

By: Representative Clark

To: Education

HOUSE BILL NO. 1309

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

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

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

7 37-13-91. (1) This section shall be referred to as the  
8 "Mississippi Compulsory School Attendance Law."

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

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

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

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

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

24 (e) "School" means any public school in this state or  
25 any nonpublic school in this state which is in session each school  
26 year for at least one hundred eighty (180) school days, except



27 that the "nonpublic" school term shall be the number of days that  
28 each school shall require for promotion from grade to grade.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

91 However, in the event the child has been enrolled in a public  
92 school within fifteen (15) calendar days after the first day of



93 the school year as required in subsection (6), the parent or  
94 custodian may at a later date enroll the child in a legitimate  
95 nonpublic school or legitimate home instruction program and send  
96 the certificate of enrollment to the school attendance officer and  
97 be in compliance with this subsection.

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

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

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

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

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

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



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

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

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

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

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

156 (i) An absence may be excused when it is demonstrated  
157 to the satisfaction of the superintendent of the school district, or  
158 his designee, that conditions are sufficient to warrant the



159 compulsory-school-age child's nonattendance. However, no absences  
160 shall be excused by the school district superintendent, or his  
161 designee, when any student suspensions or expulsions circumvent  
162 the intent and spirit of the compulsory attendance law.

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

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

188 (6) If a compulsory-school-age child has not been enrolled  
189 in a school within fifteen (15) calendar days after the first day  
190 of the school year of the school which the child is eligible to  
191 attend or the child has accumulated five (5) unlawful absences



192 during the school year of the public school in which the child is  
193 enrolled, the school district superintendent shall report, within  
194 two (2) school days or within five (5) calendar days, whichever is  
195 less, the absences to the school attendance officer. The State  
196 Department of Education shall prescribe a uniform method for  
197 schools to utilize in reporting the unlawful absences to the  
198 school attendance officer. The superintendent, or his designee,  
199 also shall report any student suspensions or student expulsions to  
200 the school attendance officer when they occur.

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

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



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

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

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





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

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

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

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

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

277           (3) When any child applies for admission or enrollment in  
278 any public school in the state, the parent, guardian or child, in  
279 the absence of an accompanying parent or guardian, shall indicate  
280 on the school registration form if the enrolling child has been  
281 expelled from any public or private school or is currently a party  
282 to an expulsion proceeding. If it is determined from the child's  
283 cumulative record or application for admission or enrollment that  
284 the child has been expelled, the school district may deny the  
285 student admission and enrollment until the superintendent of the  
286 school, or his designee, has reviewed the child's cumulative  
287 record and determined that the child has participated in  
288 successful rehabilitative efforts including, but not limited to,  
289 progress in an alternative school or similar program. If the  
290 child is a party to an expulsion proceeding, the child may be



291 admitted to a public school pending final disposition of the  
292 expulsion proceeding. If the expulsion proceeding results in the  
293 expulsion of the child, the public school may revoke such  
294 admission to school. If the child was expelled or is a party to  
295 an expulsion proceeding for an act involving violence, weapons,  
296 alcohol, illegal drugs or other activity that may result in  
297 expulsion, the school district shall not be required to grant  
298 admission or enrollment to the child before one (1) calendar year  
299 after the date of the expulsion.

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

