

By: Senator(s) Simmons (12th)

To: Education

SENATE BILL NO. 2090

1 AN ACT TO AMEND SECTION 37-13-91, MISSISSIPPI CODE OF 1972,
 2 TO PROVIDE THAT THE PROVISIONS OF THE MISSISSIPPI COMPULSORY
 3 SCHOOL ATTENDANCE LAW ARE APPLICABLE TO STUDENTS THROUGH AGE 18;
 4 TO PROVIDE THAT EVERY DAY A COMPULSORY-SCHOOL-AGE CHILD
 5 ACCUMULATES AN UNLAWFUL ABSENCE CONSTITUTES A SEPARATE CRIMINAL
 6 VIOLATION RELATIVE TO THE PARENTS OR LEGAL GUARDIANS OF SUCH
 7 STUDENTS AND TO AMEND SECTIONS 97-5-39 AND 37-13-92, MISSISSIPPI
 8 CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 37-13-91, Mississippi Code of 1972, is
 11 amended as follows:

12 37-13-91. (1) This section shall be referred to as the
 13 "Mississippi Compulsory School Attendance Law."

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

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

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



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

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

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

34 (f) "Compulsory-school-age child" means a child who has
35 attained or will attain the age of six (6) years on or before
36 September 1 of the calendar year and who has not attained the age
37 of * * * nineteen (19) years on or before September 1 of the
38 calendar year; and shall include any child who has attained or
39 will attain the age of five (5) years on or before September 1 and
40 has enrolled in a full-day public school kindergarten program.
41 Provided, however, that the parent or guardian of any child
42 enrolled in a full-day public school kindergarten program shall be
43 allowed to disenroll the child from the program on a one-time
44 basis, and such child shall not be deemed a compulsory-school-age
45 child until the child attains the age of six (6) years.



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

48 (h) "Appropriate school official" means the
49 superintendent of the school district, or his designee, or, in the
50 case of a nonpublic school, the principal or the headmaster.

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

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

62 (a) When a compulsory-school-age child is physically,
63 mentally or emotionally incapable of attending school as
64 determined by the appropriate school official based upon
65 sufficient medical documentation.

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



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

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

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

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

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

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

91 (iv) The signature of the parent, guardian or
92 custodian of the compulsory-school-age child or, for any or all
93 compulsory-school-age child or children attending a nonpublic



94 school, the signature of the appropriate school official and the
95 date signed.

96 The certificate of enrollment shall be returned to the school
97 attendance officer where the child resides on or before September
98 15 of each year. Any parent, guardian or custodian found by the
99 school attendance officer to be in noncompliance with this section
100 shall comply, after written notice of the noncompliance by the
101 school attendance officer, with this subsection within ten (10)
102 days after the notice or be in violation of this section.

103 However, in the event the child has been enrolled in a public
104 school within fifteen (15) calendar days after the first day of
105 the school year as required in subsection (6), the parent or
106 custodian may, at a later date, enroll the child in a legitimate
107 nonpublic school or legitimate home instruction program and send
108 the certificate of enrollment to the school attendance officer and
109 be in compliance with this subsection.

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

114 (4) An "unlawful absence" is an absence during a school day
115 by a compulsory-school-age child, which absence is not due to a
116 valid excuse for temporary nonattendance. Days missed from school
117 due to disciplinary suspension shall not be considered an



118 "excused" absence under this section. This subsection shall not
119 apply to children enrolled in a nonpublic school.

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

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

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

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

138 (d) An absence is excused when it results from the
139 death or serious illness of a member of the immediate family of a
140 compulsory-school-age child. The immediate family members of a
141 compulsory-school-age child shall include children, spouse,



142 grandparents, parents, brothers and sisters, including
143 stepbrothers and stepsisters.

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

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

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

157 (h) 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 the purpose of the absence is to take
160 advantage of a valid educational opportunity such as travel,
161 including vacations or other family travel. Approval of the
162 absence must be gained from the superintendent of the school
163 district, or his designee, before the absence, but the approval
164 shall not be unreasonably withheld.

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



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

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

180 Upon prosecution of a parent, guardian or custodian of a
181 compulsory-school-age child for violation of this section, the
182 presentation of evidence by the prosecutor that shows that the
183 child has not been enrolled in school within eighteen (18)
184 calendar days after the first day of the school year of the public
185 school which the child is eligible to attend, or that the child
186 has accumulated twelve (12) unlawful absences during the school
187 year at the public school in which the child has been enrolled,
188 shall establish a prima facie case that the child's parent,
189 guardian or custodian is responsible for the absences and has
190 refused or willfully failed to perform the duties imposed upon him
191 or her under this section. For purposes of prosecution of a



192 parent, guardian or custodian of a compulsory-school-age child for
193 violation of this section, every day that a child accumulates an
194 unlawful absence shall constitute a separate violation of this
195 section. However, no proceedings under this section shall be
196 brought against a parent, guardian or custodian of a
197 compulsory-school-age child unless the school attendance officer
198 has contacted promptly the home of the child and has provided
199 written notice to the parent, guardian or custodian of the
200 requirement for the child's enrollment or attendance.

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

214 (7) When a school attendance officer has made all attempts
215 to secure enrollment and/or attendance of a compulsory-school-age
216 child and is unable to effect the enrollment and/or attendance,



217 the attendance officer shall file a petition with the youth court
218 under Section 43-21-451 or shall file a petition in a court of
219 competent jurisdiction as it pertains to parent or child.
220 Sheriffs, deputy sheriffs and municipal law enforcement officers
221 shall be fully authorized to investigate all cases of
222 nonattendance and unlawful absences by compulsory-school-age
223 children, and shall be authorized to file a petition with the
224 youth court under Section 43-21-451 or file a petition or
225 information in the court of competent jurisdiction as it pertains
226 to parent or child for violation of this section. The youth court
227 shall expedite a hearing to make an appropriate adjudication and a
228 disposition to ensure compliance with the Compulsory School
229 Attendance Law, and may order the child to enroll or re-enroll in
230 school. The superintendent of the school district to which the
231 child is ordered may assign, in his discretion, the child to the
232 alternative school program of the school established pursuant to
233 Section 37-13-92.

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

238 (9) 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.** Section 97-5-39, Mississippi Code of 1972, is
257 amended as follows:

258 97-5-39. (1) (a) Except as otherwise provided in this
259 section, any parent, guardian or other person who willfully
260 commits any act or omits the performance of any duty, which act or
261 omission contributes to or tends to contribute to the neglect or
262 delinquency of any child or which act or omission results in the
263 abuse of any child, as defined in Section 43-21-105(m) of the
264 Youth Court Law, or who knowingly aids any child in escaping or
265 absenting himself from the guardianship or custody of any person,
266 agency or institution, or knowingly harbors or conceals, or aids



267 in harboring or concealing, any child who has absented himself
268 without permission from the guardianship or custody of any person,
269 agency or institution to which the child shall have been committed
270 by the youth court shall be guilty of a misdemeanor, and upon
271 conviction shall be punished by a fine not to exceed One Thousand
272 Dollars (\$1,000.00), or by imprisonment not to exceed one (1) year
273 in jail, or by both such fine and imprisonment. Every day a
274 compulsory-school-age child accumulates an "unlawful absence" from
275 school as verified by the school attendance officer under the
276 provisions of the Mississippi Compulsory School Law, Section
277 37-13-91, Mississippi Code of 1972, shall constitute a separate
278 violation against the parent or legal guardian of such child under
279 the provisions of this subsection (1).

280 (b) If the child's deprivation of necessary food,
281 clothing, shelter, health care or supervision appropriate to the
282 child's age results in substantial harm to the child's physical,
283 mental or emotional health, the person may be sentenced to
284 imprisonment for not more than five (5) years or to payment of a
285 fine of not more than Five Thousand Dollars (\$5,000.00), or both.

286 (c) A parent, legal guardian or other person who
287 knowingly permits the continuing physical or sexual abuse of a
288 child is guilty of neglect of a child and may be sentenced to
289 imprisonment for not more than ten (10) years or to payment of a
290 fine of not more than Ten Thousand Dollars (\$10,000.00), or both.



291 (2) (a) Any person who shall intentionally (i) burn any
292 child, (ii) torture any child or, (iii) except in self-defense or
293 in order to prevent bodily harm to a third party, whip, strike or
294 otherwise abuse or mutilate any child in such a manner as to cause
295 serious bodily harm, shall be guilty of felonious abuse of a child
296 and, upon conviction, shall be sentenced to imprisonment in the
297 custody of the Department of Corrections for life or such lesser
298 term of imprisonment as the court may determine, but not less than
299 ten (10) years. For any second or subsequent conviction under
300 this subsection, the person shall be sentenced to imprisonment for
301 life.

302 (b) (i) A parent, legal guardian or caretaker who
303 endangers a child's person or health by knowingly causing or
304 permitting the child to be present where any person is selling,
305 manufacturing or possessing immediate precursors or chemical
306 substances with intent to manufacture, sell or possess a
307 controlled substance as prohibited under Section 41-29-139 or
308 41-29-313, is guilty of child endangerment and may be sentenced to
309 imprisonment for not more than ten (10) years or to payment of a
310 fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

311 (ii) If the endangerment results in substantial
312 harm to the child's physical, mental or emotional health, the
313 person may be sentenced to imprisonment for not more than twenty
314 (20) years or to payment of a fine of not more than Twenty
315 Thousand Dollars (\$20,000.00), or both.



316 (3) Nothing contained in this section shall prevent
317 proceedings against the parent, guardian or other person under any
318 statute of this state or any municipal ordinance defining any act
319 as a crime or misdemeanor. Nothing in the provisions of this
320 section shall preclude any person from having a right to trial by
321 jury when charged with having violated the provisions of this
322 section.

323 (4) After consultation with the Department of Human
324 Services, a regional mental health center or an appropriate
325 professional person, a judge may suspend imposition or execution
326 of a sentence provided in subsections (1) and (2) of this section
327 and in lieu thereof require treatment over a specified period of
328 time at any approved public or private treatment facility. A
329 person may be eligible for treatment in lieu of criminal penalties
330 no more than one (1) time.

331 (5) In any proceeding resulting from a report made pursuant
332 to Section 43-21-353 of the Youth Court Law, the testimony of the
333 physician making the report regarding the child's injuries or
334 condition or cause thereof shall not be excluded on the ground
335 that the physician's testimony violates the physician-patient
336 privilege or similar privilege or rule against disclosure. The
337 physician's report shall not be considered as evidence unless
338 introduced as an exhibit to his testimony.

339 (6) Any criminal prosecution arising from a violation of
340 this section shall be tried in the circuit, county, justice or



341 municipal court having jurisdiction; provided, however, that
342 nothing herein shall abridge or dilute the contempt powers of the
343 youth court.

344 **SECTION 3.** Section 37-13-92, Mississippi Code of 1972, is
345 amended as follows:

346 37-13-92. (1) Beginning with the school year * * *
347 2013-2014, the school boards of all school districts shall
348 establish, maintain and operate, in connection with the regular
349 programs of the school district, an alternative school program or
350 behavior modification program as defined by the State Board of
351 Education for, but not limited to, the following categories of
352 compulsory-school-age students:

353 (a) Any compulsory-school-age child who has been
354 suspended for more than ten (10) days or expelled from school,
355 except for any student expelled for possession of a weapon or
356 other felonious conduct;

357 (b) Any compulsory-school-age child referred to such
358 alternative school based upon a documented need for placement in
359 the alternative school program by the parent, legal guardian or
360 custodian of such child due to disciplinary problems;

361 (c) Any compulsory-school-age child referred to such
362 alternative school program by the dispositive order of a
363 chancellor or youth court judge, with the consent of the
364 superintendent of the child's school district;



365 (d) Any compulsory-school-age child whose presence in
366 the classroom, in the determination of the school superintendent
367 or principal, is a disruption to the educational environment of
368 the school or a detriment to the interest and welfare of the
369 students and teachers of such class as a whole; and

370 (e) No school district is required to place a child
371 returning from out-of-home placement in the mental health,
372 juvenile justice or foster care system in alternative school.
373 Placement of a child in the alternative school shall be done
374 consistently, and for students identified under the Individuals
375 with Disabilities Education Act (IDEA), shall adhere to the
376 requirements of the Individuals with Disabilities Education
377 Improvement Act of 2004. If a school district chooses to place a
378 child in alternative school the district will make an individual
379 assessment and evaluation of that child in the following time
380 periods:

381 (i) Five (5) days for a child transitioning from a
382 group home, mental health care system, and/or the custody of the
383 Department of Human Services, Division of Youth and Family
384 Services * * *;

385 (ii) Ten (10) days for a child transitioning from
386 a dispositional placement order by a youth court pursuant to
387 Section 43-21-605; and



388 (iii) An individualized assessment for youth
389 transitioning from out-of-home placement to the alternative school
390 shall include:

391 1. A strength needs assessment.

392 2. A determination of the child's academic
393 strengths and deficiencies.

394 3. A proposed plan for transitioning the
395 child to a regular education placement at the earliest possible
396 date.

397 (2) The principal or program administrator of any such
398 alternative school program shall require verification from the
399 appropriate guidance counselor of any such child referred to the
400 alternative school program regarding the suitability of such child
401 for attendance at the alternative school program. Before a
402 student may be removed to an alternative school education program,
403 the superintendent of the student's school district must determine
404 that the written and distributed disciplinary policy of the local
405 district is being followed. The policy shall include standards
406 for:

407 (a) The removal of a student to an alternative
408 education program that will include a process of educational
409 review to develop the student's individual instruction plan and
410 the evaluation at regular intervals of the student's educational
411 progress; the process shall include classroom teachers and/or
412 other appropriate professional personnel, as defined in the



413 district policy, to ensure a continuing educational program for
414 the removed student;

415 (b) The duration of alternative placement; and

416 (c) The notification of parents or guardians, and their
417 appropriate inclusion in the removal and evaluation process, as
418 defined in the district policy. Nothing in this paragraph should
419 be defined in a manner to circumvent the principal's or the
420 superintendent's authority to remove a student to alternative
421 education.

422 (3) The local school board or the superintendent shall
423 provide for the continuing education of a student who has been
424 removed to an alternative school program.

425 (4) A school district, in its discretion, may provide a
426 program of general educational development (GED) preparatory
427 instruction in the alternative school program. However, any GED
428 preparation program offered in an alternative school program must
429 be administered in compliance with the rules and regulations
430 established for such programs under Sections 37-35-1 through
431 37-35-11 and by the State Board for Community and Junior Colleges.
432 The school district may administer the General Educational
433 Development (GED) Testing Program under the policies and
434 guidelines of the GED Testing Service of the American Council on
435 Education in the alternative school program or may authorize the
436 test to be administered through the community/junior college
437 district in which the alternative school is situated.



438 (5) Any such alternative school program operated under the
439 authority of this section shall meet all appropriate accreditation
440 requirements of the State Department of Education.

441 (6) The alternative school program may be held within such
442 school district or may be operated by two (2) or more adjacent
443 school districts, pursuant to a contract approved by the State
444 Board of Education. When two (2) or more school districts
445 contract to operate an alternative school program, the school
446 board of a district designated to be the lead district shall serve
447 as the governing board of the alternative school program.
448 Transportation for students attending the alternative school
449 program shall be the responsibility of the local school district.
450 The expense of establishing, maintaining and operating such
451 alternative school program may be paid from funds contributed or
452 otherwise made available to the school district for such purpose
453 or from local district maintenance funds.

454 (7) The State Board of Education shall promulgate minimum
455 guidelines for alternative school programs. The guidelines shall
456 require, at a minimum, the formulation of an individual
457 instruction plan for each student referred to the alternative
458 school program and, upon a determination that it is in a student's
459 best interest for that student to receive general educational
460 development (GED) preparatory instruction, that the local school
461 board assign the student to a GED preparatory program established
462 under subsection (4) of this section. The minimum guidelines for



463 alternative school programs shall also require the following
464 components:

465 (a) Clear guidelines and procedures for placement of
466 students into alternative education programs which at a minimum
467 shall prescribe due process procedures for disciplinary and
468 general educational development (GED) placement;

469 (b) Clear and consistent goals for students and
470 parents;

471 (c) Curricula addressing cultural and learning style
472 differences;

473 (d) Direct supervision of all activities on a closed
474 campus;

475 (e) Attendance requirements that allow for educational
476 and workforce development opportunities;

477 (f) Selection of program from options provided by the
478 local school district, Division of Youth Services or the youth
479 court, including transfer to a community-based alternative school;

480 (g) Continual monitoring and evaluation and formalized
481 passage from one (1) step or program to another;

482 (h) A motivated and culturally diverse staff;

483 (i) Counseling for parents and students;

484 (j) Administrative and community support for the
485 program; and

486 (k) Clear procedures for annual alternative school
487 program review and evaluation.



488 (8) On request of a school district, the State Department of
489 Education shall provide the district informational material on
490 developing an alternative school program that takes into
491 consideration size, wealth and existing facilities in determining
492 a program best suited to a district.

493 (9) Any compulsory-school-age child who becomes involved in
494 any criminal or violent behavior shall be removed from such
495 alternative school program and, if probable cause exists, a case
496 shall be referred to the youth court.

497 (10) The State Board of Education shall promulgate
498 guidelines for alternative school programs which provide broad
499 authority to school boards of local school districts to establish
500 alternative education programs to meet the specific needs of the
501 school district.

502 (11) Each school district having an alternative school
503 program shall submit a report annually to the State Department of
504 Education describing the results of its annual alternative school
505 program review and evaluation undertaken pursuant to subsection
506 (7)(k). The report shall include a detailed account of any
507 actions taken by the school district during the previous year to
508 comply with substantive guidelines promulgated by the State Board
509 of Education under subsection (7)(a) through (j).

510 **SECTION 4.** This act shall take effect and be in force from
511 and after July 1, 2013.

