

By: Representatives Evans, Green

To: Education

## HOUSE BILL NO. 1112

1 AN ACT TO AMEND SECTION 37-15-9, MISSISSIPPI CODE OF 1972, TO  
2 ALLOW CHILDREN WHO REACH THEIR SIXTH BIRTHDAY ON OR BEFORE  
3 SEPTEMBER 30 TO ENROLL IN FIRST GRADE; TO AMEND SECTION 37-13-91,  
4 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISION;  
5 AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 37-15-9, Mississippi Code of 1972, is  
8 amended as follows:

9 37-15-9. (1) Except as provided in subsection (2) and  
10 subject to the provisions of subsection (3) of this section, no  
11 child shall be enrolled or admitted to any kindergarten that is a  
12 part of the free public school system during any school year  
13 unless that child will reach his fifth birthday on or before  
14 September 1 of the school year, and no child shall be enrolled or  
15 admitted to the first grade in any school that is a part of the  
16 free public school system during any school year unless that child  
17 will reach his sixth birthday on or before September 30 of the  
18 school year. No pupil shall be permanently enrolled in a school  
19 in the State of Mississippi who formerly was enrolled in another  
20 public or private school within the state until the cumulative  
21 record of the pupil is received from the school from which he  
22 transferred. If the record has been lost or destroyed, then it is  
23 the duty of the superintendent or principal of the school where  
24 the pupil last attended school to initiate a new record.

25 (2) Subject to the provisions of subsection (3) of this  
26 section, any child who transfers from an out-of-state public or  
27 private school in which that state's law provides for a  
28 first-grade enrollment date after September 30 or a kindergarten

29 enrollment date after September 1, may enroll in the public  
30 schools of Mississippi, at the same grade level as their prior  
31 out-of-state enrollment, if:

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

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

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

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

44 (3) When any child applies for admission or enrollment in  
45 any public school in the state, the parent, guardian or child, in  
46 the absence of an accompanying parent or guardian, shall indicate  
47 on the school registration form if the enrolling child has been  
48 expelled from any public or private school or is currently a party  
49 to an expulsion proceeding. If it is determined from the child's  
50 cumulative record or application for admission or enrollment that  
51 the child has been expelled, the school district may deny the  
52 student admission and enrollment until the superintendent of the  
53 school, or his designee, has reviewed the child's cumulative  
54 record and determined that the child has participated in  
55 successful rehabilitative efforts including, but not limited to,  
56 progress in an alternative school or similar program. If the  
57 child is a party to an expulsion proceeding, the child may be  
58 admitted to a public school pending final disposition of the  
59 expulsion proceeding. If the expulsion proceeding results in the  
60 expulsion of the child, the public school may revoke such  
61 admission to school. If the child was expelled or is a party to

62 an expulsion proceeding for an act involving violence, weapons,  
63 alcohol, illegal drugs or other activity that may result in  
64 expulsion, the school district shall not be required to grant  
65 admission or enrollment to the child before one (1) calendar year  
66 after the date of the expulsion.

67 **SECTION 2.** Section 37-13-91, Mississippi Code of 1972, is  
68 amended as follows:

69 37-13-91. (1) This section shall be referred to as the  
70 "Mississippi Compulsory School Attendance Law."

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

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

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

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

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

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

91 (f) "Compulsory-school-age child" means a child who has  
92 attained or will attain the age of six (6) years on or before  
93 September 30 of the calendar year and who has not attained the age  
94 of seventeen (17) years on or before September 1 of the calendar

95 year; and shall include any child who has attained or will attain  
96 the age of five (5) years on or before September 1 and has  
97 enrolled in a full-day public school kindergarten program.  
98 Provided, however, that the parent or guardian of any child  
99 enrolled in a full-day public school kindergarten program shall be  
100 allowed to disenroll the child from the program on a one-time  
101 basis, and such child shall not be deemed a compulsory-school-age  
102 child until the child attains the age of six (6) years.

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

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

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

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

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

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

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

129           The parent, guardian or custodian of a compulsory-school-age  
130 child described in this subsection, or the parent, guardian or  
131 custodian of a compulsory-school-age child attending any nonpublic  
132 school, or the appropriate school official for any or all children  
133 attending a nonpublic school shall complete a "certificate of  
134 enrollment" in order to facilitate the administration of this  
135 section.

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

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

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

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

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

153           The certificate of enrollment shall be returned to the school  
154 attendance officer where the child resides on or before September  
155 15 of each year. Any parent, guardian or custodian found by the  
156 school attendance officer to be in noncompliance with this section  
157 shall comply, after written notice of the noncompliance by the  
158 school attendance officer, with this subsection within ten (10)  
159 days after the notice or be in violation of this section.

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

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

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

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

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

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

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

193 officer, by the State Board of Health or appropriate school  
194 official.

195 (d) An absence is excused when it results from the  
196 death or serious illness of a member of the immediate family of a  
197 compulsory-school-age child. The immediate family members of a  
198 compulsory-school-age child shall include children, spouse,  
199 grandparents, parents, brothers and sisters, including  
200 stepbrothers and stepsisters.

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

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

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

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

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

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

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



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

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

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

294 (9) Notwithstanding any provision or implication herein to  
295 the contrary, it is not the intention of this section to impair  
296 the primary right and the obligation of the parent or parents, or  
297 person or persons in loco parentis to a child, to choose the  
298 proper education and training for such child, and nothing in this  
299 section shall ever be construed to grant, by implication or  
300 otherwise, to the State of Mississippi, any of its officers,  
301 agencies or subdivisions any right or authority to control,  
302 manage, supervise or make any suggestion as to the control,  
303 management or supervision of any private or parochial school or  
304 institution for the education or training of children, of any kind  
305 whatsoever that is not a public school according to the laws of  
306 this state; and this section shall never be construed so as to  
307 grant, by implication or otherwise, any right or authority to any  
308 state agency or other entity to control, manage, supervise,  
309 provide for or affect the operation, management, program,  
310 curriculum, admissions policy or discipline of any such school or  
311 home instruction program.

312 **SECTION 3.** This act shall take effect and be in force from  
313 and after July 1, 2004.