

By: Representative Endt

To: Judiciary B

HOUSE BILL NO. 1088

1 AN ACT TO AMEND SECTION 45-9-101, MISSISSIPPI CODE OF 1972,
2 TO REVISE LICENSING AND REVOCATION PROVISIONS RELATED TO THE
3 LICENSE TO CARRY CONCEALED WEAPONS; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 45-9-101, Mississippi Code of 1972, is
6 amended as follows:

7 45-9-101. (1) (a) The Department of Public Safety is
8 authorized to issue licenses to carry concealed pistols or
9 revolvers to persons qualified as provided in this section. Such
10 licenses shall be valid throughout the state for a period of four
11 (4) years from the date of issuance. Any person possessing a
12 valid license issued pursuant to this section may carry a
13 concealed pistol or concealed revolver.

14 (b) The licensee must carry the license, together with
15 valid identification, at all times in which the licensee is
16 carrying a concealed pistol or revolver and must display both the
17 license and proper identification upon demand by a law enforcement
18 officer. A violation of the provisions of this paragraph (b)
19 shall constitute a noncriminal violation with a penalty of
20 Twenty-five Dollars (\$25.00) and shall be enforceable by summons.

21 (2) The Department of Public Safety shall issue a license if
22 the applicant:

23 (a) Is a resident of the state and has been a resident
24 for twelve (12) months or longer immediately preceding the filing
25 of the application;

26 (b) Is twenty-one (21) years of age or older;

27 (c) Does not suffer from a physical infirmity which
28 prevents the safe handling of a pistol or revolver;

29 (d) Is not ineligible to possess a firearm by virtue of
30 having been convicted of a felony in a court of this state, of any
31 other state, or of the United States without having been pardoned
32 for same;

33 (e) Does not chronically or habitually abuse controlled
34 substances to the extent that his normal faculties are impaired.
35 It shall be presumed that an applicant chronically and habitually
36 uses controlled substances to the extent that his faculties are
37 impaired if the applicant has been voluntarily or involuntarily
38 committed to a treatment facility for the abuse of a controlled
39 substance or been found guilty of a crime under the provisions of
40 the Uniform Controlled Substances Law or similar laws of any other
41 state or the United States relating to controlled substances
42 within a three-year period immediately preceding the date on which
43 the application is submitted;

44 (f) Does not chronically and habitually use alcoholic
45 beverages to the extent that his normal faculties are impaired.
46 It shall be presumed that an applicant chronically and habitually
47 uses alcoholic beverages to the extent that his normal faculties
48 are impaired if the applicant has been voluntarily or
49 involuntarily committed as an alcoholic to a treatment facility or
50 has been convicted of two (2) or more offenses related to the use
51 of alcohol under the laws of this state or similar laws of any
52 other state or the United States within the three-year period
53 immediately preceding the date on which the application is
54 submitted;

55 (g) Desires a legal means to carry a concealed pistol
56 or revolver to defend himself;

57 (h) Has not been adjudicated mentally incompetent, or
58 has waited five (5) years from the date of his restoration to
59 capacity by court order;

60 (i) Has not been voluntarily or involuntarily committed
61 to a mental institution or mental health treatment facility unless
62 he possesses a certificate from a psychiatrist licensed in this
63 state that he has not suffered from disability for a period of
64 five (5) years;

65 (j) Has not had adjudication of guilt withheld or
66 imposition of sentence suspended on any felony unless three (3)
67 years have elapsed since probation or any other conditions set by
68 the court have been fulfilled; * * *

69 (k) Is not a fugitive from justice;

70 (l) Agrees in writing to hold harmless and indemnify
71 the department, the state or any peace officer for any and all
72 liability arising out of the issuance or use of the concealed
73 handgun permit;

74 (m) Has not been committed, either voluntarily or
75 involuntarily, for the abuse of a controlled dangerous substance,
76 or been found guilty of, or entered a plea of guilty or nolo
77 contendere to a misdemeanor under the laws of this state or
78 similar laws of any other state relating to a controlled dangerous
79 substance within a five-year period immediately preceding the date
80 on which the application is submitted, or be presently charged
81 under indictment or a bill of information for such an offense;

82 (n) Has not entered a plea of guilty or nolo contendere
83 to or been found guilty of a crime of violence at the misdemeanor
84 level, unless five (5) years have elapsed since completion of
85 sentence or any other conditions set by the court have been
86 fulfilled, or unless the conviction was set aside and the
87 prosecution dismissed, prior to the date on which the application
88 is submitted;

89 (o) Has not been convicted of, have entered a plea of
90 guilty or nolo contendere to, or not be charged under indictment
91 or a bill of information for any crime of violence or any crime
92 punishable by imprisonment for a term of one (1) year or greater;

93 (p) Is not illegal alien in the United States;

94 (q) Has not been discharged from the Armed Forces of
95 the United States with a discharge characterized as "Under Other
96 than Honorable Conditions," a "Bad Conduct Discharge," or a
97 "Dishonorable Discharge." In the case of Commissioned Officers
98 and Warrant Officers of the United States Armed Forces, the
99 punishment of "Dismissal" rendered subject to a verdict of
100 "guilty" at a trial by military court-martial is deemed to be
101 disqualifying under this paragraph. For the purposes of this
102 paragraph, the United States Coast Guard is considered an armed
103 force; and

104 (r) Does not have a history of engaging in violent
105 behavior. There shall be a rebuttable presumption that an
106 applicant has a history of engaging in violent behavior upon proof
107 that, within a ten-year period immediately preceding the date of
108 the application, the applicant has been arrested or charged on
109 three (3) or more occasions for any crime of violence or has been
110 arrested or charged on two (2) or more occasions for any crime of
111 violence that may be punished by death; and

112 (s) (i) In addition to the requirements of subsection
113 (2) of this section, an applicant shall demonstrate competence
114 with a handgun by any one (1) of the following:

115 1. Completion of any National Rifle
116 Association handguns safety or training course conducted by a
117 National Rifle Association certified instructor;

118 2. Completion of any Department of Public
119 Safety approved firearms safety or training course or class
120 available to the general public offered by a law enforcement
121 agency, college or private or public institution or organization
122 or firearms training school;

123 3. Completion of any law enforcement firearms
124 safety or training course or class approved by the Board on Law
125 Enforcement Officer Standards and Training and offered for

126 security guards, investigators, special deputies or any division
127 or subdivision of law enforcement or security enforcement;

128 4. Completion of any firearms training or
129 safety course or class approved by the Department of Public
130 Safety;

131 5. Completion of a law enforcement training
132 academy program certified by the Council on Peace Officer
133 Standards and Training;

134 6. Completion of small arms training while
135 serving with the Armed Forces of the United States of America as
136 evidenced by any of the following:

137 a. For personnel released or retired
138 from active duty, possession of an "Honorable Discharge" or
139 "General Discharge Under Honorable Conditions" as evidenced by a
140 Department of Defense Form 214(DD-214).

141 b. For personnel on active duty or
142 serving in one of the National Guard or reserve components of the
143 Armed Forces, possession of certification of completion of basic
144 training with service record evidence of having successfully
145 completed small arms training and qualification.

146 7. The National Rifle Association's personal
147 protection course.

148 (ii) Instructors for any class, training or course
149 of instruction authorized by the subsection, except for small arms
150 training in military service as provided in paragraph (s)6 of this
151 subsection, shall be certified as an instructor by the National
152 Rifle Association as an instructor for civilians or law
153 enforcement or by the Council on Peace Officer Standards and
154 Training as a firearms instructor. Any safety or training course
155 or class as described in this subsection, except for basic handgun
156 training in military service provided in paragraph (s)6 of this
157 subsection, shall include instruction in child access prevention.

158 (t) (i) A photocopy of a certificate of completion of

159 any of the courses or classes, or an affidavit from the
160 instructor, school, club, organization or group that conducted or
161 taught said course or class attesting to the completion of the
162 course or class by the applicant, or a copy of any document which
163 shows completion of the course or class or confirms participation
164 in firearms competition or honorable discharge shall constitute
165 evidence of qualification pursuant to paragraph (s) of this
166 subsection;

167 (ii) It shall be illegal to intentionally present
168 false, fraudulent, altered or counterfeit documents to prove
169 training in handguns in order to obtain a concealed handgun
170 permit. Whoever intentionally presents false, fraudulent, altered
171 or counterfeit documents to prove training in handguns in order to
172 obtain a concealed handgun permit shall be fined not more than One
173 Thousand Dollars (\$1,000.00) or imprisoned for not more than six
174 (6) months, or both. In addition, no person convicted of a
175 violation of this paragraph shall be eligible to obtain a permit.

176 (3) The Department of Public Safety may deny a license if
177 the applicant has been found guilty of one or more crimes of
178 violence constituting a misdemeanor unless three (3) years have
179 elapsed since probation or any other conditions set by the court
180 have been fulfilled or expunction has occurred prior to the date
181 on which the application is submitted, or may revoke a license if
182 the licensee has been found guilty of one or more crimes of
183 violence within the preceding three (3) years. The department
184 shall, upon notification by a law enforcement agency or a court
185 and subsequent written verification, suspend a license or the
186 processing of an application for a license if the licensee or
187 applicant is arrested or formally charged with a crime which would
188 disqualify such person from having a license under this section,
189 until final disposition of the case. The provisions of subsection
190 (7) of this section shall apply to any suspension or revocation of
191 a license pursuant to the provisions of this section.

192 (4) The application shall be completed, under oath, on a
193 form promulgated by the Department of Public Safety and shall
194 include only:

195 (a) The name, address, place and date of birth, race,
196 sex and occupation of the applicant;

197 (b) The driver's license number or Social Security
198 number of applicant;

199 (c) Any previous address of the applicant for the two
200 (2) years preceding the date of the application;

201 (d) A statement that the applicant is in compliance
202 with criteria contained within subsections (2) and (3) of this
203 section;

204 (e) A statement that the applicant has been furnished a
205 copy of this section and is knowledgeable of its provisions;

206 (f) A conspicuous warning that the application is
207 executed under oath and that a knowingly false answer to any
208 question, or the knowing submission of any false document by the
209 applicant, subjects the applicant to criminal prosecution; and

210 (g) A statement that the applicant desires a legal
211 means to carry a concealed pistol or revolver to defend himself.

212 (5) The applicant shall submit only the following to the
213 Department of Public Safety:

214 (a) A completed application as described in subsection
215 (4) of this section;

216 (b) A full-face photograph of the applicant;

217 (c) A nonrefundable license fee of One Hundred Dollars
218 (\$100.00). Costs for processing the set of fingerprints as
219 required in paragraph (c) of this subsection shall be borne by the
220 applicant. Honorably retired law enforcement officers shall be
221 exempt from the payment of the license fee;

222 (d) A full set of fingerprints of the applicant
223 administered by the Department of Public Safety; and

224 (e) A waiver authorizing the Department of Public

225 Safety access to any records concerning commitments of the
226 applicant to any of the treatment facilities or institutions
227 referred to in subsection (2) and permitting access to all the
228 applicant's criminal records.

229 (6) (a) The Department of Public Safety, upon receipt of
230 the items listed in subsection (5) of this section, shall forward
231 the full set of fingerprints of the applicant to the appropriate
232 agencies for state and federal processing.

233 (b) The Department of Public Safety shall forward a
234 copy of the applicant's application to the sheriff of the
235 applicant's county of residence and, if applicable, the police
236 chief of the applicant's municipality of residence. The sheriff
237 of the applicant's county of residence and, if applicable, the
238 police chief of the applicant's municipality of residence may, at
239 his discretion, participate in the process by submitting a
240 voluntary report to the Department of Public Safety containing any
241 readily discoverable prior information that he feels may be
242 pertinent to the licensing of any applicant. The reporting shall
243 be made within thirty (30) days after the date he receives the
244 copy of the application. Upon receipt of a response from a
245 sheriff or police chief, such sheriff or police chief shall be
246 reimbursed at a rate set by the department.

247 (c) The Department of Public Safety shall, within one
248 hundred twenty (120) days after the date of receipt of the items
249 listed in subsection (5) of this section:

250 (i) Issue the license; or

251 (ii) Deny the application based solely on the
252 ground that the applicant fails to qualify under the criteria
253 listed in subsections (2) and (3) of this section. If the
254 Department of Public Safety denies the application, it shall
255 notify the applicant in writing, stating the ground for denial,
256 and the denial shall be subject to the appeal process set forth in
257 subsection (7).

258 (d) In the event a legible set of fingerprints, as
259 determined by the Department of Public Safety and the Federal
260 Bureau of Investigation, cannot be obtained after a minimum of
261 three (3) attempts, the Department of Public Safety shall
262 determine eligibility based upon a name check by the Mississippi
263 Highway Safety Patrol and a Federal Bureau of Investigation name
264 check conducted by the Mississippi Highway Safety Patrol at the
265 request of the Department of Public Safety.

266 (7) (a) If the Department of Public Safety denies the
267 issuance of a license, or suspends or revokes a license, the party
268 aggrieved may appeal such denial, suspension or revocation to the
269 Commissioner of Public Safety, or his authorized agent, within
270 thirty (30) days after the aggrieved party receives written notice
271 of such denial, suspension or revocation. The Commissioner of
272 Public Safety, or his duly authorized agent, shall rule upon such
273 appeal within thirty (30) days after the appeal is filed and
274 failure to rule within this thirty-day period shall constitute
275 sustaining such denial, suspension or revocation. Such review
276 shall be conducted pursuant to such reasonable rules and
277 regulations as the Commissioner of Public Safety may adopt.

278 (b) If the revocation, suspension or denial of issuance
279 is sustained by the Commissioner of Public Safety, or his duly
280 authorized agent pursuant to paragraph (a) of this subsection, the
281 aggrieved party may file within ten (10) days after the rendition
282 of such decision a petition in the circuit or county court of his
283 residence for review of such decision. A hearing for review shall
284 be held and shall proceed before the court without a jury upon the
285 record made at the hearing before the Commissioner of Public
286 Safety or his duly authorized agent. No such party shall be
287 allowed to carry a concealed pistol or revolver pursuant to the
288 provisions of this section while any such appeal is pending.

289 (8) (a) No individual to whom a concealed handgun permit is
290 issued may carry and conceal such handgun while under the

291 influence of alcohol or a controlled dangerous substance. While a
292 permittee is under the influence of alcohol or a controlled
293 dangerous substance, an otherwise lawful permit is considered
294 automatically suspended and is not valid. A permittee shall be
295 considered under the influence as evidenced by a blood alcohol
296 reading of five-one-hundredth percent (.05%) or greater by weight
297 of alcohol in the blood, or when a blood test or urine test shows
298 any confirmed presence of a controlled dangerous substance.

299 (b) A permittee armed with a handgun in accordance with
300 this section shall notify any police officer who approaches the
301 permittee in an official manner or with an identified official
302 purpose that he has a weapon on his person, submit to a pat down,
303 and allow the officer to temporarily disarm him. Whenever a law
304 enforcement officer is made aware that an individual is carrying a
305 concealed handgun and the law enforcement officer has reasonable
306 grounds to believe that the individual is under the influence of
307 either alcohol or a controlled dangerous substance, the law
308 enforcement officer may take temporary possession of the handgun
309 and request submission of the individual to a department certified
310 chemical test for determination of the chemical status of the
311 individual. Whenever a law enforcement officer is made aware that
312 an individual is behaving in a criminally negligent manner as
313 defined under the provisions of this section, or is negligent in
314 the carrying of a concealed handgun, the law enforcement officer
315 may seize the handgun, until adjudication by a judge, if the
316 individual is issued a summons or arrested. Failure by the
317 permittee to comply with the provisions of this paragraph shall
318 result in a six-month automatic suspension of the permit.

319 (c) The permit to carry a concealed weapon shall be
320 revoked by the Department of Public Safety when the permittee is
321 carrying and concealing a handgun under any of the following
322 circumstances:

323 (i) The blood alcohol reading of a permittee is

324 five-one-hundredth percent (.05%) or greater by weight of alcohol
325 in the blood.

326 (ii) A permittee's blood test or urine test shows
327 the confirmed presence of a controlled dangerous substance.

328 (iii) A permittee refuses to submit to a
329 department-certified chemical test when requested to do so by a
330 law enforcement officer.

331 (iv) An individual is found guilty of negligent
332 carrying of a concealed handgun.

333 (d) The person tested may have a physician or a
334 qualified technician, chemist, registered nurse or other qualified
335 person of his own choosing administer a chemical test or tests in
336 addition to any administered at the direction of a law enforcement
337 officer, and he shall be given the opportunity to telephone and
338 request the qualified person to administer such test.

339 (e) Whenever a peace officer determines that grounds
340 under this subsection exist for the revocation of a concealed
341 handgun permit, he shall prepare an affidavit, on a form provided
342 by the Department of Public Safety, indicating the reasons for the
343 revocation and all other information regarding the revocation
344 available to the officer. A copy of the peace officer's report
345 relating to the incident shall be attached to the affidavit when
346 submitted to the department.

347 (9) The Department of Public Safety shall maintain an
348 automated listing of license holders and such information shall be
349 available on-line, upon request, at all times, to all law
350 enforcement agencies through the Mississippi Crime Information
351 Center. However, the records of the department relating to
352 applications for licenses to carry concealed pistols or revolvers
353 and records relating to license holders shall be exempt from the
354 provisions of the Mississippi Public Records Act of 1983 for a
355 period of forty-five (45) days from the date of the issuance of
356 the license or the final denial of an application.

357 (10) Within thirty (30) days after the changing of a
358 permanent address, or within thirty (30) days after having a
359 license lost or destroyed, the licensee shall notify the
360 Department of Public Safety in writing of such change or loss.
361 Failure to notify the Department of Public Safety pursuant to the
362 provisions of this subsection shall constitute a noncriminal
363 violation with a penalty of Twenty-five Dollars (\$25.00) and shall
364 be enforceable by a summons.

365 (11) In the event that a concealed pistol or revolver
366 license is lost or destroyed, the person to whom the license was
367 issued shall comply with the provisions of subsection (9) of this
368 section and may obtain a duplicate, or substitute thereof, upon
369 payment of Fifteen Dollars (\$15.00) to the Department of Public
370 Safety, and furnishing a notarized statement to the department
371 that such license has been lost or destroyed.

372 (12) A license issued under this section shall be revoked if
373 the licensee becomes ineligible under the criteria set forth in
374 subsection (2) of this section.

375 (13) No less than ninety (90) days prior to the expiration
376 date of the license, the Department of Public Safety shall mail to
377 each licensee a written notice of the expiration and a renewal
378 form prescribed by the department. The licensee must renew his
379 license on or before the expiration date by filing with the
380 department the renewal form, a notarized affidavit stating that
381 the licensee remains qualified pursuant to the criteria specified
382 in subsections (2) and (3) of this section, and a renewal fee of
383 Fifty Dollars (\$50.00); provided, however, that honorably retired
384 law enforcement officers shall be exempt from this renewal fee.
385 The license shall be renewed upon receipt of the completed renewal
386 application and appropriate payment of fees. Additionally, a
387 licensee who fails to file a renewal application on or before its
388 expiration date must renew his license by paying a late fee of
389 Fifteen Dollars (\$15.00). No license shall be renewed six (6)

390 months or more after its expiration date, and such license shall
391 be deemed to be permanently expired. A person whose license has
392 been permanently expired may reapply for licensure; however, an
393 application for licensure and fees pursuant to subsection (5) of
394 this section must be submitted, and a background investigation
395 shall be conducted pursuant to the provisions of this section.

396 (14) No license issued pursuant to this section shall
397 authorize any person to carry a concealed pistol or revolver into
398 any place of nuisance as defined in Section 95-3-1, Mississippi
399 Code of 1972; any police, sheriff or highway patrol station; any
400 detention facility, prison or jail; any courthouse; any courtroom,
401 except that nothing in this section shall preclude a judge from
402 carrying a concealed weapon or determining who will carry a
403 concealed weapon in his courtroom; any polling place; any meeting
404 place of the governing body of any governmental entity; any
405 meeting of the Legislature or a committee thereof; any public park
406 unless for the purpose of participating in any authorized
407 firearms-related activity; any school, college or professional
408 athletic event not related to firearms; any portion of an
409 establishment, licensed to dispense alcoholic beverages for
410 consumption on the premises, that is primarily devoted to
411 dispensing alcoholic beverages; any portion of an establishment in
412 which beer or light wine is consumed on the premises, that is
413 primarily devoted to such purpose; any elementary or secondary
414 school facility; any junior college, community college, college or
415 university facility unless for the purpose of participating in any
416 authorized firearms-related activity; inside the passenger
417 terminal of any airport, except that no person shall be prohibited
418 from carrying any legal firearm into the terminal if the firearm
419 is encased for shipment, for purposes of checking such firearm as
420 baggage to be lawfully transported on any aircraft; any church or
421 other place of worship; or any place where the carrying of
422 firearms is prohibited by federal law. In addition to the places

423 enumerated in this subsection, the carrying of a concealed pistol
424 or revolver may be disallowed in any place in the discretion of
425 the person or entity exercising control over the physical location
426 of such place by the placing of a written notice clearly readable
427 at a distance of not less than ten (10) feet that the "carrying of
428 a pistol or revolver is prohibited." No license issued pursuant
429 to this section shall authorize the participants in a parade or
430 demonstration for which a permit is required to carry a concealed
431 pistol or revolver.

432 (15) A law enforcement officer as defined in Section 45-6-3,
433 chiefs of police, sheriffs and persons licensed as professional
434 bondsmen pursuant to Chapter 39, Title 83, Mississippi Code of
435 1972, shall be exempt from the licensing requirements of this
436 section.

437 (16) Any person who knowingly submits a false answer to any
438 question on an application for a license issued pursuant to this
439 section, or who knowingly submits a false document when applying
440 for a license issued pursuant to this section, shall, upon
441 conviction, be guilty of a misdemeanor and shall be punished as
442 provided in Section 99-19-31, Mississippi Code of 1972.

443 (17) All fees collected by the Department of Public Safety
444 pursuant to this section shall be deposited into a special fund
445 hereby created in the State Treasury and shall be used for
446 implementation and administration of this section. After the
447 close of each fiscal year the balance in this fund shall be
448 certified to the Legislature and then may be used by the
449 Department of Public Safety as directed by the Legislature.

450 (18) All funds received by a sheriff or police chief
451 pursuant to the provisions of this section shall be deposited into
452 the general fund of the county or municipality, as appropriate,
453 and shall be budgeted to the sheriff's office or police department
454 as appropriate.

455 (19) Nothing in this section shall be construed to require

456 or allow the registration, documentation or providing of serial
457 numbers with regard to any firearm. Further, nothing in this
458 section shall be construed to allow the open and unconcealed
459 carrying of any deadly weapon as described in Section 97-37-1,
460 Mississippi Code of 1972.

461 (20) Any person holding a valid unrevoked and unexpired
462 license to carry concealed pistols or revolvers issued in another
463 state having requirements substantially similar to those of this
464 state shall have such license recognized by this state to carry
465 concealed pistols or revolvers, provided that the issuing state
466 authorizes license holders from this state to carry concealed
467 pistols or revolvers in such issuing state and the appropriate
468 authority has communicated that fact to the Department of Public
469 Safety.

470 SECTION 2. This act shall take effect and be in force from
471 and after July 1, 1999.