

By: Senator(s) Jordan

To: Education

SENATE BILL NO. 2040

1 AN ACT TO AMEND SECTIONS 37-13-91 AND 37-15-9, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE THAT THE PROVISIONS OF THE MISSISSIPPI
3 COMPULSORY SCHOOL ATTENDANCE LAW ARE FULLY APPLICABLE TO
4 KINDERGARTEN-AGE CHILDREN; TO REQUIRE SUCH KINDERGARTEN-AGE
5 CHILDREN TO ATTEND LICENSED PUBLIC, PAROCHIAL, NONPUBLIC OR
6 HOMESCHOOL KINDERGARTEN PROGRAMS; 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. Relative to
33 kindergarten-age children, school shall mean any licensed public,
34 parochial or nonpublic school kindergarten program or legitimate
35 homeschool kindergarten program which promotes services that
36 address the cognitive, social and emotional needs of five-year-old
37 children.

38 (f) "Compulsory-school-age child" means a child who has
39 attained or will attain the age of * * * five (5) years on or
40 before * * * August 1 of the calendar year and who has not
41 attained the age of seventeen (17) years on or before * * * August
42 1 of the calendar year * * *.

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



45 (h) "Appropriate school official" means the
46 superintendent of the school district, or his designee, or, in the
47 case of a nonpublic school, the principal or the headmaster.

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

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

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

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

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



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

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

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

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

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

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



93 The certificate of enrollment shall be returned to the school
94 attendance officer where the child resides on or before September
95 15 of each year. Any parent, guardian or custodian found by the
96 school attendance officer to be in noncompliance with this section
97 shall comply, after written notice of the noncompliance by the
98 school attendance officer, with this subsection within ten (10)
99 days after the notice or be in violation of this section.

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

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

111 (4) An "unlawful absence" is an absence for an entire school
112 day or during part of a school day by a compulsory-school-age
113 child, which absence is not due to a valid excuse for temporary
114 nonattendance. For purposes of reporting absenteeism under
115 subsection (6) of this section, if a compulsory-school-age child
116 has an absence that is more than thirty-seven percent (37%) of the
117 instructional day, as fixed by the school board for the school at



118 which the compulsory-school-age child is enrolled, the child must
119 be considered absent the entire school day. Days missed from
120 school due to disciplinary suspension shall not be considered an
121 "excused" absence under this section. This subsection shall not
122 apply to children enrolled in a nonpublic school.

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

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

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

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

141 (d) An absence is excused when it results from the
142 death or serious illness of a member of the immediate family of a



143 compulsory-school-age child. The immediate family members of a
144 compulsory-school-age child shall include children, spouse,
145 grandparents, parents, brothers and sisters, including
146 stepbrothers and stepsisters.

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

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

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

160 (h) An absence may be excused when it is demonstrated
161 to the satisfaction of the superintendent of the school district,
162 or his designee, that the purpose of the absence is to take
163 advantage of a valid educational opportunity such as travel,
164 including vacations or other family travel. Approval of the
165 absence must be gained from the superintendent of the school
166 district, or his designee, before the absence, but the approval
167 shall not be unreasonably withheld.



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

175 (j) An absence is excused when it results from the
176 attendance of a compulsory-school-age child participating in
177 official organized events sponsored by the 4-H or Future Farmers
178 of America (FFA). The excuse for the 4-H or FFA event must be
179 provided in writing to the appropriate school superintendent by
180 the Extension Agent or High School Agricultural Instructor/FFA
181 Advisor.

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

186 (5) Any parent, guardian or custodian of a
187 compulsory-school-age child subject to this section who refuses or
188 willfully fails to perform any of the duties imposed upon him or
189 her under this section or who intentionally falsifies any
190 information required to be contained in a certificate of
191 enrollment, shall be guilty of contributing to the neglect of a



192 child and, upon conviction, shall be punished in accordance with
193 Section 97-5-39.

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

211 (6) If a compulsory-school-age child has not been enrolled
212 in a school within fifteen (15) calendar days after the first day
213 of the school year of the school which the child is eligible to
214 attend or the child has accumulated five (5) unlawful absences
215 during the school year of the public school in which the child is
216 enrolled, the school district superintendent, or his designee,



217 shall report, within two (2) school days or within five (5)
218 calendar days, whichever is less, the absences to the school
219 attendance officer. The State Department of Education shall
220 prescribe a uniform method for schools to utilize in reporting the
221 unlawful absences to the school attendance officer. The
222 superintendent, or his designee, also shall report any student
223 suspensions or student expulsions to the school attendance officer
224 when they occur.

225 (7) When a school attendance officer has made all attempts
226 to secure enrollment and/or attendance of a compulsory-school-age
227 child and is unable to effect the enrollment and/or attendance,
228 the attendance officer shall file a petition with the youth court
229 under Section 43-21-451 or shall file a petition in a court of
230 competent jurisdiction as it pertains to parent or child.
231 Sheriffs, deputy sheriffs and municipal law enforcement officers
232 shall be fully authorized to investigate all cases of
233 nonattendance and unlawful absences by compulsory-school-age
234 children, and shall be authorized to file a petition with the
235 youth court under Section 43-21-451 or file a petition or
236 information in the court of competent jurisdiction as it pertains
237 to parent or child for violation of this section. The youth court
238 shall expedite a hearing to make an appropriate adjudication and a
239 disposition to ensure compliance with the Compulsory School
240 Attendance Law, and may order the child to enroll or re-enroll in
241 school. The superintendent of the school district to which the



242 child is ordered may assign, in his discretion, the child to the
243 alternative school program of the school established pursuant to
244 Section 37-13-92.

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

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



267 **SECTION 2.** Section 37-15-9, Mississippi Code of 1972, is
268 amended as follows:

269 37-15-9. (1) Except as provided in subsection (2) and
270 subject to the provisions of subsection (3) of this section, no
271 child shall be enrolled or admitted to any kindergarten which is a
272 part of a public school during any school year unless such child
273 will reach his fifth birthday on or before * * * August 1 of said
274 school year, and no child shall be enrolled or admitted to the
275 first grade in any public school during any school year unless
276 such child will reach his sixth birthday on or before * * * August
277 1 of said school year. No pupil shall be permanently enrolled in
278 a public school in the State of Mississippi who formerly was
279 enrolled in another public or private school within the state
280 until the cumulative record of the pupil shall have been received
281 from the school from which he transferred. Should such record
282 have become lost or destroyed, then it shall be the duty of the
283 superintendent or principal of the school where the pupil last
284 attended school to initiate a new record.

285 (2) Subject to the provisions of subsection (3) of this
286 section, any child who transfers from an out-of-state public or
287 private school in which that state's law provides for a
288 first-grade or kindergarten enrollment date subsequent to * * *
289 August 1, shall be allowed to enroll in the public schools of
290 Mississippi, at the same grade level as their prior out-of-state
291 enrollment, if:



292 (a) The parent, legal guardian or custodian of such
293 child was a legal resident of the state from which the child is
294 transferring;

295 (b) The out-of-state school from which the child is
296 transferring is duly accredited by that state's appropriate
297 accrediting authority;

298 (c) Such child was legally enrolled in a public or
299 private school for a minimum of four (4) weeks in the previous
300 state; and

301 (d) The superintendent of schools in the applicable
302 Mississippi school district or the principal of a charter school,
303 as the case may be, has determined that the child was making
304 satisfactory educational progress in the previous state.

305 (3) When any child applies for admission or enrollment in
306 any public school in the state, the parent, guardian or child, in
307 the absence of an accompanying parent or guardian, shall indicate
308 on the school registration form if the enrolling child has been
309 expelled from any public or private school or is currently a party
310 to an expulsion proceeding. If it is determined from the child's
311 cumulative record or application for admission or enrollment that
312 the child has been expelled, the school district or charter school
313 may deny the student admission and enrollment until the
314 superintendent of the school, or his designee, or principal of the
315 charter school, as the case may be, has reviewed the child's
316 cumulative record and determined that the child has participated



317 in successful rehabilitative efforts including, but not limited
318 to, progress in an alternative school or similar program. If the
319 child is a party to an expulsion proceeding, the child may be
320 admitted to a public school pending final disposition of the
321 expulsion proceeding. If the expulsion proceeding results in the
322 expulsion of the child, the public school may revoke such
323 admission to school. If the child was expelled or is a party to
324 an expulsion proceeding for an act involving violence, weapons,
325 alcohol, illegal drugs or other activity that may result in
326 expulsion, the school district or charter school shall not be
327 required to grant admission or enrollment to the child before one
328 (1) calendar year after the date of the expulsion.

329 **SECTION 3.** This act shall take effect and be in force from
330 and after July 1, 2021.

