S. B. No. 2205

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2001

By: Senator(s) Harden
To: Education; Appropriations

SENATE BILL NO. 2205

AN ACT RELATING TO NONCERTIFIED PUBLIC SCHOOL DISTRICT PERSONNEL; TO REQUIRE THE STATE DEPARTMENT OF EDUCATION TO DEVELOP HIRING STANDARDS, CONTRACTS AND SALARY SCHEDULES FOR NONCERTIFIED SCHOOL DISTRICT EMPLOYEES, AND TO PRESCRIBE A MINIMUM ANNUAL SALARY THEREFOR; TO REQUIRE THE STATE DEPARTMENT OF EDUCATION TO DEVELOP AND IMPLEMENT A TRAINING PROGRAM FOR TEACHERS AND TEACHING ASSISTANTS; TO AMEND SECTION 37-7-307, MISSISSIPPI CODE OF 1972, TO PROVIDE A MINIMUM SICK LEAVE AND PERSONAL LEAVE ALLOWANCE FOR SUCH NONCERTIFIED EMPLOYEES, AND TO PROVIDE THAT ACCRUED SICK LEAVE FOR SUCH EMPLOYEES SHALL HAVE UNLIMITED ACCUMULATION; TO AMEND SECTION 37-9-103, MISSISSIPPI CODE OF 1972, TO INCLUDE NONCERTIFIED SCHOOL PERSONNEL WITHIN THE PROVISIONS OF THE SCHOOL EMPLOYMENT PROCEDURES ACT; TO AMEND SECTION 71-3-5, MISSISSIPPI CODE OF 1972, TO REQUIRE SCHOOL DISTRICTS TO COME WITHIN THE PROVISIONS OF THE WORKERS' COMPENSATION LAW WITH RESPECT TO ALL SCHOOL DISTRICT EMPLOYEES; AND FOR RELATED PURPOSES.

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

SECTION 1. For purposes of this act, "noncertified personnel" shall mean all public school district employees who are not administrators, teachers or other persons required to have certification by the State Department of Education as a condition of employment. These include, but are not limited to, teaching assistants, teaching aides, assistant reading instructors, secretaries, clerical or office help, cafeteria personnel and maintenance personnel.

SECTION 2. Hiring standards, contracts, job descriptions and salary schedules for noncertified personnel will be developed by the State Department of Education for implementation in each school district. Full-time noncertified personnel shall be paid a minimum annual salary of Twelve Thousand Dollars ($12,000.00).

SECTION 3. The statewide training program for teachers and their teaching assistants prescribed in Section 37-21-7(2), Mississippi Code of 1972, to assure maximum efficiency in the teaching assistant program shall be developed by the State Department of Education.
Department of Education and implemented in each school district in the 2001-2002 school year.

SECTION 4. Section 37-7-307, Mississippi Code of 1972, is amended as follows:

37-7-307. (1) For purposes of this section, the term "licensed employee" means any employee of a public school district required to hold a valid license by the Commission on Teacher and Administrator Education, Certification and Licensure and Development.

(2) The school board of a school district shall establish by rules and regulations a policy of sick leave with pay for licensed employees employed in the school district, and such policy shall include the following minimum provisions for sick and emergency leave with pay:

(a) Each licensed employee, at the beginning of each school year, shall be credited with a minimum sick leave allowance, with pay, of seven (7) days for absences caused by illness or physical disability of the employee during that school year.

(b) Any unused portion of the total sick leave allowance shall be carried over to the next school year and credited to such licensed employee if the licensed employee remains employed in the same school district. In the event any public school licensed employee transfers from one public school district in Mississippi to another, any unused portion of the total sick leave allowance credited to such licensed employee shall be credited to such licensed employee in the computation of unused leave for retirement purposes under Section 25-11-109. Accumulation of sick leave allowed under this section shall be unlimited.

(c) No deduction from the pay of such licensed employee may be made because of absence of such licensed employee caused by illness or physical disability of the licensed employee until
after all sick leave allowance credited to such licensed employee
has been used.

(d) For the first ten (10) days of absence of a
licensed employee because of illness or physical disability, in
any school year, in excess of the sick leave allowance credited to
such licensed employee, there may be deducted from the pay of such
licensed employee the established substitute amount of licensed
employee compensation paid in that local school district,
necessitated because of the absence of the licensed employee as a
result of illness or physical disability. Thereafter, the regular
pay of such absent licensed employee may be suspended and withheld
in its entirety for any period of absence because of illness or
physical disability during that school year.

(3) Beginning with the school year 1983-1984, each licensed
employee at the beginning of each school year shall be credited
with a minimum personal leave allowance, with pay, of two (2) days
for absences caused by personal reasons during that school year.
Such personal leave shall not be taken on the first day of the
school term, the last day of the school term, on a day previous to
a holiday or a day after a holiday. Personal leave may be used
for professional purposes, including absences caused by attendance
of such licensed employee at a seminar, class, training program,
professional association or other functions designed for
educators. No deduction from the pay of such licensed employee
may be made because of absence of such licensed employee caused by
personal reasons until after all personal leave allowance credited
to such licensed employee has been used. However, the
superintendent of a school district, in his discretion, may allow
a licensed employee personal leave in addition to any minimum
personal leave allowance, under the condition that there shall be
deducted from the salary of such licensed employee the actual
amount of any compensation paid to any person as a substitute,
necessitated because of the absence of the licensed employee.
(4) Beginning with the school year 1992-1993, each licensed employee shall be credited with a professional leave allowance, with pay, for each day of absence caused by reason of such employee's statutorily required membership and attendance at a regular or special meeting held within the State of Mississippi of the State Board of Education, the Commission on Teacher and Administrator Education, Certification and Licensure and Development, the Commission on School Accreditation, the Mississippi Authority for Educational Television and the meetings of the state textbook rating committees.

(5) Upon retirement from employment, each licensed and nonlicensed employee shall be paid for not more than thirty (30) days of unused accumulated leave earned while employed by the school district in which the employee is last employed. Such payment for licensed employees shall be made by the school district at a rate equal to the amount paid to substitute teachers and for nonlicensed employees, the payment shall be made by the school district at a rate equal to the federal minimum wage. The payment shall be treated in the same manner for retirement purposes as a lump sum payment for personal leave as provided in Section 25-11-103(e). Any remaining lawfully credited unused leave, for which payment has not been made, shall be certified to the Public Employees' Retirement System in the same manner and subject to the same limitations as otherwise provided by law for unused leave.

(6) The school board may adopt rules and regulations which will reasonably aid to implement the policy of sick and personal leave, including, but not limited to, rules and regulations having the following general effect:

(a) Requiring the absent licensed employee to furnish the certificate of a physician or dentist or other medical practitioner as to the illness of the absent licensed employee, where the absence is for four (4) or more consecutive school days,
or for two (2) consecutive school days immediately preceding or following a nonschool day;

(b) Providing penalties, by way of full deduction from salary, or entry on the work record of the licensed employee, or other appropriate penalties, for any materially false statement by the licensed employee as to the cause of absence;

(c) Forfeiture of accumulated or future sick leave, if the absence of the licensed employee is caused by optional dental or medical treatment or surgery which could, without medical risk, have been provided, furnished or performed at a time when school was not in session;

(d) Enlarging, increasing or providing greater sick or personal leave allowances than the minimum standards established by this section in the discretion of the school board of each school district.

(7) School boards may include in their budgets provisions for the payment of substitute teachers, necessitated because of the absence of regular licensed employees. All such substitute teachers shall be paid wholly from district funds other than minimum education program funds, except as otherwise provided for long-term substitute teachers in Section 37-19-20. Such school boards, in their discretion, also may pay, from district funds other than minimum education program funds, the whole or any part of the salaries of licensed employees granted leaves for the purpose of special studies or training.

(8) The school board may further adopt rules and regulations which will reasonably implement such leave policies for all other nonlicensed school employees as the board deems appropriate. Any unused portion of the total sick leave allowance for a nonlicensed school employee shall be carried over to the next school year and credited to such nonlicensed employee if the nonlicensed employee remains employed in the same school district.
(9) (a) For the purposes of this subsection, the following words and phrases shall have the meaning ascribed in this paragraph unless the context requires otherwise:

(i) "Catastrophic injury or illness" means a severe condition or combination of conditions affecting the mental or physical health of an employee or a member of an employee's immediate family, including pregnancy, that requires the services of a licensed physician for an extended period of time and that forces the employee to exhaust all leave time accumulated by that employee, thereby resulting in the loss of compensation from the school district for the employee.

(ii) "Immediate family" means spouse, parent, stepparent, sibling, child or stepchild.

(b) Any school district employee may donate a portion of his or her unused accumulated personal leave or sick leave to another employee of the same or another school district who is suffering from a catastrophic injury or illness or who has a member of his or her immediate family suffering from a catastrophic injury or illness, in accordance with the following:

(i) The employee donating the leave (the "donor employee") shall designate the employee who is to receive the leave (the "recipient employee") and the amount of unused accumulated personal leave and sick leave that is to be donated, and shall notify the school district superintendent or his designee of his or her designation.

(ii) The maximum amount of unused accumulated personal leave that an employee may donate to any other employee may not exceed a number of days that would leave the donor employee with fewer than seven (7) days of personal leave remaining, and the maximum amount of unused accumulated sick leave that an employee may donate to any other employee may not exceed fifty percent (50%) of the unused accumulated sick leave of the donor employee.
(iii) An employee must have exhausted all of his or her accumulated personal leave and sick leave before he or she will be eligible to receive any leave donated by another employee. Eligibility for donated leave shall be based upon review and approval by the donor employee’s supervisor.

(iv) Before an employee may receive donated leave, he or she must provide the school district superintendent or his designee with a physician’s statement that states the beginning date of the catastrophic injury or illness, a description of the injury or illness, and a prognosis for recovery and the anticipated date that the recipient employee will be able to return to work.

(v) If the total amount of leave that is donated to any employee is not used by the recipient employee, the whole days of donated leave shall be returned to the donor employees on a pro rata basis, based on the ratio of the number of days of leave donated by each donor employee to the total number of days of leave donated by all donor employees.

(vi) Donated leave shall not be used in lieu of disability retirement.

SECTION 5. Section 37-9-103, Mississippi Code of 1972, is amended as follows:

37-9-103. As used in Sections 37-9-101 through 37-9-113 the word "employee" shall include any teacher, principal, superintendent elected by a board of trustees and other professional personnel employed by any public school district of this state and required to have a valid license issued by the State Department of Education as a prerequisite of employment, and shall include any noncertified school district personnel as such term is defined in Section 1 of Senate Bill No. 2204, 2001 Regular Session.

SECTION 6. Section 71-3-5, Mississippi Code of 1972, is amended as follows:
71-3-5. The following shall constitute employers subject to the provisions of this chapter:

Every person, firm and private corporation, including any public service corporation but excluding, however, all nonprofit charitable, fraternal, cultural, or religious corporations or associations, that have in service five (5) or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied.

Any state agency, state institution, state department, or subdivision thereof, including counties and municipalities, or the singular thereof, not heretofore included under the Workers' Compensation Law, may elect, by proper action of its officers or department head, to come within its provisions and, in such case, shall notify the commission of such action by filing notice of compensation insurance with the commission. Payment for compensation insurance policies so taken may be made from any appropriation or funds available to such agency, department or subdivision thereof, or from the general fund of any county or municipality.

From and after July 1, 1990, all offices, departments, agencies, bureaus, commissions, boards, institutions, hospitals, colleges, universities, airport authorities or other instrumentalities of the "state" as such term is defined in Section 11-46-1, Mississippi Code of 1972, shall come under the provisions of the Workers' Compensation Law. Payment for compensation insurance policies so taken may be made from any appropriation or funds available to such office, department, agency, bureau, commission, board, institution, hospital, college, university, airport authority or other instrumentality of the state.

From and after October 1, 1990, counties and municipalities shall come under the provisions of the Workers' Compensation Law.
Payment for compensation insurance policies so taken may be made from any funds available to such counties and municipalities.

From and after October 1, 1993, all "political subdivisions," as such term is defined in Section 11-46-1, Mississippi Code of 1972, except counties and municipalities shall come under the provisions of the Workers' Compensation Law. All public school districts shall come within the provisions of the Workers' Compensation Law with respect to all school district employees.

Payment for compensation insurance policies so taken may be made from any funds available to such political subdivisions. However, school districts shall not expend minimum program funds to pay for such policies.

From and after July 1, 1988, the "state" as such term is defined in Section 11-46-1, Mississippi Code of 1972, may elect to become a self-insurer under the provisions elsewhere set out by law, by notifying the commission of its intent to become a self-insurer. The cost of being such a self-insurer, as provided otherwise by law, may be paid from funds available to the offices, departments, agencies, bureaus, commissions, boards, institutions, hospitals, colleges, universities, airport authorities or other instrumentalities of the state.

The Mississippi Transportation Commission, the Department of Public Safety and the Mississippi Industries for the Blind may elect to become self-insurers under the provisions elsewhere set out by law by notifying the commission of their intention of becoming such a self-insurer. The cost of being such a self-insurer, as provided elsewhere by law, may be paid from funds available to the Mississippi Transportation Commission, the Department of Public Safety or the Mississippi Industries for the Blind.

The Mississippi State Senate and the Mississippi House of Representatives may elect to become self-insurers under provisions elsewhere set out by law by notifying the commission of their
intention of becoming such self-insurers. The cost of being such self-insurers, as provided elsewhere by law, may be paid from funds available to the Mississippi State Senate and the Mississippi House of Representatives. The Mississippi State Senate and the Mississippi House of Representatives are authorized and empowered to provide workers' compensation benefits for employees after January 1, 1970.

Any municipality of the State of Mississippi having forty thousand (40,000) population or more desiring to do so may elect to become a self-insurer under provisions elsewhere set out by law by notifying the commission of its intention of becoming such an insurer. The cost of being such a self-insurer, as provided elsewhere by law, may be provided from any funds available to such municipality.

The commission may, under such rules and regulations as it prescribes, permit two (2) or more "political subdivisions," as such term is defined in Section 11-46-1, Mississippi Code of 1972, to pool their liabilities to participate in a group workers' compensation self-insurance program. The governing authorities of any political subdivision may authorize the organization and operation of, or the participation in such a group self-insurance program with other political subdivisions, provided such program is approved by the commission. The cost of participating in a group self-insurance program may be provided from any funds available to a political subdivision.

Domestic servants, farmers and farm labor are not included under the provisions of this chapter, but this exemption does not apply to the processing of agricultural products when carried on commercially. Any purchaser of timber products shall not be liable for workers' compensation for any person who harvests and delivers timber to such purchaser if such purchaser is not liable for unemployment tax on the person harvesting and delivering the timber as provided by United States Code Annotated, Title 26,
Section 3306, as amended. Provided, however, nothing in this section shall be construed to exempt an employer who would otherwise be covered under Section 71-3-5 from providing workers' compensation coverage on those employees for whom he is liable for unemployment tax.

Employers exempted by this section may assume, with respect to any employee or classification of employees, the liability for compensation imposed upon employers by this chapter with respect to employees within the coverage of this chapter. The purchase and acceptance by such employer of valid workers' compensation insurance applicable to such employee or classification of employees shall constitute, as to such employer, an assumption by him of such liability under this chapter without any further act on his part notwithstanding any other provisions of this chapter, but only with respect to such employee or such classification of employees as are within the coverage of the state fund. Such assumption of liability shall take effect and continue from the effective date of such workers' compensation insurance and as long only as such coverage shall remain in force, in which case the employer shall be subject with respect to such employee or classification of employees to no other liability than the compensation as provided for in this chapter.

This chapter shall not apply to transportation and maritime employments for which a rule of liability is provided by the laws of the United States.

This chapter shall not be applicable to a mere direct buyer-seller or vendor-vendee relationship where there is no employer-employee relationship as defined by Section 71-3-3, and any insurance carrier is hereby prohibited from charging a premium for any person who is a seller or vendor rather than an employee.

Any employer may elect, by proper and written action of its own governing authority, to be exempt from the provisions of the Workers' Compensation Law as to its sole proprietor, its partner
in a partnership or to its employee who is the owner of fifteen percent (15%) or more of its stock in a corporation, if such sole proprietor, partner or employee also voluntarily agrees thereto in writing. Any sole proprietor, partner or employee owning fifteen percent (15%) or more of the stock of his/her corporate employer who becomes exempt from coverage under the Workers' Compensation Law shall be excluded from the total number of workers or operatives toward reaching the mandatory coverage threshold level of five (5).

SECTION 7. This act shall take effect and be in force from and after July 1, 2001.