

By: Senator(s) Harden

To: Education;  
Appropriations

## SENATE BILL NO. 2310

1 AN ACT TO AMEND SECTION 37-15-9, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT CHILDREN WHO HAVE REACHED THEIR 5TH OR 6TH BIRTHDAY  
3 ON OR BEFORE JANUARY 1 OF THE UPCOMING SCHOOL YEAR SHALL BE  
4 ELIGIBLE TO ENROLL IN PUBLIC KINDERGARTEN OR FIRST GRADE; TO AMEND  
5 SECTION 37-13-91, MISSISSIPPI CODE OF 1972, TO CONFORM SAID  
6 ENROLLMENT REQUIREMENTS TO THE PROVISIONS OF THE COMPULSORY SCHOOL  
7 LAW; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 37-15-9, Mississippi Code of 1972, is  
10 amended as follows:

11 37-15-9. (1) Except as provided in subsection (2) and  
12 subject to the provisions of subsection (3) of this section, no  
13 child shall be enrolled or admitted to any kindergarten which is a  
14 part of the free public school system during any school year  
15 unless such child will reach his fifth birthday on or before  
16 January 1 of said school year, and no child shall be enrolled or  
17 admitted to the first grade in any school which is a part of the  
18 free public school system during any school year unless such child  
19 will reach his sixth birthday on or before January 1 of said  
20 school year. No pupil shall be permanently enrolled in a school  
21 in the State of Mississippi who formerly was enrolled in another  
22 public or private school within the state until the cumulative  
23 record of the pupil shall have been received from the school from  
24 which he transferred. Should such record have become lost or  
25 destroyed, then it shall be the duty of the superintendent or  
26 principal of the school where the pupil last attended school to  
27 initiate a new record.

28 (2) Subject to the provisions of subsection (3) of this  
29 section, any child who transfers from an out-of-state public or



30 private school in which that state's law provides for a  
31 first-grade or kindergarten enrollment date subsequent to  
32 September 1, shall be allowed to enroll in the public schools of  
33 Mississippi, at the same grade level as their prior out-of-state  
34 enrollment, if:

35 (a) The parent, legal guardian or custodian of such  
36 child was a legal resident of the state from which the child is  
37 transferring;

38 (b) The out-of-state school from which the child is  
39 transferring is duly accredited by that state's appropriate  
40 accrediting authority;

41 (c) Such child was legally enrolled in a public or  
42 private school for a minimum of four (4) weeks in the previous  
43 state; and

44 (d) The superintendent of schools in the applicable  
45 Mississippi school district has determined that the child was  
46 making satisfactory educational progress in the previous state.

47 (3) When any child applies for admission or enrollment in  
48 any public school in the state, the parent, guardian or child, in  
49 the absence of an accompanying parent or guardian, shall indicate  
50 on the school registration form if the enrolling child has been  
51 expelled from any public or private school or is currently a party  
52 to an expulsion proceeding. If it is determined from the child's  
53 cumulative record or application for admission or enrollment that  
54 the child has been expelled, the school district may deny the  
55 student admission and enrollment until the superintendent of the  
56 school, or his designee, has reviewed the child's cumulative  
57 record and determined that the child has participated in  
58 successful rehabilitative efforts including, but not limited to,  
59 progress in an alternative school or similar program. If the  
60 child is a party to an expulsion proceeding, the child may be  
61 admitted to a public school pending final disposition of the  
62 expulsion proceeding. If the expulsion proceeding results in the



expulsion of the child, the public school may revoke such admission to school. If the child was expelled or is a party to an expulsion proceeding for an act involving violence, weapons, alcohol, illegal drugs or other activity that may result in expulsion, the school district shall not be required to grant admission or enrollment to the child before one (1) calendar year after the date of the expulsion.

**SECTION 2.** Section 37-13-91, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

(e) "School" means any public school in this state or any nonpublic school in this state which is in session each school year for at least one hundred eighty (180) school days, except that the "nonpublic" school term shall be the number of days that each school shall require for promotion from grade to grade.

(f) "Compulsory-school-age child" means a child who has attained or will attain the age of six (6) years on or before



96 January 1 of the school year and who has not attained the age of  
97 seventeen (17) years on or before January 1 of the school year;  
98 and shall include any child who has attained or will attain the  
99 age of five (5) years on or before January 1 and has enrolled in a  
100 full-day public school kindergarten program. Provided, however,  
101 that the parent or guardian of any child enrolled in a full-day  
102 public school kindergarten program shall be allowed to disenroll  
103 the child from the program on a one-time basis, and such child  
104 shall not be deemed a compulsory-school-age child until the child  
105 attains the age of six (6) years.

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

108 (h) "Appropriate school official" means the  
109 superintendent of the school district, or his designee, or, in the  
110 case of a nonpublic school, the principal or the headmaster.

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

117 (3) A parent, guardian or custodian of a  
118 compulsory-school-age child in this state shall cause the child to  
119 enroll in and attend a public school or legitimate nonpublic  
120 school for the period of time that the child is of compulsory  
121 school age, except under the following circumstances:

122 (a) When a compulsory-school-age child is physically,  
123 mentally or emotionally incapable of attending school as  
124 determined by the appropriate school official based upon  
125 sufficient medical documentation.

126 (b) When a compulsory-school-age child is enrolled in  
127 and pursuing a course of special education, remedial education or



education for handicapped or physically or mentally disadvantaged children.

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

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

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

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

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

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

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

The certificate of enrollment shall be returned to the school attendance officer where the child resides on or before September 15 of each year. Any parent, guardian or custodian found by the school attendance officer to be in noncompliance with this section shall comply, after written notice of the noncompliance by the



161 school attendance officer, with this subsection within ten (10)  
162 days after the notice or be in violation of this section.  
163 However, in the event the child has been enrolled in a public  
164 school within fifteen (15) calendar days after the first day of  
165 the school year as required in subsection (6), the parent or  
166 custodian may, at a later date, enroll the child in a legitimate  
167 nonpublic school or legitimate home instruction program and send  
168 the certificate of enrollment to the school attendance officer and  
169 be in compliance with this subsection.

170 For the purposes of this subsection, a legitimate nonpublic  
171 school or legitimate home instruction program shall be those not  
172 operated or instituted for the purpose of avoiding or  
173 circumventing the compulsory attendance law.

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

180 Each of the following shall constitute a valid excuse for  
181 temporary nonattendance of a compulsory-school-age child enrolled  
182 in a public school, provided satisfactory evidence of the excuse  
183 is provided to the superintendent of the school district, or his  
184 designee:

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

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



194 (c) An absence is excused when isolation of a  
195 compulsory-school-age child is ordered by the county health  
196 officer, by the State Board of Health or appropriate school  
197 official.

198 (d) An absence is excused when it results from the  
199 death or serious illness of a member of the immediate family of a  
200 compulsory-school-age child. The immediate family members of a  
201 compulsory-school-age child shall include children, spouse,  
202 grandparents, parents, brothers and sisters, including  
203 stepbrothers and stepsisters.

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

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

210 (g) An absence may be excused if the religion to which  
211 the compulsory-school-age child or the child's parents adheres,  
212 requires or suggests the observance of a religious event. The  
213 approval of the absence is within the discretion of the  
214 superintendent of the school district, or his designee, but  
215 approval should be granted unless the religion's observance is of  
216 such duration as to interfere with the education of the child.

217 (h) An absence may be excused when it is demonstrated  
218 to the satisfaction of the superintendent of the school district,  
219 or his designee, that the purpose of the absence is to take  
220 advantage of a valid educational opportunity such as travel,  
221 including vacations or other family travel. Approval of the  
222 absence must be gained from the superintendent of the school  
223 district, or his designee, before the absence, but the approval  
224 shall not be unreasonably withheld.

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



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

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

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

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





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

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

(8) The State Board of Education shall adopt rules and regulations for the purpose of reprimanding any school



superintendents who fail to timely report unexcused absences under the provisions of this section.

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

**SECTION 3.** This act shall take effect and be in force from and after July 1, 2011.

