

By: Representative Hines

To: Judiciary A

## HOUSE BILL NO. 1101

1 AN ACT TO AMEND SECTION 37-13-91, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE PENALTIES FOR PARENTS OR LEGAL GUARDIANS OF CHILDREN  
3 WHO ARE TRUANT THAT RECEIVE PUBLIC FINANCIAL ASSISTANCE FROM THE  
4 STATE OF MISSISSIPPI; 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 Provided, however, that the parent or guardian of any child  
38 enrolled in a full-day public school kindergarten program shall be  
39 allowed to disenroll the child from the program on a one-time  
40 basis, and such child shall not be deemed a compulsory-school-age  
41 child until the child attains the age of six (6) years.

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

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

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

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

58 (a) When a compulsory-school-age child is physically,  
59 mentally or emotionally incapable of attending school as

60 determined by the appropriate school official based upon  
61 sufficient medical documentation.

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

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

68 The parent, guardian or custodian of a compulsory-school-age  
69 child described in this subsection, or the parent, guardian or  
70 custodian of a compulsory-school-age child attending any nonpublic  
71 school, or the appropriate school official for any or all children  
72 attending a nonpublic school shall complete a "certificate of  
73 enrollment" in order to facilitate the administration of this  
74 section.

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

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

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

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

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

92           The certificate of enrollment shall be returned to the school  
93 attendance officer where the child resides on or before September  
94 15 of each year. Any parent, guardian or custodian found by the  
95 school attendance officer to be in noncompliance with this section  
96 shall comply, after written notice of the noncompliance by the  
97 school attendance officer, with this subsection within ten (10)  
98 days after the notice or be in violation of this section.  
99 However, in the event the child has been enrolled in a public  
100 school within fifteen (15) calendar days after the first day of  
101 the school year as required in subsection (6), the parent or  
102 custodian may, at a later date, enroll the child in a legitimate  
103 nonpublic school or legitimate home instruction program and send  
104 the certificate of enrollment to the school attendance officer and  
105 be in compliance with this subsection.

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

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

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

121           (a) An absence is excused when the absence results from  
122 the compulsory-school-age child's attendance at an authorized  
123 school activity with the prior approval of the superintendent of  
124 the school district, or his designee. These activities may

125 include field trips, athletic contests, student conventions,  
126 musical festivals and any similar activity.

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

130 (c) An absence is excused when isolation of a  
131 compulsory-school-age child is ordered by the county health  
132 officer, by the State Board of Health or appropriate school  
133 official.

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

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

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

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

156 (h) An absence may be excused when it is demonstrated  
157 to the satisfaction of the superintendent of the school district,

158 or his designee, that the purpose of the absence is to take  
159 advantage of a valid educational opportunity such as travel,  
160 including vacations or other family travel. Approval of the  
161 absence must be gained from the superintendent of the school  
162 district, or his designee, before the absence, but the approval  
163 shall not be unreasonably withheld.

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

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

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

191 section shall be brought against a parent, guardian or custodian  
192 of a compulsory-school-age child unless the school attendance  
193 officer has contacted promptly the home of the child and has  
194 provided written notice to the parent, guardian or custodian of  
195 the requirement for the child's enrollment or attendance.

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

209 (7) (a) When a school attendance officer has made all  
210 attempts to secure enrollment and/or attendance of a  
211 compulsory-school-age child and is unable to effect the enrollment  
212 and/or attendance, the attendance officer shall file a petition  
213 with the youth court under Section 43-21-451 or shall file a  
214 petition in a court of competent jurisdiction as it pertains to  
215 parent or child. Sheriffs, deputy sheriffs and municipal law  
216 enforcement officers shall be fully authorized to investigate all  
217 cases of nonattendance and unlawful absences by  
218 compulsory-school-age children, and shall be authorized to file a  
219 petition with the youth court under Section 43-21-451 or file a  
220 petition or information in the court of competent jurisdiction as  
221 it pertains to parent or child for violation of this section. The  
222 youth court shall expedite a hearing to make an appropriate  
223 adjudication and a disposition to ensure compliance with the

224 Compulsory School Attendance Law, and may order the child to  
225 enroll or re-enroll in school. The superintendent of the school  
226 district to which the child is ordered may assign, in his  
227 discretion, the child to the alternative school program of the  
228 school established pursuant to Section 37-13-92.

229 (b) In addition to the authority granted in paragraph  
230 (a) of this section, the school attendance officers in cooperation  
231 with the Department of Human Services, shall determine if the  
232 parent or legal guardian of a truant student receives public  
233 financial assistance. If the parent or legal guardian is  
234 receiving public financial assistance and the child fails to  
235 attend school, the parent or legal guardian may be punished  
236 accordingly:

237 (i) For the first offense, an appropriate written  
238 warning to the parent or legal guardian to get the child  
239 re-enrolled in school.

240 (ii) For the second offense, a sixty (60) day  
241 probationary period allowing the parent or legal guardian to  
242 re-enroll the child in school.

243 (iii) The third offense, the parent or legal  
244 guardian shall become ineligible for public financial assistance  
245 until the child is re-enrolled in school.

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

250 (9) Notwithstanding any provision or implication herein to  
251 the contrary, it is not the intention of this section to impair  
252 the primary right and the obligation of the parent or parents, or  
253 person or persons in loco parentis to a child, to choose the  
254 proper education and training for such child, and nothing in this  
255 section shall ever be construed to grant, by implication or  
256 otherwise, to the State of Mississippi, any of its officers,



257 agencies or subdivisions any right or authority to control,  
258 manage, supervise or make any suggestion as to the control,  
259 management or supervision of any private or parochial school or  
260 institution for the education or training of children, of any kind  
261 whatsoever that is not a public school according to the laws of  
262 this state; and this section shall never be construed so as to  
263 grant, by implication or otherwise, any right or authority to any  
264 state agency or other entity to control, manage, supervise,  
265 provide for or affect the operation, management, program,  
266 curriculum, admissions policy or discipline of any such school or  
267 home instruction program.

268       **SECTION 2.** This act shall take effect and be in force from  
269 and after July 1, 2005.