

By: Senator(s) McDaniel

To: Public Health and
Welfare

SENATE BILL NO. 2738

1 AN ACT TO AMEND SECTION 41-23-37, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT A CHILD WILL BE EXEMPT FROM THE REQUIREMENT TO
3 HAVE ANY SPECIFIC VACCINATION IN ORDER TO ATTEND A SCHOOL IF THE
4 CHILD'S PARENT OR GUARDIAN SUBMITS TO THE SCHOOL A LETTER OR
5 AFFIDAVIT THAT DOCUMENTS WHICH REQUIRED VACCINATIONS HAVE BEEN
6 GIVEN, AND WHICH VACCINATIONS HAVE NOT BEEN GIVEN ON THE BASIS
7 THAT THEY ARE CONTRARY TO HIS OR HER BELIEFS; TO PROVIDE THAT
8 BEGINNING WITH THE 2013-2014 SCHOOL YEAR, A FORM PRESCRIBED BY THE
9 STATE DEPARTMENT OF HEALTH SHALL ACCOMPANY THE LETTER OR AFFIDAVIT
10 SUBMITTED BY THE PARENT OR GUARDIAN, WHICH INCLUDES BOTH A SIGNED
11 ATTESTATION FROM A HEALTH CARE PRACTITIONER THAT THE HEALTH CARE
12 PRACTITIONER PROVIDED THE PARENT OR GUARDIAN WITH INFORMATION
13 REGARDING THE BENEFITS AND RISKS OF THE VACCINATIONS AND THE
14 HEALTH RISKS TO THE CHILD AND TO THE COMMUNITY OF THOSE DISEASES
15 SPECIFIED FOR VACCINATION, AND A WRITTEN STATEMENT SIGNED BY THE
16 PARENT OR GUARDIAN THAT INDICATES THAT THE SIGNER HAS RECEIVED THE
17 INFORMATION PROVIDED BY THE HEALTH CARE PRACTITIONER; TO AMEND
18 SECTION 37-13-91, MISSISSIPPI CODE OF 1972, TO AUTHORIZE SCHOOL
19 ADMINISTRATORS, WHEN THERE IS GOOD CAUSE TO BELIEVE THAT A CHILD
20 HAS BEEN EXPOSED TO ANY DISEASE SPECIFIED FOR VACCINATION AND THE
21 CHILD IS NOT VACCINATED AGAINST THAT DISEASE UNDER THE EXEMPTION
22 AUTHORIZED UNDER THIS ACT, TO TEMPORARILY EXCLUDE THAT CHILD FROM
23 ATTENDANCE UNTIL THE LOCAL HEALTH OFFICER IS SATISFIED THAT THE
24 CHILD IS NO LONGER AT RISK OF DEVELOPING THE DISEASE; AND FOR
25 RELATED PURPOSES.

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

27 **SECTION 1.** Section 41-23-37, Mississippi Code of 1972, is
28 amended as follows:



29 41-23-37. (1) Whenever indicated, the State Health Officer
30 shall specify such immunization practices as may be considered
31 best for the control of vaccine preventable diseases. A listing
32 shall be promulgated annually or more often, if necessary.

33 (2) Except as provided hereinafter, it shall be unlawful for
34 any child to attend any school, kindergarten or similar type
35 facility intended for the instruction of children (hereinafter
36 called "schools"), either public or private, with the exception of
37 any legitimate home instruction program as defined in Section
38 37-13-91, * * * for ten (10) or * * * fewer children who are
39 related within the third degree computed according to the civil
40 law to the operator, unless they * * * first have been vaccinated
41 against those diseases specified by the State Health Officer.

42 (3) A certificate of exemption from vaccination for medical
43 reasons may be offered on behalf of a child by a duly licensed
44 physician and may be accepted by the local health officer when, in
45 his opinion, such exemption will not cause undue risk to the
46 community.

47 (4) (a) No child seeking to attend any school shall be
48 required to comply with the requirements of this section for any
49 specific vaccination in order to attend the school if the parent
50 or guardian or adult who has assumed responsibility for the
51 child's care and custody in the case of a minor, or the child
52 seeking admission if an emancipated minor, submits to the school a
53 letter or affidavit that documents which required vaccinations



54 have been given, and which vaccinations have not been given on the
55 basis that they are contrary to his or her beliefs.

56 (b) Beginning with the 2013-2014 school year, a form
57 prescribed by the State Department of Health shall accompany the
58 letter or affidavit filed under paragraph (a) of this subsection.
59 The form shall include both of the following:

60 (i) A signed attestation from a health care
61 practitioner that indicates that the health care practitioner
62 provided the parent or guardian of the child who is subject to the
63 vaccination requirements of this section, the adult who has
64 assumed responsibility for the care and custody of the child, or
65 the child if an emancipated minor, with information regarding the
66 benefits and risks of the vaccinations and the health risks to the
67 child and to the community of those diseases specified by the
68 State Health Officer for vaccination. This attestation shall be
69 signed not more than six (6) months before the date when the child
70 first becomes subject to the vaccination requirements for which
71 exemption is being sought.

72 (ii) A written statement signed by the parent or
73 guardian of the child who is subject to the vaccination
74 requirements of this section, the adult who has assumed
75 responsibility for the care and custody of the child, or the child
76 if an emancipated minor, that indicates that the signer has
77 received the information provided by the health care practitioner
78 under subparagraph (i) of this paragraph (b). This statement



79 shall be signed not more than six (6) months before the date when
80 the child first becomes subject to the vaccination requirements
81 for which exemption is being sought.

82 (c) The following shall be accepted in lieu of the
83 original form:

84 (i) A photocopy of the signed form.

85 (ii) A letter signed by a health care practitioner
86 that includes all information and attestations included on the
87 form.

88 (d) For the purposes of this subsection, the term
89 "health care practitioner" means a physician, nurse practitioner
90 or physician assistant who is licensed to practice in Mississippi.

91 (5) Certificates of vaccination shall be issued by local
92 health officers or physicians on forms specified by the
93 Mississippi State Board of Health. These forms shall be the only
94 acceptable means for showing compliance with these immunization
95 requirements, and the responsible school officials shall file the
96 form with the child's record.

97 (6) If a child who is not exempt under subsection (3) or (4)
98 of this section * * * offers to enroll at a school without having
99 completed the required vaccinations, the local health officer may
100 grant a period of time up to ninety (90) days for such completion
101 when, in the opinion of the health officer, such delay will not
102 cause undue risk to the child, the school or the community. No



103 child shall be enrolled without having had at least one (1) dose
104 of each specified vaccine.

105 (7) Within thirty (30) days after the opening of the fall
106 term of school (on or before October 1 of each year) the person in
107 charge of each school shall report to the county or local health
108 officer, on forms provided by the Mississippi State Board of
109 Health, the number of children enrolled by age or grade or both,
110 the number fully vaccinated, the number in process of completing
111 vaccination requirements, and the number exempt from vaccination
112 by reason for such exemption.

113 (8) Within one hundred twenty (120) days after the opening
114 of the fall term (on or before December 31), the person in charge
115 of each school shall certify to the local or county health officer
116 that all children enrolled who are not exempt under subsection (3)
117 or (4) of this section are in compliance with immunization
118 requirements.

119 (9) For the purpose of assisting in supervising the
120 immunization status of the children the local health officer, or
121 his designee, may inspect the children's records or be furnished
122 certificates of immunization compliance by the school.

123 (10) It shall be the responsibility of the person in charge
124 of each school to enforce the requirements for immunization. Any
125 child not exempt under subsection (3) or (4) of this section who
126 is not in compliance at the end of ninety (90) days from the
127 opening of the fall term must be suspended until in compliance,



128 unless the health officer * * * attributes the delay to lack of
129 supply of vaccine or some other such factor clearly making
130 compliance impossible.

131 (11) Failure to enforce provisions of this act shall
132 constitute a misdemeanor and, upon conviction, be punishable by
133 fine or imprisonment or both.

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

136 37-13-91. (1) This section shall be referred to as the
137 "Mississippi Compulsory School Attendance Law."

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

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

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

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

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



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

158 (f) "Compulsory-school-age child" means a child who has
159 attained or will attain the age of six (6) years on or before
160 September 1 of the calendar year and who has not attained the age
161 of seventeen (17) years on or before September 1 of the calendar
162 year; and shall include any child who has attained or will attain
163 the age of five (5) years on or before September 1 and has
164 enrolled in a full-day public school kindergarten program.
165 Provided, however, that the parent or guardian of any child
166 enrolled in a full-day public school kindergarten program shall be
167 allowed to disenroll the child from the program on a one-time
168 basis, and such child shall not be deemed a compulsory-school-age
169 child until the child attains the age of six (6) years.

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

172 (h) "Appropriate school official" means the
173 superintendent of the school district, or his designee, or, in the
174 case of a nonpublic school, the principal or the headmaster.

175 (i) "Nonpublic school" means an institution for the
176 teaching of children, consisting of a physical plant, whether
177 owned or leased, including a home, instructional staff members and



178 students, and which is in session each school year. This
179 definition shall include, but not be limited to, private, church,
180 parochial and home instruction programs.

181 (3) A parent, guardian or custodian of a
182 compulsory-school-age child in this state shall cause the child to
183 enroll in and attend a public school or legitimate nonpublic
184 school for the period of time that the child is of compulsory
185 school age, except under the following circumstances:

186 (a) When a compulsory-school-age child is physically,
187 mentally or emotionally incapable of attending school as
188 determined by the appropriate school official based upon
189 sufficient medical documentation.

190 (b) When a compulsory-school-age child is enrolled in
191 and pursuing a course of special education, remedial education or
192 education for handicapped or physically or mentally disadvantaged
193 children.

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

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



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

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

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

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

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

220 The certificate of enrollment shall be returned to the school
221 attendance officer where the child resides on or before September
222 15 of each year. Any parent, guardian or custodian found by the
223 school attendance officer to be in noncompliance with this section
224 shall comply, after written notice of the noncompliance by the
225 school attendance officer, with this subsection within ten (10)
226 days after the notice or be in violation of this section.
227 However, in the event the child has been enrolled in a public



228 school within fifteen (15) calendar days after the first day of
229 the school year as required in subsection (6), the parent or
230 custodian may, at a later date, enroll the child in a legitimate
231 nonpublic school or legitimate home instruction program and send
232 the certificate of enrollment to the school attendance officer and
233 be in compliance with this subsection.

234 For the purposes of this subsection, a legitimate nonpublic
235 school or legitimate home instruction program shall be those not
236 operated or instituted for the purpose of avoiding or
237 circumventing the compulsory attendance law.

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

244 Each of the following shall constitute a valid excuse for
245 temporary nonattendance of a compulsory-school-age child enrolled
246 in a public school, provided satisfactory evidence of the excuse
247 is provided to the superintendent of the school district, or his
248 designee:

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



253 include field trips, athletic contests, student conventions,
254 musical festivals and any similar activity.

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

258 (c) An absence is excused when isolation of a
259 compulsory-school-age child is ordered by the county health
260 officer, by the State Board of Health or appropriate school
261 official. When there is good cause to believe that a child has
262 been exposed to any disease specified by the State Health Officer
263 for vaccination and the child is not vaccinated against that
264 disease under the authority of Section 41-23-37(4), that child may
265 be temporarily excluded from the school until the local health
266 officer is satisfied that the child is no longer at risk of
267 developing the disease.

268 (d) An absence is excused when it results from the
269 death or serious illness of a member of the immediate family of a
270 compulsory-school-age child. The immediate family members of a
271 compulsory-school-age child shall include children, spouse,
272 grandparents, parents, brothers and sisters, including
273 stepbrothers and stepsisters.

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

276 (f) An absence is excused when it results from the
277 attendance of a compulsory-school-age child at the proceedings of



278 a court or an administrative tribunal if the child is a party to
279 the action or under subpoena as a witness.

280 (g) An absence may be excused if the religion to which
281 the compulsory-school-age child or the child's parents adheres,
282 requires or suggests the observance of a religious event. The
283 approval of the absence is within the discretion of the
284 superintendent of the school district, or his designee, but
285 approval should be granted unless the religion's observance is of
286 such duration as to interfere with the education of the child.

287 (h) An absence may be excused when it is demonstrated
288 to the satisfaction of the superintendent of the school district,
289 or his designee, that the purpose of the absence is to take
290 advantage of a valid educational opportunity such as travel,
291 including vacations or other family travel. Approval of the
292 absence must be gained from the superintendent of the school
293 district, or his designee, before the absence, but the approval
294 shall not be unreasonably withheld.

295 (i) An absence may be excused when it is demonstrated
296 to the satisfaction of the superintendent of the school district,
297 or his designee, that conditions are sufficient to warrant the
298 compulsory-school-age child's nonattendance. However, no absences
299 shall be excused by the school district superintendent, or his
300 designee, when any student suspensions or expulsions circumvent
301 the intent and spirit of the compulsory attendance law.



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

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



327 (6) If a compulsory-school-age child has not been enrolled
328 in a school within fifteen (15) calendar days after the first day
329 of the school year of the school which the child is eligible to
330 attend or the child has accumulated five (5) unlawful absences
331 during the school year of the public school in which the child is
332 enrolled, the school district superintendent or his designee shall
333 report, within two (2) school days or within five (5) calendar
334 days, whichever is less, the absences to the school attendance
335 officer. The State Department of Education shall prescribe a
336 uniform method for schools to utilize in reporting the unlawful
337 absences to the school attendance officer. The superintendent, or
338 his designee, also shall report any student suspensions or student
339 expulsions to the school attendance officer when they occur.

340 (7) When a school attendance officer has made all attempts
341 to secure enrollment and/or attendance of a compulsory-school-age
342 child and is unable to effect the enrollment and/or attendance,
343 the attendance officer shall file a petition with the youth court
344 under Section 43-21-451 or shall file a petition in a court of
345 competent jurisdiction as it pertains to parent or child.
346 Sheriffs, deputy sheriffs and municipal law enforcement officers
347 shall be fully authorized to investigate all cases of
348 nonattendance and unlawful absences by compulsory-school-age
349 children, and shall be authorized to file a petition with the
350 youth court under Section 43-21-451 or file a petition or
351 information in the court of competent jurisdiction as it pertains



352 to parent or child for violation of this section. The youth court
353 shall expedite a hearing to make an appropriate adjudication and a
354 disposition to ensure compliance with the Compulsory School
355 Attendance Law, and may order the child to enroll or re-enroll in
356 school. The superintendent of the school district to which the
357 child is ordered may assign, in his discretion, the child to the
358 alternative school program of the school established pursuant to
359 Section 37-13-92.

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

364 (9) Notwithstanding any provision or implication herein to
365 the contrary, it is not the intention of this section to impair
366 the primary right and the obligation of the parent or parents, or
367 person or persons in loco parentis to a child, to choose the
368 proper education and training for such child, and nothing in this
369 section shall ever be construed to grant, by implication or
370 otherwise, to the State of Mississippi, any of its officers,
371 agencies or subdivisions any right or authority to control,
372 manage, supervise or make any suggestion as to the control,
373 management or supervision of any private or parochial school or
374 institution for the education or training of children, of any kind
375 whatsoever that is not a public school according to the laws of
376 this state; and this section shall never be construed so as to



377 grant, by implication or otherwise, any right or authority to any
378 state agency or other entity to control, manage, supervise,
379 provide for or affect the operation, management, program,
380 curriculum, admissions policy or discipline of any such school or
381 home instruction program.

382 **SECTION 3.** This act shall take effect and be in force from
383 and after July 1, 2013.

