

3/18 5:32P

Chapter No. 360  
13/HR40/R1137PH  
EW 1/18

***HOUSE BILL NO. 437***

Originated in House  Clerk

HOUSE BILL NO. 437

AN ACT TO AMEND SECTION 45-11-1, MISSISSIPPI CODE OF 1972, TO PROVIDE ARREST AND LIMITED POLICE POWERS FOR THE STATE CHIEF DEPUTY FIRE MARSHAL AND DEPUTY FIRE MARSHALS; TO AMEND SECTION 99-3-7, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

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

**SECTION 1.** Section 45-11-1, Mississippi Code of 1972, is amended as follows:

45-11-1. (1) The Commissioner of Insurance is by virtue of his office the State Fire Marshal and shall appoint the State Chief Deputy Fire Marshal who, along with his employees, shall be designated as a division of the Insurance Department. The State Chief Deputy Fire Marshal shall be a person qualified by experience and training and thoroughly knowledgeable in the areas of arson investigation and prevention, fire prevention, fire fighting and the training of firemen. The State Chief Deputy Fire Marshal shall serve at the will and pleasure of the Commissioner of Insurance.

(2) The State Chief Deputy Fire Marshal shall employ such deputy state fire marshals as are necessary and in accordance with availability of funds. Deputy fire marshals shall be deployed across the state in order to provide effective service to fire scenes.

(3) It shall be the duty of the State Chief Deputy Fire Marshal to investigate, by himself or his deputy, the origin of every fire occurring within the state to which his attention is called by the chief of the fire department or other law enforcement authority of any county or municipality. It shall also be his duty to investigate any case requested by any party in interest, whenever, in his judgment, there be sufficient evidence or circumstances indicating that such fire may be of incendiary origin. All county and municipal law enforcement authorities shall cooperate with the State Chief Deputy Fire Marshal in such investigation. This section shall not be construed to impair the duty and power of county and municipal law enforcement authorities to investigate any fire occurring within his or their jurisdiction.

(4) (a) The State Chief Deputy Fire Marshal and deputy state fire marshals shall have the following powers:

(i) To arrest without warrant any person or persons committing or attempting to commit any misdemeanor or felony within their presence or view but only such violations of

law or violations of regulations adopted pursuant to this chapter or Chapter 49, Title 75, Mississippi Code of 1972;

(ii) To pursue and so arrest any person committing an offense as described under subparagraph (i) of this paragraph to and at any place in the State of Mississippi where he may go or be;

(iii) To execute all warrants and search warrants related to, and investigate any violation of the laws and regulations related to this chapter and Chapter 49, Title 75, Mississippi Code of 1972, and prevent, arrest and apprehend such violators; and

(iv) To aid and assist any peace officer of this state or any other state if requested, or in manhunts or natural disasters within the state, and upon the consent of the State Fire Marshal, within the jurisdiction of the called event.

(b) Nothing herein shall be construed as granting the State Chief Deputy Fire Marshal or deputy state fire marshals general police powers.

(c) All deputy state fire marshals hired on or after July 1, 2013, shall be required to complete or have completed the Law Enforcement Officers Training Program and shall meet the standards of the program.

( \* \* \*5) The State Chief Deputy Fire Marshal shall maintain in his office a record of all fires investigated by him or his

deputy, including evidence obtained as to the origin of each such fire.

( \* \* \*6) Such record shall at all times be subject to inspection by any party of interest in the fire loss; provided, however, that no record or report of an investigation shall be subject to inspection pending such investigation or while same is in progress, and if a report of an investigation contains any evidence of arson or other felony, same shall not be subject to inspection by any person other than the district attorney and county attorney of the county in which such evidence indicates that arson or other felony may have been committed, except upon the written approval of such district attorney or the order of a court of competent jurisdiction. Provided that in cases where a person has been arrested for the crimes of arson, attempted arson, or any other felony, the defendant or his attorney shall have access to these records. Any physical evidence of arson or other felony shall be delivered to the custody of the sheriff of the county wherein such fire occurred.

( \* \* \*7) The State Chief Deputy Fire Marshal may appoint, with the consent of the Commissioner of Insurance, a State Chief Assistant Deputy Fire Marshal, who shall have power, during the chief deputy's absence or inability to act due to any cause, to perform any and all of the duties of the chief deputy. The chief assistant deputy shall serve at the will and pleasure of the Commissioner of Insurance.

**SECTION 2.** Section 99-3-7, Mississippi Code of 1972, is amended as follows:

99-3-7. (1) An officer or private person may arrest any person without warrant, for an indictable offense committed, or a breach of the peace threatened or attempted in his presence; or when a person has committed a felony, though not in his presence; or when a felony has been committed, and he has reasonable ground to suspect and believe the person proposed to be arrested to have committed it; or on a charge, made upon reasonable cause, of the commission of a felony by the party proposed to be arrested. And in all cases of arrests without warrant, the person making such arrest must inform the accused of the object and cause of the arrest, except when he is in the actual commission of the offense, or is arrested on pursuit.

(2) Any law enforcement officer may arrest any person on a misdemeanor charge without having a warrant in his possession when a warrant is in fact outstanding for that person's arrest and the officer has knowledge through official channels that the warrant is outstanding for that person's arrest. In all such cases, the officer making the arrest must inform such person at the time of the arrest the object and cause therefor. If the person arrested so requests, the warrant shall be shown to him as soon as practicable.

(3) (a) Any law enforcement officer shall arrest a person with or without a warrant when he has probable cause to believe

that the person has, within twenty-four (24) hours of such arrest, knowingly committed a misdemeanor which is an act of domestic violence or knowingly violated provisions of an ex parte protective order, protective order after hearing or court-approved consent agreement entered by a chancery, circuit, county, justice or municipal court pursuant to the Protection from Domestic Abuse Law, Sections 93-21-1 through 93-21-29, Mississippi Code of 1972, or a restraining order entered by a foreign court of competent jurisdiction to protect an applicant from domestic violence.

(b) If a law enforcement officer has probable cause to believe that two (2) or more persons committed a misdemeanor which is an act of domestic violence as defined herein, or if two (2) or more persons make complaints to the officer, the officer shall attempt to determine who was the principal aggressor. The term principal aggressor is defined as the party who poses the most serious ongoing threat, or who is the most significant, rather than the first, aggressor. The officer shall presume that arrest is not the appropriate response for the person or persons who were not the principal aggressor. If the officer affirmatively finds more than one (1) principal aggressor was involved, the officer shall document those findings.

(c) To determine who is the principal aggressor, the officer shall consider the following factors, although such consideration is not limited to these factors:

(i) Evidence from the persons involved in the domestic abuse;

(ii) The history of domestic abuse between the parties, the likelihood of future injury to each person, and the intent of the law to protect victims of domestic violence from continuing abuse;

(iii) Whether one (1) of the persons acted in self-defense; and

(iv) Evidence from witnesses of the domestic violence.

(d) A law enforcement officer shall not base the decision of whether to arrest on the consent or request of the victim.

(e) A law enforcement officer's determination regarding the existence of probable cause or the lack of probable cause shall not adversely affect the right of any party to independently seek appropriate remedies.

(4) (a) Any person authorized by a court of law to supervise or monitor a convicted offender who is under an intensive supervision program may arrest the offender when the offender is in violation of the terms or conditions of the intensive supervision program, without having a warrant, provided that the person making the arrest has been trained at the Law Enforcement Officers Training Academy established under Section

45-5-1 et seq., or at a course approved by the Board on Law Enforcement Officer Standards and Training.

(b) For the purposes of this subsection, the term "intensive supervision program" means an intensive supervision program of the Department of Corrections as described in Section 47-5-1001 et seq., or any similar program authorized by a court for offenders who are not under jurisdiction of the Department of Corrections.

(5) As used in subsection (3) of this section, the phrase "misdemeanor which is an act of domestic violence" shall mean one or more of the following acts between current or former spouses or a child of current or former spouses, persons living as spouses or who formerly lived as spouses or a child of persons living as spouses or who formerly lived as spouses, a parent, grandparent, child, grandchild or someone similarly situated to the defendant, persons who have a current or former dating relationship, or persons who have a biological or legally adopted child together:

(a) Simple domestic violence within the meaning of Section 97-3-7;

(b) Disturbing the family or public peace within the meaning of Section 97-35-9, 97-35-11, 97-35-13 or 97-35-15; or

(c) Stalking within the meaning of Section 97-3-107.

(6) Any arrest made pursuant to subsection (3) of this section shall be designated as domestic assault or domestic violence on both the arrest docket and the incident report. Any

officer investigating a complaint of a misdemeanor crime of domestic violence who finds probable cause that such an offense has occurred within the past twenty-four (24) hours shall file an affidavit on behalf of the victim(s) of the crime, regardless of whether an arrest is made within that time period. If the crime is reported or investigated outside of that twenty-four-hour period, the officer may file the affidavit on behalf of the victim. In the event the officer does not file an affidavit on behalf of the victim, the officer shall instruct the victim of the procedure for filing on his or her own behalf.

(7) A law enforcement officer shall not be held liable in any civil action for an arrest based on probable cause and in good faith pursuant to subsection (3) of this section, or failure, in good faith, to make an arrest pursuant to subsection (3) of this section.

(8) The authority for the State Chief Deputy Fire Marshal and deputy state fire marshals to make arrests shall be governed by the provisions of Section 45-11-1.

**SECTION 3.** This act shall take effect and be in force from and after July 1, 2013.

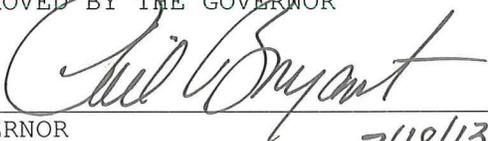
PASSED BY THE HOUSE OF REPRESENTATIVES  
February 14, 2013

  
\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE  
March 7, 2013

  
\_\_\_\_\_  
PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

  
\_\_\_\_\_  
GOVERNOR

3/18/13  
5:32pm