

By: Senator(s) Harden, Chaney, Tollison,
Williamson, Burton

To: Education

SENATE BILL NO. 2394

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 WHO HAVE ENROLLED IN FULL DAY PUBLIC
4 SCHOOL KINDERGARTEN PROGRAMS; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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



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

30 (f) "Compulsory-school-age child" means a child who has
31 attained or will attain the age of six (6) years on or before
32 September 1 of the calendar year and who has not attained the age
33 of seventeen (17) years on or before September 1 of the calendar
34 year; and shall include any child who has attained or will attain
35 the age of five (5) years on or before September 1 and has
36 enrolled in a full day public school kindergarten program.

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

125 (c) An absence is excused when isolation of a
126 compulsory-school-age child is ordered by the county health



127 officer, by the State Board of Health or appropriate school
128 official.

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

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

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

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

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



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

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

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



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

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



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

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

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

248 37-15-9. (1) Except as provided in subsection (2) and
249 subject to the provisions of subsection (3) of this section, no
250 child shall be enrolled or admitted to any kindergarten which is a
251 part of the free public school system during any school year
252 unless such child will reach his fifth birthday on or before
253 September 1 of said school year, and no child shall be enrolled or
254 admitted to the first grade in any school which is a part of the
255 free public school system during any school year unless such child
256 will reach his sixth birthday on or before September 1 of said



257 school year. No pupil shall be permanently enrolled in a school
258 in the State of Mississippi who formerly was enrolled in another
259 public or private school within the state until the cumulative
260 record of the pupil shall have been received from the school from
261 which he transferred. Should such record have become lost or
262 destroyed, then it shall be the duty of the superintendent or
263 principal of the school where the pupil last attended school to
264 initiate a new record.

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

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

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

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

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

284 (3) When any child applies for admission or enrollment in
285 any public school in the state, the parent, guardian or child, in
286 the absence of an accompanying parent or guardian, shall indicate
287 on the school registration form if the enrolling child has been
288 expelled from any public or private school or is currently a party
289 to an expulsion proceeding. If it is determined from the child's



290 cumulative record or application for admission or enrollment that
291 the child has been expelled, the school district may deny the
292 student admission and enrollment until the superintendent of the
293 school, or his designee, has reviewed the child's cumulative
294 record and determined that the child has participated in
295 successful rehabilitative efforts including, but not limited to,
296 progress in an alternative school or similar program. If the
297 child is a party to an expulsion proceeding, the child may be
298 admitted to a public school pending final disposition of the
299 expulsion proceeding. If the expulsion proceeding results in the
300 expulsion of the child, the public school may revoke such
301 admission to school. If the child was expelled or is a party to
302 an expulsion proceeding for an act involving violence, weapons,
303 alcohol, illegal drugs or other activity that may result in
304 expulsion, the school district shall not be required to grant
305 admission or enrollment to the child before one (1) calendar year
306 after the date of the expulsion.

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

