

By: Senator(s) McDaniel

To: Education

SENATE BILL NO. 2774

1 AN ACT TO AMEND SECTION 37-13-91, MISSISSIPPI CODE OF 1972,  
2 TO PROHIBIT A PUBLIC SCHOOL DISTRICT FROM RESTRICTING A STUDENT  
3 ATTENDING A NONPUBLIC SCHOOL FROM PARTICIPATING IN ANY PUBLIC  
4 SCHOOL COURSES, SERVICES OR EXTRACURRICULAR ACTIVITIES UNDER  
5 CERTAIN CONDITIONS; AND FOR RELATED PURPOSES.

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

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

9 37-13-91. (1) This section shall be referred to as the  
10 "Mississippi Compulsory School Attendance Law."

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

89 The certificate of enrollment shall be returned to the school  
90 attendance officer where the child resides on or before September  
91 15 of each year. Any parent, guardian or custodian found by the  
92 school attendance officer to be in noncompliance with this section  
93 shall comply, after written notice of the noncompliance by the



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

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

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



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

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

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

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

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



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

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

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

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

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



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

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

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

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

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





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

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



218 superintendent, or his designee, also shall report any student  
219 suspensions or student expulsions to the school attendance officer  
220 when they occur.

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

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



243 superintendents who fail to timely report unexcused absences under  
244 the provisions of this section.

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

263 (10) (a) A school district may not prohibit or restrict the  
264 ability of a student attending a nonpublic school under Section  
265 37-13-91 from participating in any public school courses, services  
266 or extracurricular activities at a public school.



267           (b) Except as provided in paragraphs (a) and (c) of  
268 this subsection, a student attending a nonpublic school who  
269 participates in extracurricular activities at a public school is  
270 subject to:

271           (i) The same standards for participation as those  
272 required of full-time students enrolled in the school;

273           (ii) The same rules of any interscholastic  
274 organization of which the school of participation is a member.

275           (c) The academic eligibility for extracurricular  
276 participation for a student attending a nonpublic school must be  
277 attested by the administrator of the nonpublic school.

278           **SECTION 2.** This act shall take effect and be in force from  
279 and after July 1, 2023.

