

By: Representative Clark

To: Education

HOUSE BILL NO. 645

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 WHICH WOULD MAKE ALL CHILDREN BE SUBJECT TO THE COMPULSORY SCHOOL
6 ATTENDANCE LAW AT AGE FIVE; AND FOR 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 (g) "School attendance officer" means a person employed
40 by the State Department of Education pursuant to Section 37-13-89.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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