

By: Senator(s) Collins

To: Education

SENATE BILL NO. 2244

1 AN ACT TO AMEND SECTION 37-13-91, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY THAT SCHOOL ATTENDANCE OFFICERS AND SCHOOL OFFICIALS
3 ARE IMMUNE FROM ANY CIVIL OR CRIMINAL LIABILITY FOR MAKING
4 REQUIRED REPORTS AND OTHERWISE ENFORCING THE PROVISIONS OF THE
5 COMPULSORY SCHOOL ATTENDANCE LAW; AND FOR RELATED 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 Provided, however, that the parent or guardian of any child
39 enrolled in a full-day public school kindergarten program shall be
40 allowed to disenroll the child from the program on a one-time
41 basis, and such child shall not be deemed a compulsory-school-age
42 child until the child attains the age of six (6) years.

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

45 (h) "Appropriate school official" means the
46 superintendent of the school district, or his designee, or, in the
47 case of a nonpublic school, the principal or the headmaster.

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

54 (3) A parent, guardian or custodian of a
55 compulsory-school-age child in this state shall cause the child to
56 enroll in and attend a public school or legitimate nonpublic
57 school for the period of time that the child is of compulsory
58 school age, except under the following circumstances:

59 (a) When a compulsory-school-age child is physically,
60 mentally or emotionally incapable of attending school as



61 determined by the appropriate school official based upon
62 sufficient medical documentation.

63 (b) When a compulsory-school-age child is enrolled in
64 and pursuing a course of special education, remedial education or
65 education for handicapped or physically or mentally disadvantaged
66 children.

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

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

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

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

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

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

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



93 The certificate of enrollment shall be returned to the school
94 attendance officer where the child resides on or before September
95 15 of each year. Any parent, guardian or custodian found by the
96 school attendance officer to be in noncompliance with this section
97 shall comply, after written notice of the noncompliance by the
98 school attendance officer, with this subsection within ten (10)
99 days after the notice or be in violation of this section.
100 However, in the event the child has been enrolled in a public
101 school within fifteen (15) calendar days after the first day of
102 the school year as required in subsection (6), the parent or
103 custodian may, at a later date, enroll the child in a legitimate
104 nonpublic school or legitimate home instruction program and send
105 the certificate of enrollment to the school attendance officer and
106 be in compliance with this subsection.

107 For the purposes of this subsection, a legitimate nonpublic
108 school or legitimate home instruction program shall be those not
109 operated or instituted for the purpose of avoiding or
110 circumventing the compulsory attendance law.

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

117 Each of the following shall constitute a valid excuse for
118 temporary nonattendance of a compulsory-school-age child enrolled
119 in a public school, provided satisfactory evidence of the excuse
120 is provided to the superintendent of the school district, or his
121 designee:

122 (a) An absence is excused when the absence results from
123 the compulsory-school-age child's attendance at an authorized
124 school activity with the prior approval of the superintendent of
125 the school district, or his designee. These activities may



126 include field trips, athletic contests, student conventions,
127 musical festivals and any similar activity.

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

131 (c) An absence is excused when isolation of a
132 compulsory-school-age child is ordered by the county health
133 officer, by the State Board of Health or appropriate school
134 official.

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

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

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

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

154 (h) An absence may be excused when it is demonstrated
155 to the satisfaction of the superintendent of the school district,
156 or his designee, that the purpose of the absence is to take
157 advantage of a valid educational opportunity such as travel,
158 including vacations or other family travel. Approval of the



159 absence must be gained from the superintendent of the school
160 district, or his designee, before the absence, but the approval
161 shall not be unreasonably withheld.

162 (i) An absence may be excused when it is demonstrated
163 to the satisfaction of the superintendent of the school district,
164 or his designee, that conditions are sufficient to warrant the
165 compulsory-school-age child's nonattendance. However, no absences
166 shall be excused by the school district superintendent, or his
167 designee, when any student suspensions or expulsions circumvent
168 the intent and spirit of the compulsory attendance law.

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

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



192 provided written notice to the parent, guardian or custodian of
193 the requirement for the child's enrollment or attendance.

194 (6) If a compulsory-school-age child has not been enrolled
195 in a school within fifteen (15) calendar days after the first day
196 of the school year of the school which the child is eligible to
197 attend or the child has accumulated five (5) unlawful absences
198 during the school year of the public school in which the child is
199 enrolled, the school district superintendent or his designee shall
200 report, within two (2) school days or within five (5) calendar
201 days, whichever is less, the absences to the school attendance
202 officer. The State Department of Education shall prescribe a
203 uniform method for schools to utilize in reporting the unlawful
204 absences to the school attendance officer. The superintendent, or
205 his designee, also shall report any student suspensions or student
206 expulsions to the school attendance officer when they occur.

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 Compulsory School
222 Attendance Law, and may order the child to enroll or re-enroll in
223 school. The superintendent of the school district to which the
224 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) Any school attendance officer, school superintendent or
232 other appropriate school official participating in the making of a
233 required report under this section or otherwise enforcing the
234 provisions of the Compulsory School Attendance Law shall be
235 presumed to be acting in good faith, and shall be immune from any
236 liability, civil or criminal, that might otherwise be incurred or
237 imposed by such action.

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

256 **SECTION 2.** This act shall take effect and be in force from
257 and after July 1, 2012.

