

By: Representative Clark

To: Education

HOUSE BILL NO. 1260

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 WHICH ALLOWS A PARENT OR GUARDIAN TO DISENROLL A CHILD FROM A
4 FULL-DAY PUBLIC SCHOOL KINDERGARTEN PROGRAM; AND FOR RELATED
5 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 (g) "School attendance officer" means a person employed
39 by the State Department of Education under Section 37-13-89.

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

136 (e) An absence is excused when it results from a
137 medical or dental appointment of a compulsory-school-age child.

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 a 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 that the child is eligible to attend, or that the child has
178 accumulated twelve (12) unlawful absences during the school year
179 at the public school in which the child has been enrolled, shall
180 establish a prima facie case that the child's parent, guardian or
181 custodian is responsible for the absences and has refused or
182 willfully failed to perform the duties imposed upon him or her
183 under this section. However, no proceedings under this section
184 shall be brought against a parent, guardian or custodian of a
185 compulsory-school-age child unless the school attendance officer
186 has contacted promptly the home of the child and has provided
187 written notice to the parent, guardian or custodian of the
188 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 that 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 or his designee shall
195 report, within two (2) school days or within five (5) calendar
196 days, whichever is less, the absences to the school attendance
197 officer. The State Department of Education shall prescribe a
198 uniform method for schools to utilize in reporting the unlawful
199 absences to the school attendance officer. The superintendent, or
200 his designee, also shall report any student suspensions or student
201 expulsions to 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 under Section
221 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 in this
227 section to the contrary, it is not the intention of this section
228 to impair the primary right and the obligation of the parent or
229 parents, or person or persons in loco parentis to a child, to
230 choose the proper education and training for the child, and
231 nothing in this section shall ever be construed to grant, by
232 implication or otherwise, to the State of Mississippi, any of its
233 officers, agencies or subdivisions any right or authority to
234 control, manage, supervise or make any suggestion as to the
235 control, management or supervision of any private or parochial
236 school or institution for the education or training of children,
237 of any kind whatsoever that is not a public school according to
238 the laws of this state; and this section shall never be construed
239 so as to grant, by implication or otherwise, any right or
240 authority to any state agency or other entity to control, manage,
241 supervise, provide for or affect the operation, management,
242 program, curriculum, admissions policy or discipline of any
243 private or parochial school or home instruction program.

244 **SECTION 2.** This act shall take effect and be in force from
245 and after July 1, 2010.

