MISSISSIPPI LEGISLATURE  
REGULAR SESSION 2003

By: Representative Young  
To: Universities and Colleges

HOUSE BILL NO. 1434

AN ACT TO AMEND SECTION 37-101-285, MISSISSIPPI CODE OF 1972, TO CLARIFY CERTAIN DEFINITIONS RELATING TO THE PROGRAM OF PAID EDUCATIONAL LEAVE FOR THE STUDY OF CERTAIN HEALTH CARE PROFESSIONS; TO AMEND SECTION 37-101-291, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A FINDING OF EDUCATIONAL LEAVE DEFAULT IS DISCIPLINARY NOT A COLLECTION ACTION; TO AMEND SECTION 37-101-293, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT PERSONS WHO DEFAULT ON CERTAIN CONTRACTS SHALL LOSE THEIR NURSING LICENSES; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 37-101-285, Mississippi Code of 1972, is amended as follows:

37-101-285. For the purposes of Section ** ** 37-101-291, the following terms shall have the following meanings unless context shall prescribe otherwise:

(1) "State health institution" or "state health institutions" means all facilities operated within the Department of Mental Health, mental health/mental retardation facilities under the administration of a regional commission as established under Section 41-19-31, that are certified by the Department of Mental Health, University of Mississippi Hospital, * * * the State Board of Health, * * * health care facilities operated by the Department of Corrections, and any other public health care facility.

(2) "Health care professions" means nurses, nurse practitioners, speech pathologists, psychologists, occupational therapists, physical therapists, and any other critical need profession determined by the sponsoring state health institution.

SECTION 2. Section 37-101-291, Mississippi Code of 1972, is amended as follows:
37-101-291. (1) In order to help alleviate the problem of
the shortage of health care professionals at the state health
institutions, there is established a program of paid educational
leave for the study of such health care professions as defined in
Section 37-101-285 and licensed practical nursing by any employee
who works at a state health institution and who declares an
intention to work in such respective health care occupation in the
same state health institution in which the employee was working
when granted educational leave, for a minimum period of time after
graduation.

(2) The paid educational leave program shall be administered
by the respective state health institutions.

(3) (a) Within the limits of the funds available to a state
health institution for such purpose, the institution may grant
paid educational leave to those applicants deemed qualified
therefor, upon such terms and conditions as it may impose and as
provided for in this section.

(b) In order to be eligible for paid educational leave,
an applicant must:

(i) Be working at a state health institution at
the time of application;

(ii) Attend any college or school approved and
designated by the state health institution; and

(iii) Agree to work in a health care profession as
defined in Section 37-101-285 or as a licensed practical nurse in
the same state health institution for a period of time equivalent
to the period of time for which the applicant receives paid
educational leave compensation, calculated to the nearest whole
month, but in no event less than two (2) years.

(c) (i) Before being granted paid educational leave,
each applicant shall enter into a contract with the state health
institution, which shall be deemed a contract with the State of
Mississippi, agreeing to the terms and conditions upon which the
paid educational leave shall be granted to him. The contract shall include such terms and provisions necessary to carry out the full purpose and intent of this section. The form of such contract shall be prepared and approved by the Attorney General of this state, and shall be signed by the executive director of the respective state health institution and the recipient. If the recipient is a minor, his minority disabilities shall be removed by a chancery court of competent jurisdiction before the contract is signed.

(ii) The state health institution shall have the authority to cancel any contract made between it and any recipient for paid educational leave upon such cause being deemed sufficient by the executive director of such institution.

(iii) The state health institution is vested with full and complete authority and power to sue in its own name any recipient for any balance due the state on any such uncompleted contract, which suit shall be filed and handled by the Attorney General of the state. The state health institution may contract with a collection agency or banking institution, subject to approval by the Attorney General, for collection of any balance due the state from any recipient. The State of Mississippi, agencies of the state and the state health institution and its employees are immune from any suit brought in law or equity for actions taken by the collection agency or banking institution incidental to or arising from their performance under the contract. The state health institution, collection agency and banking institution may negotiate for the payment of a sum that is less than full payment in order to satisfy any balance the recipient owes the state, subject to approval by the facility director of the sponsoring facility within the state health institution.

(iv) Failure to meet the terms of an educational loan contract shall be grounds for revocation of the professional
license which was earned through the paid educational leave
compensation granted under this section.

(v) A finding by the sponsoring agency of a
default by the recipient shall be a finding of unprofessional
conduct and therefore, a basis for the revocation of the
professional license which was obtained through the educational
leave program. The finding also will be grounds for revocation of
any license, as defined by Section 93-11-153.

(vi) Notice of pending default status shall be
mailed to the recipient at the last known address by the
sponsoring agency.

(vii) The sponsoring agency shall conduct a
hearing of pending default status, make a final determination, and
issue an Order of Default, if appropriate.

(viii) Recipients may appear either personally or
by counsel, or both, and produce and cross-examine witnesses or
evidence in the recipient's behalf. The procedure of the hearing
shall not be bound by the Mississippi Rules of Civil Procedure and
Evidence.

(ix) If a recipient is found to be in default, a
copy of an Order of Default shall be forwarded to the appropriate
licensing agency.

(x) Appeals from a finding of default by the
sponsoring agency shall be to the Circuit Court of Hinds County.
Actions taken by a licensing entity in revoking a license when
required by this section are not actions from which an appeal may
be taken under the general licensing and disciplinary provisions
applicable to the licensing agency.

(xi) Rules and regulations governing hearing and
other applicable matters shall be promulgated by the sponsoring
agency.
(xii) A license which has been revoked pursuant to this statute shall be reinstated upon a showing of proof that the recipient is no longer in default.

(xiii) A finding by the sponsoring facility of educational leave default is a disciplinary action, not a collection action, and therefore shall not be affected by the recipient declaring bankruptcy.

(4) (a) Any recipient who is granted paid educational leave by a state health institution shall be compensated by the institution during the time the recipient is in school, at the rate of pay received by a nurse's aide employed at the respective state health institution. All educational leave compensation received by the recipient while in school shall be considered earned conditioned upon the fulfillment of the terms and obligations of the educational leave contract and this section. However, no recipient of full-time educational leave shall accrue personal or major medical leave while the recipient is on paid educational leave. Recipients of paid educational leave shall be responsible for their individual costs of tuition and books.

(b) Paid educational leave shall be granted only upon the following conditions:

(i) The recipient shall fulfill his or her obligation under the contract with the State of Mississippi by working as a professional in a health care profession defined in Section 37-101-285 or as a licensed practical nurse in a state health institution; a recipient sponsored by a health institution under the supervision of the Mississippi Department of Mental Health may fulfill his or her obligation under the contract with the State of Mississippi at another health institution under the supervision of the Mississippi Department of Mental Health with prior written approval of the Director of the Department of Mental Health institution with which he or she originally contracted for educational leave. The total compensation that the recipient was
paid while on educational leave shall be considered as
unconditionally earned on an annual pro rata basis for each year of service rendered under the educational leave contract as a health care professional in his respective state health institution.

(ii) If the recipient does not work as a professional in a health care profession as defined in Section 37-101-285 or as a licensed practical nurse in his respective state health institution for the period required under subsection (3)(b)(iii) of this section, the recipient shall be liable for repayment on demand of the remaining portion of the compensation that the recipient was paid while on paid educational leave which has not been unconditionally earned, with interest accruing at ten percent (10\%) per annum from the recipient's date of graduation or the date that the recipient last worked at that state health institution, whichever is the later date. In addition, there shall be included in any contract for paid educational leave a provision for liquidated damages equal to Five Thousand Dollars ($5,000.00) which may be reduced on a pro rata basis for each year served under such contract.

(iii) If any recipient fails or withdraws from school at any time before completing his or her health care training, the recipient shall be liable for repayment on demand of the amount of the total compensation that the recipient was paid while on paid educational leave, with interest accruing at ten percent (10\%) per annum from the date the recipient failed or withdrew from school. However, the recipient shall not be liable for liquidated damages, and if the recipient returns to work in the same position held in the same state health institution prior to accepting educational leave, the recipient shall not be liable for payment of any interest on the amount owed.

(iv) The issuance and renewal of the professional license required to work in a health care profession as defined in
Section 37-101-285 for which the educational leave was granted shall be contingent upon the repayment of the total compensation that the recipient received while on paid educational leave. No license shall be granted until a contract for repayment is executed. No license shall be renewed without proof of an existing contract which is not in default. Failure to meet the terms of an educational loan contract shall be grounds for revocation of the professional license which was earned through the paid educational leave compensation granted under this section. Any person who receives any amount of paid educational leave compensation while in school and subsequently receives a professional license shall be deemed to have earned the professional license through paid educational leave.

(v) The obligations of educational leave recipients under contracts entered into before July 1, 2002, shall remain unchanged. However, state health institutions may use the collection or license revocation provisions of this section to collect money owed under all educational leave contracts, regardless of when those contracts were executed.

SECTION 3. Section 37-101-293, Mississippi Code of 1972, is amended as follows:

37-101-293. (1) Within the limits of the funds available to any state agency for such purpose, the administrative head of such state agency may grant paid educational leave on a part-time or full-time basis and reimburse employees for educational expenses such as tuition, books and related fees to pursue undergraduate or graduate level education to those applicants deemed qualified.

It is the intent of the Legislature that such educational leave program shall be used as an incentive for employees to develop job-related skills and to develop employees for higher-level professional and management positions.

(2) In order to be eligible for paid educational leave, reimbursement for educational expenses or both, an applicant must:
(a) Be working at a state agency for at least three (3) years at the time of application or be working at a state agency at the time of application for part-time graduate level education in a particular profession deemed by the administrative head of the state agency to meet a critical need within the state agency;

(b) Attend any college or school located in the State of Mississippi and approved by the administrative head of such agency, unless such course of study is not available at a Mississippi college or school, in which case the applicant may attend an out-of-state college or school;

(c) Agree to work as an employee in the same state agency for at least three (3) full years after completion of the course of study or, in the case of employees on educational leave on a part-time basis or receiving reimbursement for educational expenses only, to work for a time prorated based upon the total amount of expenses, including leave, paid for by the agency.

(3) (a) Before being granted paid educational leave, or being approved for reimbursement of educational expense or both, each applicant shall enter into a contract with the state agency, which shall be deemed a contract with the State of Mississippi, agreeing to the terms and conditions upon which the paid educational leave will be granted to him. The contract shall include such terms and provisions necessary to implement the purpose and intent of this section. The form of such contract shall be prepared by the Attorney General of this state and approved by the State Personnel Board, and shall be signed by the administrative head of the state agency and signed by the recipient. If the recipient is a minor, his minority disabilities shall be removed by a chancery court of competent jurisdiction before the contract is signed.

(b) Educational expenses for tuition, books and associated fees shall be reimbursed to the employee only after the
employee has submitted documentation that the approved course has
been successfully completed.

(c) If the recipient does not work as an employee in
that state agency for the period of employment specified in the
contract, the recipient shall be liable for repayment on demand of
the remaining portion of the compensation that he or she was paid
while on paid educational leave and educational expenses paid,
with interest accruing at ten percent (10%) per annum from the
recipient's date of graduation, or the date that the recipient
last worked at that state agency, whichever is the later date. In
addition, there shall be included in any contract for paid
educational leave a provision for liquidated damages equal to Two
Thousand Dollars ($2,000.00) per year for each year remaining to
be served under such contract.

(d) If any recipient fails or withdraws from school at
any time before completing his or her education, the recipient
shall be liable for repayment on demand of the amount of the total
compensation that he or she was paid while on paid educational
leave, with interest accruing at ten percent (10%) per annum from
the date the recipient failed or withdrew from school. However,
if the recipient remains or returns to work in the same position
he or she held in the same state agency prior to accepting
educational leave, he or she shall not be liable for payment of
any interest on the amount owed.

(e) The state agency shall have the authority to cancel
any contract made between it and any recipient for paid
educational leave or educational expenses or both upon such cause
being deemed sufficient by the administrative head of the agency.

(f) The state agency is vested with full and complete
authority and power to sue in its own name any recipient for any
balance due the state on any such uncompleted contract, which suit
shall be conducted and handled by the Attorney General of the
state.
(g) Persons who default on contracts entered into under this section shall have the default determined and lose their professional health care licenses under the procedures provided in Section 37-101-291.

(4) At the discretion of the administrative head of the state agency, any recipient who is granted paid educational leave by the state agency, including nurses, shall be compensated by such agency as prescribed by the State Personnel Board during the time he or she is in school. For employees who are on educational leave on a full-time basis, the State Personnel Board shall establish a maximum salary amount at which any employee may be paid full compensation while on educational leave and shall establish a deduction ratio or reduced percentage rate of compensation to be paid to all employees compensated at a salary level above such maximum salary amount. No recipient of full-time educational leave shall accrue personal or major medical leave while he or she is on paid educational leave.

(5) Each state agency granting paid educational leave to employees or reimbursing educational expenses or both shall file an annual report with the Legislature which shall detail for each recipient of paid educational leave the position of the employee, the cost of the educational assistance and the degree program and school attended.

SECTION 4. This act shall take effect and be in force from and after July 1, 2003.