

By: Representative Mickens

To: Education;  
Accountability, Efficiency,  
Transparency

HOUSE BILL NO. 709

1 AN ACT TO REPEAL SECTION 37-177-9, MISSISSIPPI CODE OF 1972,  
2 WHICH IS THE PROVISION OF THE LITERACY BASED PROMOTION ACT, WHICH  
3 PROHIBITS A THIRD-GRADE STUDENT FROM BEING PROMOTED TO THE FOURTH  
4 GRADE IF THE STUDENT FAILS TO ACHIEVE A SATISFACTORY PASSING SCORE  
5 ON THE STATE ANNUAL ACCOUNTABILITY ASSESSMENT OR ON AN APPROVED  
6 ALTERNATIVE STANDARDIZED ASSESSMENT FOR THIRD GRADE; TO AMEND  
7 SECTIONS 37-177-3, 37-177-5, 37-177-11 AND 37-177-13, MISSISSIPPI  
8 CODE OF 1972, IN CONFORMITY TO THE REPEALED PROVISIONS TO NO  
9 LONGER REQUIRE A PASSING SCORE ON THE THIRD-GRADE READING  
10 ASSESSMENT AS A SOLE CRITERIA TO DETERMINE WHETHER A STUDENT WILL  
11 BE PROMOTED TO FOURTH GRADE; TO BRING FORWARD SECTIONS 37-177-1,  
12 37-177-7, 37-177-15, 37-177-17, 37-177-19 AND 37-177-21,  
13 MISSISSIPPI CODE OF 1972, FOR THE PURPOSE OF POSSIBLE AMENDMENT;  
14 AND FOR RELATED PURPOSES.

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

16 **SECTION 1.** Section 37-177-9, Mississippi Code of 1972, which  
17 is the provisions of the Literacy Based Promotion Act, which  
18 prohibits a third-grade student from being promoted to the fourth  
19 grade if the student fails to achieve a satisfactory passing score  
20 on the state annual accountability assessment or on an approved  
21 alternative standardized assessment for third grade, is repealed.

22 **SECTION 2.** Section 37-177-3, Mississippi Code of 1972, is  
23 amended as follows:



24           37-177-3. Immediately upon the determination of a reading  
25 deficiency, and subsequently with each quarterly progress report  
26 until the deficiency is remediated, the parent or legal guardian  
27 of a kindergarten or first-, second- or third-grade student who  
28 exhibits a substantial deficiency in reading must be notified in  
29 writing by the student's teacher of the following:

30           (a) That the student has been identified as having a  
31 substantial deficiency in reading;

32           (b) A description of the services that the school  
33 district currently is providing to the student;

34           (c) A description of the proposed supplemental  
35 instructional services and supports that are designed to remediate  
36 the identified area of reading deficiency which the school  
37 district plans to provide the student, as outlined in the  
38 student's individual reading plan;

39       \* \* \*

40           ( \* \* \*d) Strategies for parents and guardians to use  
41 in helping the student to succeed in reading proficiency; and

42           ( \* \* \*e) That while the state annual accountability  
43 assessment for reading in third grade is the initial determinant,  
44 it is not the sole determiner of promotion and that approved  
45 alternative standardized assessments are available to assist the  
46 school district in knowing when a child is reading at or above  
47 grade level \* \* \*.



48           **SECTION 3.** Section 37-177-5, Mississippi Code of 1972, is  
49 amended as follows:

50           37-177-5. The State Department of Education shall establish  
51 a Mississippi Reading Panel to collaborate with the State  
52 Department of Education in recommending appropriate equitable  
53 alternative standardized assessments and cut scores to be used to  
54 determine \* \* \* achievement level on the state annual  
55 accountability assessment, as outlined in Section 37-177-9, or  
56 who, for unforeseen circumstances, were unable to take the  
57 assessment. The panel should have knowledge and input in the  
58 adoption or development of a universal screener for required use  
59 only in select schools most in need for the reading intervention  
60 program to identify reading deficiencies and determine progress.  
61 A suggestive list of no less than four (4) screening assessments  
62 should be available to schools not selected for the critical  
63 reading intervention program taking into consideration those  
64 screening assessments already being used satisfactorily in  
65 Mississippi elementary schools. An approved alternative  
66 standardized reading assessment may be used in years when the  
67 state is transitioning to a new state annual accountability  
68 assessment. The panel shall consist of six (6) members as  
69 follows: the State Superintendent of Public Education, or his/her  
70 designee, who will chair the committee; the Chair of the House  
71 Education Committee, or his designee; the Chairman of the Senate  
72 Education Committee, or his designee; one (1) member appointed by



73 the Governor; and two (2) additional members appointed by the  
74 State Superintendent of Public Education.

75 **SECTION 4.** Section 37-177-11, Mississippi Code of 1972, is  
76 amended as follows:

77 37-177-11. (1) A third-grade student who does not meet the  
78 academic requirements, notwithstanding a student's score on the  
79 assessment for reading in the third grade, for promotion to the  
80 fourth grade may be promoted by the school district only for good  
81 cause. Good cause exemptions for promotion are limited to the  
82 following students:

83 (a) Limited English proficient students who have had  
84 less than two (2) years of instruction in an English Language  
85 Learner program;

86 (b) Students with disabilities whose individual  
87 education plan (IEP) indicates that participation in the statewide  
88 accountability assessment program is not appropriate, as  
89 authorized under state law;

90 (c) Students with a disability who participate in the  
91 state annual accountability assessment and who have an IEP or a  
92 Section 504 plan that reflects that the individual student has  
93 received intensive remediation in reading for more than two (2)  
94 years but still demonstrates a deficiency in reading or previously  
95 was retained in kindergarten or first, second or third grade;



96 (d) Students who demonstrate an acceptable level of  
97 reading proficiency on an alternative standardized assessment  
98 approved by the State Board of Education; and

99 (e) Students who have received intensive intervention  
100 in reading for two (2) or more years but still demonstrate a  
101 deficiency in reading and who previously were retained in  
102 kindergarten or first, second or third grade for a total of two  
103 (2) years and have not met exceptional education criteria. A  
104 student who is promoted to fourth grade with a good cause  
105 exemption shall be provided an individual reading plan as  
106 described in Section 37-177-1(2), which outlines intensive reading  
107 instruction and intervention informed by specialized diagnostic  
108 information and delivered through specific reading strategies to  
109 meet the needs of each student so promoted. The school district  
110 shall assist schools and teachers in implementing reading  
111 strategies that research has shown to be successful in improving  
112 reading among students with persistent reading difficulties.

113 (2) A request for good cause exemptions for a third-grade  
114 student from the academic requirements established for promotion  
115 to fourth grade, notwithstanding a student's score on the  
116 assessment for reading in the third grade, must be made consistent  
117 with the following:

118 (a) Documentation must be submitted from the student's  
119 teacher to the school principal which indicates that the promotion  
120 of the student is appropriate and is based upon the student's



121 cumulative academic record. The documentation must consist of the  
122 good cause exemption being requested and must clearly prove that  
123 the student is covered by one (1) of the good cause exemptions  
124 listed in subsection (1)(a) through (e) of this section.

125 (b) The principal shall review and discuss the  
126 recommendations with the teacher and parents and make a  
127 determination as to whether or not the student should be promoted  
128 based on requirements set forth in this chapter. If the principal  
129 determines that the student should be promoted, based on the  
130 documentation provided, the principal must make the recommendation  
131 in writing to the school district superintendent, who, in writing,  
132 may accept or reject the principal's recommendation. The parents  
133 of any student promoted may choose that the student be retained  
134 for one (1) year, even if the principal and district  
135 superintendent determines otherwise.

136 **SECTION 5.** Section 37-177-13, Mississippi Code of 1972, is  
137 amended as follows:

138 37-177-13. Beginning in the 2014-2015 school year, each  
139 school district shall take the following actions for retained  
140 third-grade students:

141 (a) Provide third-grade students who are not promoted  
142 for cumulative academic deficiencies with intensive instructional  
143 services, progress monitoring measures, and supports to remediate  
144 the identified areas of reading deficiency, as outlined in the  
145 student's individual reading plan, including a minimum of ninety



146 (90) minutes during regular school hours of daily, scientifically  
147 research-based reading instruction that includes phonemic  
148 awareness, phonics, fluency, vocabulary and comprehension, and  
149 other strategies prescribed by the school district, which may  
150 include, but are not limited to:

- 151 (i) Small group instruction;
- 152 (ii) Reduced teacher-student ratios;
- 153 (iii) Tutoring in scientifically research-based  
154 reading services in addition to the regular school day;
- 155 (iv) The option of transition classes;
- 156 (v) Extended school day, week or year; and
- 157 (vi) Summer reading camps.

158 (b) Provide written notification to the parent or legal  
159 guardian of any third-grade student who is retained that the  
160 student has not met the proficiency level required for promotion  
161 and the reasons the student is not eligible for a good cause  
162 exemption. The notification must include a description of  
163 proposed interventions and supports that will be provided to the  
164 child to remediate the identified areas of reading deficiency, as  
165 outlined in the student's individual reading plan. This  
166 notification must be provided to the parent or legal guardian in  
167 writing, in a format adopted by the State Board of Education in  
168 addition to report cards given by the teacher.

169 (c) Provide third-grade students who are retained with  
170 a high-performing teacher, as determined by student performance



171 data, particularly related to student growth in reading,  
172 above-satisfactory performance appraisals, and/or specific  
173 training relevant to implementation of this chapter.

174 (d) Provide parents and legal guardians of third-grade  
175 students with a "Read at Home" plan outlined in a parental  
176 contract, including participation in regular parent-guided home  
177 reading.

178 **SECTION 6.** Section 37-177-1, Mississippi Code of 1972, is  
179 brought forward as follows:

180 37-177-1. (1) There is established an act prohibiting  
181 social promotion to be known as the "Literacy-Based Promotion  
182 Act," the purpose of which is to improve the reading skills of  
183 kindergarten and first- through third-grade students enrolled in  
184 the public schools so that every student completing the third  
185 grade is able to read at or above grade level. It is the intent  
186 of the Legislature, in establishing this act, to ensure that:  
187 each kindergarten and first- through third-grade student's  
188 progression is determined, in part, upon the student's proficiency  
189 in reading; the policies of local school boards facilitate this  
190 proficiency; and each student and the student's parent or legal  
191 guardian is informed of the student's academic progress.

192 (2) Each public school student who exhibits a substantial  
193 deficiency in reading at any time, as demonstrated through  
194 performance on a reading screener approved or developed by the  
195 State Department of Education or through locally determined





196 assessments and teacher observations conducted in kindergarten and  
197 Grades 1 through 3 or through statewide end-of-year assessments or  
198 approved alternate yearly assessments in Grade 3, must be given  
199 intensive reading instruction and intervention immediately  
200 following the identification of the reading deficiency. The  
201 intensive reading instruction and intervention must be documented  
202 for each student in an individual reading plan, which includes, at  
203 a minimum, the following:

- 204 (a) The student's specific, diagnosed reading skill  
205 deficiencies as determined (or identified) by diagnostic  
206 assessment data;
- 207 (b) The goals and benchmarks for growth;
- 208 (c) How progress will be monitored and evaluated;
- 209 (d) The type of additional instructional services and  
210 interventions the student will receive;
- 211 (e) The research-based reading instructional  
212 programming the teacher will use to provide reading instruction,  
213 addressing the areas of phonemic awareness, phonics, fluency,  
214 vocabulary and comprehension;
- 215 (f) The strategies the student's parent is encouraged  
216 to use in assisting the student to achieve reading competency; and
- 217 (g) Any additional services the teacher deems available  
218 and appropriate to accelerate the student's reading skill  
219 development.



220 (3) The universal reading screener or locally determined  
221 reading assessment may be given in the first thirty (30) days of  
222 the school year and repeated if indicated at midyear and at the  
223 end of the school year to determine student progression in reading  
224 in kindergarten through third grade. If it is determined that the  
225 student continues to have a reading deficiency, the student must  
226 be provided with continued intensive reading instruction and  
227 intervention by the school district until the reading deficiency  
228 is remedied. A student exhibiting continued reading deficiency  
229 with continued intensive interventions should be considered for  
230 exceptional criteria evaluation.

231 (4) A kindergarten or first-, second- or third-grade student  
232 identified with a deficiency in reading must be provided intensive  
233 interventions in reading to ameliorate the student's specific  
234 reading deficiency, as identified by a valid and reliable  
235 diagnostic assessment. The intensive intervention must include  
236 effective instructional strategies, and appropriate teaching  
237 methodologies necessary to assist the student in becoming a  
238 successful reader, able to read at or above grade level, and ready  
239 for promotion to the next grade. A kindergarten, first-, second-  
240 or third-grade student identified with a reading deficiency or not  
241 promoted may be placed in a transition class.

242 **SECTION 7.** Section 37-177-7, Mississippi Code of 1972, is  
243 brought forward as follows:

244 37-177-7. The State Department of Education shall:



245 (a) Select schools most in need for the reading  
246 intervention program and create criteria for selection for  
247 participation based on number and percentages of students scoring  
248 in the lowest two (2) achievement levels on state-adopted yearly  
249 reading assessments, screening results, and other relevant data;

250 (b) Assign a supervisory position within each school to  
251 be responsible for the faithful implementation of the Reading  
252 Intervention Program; and

253 (c) Subject to legislative appropriation, the  
254 Mississippi Department of Education shall conduct a program with  
255 willing "C" level or low-performing districts and/or schools. The  
256 program shall focus on the use of data coaches to improve reading  
257 and literacy, to determine the effectiveness of intense  
258 data-focused professional development, provide expert support in  
259 literacy and early reading instruction but it shall not  
260 necessarily be limited to literacy. Data coaches should be  
261 experts in both pedagogy and data analysis who facilitate  
262 professional learning community meetings, and provide observation  
263 and feedback, to help teachers and district leaders build skills  
264 in using data to inform instruction. Schools and districts  
265 selected by the department to participate in the program shall  
266 agree to involve the school and district leadership team as  
267 directed by the department. The Mississippi Department of  
268 Education is authorized to include pre-school programs it deems  
269 appropriate. The department is authorized to contract with a



270 private sector provider to implement the program and work in  
271 partnership with four-year institutions of higher learning to  
272 develop and implement the program.

273         **SECTION 8.** Section 37-177-15, Mississippi Code of 1972, is  
274 brought forward as follows:

275         37-177-15. Each district may provide, where applicable, an  
276 intensive acceleration class for any student retained in Grade 3  
277 who was previously retained in kindergarten or Grades 1 through 3.  
278 The focus of the intensive acceleration class should be to  
279 increase a student's reading level at least two (2) grade levels  
280 in one (1) school year. The intensive acceleration class should  
281 provide reading instruction and intervention for the majority of  
282 student contact each day and incorporate opportunities to master  
283 the Grade 4 state standards in other core academic areas.

284         **SECTION 9.** Section 37-177-17, Mississippi Code of 1972, is  
285 brought forward as follows:

286         37-177-17. (1) Within thirty (30) days of final State Board  
287 of Education approval of state accountability results, the school  
288 board of each school district must publish, in a newspaper having  
289 a general circulation within the school district, and report to  
290 the State Board of Education and the Mississippi Reading Panel the  
291 following information relating to the preceding school year:

292                 (a) The provisions of this chapter relating to public  
293 school student progression and the school district's policies and  
294 procedures on student retention and promotion;



295 (b) By grade, the number and percentage of all students  
296 performing at each level of competency on the reading and math  
297 portion of the annual state accountability system and the number  
298 and percentage of students given an approved alternative  
299 standardized reading assessment and the percentage of these  
300 students performing at each competency level on said alternative  
301 standardized assessment;

302 (c) By grade, the number and percentage of all students  
303 retained in kindergarten through Grade 8;

304 (d) Information on the total number and percentage of  
305 students who were promoted for good cause, by each category of  
306 good cause described in Section 37-177-11; and

307 (e) Any revisions to the school board's policy on  
308 student retention and promotion from the prior school year.

309 (2) The State Department of Education shall establish a  
310 uniform format for school districts to report the information  
311 required in subsection (1) of this section. The format must be  
312 developed with input from school boards and must be provided no  
313 later than ninety (90) days before the annual due date of the  
314 information. The department shall compile annually the required  
315 district information, along with state-level summary information,  
316 and report the information to the Governor, Senate, House of  
317 Representatives and general public.

318 **SECTION 10.** Section 37-177-19, Mississippi Code of 1972, is  
319 brought forward as follows:



320 37-177-19. (1) The State Board of Education shall adopt  
321 such policies, rules and regulations as may be necessary for the  
322 implementation of this chapter.

323 (2) The State Department of Education shall provide such  
324 technical assistance and training of teachers/administrators as  
325 may be needed to aid local school districts in administering the  
326 provisions of this chapter.

327 (3) Each local school district must include provisions  
328 required by this chapter as an addition to the district's  
329 published handbook of policy for employees and students beginning  
330 in school year 2013-2014.

331 **SECTION 11.** Section 37-177-21, Mississippi Code of 1972, is  
332 brought forward as follows:

333 37-177-21. The provisions of this chapter which include  
334 components necessary to provide for teacher training,  
335 instructional materials, remedial education training and  
336 administration of an intensive literacy curriculum shall be  
337 subject to legislative appropriation.

338 **SECTION 12.** This act shall take effect and be in force from  
339 and after July 1, 2020.

