HOUSE BILL NO. 1309

AN ACT TO AMEND SECTIONS 37-13-91 AND 37-15-9, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE COMPULSORY SCHOOL ATTENDANCE LAW SHALL APPLY TO FIVE-YEAR-OLDS; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

(e) "School" means any public school in this state or any nonpublic school in this state which is in session each school year for at least one hundred eighty (180) school days, except
that the "nonpublic" school term shall be the number of days that
each school shall require for promotion from grade to grade.

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

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

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

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

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

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

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

(c) When a compulsory-school-age child is being
educated in a legitimate home instruction program.
The parent, guardian or custodian of a compulsory-school-age child described in this subsection, or the parent, guardian or custodian of a compulsory-school-age child attending any nonpublic school, or the appropriate school official for any or all children attending a nonpublic school shall complete a "certificate of enrollment" in order to facilitate the administration of this section.

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

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

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

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

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

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

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

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

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

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

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

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

(c) An absence is excused when isolation of a
compulsory-school-age child is ordered by the county health
officer, by the State Board of Health or appropriate school
official.
(d) An absence is excused when it results from the death or serious illness of a member of the immediate family of a compulsory-school-age child. The immediate family members of a compulsory-school-age child shall include children, spouse, grandparents, parents, brothers and sisters, including stepbrothers and stepsisters.

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

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

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

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

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

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

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

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

(7) When a school attendance officer has made all attempts
to secure enrollment and/or attendance of a compulsory-school-age
child and is unable to effect the enrollment and/or attendance,
the attendance officer shall file a petition with the youth court
under Section 43-21-451 or shall file a petition in a court of
competent jurisdiction as it pertains to parent or child.
Sheriffs, deputy sheriffs and municipal law enforcement officers
shall be fully authorized to investigate all cases of
nonattendance and unlawful absences by compulsory-school-age
children, and shall be authorized to file a petition with the
youth court under Section 43-21-451 or file a petition or
information in the court of competent jurisdiction as it pertains
to parent or child for violation of this section. The youth court
shall expedite a hearing to make an appropriate adjudication and a
disposition to ensure compliance with the Compulsory School
Attendance Law, and may order the child to enroll or reenroll in
school. The superintendent of the school district to which the
child is ordered may assign, in his discretion, the child to the
alternative school program of the school established pursuant to
Section 37-13-92.

(8) The State Board of Education shall adopt rules and
regulations for the purpose of reprimanding any school
superintendents who fail to timely report unexcused absences under
the provisions of this section.
(9) Notwithstanding any provision or implication herein to the contrary, it is not the intention of this section to impair the primary right and the obligation of the parent or parents, or person or persons in loco parentis to a child, to choose the proper education and training for such child, and nothing in this section shall ever be construed to grant, by implication or otherwise, to the State of Mississippi, any of its officers, agencies or subdivisions any right or authority to control, manage, supervise or make any suggestion as to the control, management or supervision of any private or parochial school or institution for the education or training of children, of any kind whatsoever that is not a public school according to the laws of this state; and this section shall never be construed so as to grant, by implication or otherwise, any right or authority to any state agency or other entity to control, manage, supervise, provide for or affect the operation, management, program, curriculum, admissions policy or discipline of any such school or home instruction program.

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

37-15-9. (1) Except as provided in subsection (2) and subject to the provisions of subsection (3) of this section, no child shall be enrolled or admitted to any school that is a part of the free public school system during any school year unless that child will reach his fifth birthday on or before September 1 of the school year. No pupil shall be permanently enrolled in a school in the State of Mississippi who formerly was enrolled in another public or private school within the state until the cumulative record of the pupil shall have been received from the school from which he transferred. Should such record have become lost or destroyed, then it shall be the duty of the superintendent or principal of the school where the pupil last attended school to initiate a new record.
(2) Subject to the provisions of subsection (3) of this section, any child who transfers from an out-of-state public or private school in which that state's law provides for a first-grade or kindergarten enrollment date subsequent to September 1, shall be allowed to enroll in the public schools of Mississippi, at the same grade level as their prior out-of-state enrollment, if:

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

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

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

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

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

SECTION 3. This act shall take effect and be in force from 
and after July 1, 2003.