

By: Senator(s) Butler

To: Education;
Appropriations

SENATE BILL NO. 2401

1 AN ACT TO AMEND SECTION 37-13-91, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT THE PROVISIONS OF THE MISSISSIPPI COMPULSORY
3 SCHOOL ATTENDANCE LAW ARE FULLY APPLICABLE TO KINDERGARTEN-AGE
4 CHILDREN; AND FOR RELATED PURPOSES.

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

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

8 37-13-91. (1) This section shall be referred to as the
9 "Mississippi Compulsory School Attendance Law."

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

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

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

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

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

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



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

30 (f) "Compulsory-school-age child" means a child who has
31 attained or will attain the age of five (5) years on or before
32 September 1 of the calendar year and who has not attained the age
33 of seventeen (17) years on or before September 1 of the calendar
34 year. * * *

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

37 (h) "Appropriate school official" means the
38 superintendent of the school district, or his designee, or, in the
39 case of a nonpublic school, the principal or the headmaster.

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

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

51 (a) When a compulsory-school-age child is physically,
52 mentally or emotionally incapable of attending school as
53 determined by the appropriate school official based upon
54 sufficient medical documentation.

55 (b) When a compulsory-school-age child is enrolled in
56 and pursuing a course of special education, remedial education or
57 education for handicapped or physically or mentally disadvantaged
58 children.

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



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

68 The form of the certificate of enrollment shall be prepared
69 by the Office of Compulsory School Attendance Enforcement of the
70 State Department of Education and shall be designed to obtain the
71 following information only:

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

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

76 (iii) A simple description of the type of
77 education the compulsory-school-age child is receiving and, if the
78 child is enrolled in a nonpublic school, the name and address of
79 the school; and

80 (iv) The signature of the parent, guardian or
81 custodian of the compulsory-school-age child or, for any or all
82 compulsory-school-age child or children attending a nonpublic
83 school, the signature of the appropriate school official and the
84 date signed.

85 The certificate of enrollment shall be returned to the school
86 attendance officer where the child resides on or before September
87 15 of each year. Any parent, guardian or custodian found by the
88 school attendance officer to be in noncompliance with this section
89 shall comply, after written notice of the noncompliance by the
90 school attendance officer, with this subsection within ten (10)
91 days after the notice or be in violation of this section.

92 However, in the event the child has been enrolled in a public
93 school within fifteen (15) calendar days after the first day of



94 the school year as required in subsection (6), the parent or
95 custodian may, at a later date, enroll the child in a legitimate
96 nonpublic school or legitimate home instruction program and send
97 the certificate of enrollment to the school attendance officer and
98 be in compliance with this subsection.

99 For the purposes of this subsection, a legitimate nonpublic
100 school or legitimate home instruction program shall be those not
101 operated or instituted for the purpose of avoiding or
102 circumventing the compulsory attendance law.

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

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

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

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

123 (c) An absence is excused when isolation of a
124 compulsory-school-age child is ordered by the county health
125 officer, by the State Board of Health or appropriate school
126 official.



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

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

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

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

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

157 (i) 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 conditions are sufficient to warrant the



160 compulsory-school-age child's nonattendance. However, no absences
161 shall be excused by the school district superintendent, or his
162 designee, when any student suspensions or expulsions circumvent
163 the intent and spirit of the compulsory attendance law.

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

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

189 (6) If a compulsory-school-age child has not been enrolled
190 in a school within fifteen (15) calendar days after the first day
191 of the school year of the school which the child is eligible to
192 attend or the child has accumulated five (5) unlawful absences



193 during the school year of the public school in which the child is
194 enrolled, the school district superintendent shall report, within
195 two (2) school days or within five (5) calendar days, whichever is
196 less, the absences to the school attendance officer. The State
197 Department of Education shall prescribe a uniform method for
198 schools to utilize in reporting the unlawful absences to the
199 school attendance officer. The superintendent, or his designee,
200 also shall report any student suspensions or student expulsions to
201 the school attendance officer when they occur.

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

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



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

244 **SECTION 2.** This act shall take effect and be in force from
245 and after July 1, 2008.

