five (5) unlawful absences
194 during the school year of the public school in which the child is
195 enrolled, the school district superintendent shall report, within
196 two (2) school days or within five (5) calendar days, whichever is

197 less, the absences to the school attendance officer. The State
198 Department of Education shall prescribe a uniform method for
199 schools to utilize in reporting the unlawful absences to the
200 school attendance officer. The superintendent, or his designee,
201 also shall report any student suspensions or student expulsions to
202 the school attendance officer when they occur.

203 (7) When a school attendance officer has made all attempts
204 to secure enrollment and/or attendance of a compulsory-school-age
205 child and is unable to effect the enrollment and/or attendance,
206 the attendance officer shall file a petition with the youth court
207 under Section 43-21-451 or shall file a petition in a court of
208 competent jurisdiction as it pertains to parent or child.

209 Sheriffs, deputy sheriffs and municipal law enforcement officers
210 shall be fully authorized to investigate all cases of
211 nonattendance and unlawful absences by compulsory-school-age
212 children, and shall be authorized to file a petition with the
213 youth court under Section 43-21-451 or file a petition or
214 information in the court of competent jurisdiction as it pertains
215 to parent or child for violation of this section. The youth court
216 shall expedite a hearing to make an appropriate adjudication and a
217 disposition to ensure compliance with the Compulsory School
218 Attendance Law, and may order the child to enroll or reenroll in
219 school. The superintendent of the school district to which the
220 child is ordered may assign, in his discretion, the child to the
221 alternative school program of the school established pursuant to
222 Section 37-13-92.

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

227 (9) Notwithstanding any provision or implication herein to
228 the contrary, it is not the intention of this section to impair
229 the primary right and the obligation of the parent or parents, or

230 person or persons in loco parentis to a child, to choose the
231 proper education and training for such child, and nothing in this
232 section shall ever be construed to grant, by implication or
233 otherwise, to the State of Mississippi, any of its officers,
234 agencies or subdivisions any right or authority to control,
235 manage, supervise or make any suggestion as to the control,
236 management or supervision of any private or parochial school or
237 institution for the education or training of children, of any kind
238 whatsoever that is not a public school according to the laws of
239 this state; and this section shall never be construed so as to
240 grant, by implication or otherwise, any right or authority to any
241 state agency or other entity to control, manage, supervise,
242 provide for or affect the operation, management, program,
243 curriculum, admissions policy or discipline of any such school or
244 home instruction program.

245 SECTION 2. This act shall take effect and be in force from
246 and after July 1, 2000.