

By: Senator(s) McDaniel (By Request),
Sojourner

To: Education; Public Health
and Welfare

SENATE BILL NO. 2800

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 2015-2016 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 2015-2016 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)
98 or (4) 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 and one-half
150 (5-1/2) and not more than eight (8) hours of actual teaching in
151 which both teachers and pupils are in regular attendance for
152 scheduled schoolwork.



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

159 (f) "Compulsory-school-age child" means a child who has
160 attained or will attain the age of six (6) years on or before
161 September 1 of the calendar year and who has not attained the age
162 of seventeen (17) years on or before September 1 of the calendar
163 year; and shall include any child who has attained or will attain
164 the age of five (5) years on or before September 1 and has
165 enrolled in a full-day public school kindergarten program.

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

168 (h) "Appropriate school official" means the
169 superintendent of the school district, or his designee, or, in the
170 case of a nonpublic school, the principal or the headmaster.

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



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

182 (a) When a compulsory-school-age child is physically,
183 mentally or emotionally incapable of attending school as
184 determined by the appropriate school official based upon
185 sufficient medical documentation.

186 (b) When a compulsory-school-age child is enrolled in
187 and pursuing a course of special education, remedial education or
188 education for handicapped or physically or mentally disadvantaged
189 children.

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

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

199 The form of the certificate of enrollment shall be prepared
200 by the Office of Compulsory School Attendance Enforcement of the



201 State Department of Education and shall be designed to obtain the
202 following information only:

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

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

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

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

216 The certificate of enrollment shall be returned to the school
217 attendance officer where the child resides on or before September
218 15 of each year. Any parent, guardian or custodian found by the
219 school attendance officer to be in noncompliance with this section
220 shall comply, after written notice of the noncompliance by the
221 school attendance officer, with this subsection within ten (10)
222 days after the notice or be in violation of this section.

223 However, in the event the child has been enrolled in a public
224 school within fifteen (15) calendar days after the first day of
225 the school year as required in subsection (6), the parent or



226 custodian may, at a later date, enroll the child in a legitimate
227 nonpublic school or legitimate home instruction program and send
228 the certificate of enrollment to the school attendance officer and
229 be in compliance with this subsection.

230 For the purposes of this subsection, a legitimate nonpublic
231 school or legitimate home instruction program shall be those not
232 operated or instituted for the purpose of avoiding or
233 circumventing the compulsory attendance law.

234 (4) An "unlawful absence" is an absence for an entire school
235 day or during part of a school day by a compulsory-school-age
236 child, which absence is not due to a valid excuse for temporary
237 nonattendance. For purposes of reporting absenteeism under
238 subsection (6) of this section, if a compulsory-school-age child
239 has an absence that is more than thirty-seven percent (37%) of the
240 instructional day, as fixed by the school board for the school at
241 which the compulsory-school-age child is enrolled, the child must
242 be considered absent the entire school day. Days missed from
243 school due to disciplinary suspension shall not be considered an
244 "excused" absence under this section. This subsection shall not
245 apply to children enrolled in a nonpublic school.

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



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

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

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

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



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

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

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

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

297 (i) An absence may be excused when it is demonstrated
298 to the satisfaction of the superintendent of the school district,
299 or his designee, that conditions are sufficient to warrant the
300 compulsory-school-age child's nonattendance. However, no absences



301 shall be excused by the school district superintendent, or his
302 designee, when any student suspensions or expulsions circumvent
303 the intent and spirit of the compulsory attendance law.

304 (j) An absence is excused when it results from the
305 attendance of a compulsory-school-age child participating in
306 official organized events sponsored by the 4-H or Future Farmers
307 of America (FFA). The excuse for the 4-H or FFA event must be
308 provided in writing to the appropriate school superintendent by
309 the Extension Agent or High School Agricultural Instructor/FFA
310 Advisor.

311 (k) An absence is excused when it results from the
312 compulsory-school-age child officially being employed to serve as
313 a page at the State Capitol for the Mississippi House of
314 Representatives or Senate.

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

323 Upon prosecution of a parent, guardian or custodian of a
324 compulsory-school-age child for violation of this section, the
325 presentation of evidence by the prosecutor that shows that the



326 child has not been enrolled in school within eighteen (18)
327 calendar days after the first day of the school year of the public
328 school which the child is eligible to attend, or that the child
329 has accumulated twelve (12) unlawful absences during the school
330 year at the public school in which the child has been enrolled,
331 shall establish a prima facie case that the child's parent,
332 guardian or custodian is responsible for the absences and has
333 refused or willfully failed to perform the duties imposed upon him
334 or her under this section. However, no proceedings under this
335 section shall be brought against a parent, guardian or custodian
336 of a compulsory-school-age child unless the school attendance
337 officer has contacted promptly the home of the child and has
338 provided written notice to the parent, guardian or custodian of
339 the requirement for the child's enrollment or attendance.

340 (6) If a compulsory-school-age child has not been enrolled
341 in a school within fifteen (15) calendar days after the first day
342 of the school year of the school which the child is eligible to
343 attend or the child has accumulated five (5) unlawful absences
344 during the school year of the public school in which the child is
345 enrolled, the school district superintendent, or his designee,
346 shall report, within two (2) school days or within five (5)
347 calendar days, whichever is less, the absences to the school
348 attendance officer. The State Department of Education shall
349 prescribe a uniform method for schools to utilize in reporting the
350 unlawful absences to the school attendance officer. The



351 superintendent, or his designee, also shall report any student
352 suspensions or student expulsions to the school attendance officer
353 when they occur.

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

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



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

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

396 **SECTION 3.** This act shall take effect and be in force from
397 and after July 1, 2015.

