

By: Senator(s) Tollison

To: Education

SENATE BILL NO. 2761

1 AN ACT TO AMEND SECTION 37-13-91, MISSISSIPPI CODE OF 1972,  
2 TO REVISE THE STANDARD FOR REPORTING STUDENT ABSENTEEISM AND TO  
3 CLARIFY THAT A STUDENT IS CONSIDERED PRESENT FOR AVERAGE DAILY  
4 ATTENDANCE REPORTING PURPOSES WHEN PARTICIPATING IN AUTHORIZED  
5 SCHOOL ACTIVITIES APPROVED BY THE SUPERINTENDENT OF THE SCHOOL  
6 DISTRICT; AND FOR RELATED PURPOSES.

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

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

10 37-13-91. (1) This section shall be referred to as the  
11 "Mississippi Compulsory School Attendance Law."

12 (2) The following terms as used in this section are defined  
13 as follows:

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

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



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

23 (d) "School day" means not less than five and one-half  
24 (5-1/2) and not more than eight (8) hours of actual teaching in  
25 which both teachers and pupils are in regular attendance for  
26 scheduled schoolwork.

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

33 (f) "Compulsory-school-age child" means a child who has  
34 attained or will attain the age of six (6) years on or before  
35 September 1 of the calendar year and who has not attained the age  
36 of seventeen (17) years on or before September 1 of the calendar  
37 year; and shall include any child who has attained or will attain  
38 the age of five (5) years on or before September 1 and has  
39 enrolled in a full-day public school kindergarten program.

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

42 (h) "Appropriate school official" means the  
43 superintendent of the school district, or his designee, or, in the  
44 case of a nonpublic school, the principal or the headmaster.



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

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

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

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

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

The parent, guardian or custodian of a compulsory-school-age child described in this subsection, or the parent, guardian or custodian of a compulsory-school-age child attending any charter school or nonpublic school, or the appropriate school official for



any or all children attending a charter school or nonpublic school shall complete a "certificate of enrollment" in order to facilitate the administration of this section.

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

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

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

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

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

The certificate of enrollment shall be returned to the school attendance officer where the child resides on or before September 15 of each year. Any parent, guardian or custodian found by the school attendance officer to be in noncompliance with this section shall comply, after written notice of the noncompliance by the



95 school attendance officer, with this subsection within ten (10)  
96 days after the notice or be in violation of this section.  
97 However, in the event the child has been enrolled in a public  
98 school within fifteen (15) calendar days after the first day of  
99 the school year as required in subsection (6), the parent or  
100 custodian may, at a later date, enroll the child in a legitimate  
101 nonpublic school or legitimate home instruction program and send  
102 the certificate of enrollment to the school attendance officer and  
103 be in compliance with this subsection.

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

108 (4) An "unlawful absence" is an absence for an entire school  
109 day or during part of a school day by a compulsory-school-age  
110 child, which absence is not due to a valid excuse for temporary  
111 nonattendance. For purposes of reporting absenteeism under  
112 subsection (6) of this section, if a compulsory-school-age child  
113 has an absence that is more than \* \* \* fifty percent (50%) of the  
114 instructional day, as fixed by the school board for the school at  
115 which the compulsory-school-age child is enrolled, the child must  
116 be considered absent the entire school day. Days missed from  
117 school 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.



If a compulsory-school-age child is participating in an authorized school activity with the prior approval of the superintendent of the school district, or his/her designee, the student is considered present for average daily attendance reporting purposes. The activities may include, but are not limited to: field trips, athletic contest, student conventions, musical festivals, 4-H or Future Farmers of America (FFA). The excuse for the 4-H or FFA event must be provided in writing to the appropriate school superintendent by the Extension Agent or High School Agricultural Instructor/FFA Advisor.

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

\* \* \*

( \* \* \*a) An absence is excused when the absence results from illness or injury which prevents the compulsory-school-age child from being physically able to attend school.

( \* \* \*b) An absence is excused when isolation of a compulsory-school-age child is ordered by the county health officer, by the State Board of Health or appropriate school official.



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

( \* \* \*d) An absence is excused when it results from a medical or dental appointment of a compulsory-school-age child.

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

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

( \* \* \*g) An absence may be excused when it is demonstrated to the satisfaction of the superintendent of the school district, or his designee, that the purpose of the absence is to take advantage of a valid educational opportunity such as travel, including vacations or other family travel. Approval of the absence must be gained from the superintendent of the school



district, or his designee, before the absence, but the approval shall not be unreasonably withheld.

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

\* \* \*

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

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

Upon prosecution of a parent, guardian or custodian of a compulsory-school-age child for violation of this section, the





194 presentation of evidence by the prosecutor that shows that the  
195 child has not been enrolled in school within eighteen (18)  
196 calendar days after the first day of the school year of the public  
197 school which the child is eligible to attend, or that the child  
198 has accumulated twelve (12) unlawful absences during the school  
199 year at the public school in which the child has been enrolled,  
200 shall establish a prima facie case that the child's parent,  
201 guardian or custodian is responsible for the absences and has  
202 refused or willfully failed to perform the duties imposed upon him  
203 or her under this section. However, no proceedings under this  
204 section shall be brought against a parent, guardian or custodian  
205 of a compulsory-school-age child unless the school attendance  
206 officer has contacted promptly the home of the child and has  
207 provided written notice to the parent, guardian or custodian of  
208 the requirement for the child's enrollment or attendance.

209 (6) If a compulsory-school-age child has not been enrolled  
210 in a school within fifteen (15) calendar days after the first day  
211 of the school year of the school which the child is eligible to  
212 attend or the child has accumulated five (5) unlawful absences  
213 during the school year of the public school in which the child is  
214 enrolled, the school district superintendent, or his designee,  
215 shall report, within two (2) school days or within five (5)  
216 calendar days, whichever is less, the absences to the school  
217 attendance officer. The State Department of Education shall  
218 prescribe a uniform method for schools to utilize in reporting the



unlawful absences to the school attendance officer. The superintendent, or his designee, also shall report any student suspensions or student expulsions to the school attendance officer when they occur.

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



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

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

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2018.

