

By: Senator(s) Fillingane

To: Education

SENATE BILL NO. 2353

1 AN ACT TO AMEND SECTION 41-23-37, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT A CHILD WILL BE EXEMPT FROM THE REQUIREMENT FOR
3 HAVING ANY SPECIFIC VACCINATION IN ORDER TO ATTEND A SCHOOL, IF
4 THE CHILD OR THE CHILD'S PARENT OR GUARDIAN SUBMITS A CERTIFICATE
5 FROM A PHYSICIAN STATING THAT THE REQUIRED VACCINATION WOULD BE
6 INJURIOUS TO THE HEALTH AND WELL-BEING OF THE CHILD; TO AMEND
7 SECTION 37-13-91, MISSISSIPPI CODE OF 1972, TO AUTHORIZE SCHOOL
8 ADMINISTRATORS, IF THERE IS AN OUTBREAK OF A VACCINE-PREVENTABLE
9 DISEASE AT A SCHOOL, TO EXCLUDE FROM ATTENDANCE ANY CHILD WHO IS
10 NOT VACCINATED AGAINST THAT DISEASE UNTIL THE DISEASE INCUBATION
11 PERIOD HAS EXPIRED OR THE UNVACCINATED CHILD PRESENTS EVIDENCE OF
12 VACCINATION; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** Section 41-23-37, Mississippi Code of 1972, is
15 amended as follows:

16 41-23-37. (1) Whenever indicated, the State Health Officer
17 shall specify such immunization practices as may be considered
18 best for the control of vaccine preventable diseases. A listing
19 shall be promulgated annually or more often, if necessary.

20 (2) Except as provided hereinafter, it shall be unlawful for
21 any child to attend any school, kindergarten or similar type
22 facility intended for the instruction of children (hereinafter
23 called "schools"), either public or private, with the exception of
24 any legitimate home instruction program, as defined in Section
25 37-13-91, for ten (10) or fewer children who are related within
26 the third degree computed according to the civil law to the
27 operator, unless they * * * first have been vaccinated against
28 those diseases specified by the State Health Officer.

29 (3) No child seeking to attend any school shall be required
30 to comply with the requirements of subsection (2) of this section
31 for any specific vaccination in order to attend the school, if the
32 child or the child's parent or guardian submits to the school an

33 affidavit or a certificate signed by a physician who is duly
34 licensed to practice medicine in the United States, in which it is
35 stated that, in the physician's medical judgment and opinion, the
36 required vaccination would be injurious to the health and
37 well-being of the child, whether the injury would be chronic or
38 acute.

39 (4) Certificates of vaccination shall be issued by local
40 health officers or physicians on forms specified by the
41 Mississippi State Board of Health. These forms shall be the only
42 acceptable means for showing compliance with these immunization
43 requirements, and the responsible school officials shall file the
44 form with the child's record.

45 (5) If a child * * * offersu to enroll at a school without
46 having completed the required vaccinations, the local health
47 officer may grant a period of time up to ninety (90) days for
48 that completion when, in the opinion of the health officer, the
49 delay will not cause undue risk to the child, the school or the
50 community. No child shall be enrolled without having had at least
51 one (1) dose of each specified vaccine.

52 (6) Within thirty (30) days after the opening of the fall
53 term of school (on or before October 1 of each year) the person in
54 charge of each school shall report to the county or local health
55 officer, on forms provided by the Mississippi State Board of
56 Health, the number of children enrolled by age or grade or both,
57 the number fully vaccinated, the number in process of completing
58 vaccination requirements, and the number exempt from vaccination
59 by reason for the exemption.

60 (7) Within one hundred twenty (120) days after the opening
61 of the fall term (on or before December 31), the person in charge
62 of each school shall certify to the local or county health officer
63 that all children enrolled are in compliance with immunization
64 requirements.

65 (8) For the purpose of assisting in supervising the
66 immunization status of the children the local health officer, or
67 his designee, may inspect the children's records or be furnished
68 certificates of immunization compliance by the school.

69 (9) It shall be the responsibility of the person in charge
70 of each school to enforce the requirements for immunization. Any
71 child not in compliance at the end of ninety (90) days from the
72 opening of the fall term must be suspended until in compliance,
73 unless the health officer * * * attributesu the delay to lack of
74 supply of vaccine or some other such factor clearly making
75 compliance impossible.

76 (10) Failure to enforce provisions of this section shall
77 constitute a misdemeanor and, upon conviction, be punishable by
78 fine or imprisonment or both.

79 **SECTION 2.** Section 37-13-91, Mississippi Code of 1972, is
80 amended as follows:

81 37-13-91. (1) This section shall be referred to as the
82 "Mississippi Compulsory School Attendance Law."

83 (2) The following terms as used in this section are defined
84 as follows:

85 (a) "Parent" means the father or mother to whom a child
86 has been born, or the father or mother by whom a child has been
87 legally adopted.

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

91 (c) "Custodian" means any person having the present
92 care or custody of a child, other than a parent or guardian of the
93 child.

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

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

103 (f) "Compulsory-school-age child" means a child who has
104 attained or will attain the age of six (6) years on or before
105 September 1 of the calendar year and who has not attained the age
106 of seventeen (17) years on or before September 1 of the calendar
107 year; and shall include any child who has attained or will attain
108 the age of five (5) years on or before September 1 and has
109 enrolled in a full-day public school kindergarten program.
110 Provided, however, that the parent or guardian of any child
111 enrolled in a full-day public school kindergarten program shall be
112 allowed to disenroll the child from the program on a one-time
113 basis, and such child shall not be deemed a compulsory-school-age
114 child until the child attains the age of six (6) years.

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

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

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

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

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

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

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

141 The parent, guardian or custodian of a compulsory-school-age
142 child described in this subsection, or the parent, guardian or
143 custodian of a compulsory-school-age child attending any nonpublic
144 school, or the appropriate school official for any or all children
145 attending a nonpublic school shall complete a "certificate of
146 enrollment" in order to facilitate the administration of this
147 section.

148 The form of the certificate of enrollment shall be prepared
149 by the Office of Compulsory School Attendance Enforcement of the
150 State Department of Education and shall be designed to obtain the
151 following information only:

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

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

156 (iii) A simple description of the type of
157 education the compulsory-school-age child is receiving and, if the
158 child is enrolled in a nonpublic school, the name and address of
159 the school; and

160 (iv) The signature of the parent, guardian or
161 custodian of the compulsory-school-age child or, for any or all
162 compulsory-school-age child or children attending a nonpublic

163 school, the signature of the appropriate school official and the
164 date signed.

165 The certificate of enrollment shall be returned to the school
166 attendance officer where the child resides on or before September
167 15 of each year. Any parent, guardian or custodian found by the
168 school attendance officer to be in noncompliance with this section
169 shall comply, after written notice of the noncompliance by the
170 school attendance officer, with this subsection within ten (10)
171 days after the notice or be in violation of this section.

172 However, in the event the child has been enrolled in a public
173 school within fifteen (15) calendar days after the first day of
174 the school year as required in subsection (6), the parent or
175 custodian may, at a later date, enroll the child in a legitimate
176 nonpublic school or legitimate home instruction program and send
177 the certificate of enrollment to the school attendance officer and
178 be in compliance with this subsection.

179 For the purposes of this subsection, a legitimate nonpublic
180 school or legitimate home instruction program shall be those not
181 operated or instituted for the purpose of avoiding or
182 circumventing the compulsory attendance law.

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

189 Each of the following shall constitute a valid excuse for
190 temporary nonattendance of a compulsory-school-age child enrolled
191 in a public school, provided satisfactory evidence of the excuse
192 is provided to the superintendent of the school district, or his
193 designee:

194 (a) An absence is excused when the absence results from
195 the compulsory-school-age child's attendance at an authorized

196 school activity with the prior approval of the superintendent of
197 the school district, or his designee. These activities may
198 include field trips, athletic contests, student conventions,
199 musical festivals and any similar activity.

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

203 (c) An absence is excused when isolation of a
204 compulsory-school-age child is ordered by the county health
205 officer, by the State Board of Health or appropriate school
206 official. If there is an outbreak of a vaccine-preventable
207 disease at a school, the administrators of the school, upon the
208 recommendation of the State Health Officer or the local health
209 officer, may exclude from attendance any child who is not
210 vaccinated against that disease until the disease incubation
211 period has expired or the unvaccinated child presents evidence of
212 vaccination.

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

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

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

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

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

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

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

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

261 child has not been enrolled in school within eighteen (18)
262 calendar days after the first day of the school year of the public
263 school which the child is eligible to attend, or that the child
264 has accumulated twelve (12) unlawful absences during the school
265 year at the public school in which the child has been enrolled,
266 shall establish a prima facie case that the child's parent,
267 guardian or custodian is responsible for the absences and has
268 refused or willfully failed to perform the duties imposed upon him
269 or her under this section. However, no proceedings under this
270 section shall be brought against a parent, guardian or custodian
271 of a compulsory-school-age child unless the school attendance
272 officer has contacted promptly the home of the child and has
273 provided written notice to the parent, guardian or custodian of
274 the requirement for the child's enrollment or attendance.

275 (6) If a compulsory-school-age child has not been enrolled
276 in a school within fifteen (15) calendar days after the first day
277 of the school year of the school which the child is eligible to
278 attend or the child has accumulated five (5) unlawful absences
279 during the school year of the public school in which the child is
280 enrolled, the school district superintendent shall report, within
281 two (2) school days or within five (5) calendar days, whichever is
282 less, the absences to the school attendance officer. The State
283 Department of Education shall prescribe a uniform method for
284 schools to utilize in reporting the unlawful absences to the
285 school attendance officer. The superintendent, or his designee,
286 also shall report any student suspensions or student expulsions to
287 the school attendance officer when they occur.

288 (7) When a school attendance officer has made all attempts
289 to secure enrollment and/or attendance of a compulsory-school-age
290 child and is unable to effect the enrollment and/or attendance,
291 the attendance officer shall file a petition with the youth court
292 under Section 43-21-451 or shall file a petition in a court of
293 competent jurisdiction as it pertains to parent or child.

294 Sheriffs, deputy sheriffs and municipal law enforcement officers
295 shall be fully authorized to investigate all cases of
296 nonattendance and unlawful absences by compulsory-school-age
297 children, and shall be authorized to file a petition with the
298 youth court under Section 43-21-451 or file a petition or
299 information in the court of competent jurisdiction as it pertains
300 to parent or child for violation of this section. The youth court
301 shall expedite a hearing to make an appropriate adjudication and a
302 disposition to ensure compliance with the Compulsory School
303 Attendance Law, and may order the child to enroll or re-enroll in
304 school. The superintendent of the school district to which the
305 child is ordered may assign, in his discretion, the child to the
306 alternative school program of the school established pursuant to
307 Section 37-13-92.

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

312 (9) Notwithstanding any provision or implication herein to
313 the contrary, it is not the intention of this section to impair
314 the primary right and the obligation of the parent or parents, or
315 person or persons in loco parentis to a child, to choose the
316 proper education and training for such child, and nothing in this
317 section shall ever be construed to grant, by implication or
318 otherwise, to the State of Mississippi, any of its officers,
319 agencies or subdivisions any right or authority to control,
320 manage, supervise or make any suggestion as to the control,
321 management or supervision of any private or parochial school or
322 institution for the education or training of children, of any kind
323 whatsoever that is not a public school according to the laws of
324 this state; and this section shall never be construed so as to
325 grant, by implication or otherwise, any right or authority to any
326 state agency or other entity to control, manage, supervise,

327 provide for or affect the operation, management, program,
328 curriculum, admissions policy or discipline of any such school or
329 home instruction program.

330 **SECTION 3.** This act shall take effect and be in force from
331 and after July 1, 2007.