

By: Senator(s) Harden, Chaney, Tollison,
Williamson, Burton

To: Education

SENATE BILL NO. 2394
(As Passed the Senate)

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 FIVE-YEAR OLDS WHO HAVE ENROLLED IN FULL-DAY PUBLIC
4 SCHOOL 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



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

30 (f) "Compulsory-school-age child" means a child who has
31 attained or will attain the age of six (6) years on or before
32 September 1 of the calendar year and who has not attained the age
33 of seventeen (17) years on or before September 1 of the calendar
34 year; and shall include any child who has attained or will attain
35 the age of five (5) years on or before September 1 and has
36 enrolled in a full-day public school kindergarten program.
37 Provided, however, that the parent or guardian of any child
38 enrolled in a full-day public school kindergarten program shall be
39 allowed to disenroll the child from the program on a one-time
40 basis, and such child shall not be deemed a compulsory-school-age
41 child until the child attains the age of six (6) years.

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 nonpublic
71 school, or the appropriate school official for any or all children
72 attending a nonpublic school shall complete a "certificate of
73 enrollment" in order to facilitate the administration of this
74 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 nonpublic
90 school, the signature of the appropriate school official and the
91 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 during a school day
111 by a compulsory-school-age child, which absence is not due to a
112 valid excuse for temporary nonattendance. Days missed from school
113 due to disciplinary suspension shall not be considered an
114 "excused" absence under this section. This subsection shall not
115 apply to children enrolled in a nonpublic school.

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

121 (a) An absence is excused when the absence results from
122 the compulsory-school-age child's attendance at an authorized
123 school activity with the prior approval of the superintendent of
124 the school district, or his designee. These activities may



125 include field trips, athletic contests, student conventions,
126 musical festivals and any similar activity.

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

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

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

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

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

179 Upon prosecution of a parent, guardian or custodian of a
180 compulsory-school-age child for violation of this section, the
181 presentation of evidence by the prosecutor that shows that the
182 child has not been enrolled in school within eighteen (18)
183 calendar days after the first day of the school year of the public
184 school which the child is eligible to attend, or that the child
185 has accumulated twelve (12) unlawful absences during the school
186 year at the public school in which the child has been enrolled,
187 shall establish a prima facie case that the child's parent,
188 guardian or custodian is responsible for the absences and has
189 refused or willfully failed to perform the duties imposed upon him
190 or her under this section. However, no proceedings under this



191 section shall be brought against a parent, guardian or custodian
192 of a compulsory-school-age child unless the school attendance
193 officer has contacted promptly the home of the child and has
194 provided written notice to the parent, guardian or custodian of
195 the requirement for the child's enrollment or attendance.

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

209 (7) When a school attendance officer has made all attempts
210 to secure enrollment and/or attendance of a compulsory-school-age
211 child and is unable to effect the enrollment and/or attendance,
212 the attendance officer shall file a petition with the youth court
213 under Section 43-21-451 or shall file a petition in a court of
214 competent jurisdiction as it pertains to parent or child.
215 Sheriffs, deputy sheriffs and municipal law enforcement officers
216 shall be fully authorized to investigate all cases of
217 nonattendance and unlawful absences by compulsory-school-age
218 children, and shall be authorized to file a petition with the
219 youth court under Section 43-21-451 or file a petition or
220 information in the court of competent jurisdiction as it pertains
221 to parent or child for violation of this section. The youth court
222 shall expedite a hearing to make an appropriate adjudication and a
223 disposition to ensure compliance with the Compulsory School



224 Attendance Law, and may order the child to enroll or re-enroll in
225 school. The superintendent of the school district to which the
226 child is ordered may assign, in his discretion, the child to the
227 alternative school program of the school established pursuant to
228 Section 37-13-92.

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

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

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

253 37-15-9. (1) Except as provided in subsection (2) and
254 subject to the provisions of subsection (3) of this section, no
255 child shall be enrolled or admitted to any kindergarten which is a
256 part of the free public school system during any school year



257 unless such child will reach his fifth birthday on or before
258 September 1 of said school year, and no child shall be enrolled or
259 admitted to the first grade in any school which is a part of the
260 free public school system during any school year unless such child
261 will reach his sixth birthday on or before September 1 of said
262 school year. No pupil shall be permanently enrolled in a school
263 in the State of Mississippi who formerly was enrolled in another
264 public or private school within the state until the cumulative
265 record of the pupil shall have been received from the school from
266 which he transferred. Should such record have become lost or
267 destroyed, then it shall be the duty of the superintendent or
268 principal of the school where the pupil last attended school to
269 initiate a new record.

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

277 (a) The parent, legal guardian or custodian of such
278 child was a legal resident of the state from which the child is
279 transferring;

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

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

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



289 (3) When any child applies for admission or enrollment in
290 any public school in the state, the parent, guardian or child, in
291 the absence of an accompanying parent or guardian, shall indicate
292 on the school registration form if the enrolling child has been
293 expelled from any public or private school or is currently a party
294 to an expulsion proceeding. If it is determined from the child's
295 cumulative record or application for admission or enrollment that
296 the child has been expelled, the school district may deny the
297 student admission and enrollment until the superintendent of the
298 school, or his designee, has reviewed the child's cumulative
299 record and determined that the child has participated in
300 successful rehabilitative efforts including, but not limited to,
301 progress in an alternative school or similar program. If the
302 child is a party to an expulsion proceeding, the child may be
303 admitted to a public school pending final disposition of the
304 expulsion proceeding. If the expulsion proceeding results in the
305 expulsion of the child, the public school may revoke such
306 admission to school. If the child was expelled or is a party to
307 an expulsion proceeding for an act involving violence, weapons,
308 alcohol, illegal drugs or other activity that may result in
309 expulsion, the school district shall not be required to grant
310 admission or enrollment to the child before one (1) calendar year
311 after the date of the expulsion.

312 **SECTION 3.** This act shall take effect and be in force from
313 and after July 1, 2003.

