

By: Representatives Lott, Cameron, Jennings, To: Education
Martinson, Robertson

HOUSE BILL NO. 1531
(As Passed the House)

1 AN ACT TO AMEND SECTION 37-13-91, MISSISSIPPI CODE OF 1972,
2 TO INCLUDE IN THE DEFINITION OF THE TERM "COMPULSORY-SCHOOL-AGE
3 CHILD" THOSE STUDENTS WHO ARE ENROLLED IN PUBLIC SCHOOL
4 KINDERGARTEN AND THOSE STUDENTS WHO TURN SEVENTEEN YEARS OF AGE
5 DURING THE SCHOOL YEAR; TO PROVIDE THAT SCHOOL DISTRICTS MAY NOT
6 WITHHOLD KINDERGARTEN STUDENTS FROM PROMOTION TO THE FIRST GRADE
7 BASED UPON AN EXCESS NUMBER OF ABSENCES; AND TO REVISE THE DATE BY
8 WHICH CERTIFICATES OF ENROLLMENT MUST BE RETURNED BY PARENTS TO
9 SCHOOL ATTENDANCE OFFICERS; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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



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

35 (f) "Compulsory-school-age child" means a child who:

36 (i) 1. Has attained or will attain the age of six
37 (6) years on or before September 1 of the calendar year, beginning
38 in the school year that commences during the year the child
39 attains the age of six (6) years; or

40 2. Has not attained or will not attain the
41 age of six (6) years on or before September 1 of the calendar year
42 but who has enrolled in, and not formally withdrawn from, a public
43 school kindergarten program; and

44 (ii) Has not attained the age of seventeen (17)
45 years on or before September 1 of the calendar year; and

46 (iii) If the child's birthday occurs during the
47 school year, who has not completed the school year during which
48 the child attains the age of seventeen (17) years.

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

51 (h) "Appropriate school official" means the
52 superintendent of the school district or his designee or, in the
53 case of a nonpublic school, the principal or the headmaster.

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

60 (3) A parent, guardian or custodian of a
61 compulsory-school-age child in this state shall cause the child to
62 enroll in and attend a public school or legitimate nonpublic



63 school for the period of time that the child is of compulsory
64 school age, except under the following circumstances:

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

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

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

75 The parent, guardian or custodian of a compulsory-school-age
76 child described in this subsection, or the parent, guardian or
77 custodian of a compulsory-school-age child attending any nonpublic
78 school, or the appropriate school official for any or all children
79 attending a nonpublic school shall complete a "certificate of
80 enrollment" in order to facilitate the administration of this
81 section.

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

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

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

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

94 (iv) The signature of the parent, guardian or
95 custodian of the compulsory-school-age child or, for any or all



96 compulsory-school-age child or children attending a nonpublic
97 school, the signature of the appropriate school official and the
98 date signed.

99 The certificate of enrollment shall be returned to the school
100 attendance officer where the child resides * * * before the
101 beginning of the eleventh school day of each year. Any parent,
102 guardian or custodian found by the school attendance officer to be
103 in noncompliance with this section shall be provided a certificate
104 of enrollment form and notified by the school attendance officer,
105 by certified mail, of the legal requirement that the certificate
106 of enrollment be completed and returned to the school attendance
107 officer. If the parent, guardian or custodian does not comply,
108 within the two (2) school days or five (5) calendar days,
109 whichever is less, after receipt of written notice of the
110 noncompliance, the parent, guardian or custodian shall be deemed
111 to be in violation of this section. However, in the event the
112 child has been enrolled in a public school within fifteen (15)
113 calendar days after the first day of the school year as required
114 in subsection (6), the parent or custodian may at a later date
115 enroll the child in a legitimate nonpublic school or legitimate
116 home instruction program and send the certificate of enrollment to
117 the school attendance officer and be in compliance with this
118 subsection.

119 For the purposes of this subsection, a legitimate nonpublic
120 school or legitimate home instruction program shall be those not
121 operated or instituted for the purpose of avoiding or
122 circumventing the compulsory attendance law.

123 (4) An "unlawful absence" is an absence during a school day
124 by a compulsory-school-age child, which absence is not due to a
125 valid excuse for temporary nonattendance. Days missed from school
126 due to disciplinary suspension shall not be considered an
127 "excused" absence under this section. This subsection shall not
128 apply to children enrolled in a nonpublic school.



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

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

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

143 (c) An absence is excused when isolation of a
144 compulsory-school-age child is ordered by the county health
145 officer, by the State Board of Health or appropriate school
146 official.

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

153 (e) An absence is excused when it results from a
154 medical or dental appointment of a compulsory-school-age child
155 where an approval of the superintendent of the school district or
156 his designee is gained before the absence, except in the case of
157 emergency.

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



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

169 (h) An absence may be excused when it is demonstrated
170 to the satisfaction of the superintendent of the school district
171 or his designee that the purpose of the absence is to take
172 advantage of a valid educational opportunity such as travel
173 including vacations or other family travel. Approval of the
174 absence must be gained from the superintendent of the school
175 district or his designee before the absence, but the approval
176 shall not be unreasonably withheld.

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

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

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

222 (7) When a school attendance officer has made all attempts
223 to secure enrollment * * * or attendance, or both, of a
224 compulsory-school-age child and is unable to effect the
225 enrollment * * * or attendance, or both, the attendance officer
226 shall file a petition with the youth court under Section 43-21-451
227 or shall file a petition in a court of competent jurisdiction as



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

242 (8) Unlawful absences by a kindergarten student in excess of
243 the number allowed by a local school district may not be the
244 reason for a school district's determination to withhold or
245 recommend the withholding of the student from promotion to the
246 first grade.

247 (9) 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 (10) 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.** This act shall take effect and be in force from
270 and after July 1, 2002.

