

By: Senator(s) Carmichael

To: Education

## SENATE BILL NO. 2535

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.** 37-13-91, Mississippi Code of 1972, is amended as  
9 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



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



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,



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.

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

(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



225 alternative school program of the school established pursuant to  
226 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.

