

By: Senator(s) Harden

To: Education;
Appropriations

SENATE BILL NO. 2212

1 AN ACT TO AMEND SECTION 37-15-9, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT CHILDREN WHO HAVE REACHED THEIR 5TH OR 6TH BIRTHDAY
3 ON OR BEFORE JANUARY 1 OF THE UPCOMING SCHOOL YEAR SHALL BE
4 ELIGIBLE TO ENROLL IN PUBLIC KINDERGARTEN OR FIRST GRADE; TO AMEND
5 SECTION 37-13-91, MISSISSIPPI CODE OF 1972, TO CONFORM SAID
6 ENROLLMENT REQUIREMENTS TO THE PROVISIONS OF THE COMPULSORY SCHOOL
7 LAW; AND FOR RELATED PURPOSES.

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

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

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

28 (2) Subject to the provisions of subsection (3) of this
29 section, any child who transfers from an out-of-state public or

30 private school in which that state's law provides for a
31 first-grade or kindergarten enrollment date subsequent to January
32 1 shall be allowed to enroll in the public schools of Mississippi,
33 at the same grade level as their prior out-of-state enrollment,
34 if:

35 (a) The parent, legal guardian or custodian of such
36 child was a legal resident of the state from which the child is
37 transferring;

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

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

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

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

63 expulsion of the child, the public school may revoke such
64 admission to school. If the child was expelled or is a party to
65 an expulsion proceeding for an act involving violence, weapons,
66 alcohol, illegal drugs or other activity that may result in
67 expulsion, the school district shall not be required to grant
68 admission or enrollment to the child before one (1) calendar year
69 after the date of the expulsion.

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

72 37-13-91. (1) This section shall be referred to as the
73 "Mississippi Compulsory School Attendance Law."

74 (2) The following terms as used in this section are defined
75 as follows:

76 (a) "Parent" means the father or mother to whom a child
77 has been born, or the father or mother by whom a child has been
78 legally adopted.

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

82 (c) "Custodian" means any person having the present
83 care or custody of a child, other than a parent or guardian of the
84 child.

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

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

94 (f) "Compulsory-school-age child" means a child who has
95 attained or will attain the age of six (6) years on or before

96 January 1 of the school year and who has not attained the age of
97 seventeen (17) years on or before January 1 of the school year;
98 and shall include any child who has attained or will attain the
99 age of five (5) years on or before January 1 and has enrolled in a
100 full-day public school kindergarten program. Provided, however,
101 that the parent or guardian of any child enrolled in a full-day
102 public school kindergarten program shall be allowed to disenroll
103 the child from the program on a one-time basis, and such child
104 shall not be deemed a compulsory-school-age child until the child
105 attains the age of six (6) years.

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

108 (h) "Appropriate school official" means the
109 superintendent of the school district, or his designee, or, in the
110 case of a nonpublic school, the principal or the headmaster.

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

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

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

126 (b) When a compulsory-school-age child is enrolled in
127 and pursuing a course of special education, remedial education or

128 education for handicapped or physically or mentally disadvantaged
129 children.

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

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

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

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

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

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

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

156 The certificate of enrollment shall be returned to the school
157 attendance officer where the child resides on or before September
158 15 of each year. Any parent, guardian or custodian found by the
159 school attendance officer to be in noncompliance with this section
160 shall comply, after written notice of the noncompliance by the

161 school attendance officer, with this subsection within ten (10)
162 days after the notice or be in violation of this section.
163 However, in the event the child has been enrolled in a public
164 school within fifteen (15) calendar days after the first day of
165 the school year as required in subsection (6), the parent or
166 custodian may, at a later date, enroll the child in a legitimate
167 nonpublic school or legitimate home instruction program and send
168 the certificate of enrollment to the school attendance officer and
169 be in compliance with this subsection.

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

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

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

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

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

194 (c) An absence is excused when isolation of a
195 compulsory-school-age child is ordered by the county health
196 officer, by the State Board of Health or appropriate school
197 official.

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

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

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

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

220 (h) An absence may be excused when it is demonstrated
221 to the satisfaction of the superintendent of the school district,
222 or his designee, that the purpose of the absence is to take
223 advantage of a valid educational opportunity such as travel,
224 including vacations or other family travel. Approval of the
225 absence must be gained from the superintendent of the school

226 district, or his designee, before the absence, but the approval
227 shall not be unreasonably withheld.

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

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

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

258 provided written notice to the parent, guardian or custodian of
259 the requirement for the child's enrollment or attendance.

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

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

291 alternative school program of the school established pursuant to
292 Section 37-13-92.

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

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

315 **SECTION 3.** This act shall take effect and be in force from
316 and after July 1, 2005.