

By: Senator(s) Tollison

To: Education

SENATE BILL NO. 2134

1 AN ACT TO AMEND SECTION 37-13-91, MISSISSIPPI CODE OF 1972,
2 TO DELETE THE PROVISION OF THE COMPULSORY SCHOOL ATTENDANCE LAW
3 ALLOWING THE PARENT OR GUARDIAN TO DISENROLL A CHILD FROM A
4 FULL-DAY PUBLIC SCHOOL KINDERGARTEN PROGRAM ON A ONE-TIME BASIS;
5 AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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