

By: Representative Brown

To: Education

HOUSE BILL NO. 970

1 AN ACT TO AMEND SECTION 37-13-91, MISSISSIPPI CODE OF 1972,
2 TO DELETE THE PROVISION ALLOWING A PARENT OR GUARDIAN TO DISENROLL
3 A CHILD FROM KINDERGARTEN AND TO INCLUDE IN THE DEFINITION OF THE
4 TERM "COMPULSORY-SCHOOL-AGE CHILD" THOSE STUDENTS WHO TURN
5 SEVENTEEN YEARS OF AGE DURING THE SCHOOL YEAR; AND FOR RELATED
6 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:

33 (i) Has attained or will attain the age of six (6)
34 years on or before September 1 of the calendar year, beginning in
35 the school year that commences during the year the child attains
36 the age of six (6) years;

37 (ii) Has not attained the age of seventeen (17)
38 years on or before September 1 of the calendar year; and

39 (iii) If the child's birthday occurs during the
40 school year, who has not completed the school year during which
41 the child attains the age of seventeen (17) years.

42 The term "compulsory-school-age child" also shall include any
43 child who has attained or will attain the age of five (5) years on
44 or before September 1 and has enrolled in a full-day public school
45 kindergarten program. * * *

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

48 (h) "Appropriate school official" means the
49 superintendent of the school district, or his designee, or, in the
50 case of a nonpublic school, the principal or the headmaster.

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

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

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

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

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

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

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

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

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

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

91 (iv) The signature of the parent, guardian or
92 custodian of the compulsory-school-age child or, for any or all
93 compulsory-school-age child or children attending a nonpublic

94 school, the signature of the appropriate school official and the
95 date signed.

96 The certificate of enrollment shall be returned to the school
97 attendance officer where the child resides on or before September
98 15 of each year. Any parent, guardian or custodian found by the
99 school attendance officer to be in noncompliance with this section
100 shall comply, after written notice of the noncompliance by the
101 school attendance officer, with this subsection within ten (10)
102 days after the notice or be in violation of this section.

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

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

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

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

125 (a) An absence is excused when the absence results from
126 the compulsory-school-age child's attendance at an authorized

127 school activity with the prior approval of the superintendent of
128 the school district, or his designee. These activities may
129 include field trips, athletic contests, student conventions,
130 musical festivals and any similar activity.

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

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

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

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

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

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

160 (h) 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 the purpose of the absence is to take
163 advantage of a valid educational opportunity such as travel,
164 including vacations or other family travel. Approval of the
165 absence must be gained from the superintendent of the school
166 district, or his designee, before the absence, but the approval
167 shall not be unreasonably withheld.

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

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

183 Upon prosecution of a parent, guardian or custodian of a
184 compulsory-school-age child for violation of this section, the
185 presentation of evidence by the prosecutor that shows that the
186 child has not been enrolled in school within eighteen (18)
187 calendar days after the first day of the school year of the public
188 school which the child is eligible to attend, or that the child
189 has accumulated twelve (12) unlawful absences during the school
190 year at the public school in which the child has been enrolled,
191 shall establish a prima facie case that the child's parent,
192 guardian or custodian is responsible for the absences and has

193 refused or willfully failed to perform the duties imposed upon him
194 or her under this section. However, no proceedings under this
195 section shall be brought against a parent, guardian or custodian
196 of a compulsory-school-age child unless the school attendance
197 officer has contacted promptly the home of the child and has
198 provided written notice to the parent, guardian or custodian of
199 the requirement for the child's enrollment or attendance.

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

213 (7) When a school attendance officer has made all attempts
214 to secure enrollment and/or attendance of a compulsory-school-age
215 child and is unable to effect the enrollment and/or attendance,
216 the attendance officer shall file a petition with the youth court
217 under Section 43-21-451 or shall file a petition in a court of
218 competent jurisdiction as it pertains to parent or child.
219 Sheriffs, deputy sheriffs and municipal law enforcement officers
220 shall be fully authorized to investigate all cases of
221 nonattendance and unlawful absences by compulsory-school-age
222 children, and shall be authorized to file a petition with the
223 youth court under Section 43-21-451 or file a petition or
224 information in the court of competent jurisdiction as it pertains
225 to parent or child for violation of this section. The youth court

226 shall expedite a hearing to make an appropriate adjudication and a
227 disposition to ensure compliance with the Compulsory School
228 Attendance Law, and may order the child to enroll or re-enroll in
229 school. The superintendent of the school district to which the
230 child is ordered may assign, in his discretion, the child to the
231 alternative school program of the school established pursuant to
232 Section 37-13-92.

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

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

255 **SECTION 2.** This act shall take effect and be in force from
256 and after July 1, 2007.