

By: Senator(s) Harden

To: Education

## SENATE BILL NO. 2170

1 AN ACT TO AMEND SECTIONS 37-13-91 AND 37-15-9, MISSISSIPPI  
2 CODE OF 1972, TO PROVIDE THAT THE COMPULSORY SCHOOL ATTENDANCE LAW  
3 SHALL APPLY TO 5-YEAR-OLDS WHO HAVE ENROLLED IN FULL DAY  
4 KINDERGARTEN PROGRAMS; AND FOR RELATED PURPOSES.

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

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

8 37-13-91. (1) This section shall be referred to as the  
9 "Mississippi Compulsory School Attendance Law."

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

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

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

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

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

25 (e) "School" means any public school in this state or  
26 any nonpublic school in this state which is in session each school  
27 year for at least one hundred eighty (180) school days, except



that the "nonpublic" school term shall be the number of days that each school shall require for promotion from grade to grade.

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

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

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

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

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

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

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



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

63 The parent, guardian or custodian of a compulsory-school-age  
64 child described in this subsection, or the parent, guardian or  
65 custodian of a compulsory-school-age child attending any nonpublic  
66 school, or the appropriate school official for any or all children  
67 attending a nonpublic school shall complete a "certificate of  
68 enrollment" in order to facilitate the administration of this  
69 section.

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

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

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

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

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

87 The certificate of enrollment shall be returned to the school  
88 attendance officer where the child resides on or before September  
89 15 of each year. Any parent, guardian or custodian found by the  
90 school attendance officer to be in noncompliance with this section  
91 shall comply, after written notice of the noncompliance by the  
92 school attendance officer, with this subsection within ten (10)  
93 days after the notice or be in violation of this section.



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

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

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

111 Each of the following shall constitute a valid excuse for  
112 temporary nonattendance of a compulsory-school-age child enrolled  
113 in a public school, provided satisfactory evidence of the excuse  
114 is provided to the superintendent of the school district or his  
115 designee:

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

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

125 (c) An absence is excused when isolation of a  
126 compulsory-school-age child is ordered by the county health



officer, by the State Board of Health or appropriate school official.

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

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

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

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

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



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

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

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



191           (6) If a compulsory-school-age child has not been enrolled  
192 in a school within fifteen (15) calendar days after the first day  
193 of the school year of the school which the child is eligible to  
194 attend or the child has accumulated five (5) unlawful absences  
195 during the school year of the public school in which the child is  
196 enrolled, the school district superintendent shall report, within  
197 two (2) school days or within five (5) calendar days, whichever is  
198 less, the absences to the school attendance officer. The State  
199 Department of Education shall prescribe a uniform method for  
200 schools to utilize in reporting the unlawful absences to the  
201 school attendance officer. The superintendent, or his designee,  
202 also shall report any student suspensions or student expulsions to  
203 the school attendance officer when they occur.

204           (7) When a school attendance officer has made all attempts  
205 to secure enrollment and/or attendance of a compulsory-school-age  
206 child and is unable to effect the enrollment and/or attendance,  
207 the attendance officer shall file a petition with the youth court  
208 under Section 43-21-451 or shall file a petition in a court of  
209 competent jurisdiction as it pertains to parent or child.  
210 Sheriffs, deputy sheriffs and municipal law enforcement officers  
211 shall be fully authorized to investigate all cases of  
212 nonattendance and unlawful absences by compulsory-school-age  
213 children, and shall be authorized to file a petition with the  
214 youth court under Section 43-21-451 or file a petition or  
215 information in the court of competent jurisdiction as it pertains  
216 to parent or child for violation of this section. The youth court  
217 shall expedite a hearing to make an appropriate adjudication and a  
218 disposition to ensure compliance with the Compulsory School  
219 Attendance Law, and may order the child to enroll or reenroll in  
220 school. The superintendent of the school district to which the  
221 child is ordered may assign, in his discretion, the child to the  
222 alternative school program of the school established pursuant to  
223 Section 37-13-92.



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

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

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

37-15-9. (1) Except as provided in subsection (2) and subject to the provisions of subsection (3) of this section, no child shall be enrolled or admitted to any school which is a part of the free public school system during any school year unless such child will reach his fifth birthday on or before September 1 of said school year. No pupil shall be permanently enrolled in a school in the State of Mississippi who formerly was enrolled in another public or private school within the state until the cumulative record of the pupil shall have been received from the





257 school from which he transferred. Should such record have become  
258 lost or destroyed, then it shall be the duty of the superintendent  
259 or principal of the school where the pupil last attended school to  
260 initiate a new record.

261 (2) Subject to the provisions of subsection (3) of this  
262 section, any child who transfers from an out-of-state public or  
263 private school in which that state's law provides for a  
264 first-grade or kindergarten enrollment date subsequent to  
265 September 1, shall be allowed to enroll in the public schools of  
266 Mississippi, at the same grade level as their prior out-of-state  
267 enrollment, if:

268 (a) The parent, legal guardian or custodian of such  
269 child was a legal resident of the state from which the child is  
270 transferring;

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

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

277 (d) The superintendent of schools in the applicable  
278 Mississippi school district has determined that the child was  
279 making satisfactory educational progress in the previous state.

280 (3) When any child applies for admission or enrollment in  
281 any public school in the state, the parent, guardian or child, in  
282 the absence of an accompanying parent or guardian, shall indicate  
283 on the school registration form if the enrolling child has been  
284 expelled from any public or private school or is currently a party  
285 to an expulsion proceeding. If it is determined from the child's  
286 cumulative record or application for admission or enrollment that  
287 the child has been expelled, the school district may deny the  
288 student admission and enrollment until the superintendent of the  
289 school or his designee has reviewed the child's cumulative record



290 and determined that the child has participated in successful  
291 rehabilitative efforts including, but not limited to, progress in  
292 an alternative school or similar program. If the child is a party  
293 to an expulsion proceeding, the child may be admitted to a public  
294 school pending final disposition of the expulsion proceeding. If  
295 the expulsion proceeding results in the expulsion of the child,  
296 the public school may revoke such admission to school. If the  
297 child was expelled or is a party to an expulsion proceeding for an  
298 act involving violence, weapons, alcohol, illegal drugs or other  
299 activity that may result in expulsion, the school district shall  
300 not be required to grant admission or enrollment to the child  
301 before one (1) calendar year after the date of the expulsion.

302       **SECTION 3.** This act shall take effect and be in force from  
303 and after July 1, 2002.

