

By: Senator(s) Harden

To: Education;
Appropriations

SENATE BILL NO. 2215

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 AUGUST 1 SHALL BE ELIGIBLE TO ENROLL IN PUBLIC
4 KINDERGARTEN OR FIRST GRADE; TO AMEND SECTION 37-13-91, TO CONFORM
5 SAID ENROLLMENT REQUIREMENTS TO THE PROVISIONS OF THE COMPULSORY
6 SCHOOL LAW; AND FOR RELATED PURPOSES.

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

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

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

27 (2) Subject to the provisions of subsection (3) of this
28 section, any child who transfers from an out-of-state public or
29 private school in which that state's law provides for a

30 first-grade or kindergarten enrollment date subsequent to August
31 1, shall be allowed to enroll in the public schools of
32 Mississippi, at the same grade level as their prior out-of-state
33 enrollment, if:

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

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

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

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

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

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

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

71 37-13-91. (1) This section shall be referred to as the
72 "Mississippi Compulsory School Attendance Law."

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

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

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

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

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

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

93 (f) "Compulsory-school-age child" means a child who has
94 attained or will attain the age of six (6) years on or before
95 August 1 of the calendar year and who has not attained the age of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

195 officer, by the State Board of Health or appropriate school
196 official.

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

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

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

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

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

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

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

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

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

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

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

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

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