

By: Senator(s) Tollison

To: Education

SENATE BILL NO. 2393

1 AN ACT TO AMEND SECTION 37-13-91, MISSISSIPPI CODE OF 1972,  
2 TO DELETE THE PROVISION OF THE COMPULSORY SCHOOL ATTENDANCE LAW  
3 ALLOWING THE PARENT OR GUARDIAN TO DISENROLL A CHILD FROM A  
4 FULL-DAY PUBLIC SCHOOL KINDERGARTEN PROGRAM ON A ONE-TIME BASIS;  
5 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 (5) and not  
23 more than eight (8) hours of actual teaching in which both  
24 teachers and pupils are in regular attendance for scheduled  
25 schoolwork.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

247           **SECTION 2.** This act shall take effect and be in force from  
248 and after July 1, 2007.