

By: Representative Brown

To: Education

HOUSE BILL NO. 640

1 AN ACT TO AMEND SECTION 37-13-91, MISSISSIPPI CODE OF 1972,
2 TO DELETE THE AUTHORITY FOR A PARENT OR GUARDIAN TO DISENROLL A
3 CHILD FROM A PUBLIC KINDERGARTEN PROGRAM, AND TO PROHIBIT A SCHOOL
4 DISTRICT FROM AUTOMATICALLY FAILING A STUDENT DUE TO ABSENTEEISM
5 IF THE STUDENT IS OTHERWISE MAKING SATISFACTORY ACADEMIC PROGRESS;
6 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 (f) An absence is excused when it results from the
140 attendance of a compulsory-school-age child at the proceedings of
141 a court or an administrative tribunal if the child is a party to
142 the action or under subpoena as a witness.

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

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

158 (i) An absence may be excused when it is demonstrated
159 to the satisfaction of the superintendent of the school district,



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

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

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

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



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

203 An automatic failure shall not be imposed on a
204 compulsory-school-age student due to unlawful absences in a school
205 year, if the student has made satisfactory academic progress for
206 advancement to the next grade or for graduation from high school.

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



225 child to the alternative school program of the school established
226 pursuant to Section 37-13-92.

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

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

249 **SECTION 2.** This act shall take effect and be in force from
250 and after July 1, 2011.

