

By: Senator(s) Hewes, Gollott

To: Education

SENATE BILL NO. 2807

1 AN ACT TO AMEND SECTION 37-13-91, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT ANY COMPULSORY-SCHOOL-AGE CHILD THAT HAS
3 ACCUMULATED 30 OR MORE EXCUSED OR UNEXCUSED ABSENCES IN A SCHOOL
4 YEAR SHALL NOT BE ALLOWED TO ADVANCE TO THE NEXT GRADE OR
5 GRADUATE; AND FOR RELATED PURPOSES.

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

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

9 37-13-91. (1) This section shall be referred to as the
10 "Mississippi Compulsory School Attendance Law."

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

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

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

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

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

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

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

31 (f) "Compulsory-school-age child" means a child who has
32 attained or will attain the age of six (6) years on or before
33 September 1 of the calendar year and who has not attained the age
34 of seventeen (17) years on or before September 1 of the calendar
35 year; and shall include any child who has attained or will attain
36 the age of five (5) years on or before September 1 and has
37 enrolled in a full-day public school kindergarten program.
38 Provided, however, that the parent or guardian of any child
39 enrolled in a full-day public school kindergarten program shall be
40 allowed to disenroll the child from the program on a one-time
41 basis, and such child shall not be deemed a compulsory-school-age
42 child until the child attains the age of six (6) years.

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. Any
210 compulsory-school-age child that has accumulated thirty (30) or
211 more excused or unexcused absences in a school year shall not be
212 allowed to advance to the next grade or to graduate from high
213 school when such absences occur during a student's senior year.
214 The following excused absences will be exempt from this provision:
215 excused absences for authorized school activities with the prior
216 approval of the superintendent of the school district, or his
217 designee, excused absences that result from illness or injury
218 which prevents the compulsory-school-age child from physically
219 being able to attend school, excused absences that result from the
220 death or serious illness of a member of the immediate family as
221 defined in subsection (4)(d) of a compulsory-school-age child,
222 excused absences as a result of extended travel of the family,
223 and/or other excused absences approved by local board policy.

224 (7) When a school attendance officer has made all attempts
225 to secure enrollment and/or attendance of a compulsory-school-age
226 child and is unable to effect the enrollment and/or attendance,
227 the attendance officer shall file a petition with the youth court
228 under Section 43-21-451 or shall file a petition in a court of
229 competent jurisdiction as it pertains to parent or child.
230 Sheriffs, deputy sheriffs and municipal law enforcement officers
231 shall be fully authorized to investigate all cases of
232 nonattendance and unlawful absences by compulsory-school-age
233 children, and shall be authorized to file a petition with the
234 youth court under Section 43-21-451 or file a petition or
235 information in the court of competent jurisdiction as it pertains
236 to parent or child for violation of this section. The youth court
237 shall expedite a hearing to make an appropriate adjudication and a
238 disposition to ensure compliance with the Compulsory School
239 Attendance Law, and may order the child to enroll or re-enroll in
240 school. The superintendent of the school district to which the
241 child is ordered may assign, in his discretion, the child to the
242 alternative school program of the school established pursuant to
243 Section 37-13-92.

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

248 (9) Notwithstanding any provision or implication herein to
249 the contrary, it is not the intention of this section to impair
250 the primary right and the obligation of the parent or parents, or
251 person or persons in loco parentis to a child, to choose the
252 proper education and training for such child, and nothing in this
253 section shall ever be construed to grant, by implication or
254 otherwise, to the State of Mississippi, any of its officers,
255 agencies or subdivisions any right or authority to control,
256 manage, supervise or make any suggestion as to the control,

257 management or supervision of any private or parochial school or
258 institution for the education or training of children, of any kind
259 whatsoever that is not a public school according to the laws of
260 this state; and this section shall never be construed so as to
261 grant, by implication or otherwise, any right or authority to any
262 state agency or other entity to control, manage, supervise,
263 provide for or affect the operation, management, program,
264 curriculum, admissions policy or discipline of any such school or
265 home instruction program.

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