

By: Representative Scott

To: Education; Judiciary B

HOUSE BILL NO. 1401

1 AN ACT TO AMEND SECTION 37-13-91, MISSISSIPPI CODE OF 1972,
 2 TO REQUIRE A SCHOOL ATTENDANCE OFFICER TO FILE A PETITION WITH THE
 3 YOUTH COURT AFTER A CHILD'S THIRD UNLAWFUL ABSENCE DURING A SCHOOL
 4 YEAR; TO PROVIDE THAT THE YOUTH COURT MAY ORDER SUCH CHILD TO
 5 COMPLETE 16 HOURS OF COMMUNITY SERVICE, WHICH MUST BE COMPLETED
 6 WITHIN 30 DAYS OF THE CHILD BEING ADJUDICATED; TO AMEND SECTION
 7 43-21-621, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND
 8 FOR RELATED PURPOSES.

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

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

12 37-13-91. (1) This section shall be referred to as the
 13 "Mississippi Compulsory School Attendance Law."

14 (2) The following terms as used in this section are defined
 15 as follows:

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

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



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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

92 The certificate of enrollment shall be returned to the school
93 attendance officer where the child resides on or before September
94 15 of each year. Any parent, guardian or custodian found by the
95 school attendance officer to be in noncompliance with this section
96 shall comply, after written notice of the noncompliance by the



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

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

110 (4) An "unlawful absence" is an absence for an entire school
111 day or during part of a school day by a compulsory-school-age
112 child, which absence is not due to a valid excuse for temporary
113 nonattendance. For purposes of reporting absenteeism under
114 subsection (6) of this section, if a compulsory-school-age child
115 has an absence that is more than thirty-seven percent (37%) of the
116 instructional day, as fixed by the school board for the school at
117 which the compulsory-school-age child is enrolled, the child must
118 be considered absent the entire school day. Days missed from
119 school due to disciplinary suspension shall not be considered an
120 "excused" absence under this section. This subsection shall not
121 apply to children enrolled in a nonpublic school.



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

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

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

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

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



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

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

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

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

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



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

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

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

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

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



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

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



221 superintendent, or his designee, also shall report any student
222 suspensions or student expulsions to the school attendance officer
223 when they occur.

224 (7) When a school attendance officer has made all attempts
225 to secure enrollment and/or attendance of a compulsory-school-age
226 child and is unable to effect the enrollment and/or attendance,
227 after the child's third unlawful absence during a school year, the
228 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 reenroll in
241 school and may require the child to complete sixteen (16) hours of
242 community service within thirty (30) days of the child being
243 adjudicated. The superintendent of the school district to which
244 the child is ordered may assign, in his discretion, the child to



245 the alternative school program of the school established pursuant
246 to Section 37-13-92.

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

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



269 **SECTION 2.** Section 43-21-621, Mississippi Code of 1972, is
270 amended as follows:

271 43-21-621. (1) The youth court may, in compliance with the
272 laws governing education of children, order any state-supported
273 public school in its jurisdiction, after notice and hearing, to
274 enroll or reenroll any compulsory-school-age child in school, and
275 further order appropriate educational services. * * *

276 However, * * * the youth court shall not order the enrollment or
277 reenrollment of a student that has been suspended or expelled by a
278 public school pursuant to Section 37-9-71 or 37-7-301 for
279 possession of a weapon on school grounds, for an offense involving
280 a threat to the safety of other persons or for the commission of a
281 violent act. For the purpose of this section, "violent act" means
282 any action which results in death or physical harm to another or
283 an attempt to cause death or physical harm to another. The
284 superintendent of the school district to which such child is
285 ordered may, in his discretion, assign such child to the
286 alternative school program of such school established pursuant to
287 Section 37-13-92 * * *. The court shall have jurisdiction to
288 enforce school and education laws. Nothing in this section shall
289 be construed to affect the attendance of a child in a legitimate
290 home instruction program.

291 (2) The youth court may specify the following conditions of
292 probation related to any juvenile ordered to enroll or reenroll in
293 school:



294 (a) That the juvenile maintain passing grades in up to
295 four (4) courses during each grading period and meet with the
296 court counselor and a representative of the school to make a plan
297 for how to maintain those passing grades; and

298 (b) That the juvenile complete sixteen (16) hours of
299 community service, as authorized under Section 37-13-91.

300 (3) If the adjudication of delinquency was for an offense
301 involving a threat to the safety of the juvenile or others and
302 school attendance is a condition of probation, the youth court
303 judge shall make a finding that the principal of the juvenile's
304 school should be notified. If the judge orders that the principal
305 be notified, the youth court counselor shall within five (5) days
306 or before the juvenile begins to attend school, whichever occurs
307 first, notify the principal of the juvenile's school in writing of
308 the nature of the offense and the probation requirements related
309 to school attendance. A principal notified by a juvenile court
310 counselor shall handle the report according to the guidelines and
311 rules adopted by the State Board of Education.

312 * * *

313 **SECTION 3.** This act shall take effect and be in force from
314 and after July 1, 2023.

