

By: Representative Brown

To: Education

HOUSE BILL NO. 310

1 AN ACT TO AMEND SECTION 37-13-91, MISSISSIPPI CODE OF 1972,  
2 TO CLARIFY THAT ANY CHILD WHO ATTAINS THE AGE OF 17 DURING THE  
3 SCHOOL YEAR SHALL BE REQUIRED TO ATTEND SCHOOL FOR THE REMAINDER  
4 OF THE SCHOOL TERM, AND TO DELETE THE PROVISION ALLOWING A PARENT  
5 OR GUARDIAN TO DISENROLL A CHILD FROM KINDERGARTEN; AND FOR  
6 RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

32 (f) "Compulsory-school-age child" means a child who has  
33 attained or will attain the age of six (6) years on or before  
34 September 1 of the calendar year and who has not attained the age  
35 of seventeen (17) years on or before September 1 of the calendar  
36 year; and shall include any child who has attained or will attain  
37 the age of five (5) years on or before September 1 and has  
38 enrolled in a full-day public school kindergarten program.  
39 Provided further, that any compulsory-school-age child who attains  
40 the age of seventeen (17) years during the school year shall be  
41 required to attend school for the remainder of the one hundred  
42 eighty-day school term.

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

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

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

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

59 (a) When a compulsory-school-age child is physically,  
60 mentally or emotionally incapable of attending school as  
61 determined by the appropriate school official based upon  
62 sufficient medical documentation.

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

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

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

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

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

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

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

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

93           The certificate of enrollment shall be returned to the school  
94 attendance officer where the child resides on or before September  
95 15 of each year. Any parent, guardian or custodian found by the

96 school attendance officer to be in noncompliance with this section  
97 shall comply, after written notice of the noncompliance by the  
98 school attendance officer, with this subsection within ten (10)  
99 days after the notice or be in violation of this section.

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

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

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

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

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

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

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

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

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

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

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

157           (h) An absence may be excused when it is demonstrated  
158 to the satisfaction of the superintendent of the school district,  
159 or his designee, that the purpose of the absence is to take  
160 advantage of a valid educational opportunity such as travel,

161 including vacations or other family travel. Approval of the  
162 absence must be gained from the superintendent of the school  
163 district, or his designee, before the absence, but the approval  
164 shall not be unreasonably withheld.

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

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

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

194 officer has contacted promptly the home of the child and has  
195 provided written notice to the parent, guardian or custodian of  
196 the requirement for the child's enrollment or attendance.

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

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

227 child is ordered may assign, in his discretion, the child to the  
228 alternative school program of the school established pursuant to  
229 Section 37-13-92.

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

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

252 **SECTION 2.** This act shall take effect and be in force from  
253 and after July 1, 2006.