HOUSE BILL NO. 408

To: Judiciary B

MISSISSIPPI LEGISLATURE REGULAR SESSION 2003

By: Representative Moore (60th)

AN ACT TO REPEAL SECTION 45-9-101, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR LICENSES TO CARRY CONCEALED WEAPONS; TO REPEAL SECTION 97-37-1, MISSISSIPPI CODE OF 1972, WHICH PROHIBITS CARRYING CONCEALED WEAPONS; TO REPEAL SECTION 97-37-9, MISSISSIPPI CODE OF 1972, WHICH PROVIDES DEFENSES TO PERSONS CHARGED WITH A VIOLATION OF SECTION 97-37-1; TO AMEND SECTIONS 27-104-27, 37-11-28, 43-21-151, 47-5-191, 97-37-3, 97-37-7 AND 97-37-17, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 45-9-101, Mississippi Code of 1972, which provides for licenses to carry concealed weapons, is repealed.

SECTION 2. Section 97-37-1, Mississippi Code of 1972, which prohibits carrying concealed weapons, is repealed.

SECTION 3. Section 97-37-9, Mississippi Code of 1972, which provides defenses for persons charged with a violation of Section 97-37-1, is repealed.

SECTION 4. Section 27-104-27, Mississippi Code of 1972, is amended as follows:

27-104-27. Notwithstanding anything in Sections 27-103-101 through 27-103-139 and 27-104-1 through 27-104-29 contained, the same shall not be construed to apply to any agency supported wholly by funds granted or allotted under any act of Congress. The State Auditor of Public Accounts and after July 1, 1986, the State Fiscal Officer shall determine which special fund accounts in the State Treasury require an appropriation act and request an appropriation for such special fund accounts. For all other special fund accounts, the State Auditor of Public Accounts, or the State Fiscal Officer after July 1, 1986, shall certify that such accounts do not require an appropriation. The Legislative
Budget Office shall recommend an appropriation for each special fund account existing in the State Treasury so certified as requiring an appropriation, unless exempted as hereinafter provided. In the event the Legislative Budget Committee and the State Fiscal Officer find that any state agency should not be included under the provisions of Sections 27-103-101 through 27-103-139 and 27-104-1 through 27-104-29, then the said committee and officer may, in their discretion, exempt said state agency from the provisions thereof. Sections 27-103-101 through 27-103-139 and 27-104-1 through 27-104-29 shall not apply to funds collected and disbursed by a state agency created and existing under the provisions of Sections 73-3-101 through 73-3-169. Sections 27-103-101 through 27-103-139 and 27-104-1 through 27-104-29 shall not apply to funds deposited into * * * the special fund created pursuant to Section 69-37-39, the special fund created pursuant to Section 1 of Chapter 521, Laws of 1999, the special fund created pursuant to Section 31-17-127 or the special fund created pursuant to Section 65-1-110.

The State Fiscal Officer shall not promulgate or attempt to enforce any rule, order or regulation which is not in accordance with the provisions of a legally executed trust indenture agreement, nor shall Sections 27-103-101 through 27-103-139 and 27-104-1 through 27-104-29 be construed to apply to funds collected and disbursed by a state agency under Sections 65-33-45 and 65-33-47.

SECTION 5. Section 37-11-29, Mississippi Code of 1972, is amended as follows:

37-11-29. (1) Any principal, teacher or other school employee who has knowledge of any unlawful activity which occurred on educational property or during a school related activity or which may have occurred shall report such activity to the superintendent of the school district or his designee who shall notify the appropriate law enforcement officials as required by
this section. In the event of an emergency or if the
superintendent or his designee is unavailable, any principal may
make a report required under this subsection.

(2) Whenever any person who shall be an enrolled student in
any school or educational institution in this state supported in
whole or in part by public funds, or who shall be an enrolled
student in any private school or educational institution, is
arrested for, and lawfully charged with, the commission of any
crime and convicted upon the charge for which he was arrested, or
convicted of any crime charged against him after his arrest and
before trial, the office or law enforcement department of which
the arresting officer is a member, and the justice court judge and
any circuit judge or court before whom such student is tried upon
said charge or charges, shall make or cause to be made a report
thereof to the superintendent or the president or chancellor, as
the case may be, of the school district or other educational
institution in which such student is enrolled.

If the charge upon which such student was arrested, or any
other charges preferred against him are dismissed or nol prossed,
or if upon trial he is either convicted or acquitted of such
charge or charges, same shall be reported to said respective
superintendent or president, or chancellor, as the case may be. A
copy of said report shall be sent to the Secretary of the Board of
Trustees of State Institutions of Higher Learning of the State of
Mississippi, at Jackson, Mississippi.

Said report shall be made within one (1) week after the
arrest of such student and within one (1) week after any charge
placed against him is dismissed or nol prossed, and within one (1)
week after he shall have pled guilty, been convicted, or have been
acquitted by trial upon any charge placed against him. This
section shall not apply to ordinary traffic violations involving a
penalty of less than Fifty Dollars ($50.00) and costs.
(3) When the superintendent or his designee has a reasonable belief that an act has occurred on educational property or during a school related activity involving any of the offenses set forth in subsection (6) of this section, the superintendent or his designee shall immediately report the act to the appropriate local law enforcement agency. For purposes of this subsection, "school property" shall include any public school building, bus, public school campus, grounds, recreational area or athletic field in the charge of the superintendent. The State Board of Education shall prescribe a form for making reports required under this subsection. Any superintendent or his designee who fails to make a report required by this section shall be subject to the penalties provided in Section 37-11-15.

(4) The law enforcement authority shall immediately dispatch an officer to the educational institution and with probable cause the officer is authorized to make an arrest if necessary as provided in Section 99-3-7.

(5) Any superintendent, principal, teacher or other school personnel participating in the making of a required report pursuant to this section or participating in any judicial proceeding resulting therefrom shall be presumed to be acting in good faith. Any person reporting in good faith shall be immune from any civil liability that might otherwise be incurred or imposed.

(6) For purposes of this section, "unlawful activity" means any of the following:

(a) Possession or use of a deadly weapon;

(b) Possession, sale or use of any controlled substance;

(c) Aggravated assault, as defined in Section 97-3-7;

(d) Simple assault, as defined in Section 97-3-7, upon any school employee;

(e) Rape, as defined under Mississippi law;
(f) Sexual battery, as defined under Mississippi law;
(g) Murder, as defined under Mississippi law;
(h) Kidnapping, as defined under Mississippi law; or
(i) Fondling, touching, handling, etc., a child for lustful purposes, as defined in Section 97-5-23.

SECTION 6. Section 43-21-151, Mississippi Code of 1972, is amended as follows:

43-21-151. (1) The youth court shall have exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child except in the following circumstances:

(a) Any act attempted or committed by a child, which if committed by an adult would be punishable under state or federal law by life imprisonment or death, will be in the original jurisdiction of the circuit court;

(b) Any act attempted or committed by a child with the use of a deadly weapon *, *

(c) When a charge of abuse of a child first arises in the course of a custody action between the parents of the child already pending in the chancery court and no notice of such abuse was provided prior to such chancery proceedings, the chancery court may proceed with the investigation, hearing and determination of such abuse charge as a part of its hearing and determination of the custody issue as between the parents, notwithstanding the other provisions of the Youth Court Law. The proceedings in chancery court on the abuse charge shall be confidential in the same manner as provided in youth court proceedings.
When a child is expelled from the public schools, the youth court shall be notified of the act of expulsion and the act or acts constituting the basis for expulsion.

(2) Jurisdiction of the child in the cause shall attach at the time of the offense and shall continue thereafter for that offense until the child's twentieth birthday, unless sooner terminated by order of the youth court. The youth court shall not have jurisdiction over offenses committed by a child on or after his eighteenth birthday, or over offenses committed by a child on or after his seventeenth birthday where such offenses would be a felony if committed by an adult.

(3) No child who has not reached his thirteenth birthday shall be held criminally responsible or criminally prosecuted for a misdemeanor or felony; however, the parent, guardian or custodian of such child may be civilly liable for any criminal acts of such child. No child under the jurisdiction of the youth court shall be held criminally responsible or criminally prosecuted by any court for any act designated as a delinquent act, unless jurisdiction is transferred to another court under Section 43-21-157.

(4) The youth court shall also have jurisdiction of offenses committed by a child which have been transferred to the youth court by an order of a circuit court of this state having original jurisdiction of the offense, as provided by Section 43-21-159.

(5) The youth court shall regulate and approve the use of teen court as provided in Section 43-21-753.

SECTION 7. Section 47-5-191, Mississippi Code of 1972, is amended as follows:

47-5-191. As used in Sections 47-5-191 through 47-5-195, "alcoholic beverage" shall have the meaning defined in Section 67-1-5 of the Local Option Alcoholic Beverage Control Law of the State of Mississippi; "controlled substance" means any substance defined as a controlled substance by the Uniform Controlled
Substances Law of the State of Mississippi; "narcotic drug" means any substance defined as a narcotic drug by Section 41-29-105; "weapon or deadly weapon" shall mean any weapon or firearm and any rifle or shotgun regardless of barrel length; and "contraband" means coin or currency, money orders, traveler's checks, promissory notes, credit cards, personal checks or other negotiable instruments, knives, sharpened instruments, tools, explosives, ammunition and drug paraphernalia as defined in Section 41-29-105(v).

SECTION 8. Section 97-37-3, Mississippi Code of 1972, is amended as follows:

97-37-3. Any weapon used in the commission of any crime, shall be seized by the arresting officer, may be introduced in evidence, and in the event of a conviction, shall be ordered to be forfeited, and shall be disposed of as ordered by the court having jurisdiction of such offense. In the event of dismissal or acquittal of charges, such weapon shall be returned to the accused from whom it was seized.

SECTION 9. Section 97-37-7, Mississippi Code of 1972, is amended as follows:

97-37-7. (1) (a) It shall not be a violation of any statute for pistols, firearms or other suitable and appropriate weapons to be carried by duly constituted bank guards, company guards, watchmen, railroad special agents or duly authorized representatives who are not sworn law enforcement officers, agents or employees of a patrol service, guard service, or a company engaged in the business of transporting money, securities or other valuables, while actually engaged in the performance of their duties as such, provided that such persons have made a written application and paid a nonrefundable permit fee of One Hundred Dollars ($100.00) to the Department of Public Safety.
(b) No permit shall be issued to any person who has ever been convicted of a felony under the laws of this or any other state or of the United States. To determine an applicant's eligibility for a permit, the person shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check. The department shall charge a fee which includes the amounts required by the Federal Bureau of Investigation and the department for the national and state criminal history record checks and any necessary costs incurred by the department for the handling and administration of the criminal history background checks. In the event a legible set of fingerprints, as determined by the Department of Public Safety and the Federal Bureau of Investigation, cannot be obtained after a minimum of three (3) attempts, the Department of Public Safety shall determine eligibility based upon a name check by the Mississippi Highway Safety Patrol and a Federal Bureau of Investigation name check conducted by the Mississippi Safety Patrol at the request of the Department of Public Safety.

(c) A person may obtain a duplicate of a lost or destroyed permit upon payment of a Fifteen Dollar ($15.00) replacement fee to the Department of Public Safety, if he furnishes a notarized statement to the department that the permit has been lost or destroyed.

(d) (i) No less than ninety (90) days prior to the expiration date of a permit, the Department of Public Safety shall mail to the permit holder written notice of expiration together with the renewal form prescribed by the department. The permit holder shall renew the permit on or before the expiration date by filing with the department the renewal form, a notarized affidavit stating that the permit holder remains qualified, and the renewal fee of Fifty Dollars ($50.00); provided, however, that honorably...
retired law enforcement officers shall be exempt from payment of the renewal fee. A permit holder who fails to file a renewal application on or before its expiration date shall pay a late fee of Fifteen Dollars ($15.00).

(ii) Renewal of the permit shall be required every four (4) years. The permit of a qualified renewal applicant shall be renewed upon receipt of the completed renewal application and appropriate payment of fees.

(iii) A permit cannot be renewed six (6) months or more after its expiration date, and such permit shall be deemed to be permanently expired; the holder may reapply for an original permit as provided in this section.

(2) It shall not be a violation of any statute for pistols, firearms or other suitable and appropriate weapons to be carried by Department of Wildlife, Fisheries and Parks law enforcement officers, railroad special agents who are sworn law enforcement officers, investigators employed by the Attorney General, district attorneys, legal assistants to district attorneys, criminal investigators employed by the district attorneys, investigative or probation officers employed by the Department of Corrections, employees of the State Auditor who are authorized by the State Auditor to perform investigative functions, or any deputy fire marshal or investigator employed by the State Fire Marshal, while engaged in the performance of their duties as such, or by fraud investigators with the Department of Human Services, or by judges of the Mississippi Supreme Court, Court of Appeals, circuit, chancery, county and municipal courts. Before any person shall be authorized under this subsection to carry a weapon, he shall complete a weapons training course approved by the Board of Law Enforcement Officer Standards and Training. Before any criminal investigator employed by a district attorney shall be authorized under this section to carry a pistol, firearm or other weapon, he shall have complied with Section
45-6-11 or any training program required for employment as an
agent of the Federal Bureau of Investigation. A law enforcement
officer, as defined in Section 45-6-3, shall be authorized to
carry weapons in courthouses in performance of his official
duties. This section shall in no way interfere with the right of
a trial judge to restrict the carrying of firearms in the
courtroom.

(3) It shall not be a violation of *** any *** statute
for pistols, firearms or other suitable and appropriate weapons,
to be carried by any out-of-state, full-time commissioned law
enforcement officer who holds a valid commission card from the
appropriate out-of-state law enforcement agency and a photo
identification. The provisions of this subsection shall only
apply if the state where the out-of-state officer is employed has
entered into a reciprocity agreement with the state that allows
full-time commissioned law enforcement officers in Mississippi to
lawfully carry or possess a weapon in such other states. The
Commissioner of Public Safety is authorized to enter into
reciprocal agreements with other states to carry out the
provisions of this subsection.

SECTION 10. Section 97-37-17, Mississippi Code of 1972, is
amended as follows:

97-37-17. (1) The following definitions apply to this
section:

(a) "Educational property" shall mean any public or
private school building or bus, public or private school campus,
grounds, recreational area, athletic field, or other property
owned, used or operated by any local school board, school, college
or university board of trustees, or directors for the
administration of any public or private educational institution or
during a school related activity; provided however, that the term
"educational property" shall not include any sixteenth section
school land or lieu land on which is not located a school
building, school campus, recreational area or athletic field.

(b) "Student" shall mean a person enrolled in a public
or private school, college or university, or a person who has been
suspended or expelled within the last five (5) years from a public
or private school, college or university, whether the person is an
adult or a minor.

(c) "Switchblade knife" shall mean a knife containing a
blade or blades which open automatically by the release of a
spring or a similar contrivance.

(d) "Weapon" shall mean any device enumerated in
subsection (2) or (4) of this section.

(2) It shall be a felony for any person to possess or carry,
whether openly or concealed, any gun, rifle, pistol or other
firearm of any kind, or any dynamite cartridge, bomb, grenade,
mine or powerful explosive on educational property. However, this
subsection does not apply to a BB gun, air rifle or air pistol.
Any person violating this subsection shall be guilty of a felony
and, upon conviction thereof, shall be fined not more than Five
Thousand Dollars ($5,000.00), or committed to the custody of the
State Department of Corrections for not more than three (3) years,
or both.

(3) It shall be a felony for any person to cause, encourage
or aid a minor who is less than eighteen (18) years old to possess
or carry, whether openly or concealed, any gun, rifle, pistol or
other firearm of any kind, or any dynamite cartridge, bomb,
grenade, mine or powerful explosive on educational property.
However, this subsection does not apply to a BB gun, air rifle or
air pistol. Any person violating this subsection shall be guilty
of a felony and, upon conviction thereof, shall be fined not more
than Five Thousand Dollars ($5,000.00), or committed to the
custody of the State Department of Corrections for not more than
three (3) years, or both.
(4) It shall be a misdemeanor for any person to possess or carry, whether openly or concealed, any BB gun, air rifle, air pistol, bowie knife, dirk, dagger, slingshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), and any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction and maintenance on educational property. Any person violating this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than One Thousand Dollars ($1,000.00), or be imprisoned not exceeding six (6) months, or both.

(5) It shall be a misdemeanor for any person to cause, encourage or aid a minor who is less than eighteen (18) years old to possess or carry, whether openly or concealed, any BB gun, air rifle, air pistol, bowie knife, dirk, dagger, slingshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving) and any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction and maintenance on educational property. Any person violating this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than One Thousand Dollars ($1,000.00), or be imprisoned not exceeding six (6) months, or both.

(6) It shall not be a violation of this section for any person to possess or carry, whether openly or concealed, any gun, rifle, pistol or other firearm of any kind on educational property if:

(a) The person is not a student attending school on any educational property;

(b) The firearm is within a motor vehicle; and
ST: Concealed weapons; authorize persons to carry without license.

The person does not brandish, exhibit or display the firearm in any careless, angry or threatening manner.

This section shall not apply to:

(a) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school-approved program conducted under the supervision of an adult whose supervision has been approved by the school authority;

(b) Armed Forces personnel of the United States, officers and soldiers of the militia and National Guard, law enforcement personnel, any private police employed by an educational institution, State Militia or Emergency Management Corps and any guard or patrolman in a state or municipal institution, when acting in the discharge of their official duties;

(c) Home schools as defined in the compulsory school attendance law, Section 37-13-91;

(d) Competitors while participating in organized shooting events;

(e) Any person as authorized in Section 97-37-7 while in the performance of his official duties;

(f) Any mail carrier while in the performance of his official duties; or

(g) Any weapon which is in a motor vehicle under the control of a parent, guardian or custodian, as defined in Section 43-21-105, which is used to bring or pick up a student at a school building, school property or school function.

All schools shall post in public view a copy of the provisions of this section.

SECTION 11. This act shall take effect and be in force from and after July 1, 2003.