

By: Representative Reynolds (By Request)

To: Judiciary B

HOUSE BILL NO. 1109

1 AN ACT TO BRING FORWARD SECTIONS 97-41-1, 97-41-2, 97-41-3,
2 97-41-5, 97-41-7, 97-41-9, 97-41-11, 97-41-13, 97-41-15, 97-41-16,
3 97-41-17, 97-41-19 AND 97-41-21, MISSISSIPPI CODE OF 1972, WHICH
4 REGARD CRUELTY TO ANIMALS; TO CREATE DEFINITIONS REGARDING CRUELTY
5 TO ANIMALS; AND FOR RELATED PURPOSES.

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

7 SECTION 1. Section 97-41-1, Mississippi Code of 1972, is
8 brought forward as follows:

9 97-41-1. If any person shall override, overdrive, overload,
10 torture, torment, unjustifiably injure, deprive of necessary
11 sustenance, food, or drink; or cruelly beat or needlessly
12 mutilate; or cause or procure to be overridden, overdriven,
13 overloaded, tortured, unjustifiably injured, tormented, or
14 deprived of necessary sustenance, food or drink; or to be cruelly
15 beaten or needlessly mutilated or killed, any living creature,
16 every such offender shall, for every offense, be guilty of a
17 misdemeanor.

18 SECTION 2. Section 97-41-2, Mississippi Code of 1972, is
19 brought forward as follows:

20 97-41-2. (1) All justice courts in the State of Mississippi
21 may order the seizure of an animal by a law enforcement agency,
22 for its care and protection upon a finding of probable cause to
23 believe said animal is being cruelly treated, neglected or
24 abandoned. After three (3) days notice to the owner and at a
25 preliminary hearing, such probable cause may be established upon
26 sworn testimony of any person who has witnessed the condition of
27 said animal. The court may appoint an animal control agency,
28 agent of an animal protection organization, veterinarian or other

29 person as temporary custodian for the said animal, pending final
30 disposition of the animal pursuant to this section. Such
31 temporary custodian shall directly contract and be responsible for
32 any care rendered to such animal, and may make arrangements for
33 such care as may be necessary. Upon seizure of an animal, the law
34 enforcement agency responsible for removal of the animal shall
35 post prominently a notice to the owner or custodian to inform such
36 person that the animal has been seized. Such notice shall contain
37 a description of the animal seized, the date seized, the name of
38 the law enforcement agency seizing the animal, the name of the
39 temporary custodian, if known at the time, and shall be signed by
40 the court issuing the order.

41 (2) Within five (5) days of seizure of an animal, the owner
42 of the animal may request a hearing in the court ordering the
43 animal to be seized to determine whether the owner is able to
44 provide adequately for the animal and is fit to have custody of
45 the animal. The court shall hold such hearing within fourteen
46 (14) days of receiving such request. The hearing shall be
47 concluded and the court order entered thereon within twenty-one
48 (21) days after the hearing is commenced. Upon requesting a
49 hearing, the owner shall have three (3) business days to post a
50 bond or security with the court clerk in an amount determined by
51 the court to be sufficient to repay all reasonable costs
52 sufficient to provide for the animal's care. Failure to post such
53 bond within three (3) days shall result in forfeiture of the
54 animal to the court. If the temporary custodian has custody of
55 the animal upon the expiration of the bond or security, the animal
56 shall be forfeited to the court unless the court orders otherwise.

57 (3) In determining the owner's fitness to have custody of an
58 animal, the court may consider, among other matters:

59 (a) Testimony from law enforcement officers, animal
60 control officers, animal protection officials, and other witnesses
61 as to the condition the animal was kept in by its owner or
62 custodian.

63 (b) Testimony and evidence as to the type and amount of
64 care provided to the animal by its owner or custodian.

65 (c) Expert testimony as to the proper and reasonable
66 care of the same type of animal.

67 (d) Testimony from any witnesses as to prior treatment
68 or condition of this or other animals in the same custody.

69 (e) Violations of laws relating to animal cruelty that
70 the owner or custodian has been convicted of prior to the hearing.

71 (f) Any other evidence the court considers to be
72 material or relevant.

73 (4) Upon proof of costs incurred as a result of the animal's
74 seizure, including but not limited to animal medical and boarding,
75 the court may order that the animal's owner reimburse the
76 temporary custodian for such costs. A lien for authorized
77 expenses is hereby created upon all animals seized under this
78 section, and shall have priority to any other lien on such animal.

79 (5) If the court finds the owner of the animal is unable or
80 unfit to adequately provide for the animal, or that the animal is
81 severely injured, diseased, or suffering, and, therefore, not
82 likely to recover, the court may order that the animal be
83 permanently forfeited and released to an animal control agency,
84 animal protection organization or to the appropriate entity to be
85 euthanized or the court may order that such animal be sold at
86 public sale in the manner now provided for judicial sales; any
87 proceeds from such sale shall go first toward the payment of
88 expenses and costs relating to the care and treatment of such
89 animal, and any excess amount shall be paid to the owner of the
90 animal.

91 (6) Upon notice and hearing as provided in this section, or
92 as a part of any proceeding conducted under the terms of this
93 section, the court may order that other animals in the custody of
94 the owner that were not seized be surrendered and further enjoin
95 the owner from having custody of other animals in the future.

96 (7) If the court determines the owner is able to provide
97 adequately for, and have custody of, the animal, the court shall
98 order the animal be claimed and removed by the owner within seven
99 (7) days after the date of the order.

100 (8) Nothing in this section shall be construed to prevent or

101 otherwise interfere with a law enforcement officer's authority to
102 seize an animal as evidence or require court action for the taking
103 into custody and making proper disposition of animals as
104 authorized in Sections 21-19-9 and 41-53-11.

105 (9) For the purposes of this section the term "animal" or
106 "animals" means any feline, exotic animal, canine, horse, mule,
107 jack or jennet.

108 SECTION 3. Section 97-41-3, Mississippi Code of 1972, is
109 brought forward as follows:

110 97-41-3. Any sheriff, constable, policeman, or agent of a
111 society for the prevention of cruelty to animals may kill, or
112 cause to be killed, any animal found neglected or abandoned, if in
113 the opinion of three respectable citizens it be injured or
114 diseased past recovery, or by age has become useless.

115 SECTION 4. Section 97-41-5, Mississippi Code of 1972, is
116 brought forward as follows:

117 97-41-5. If any person shall carry, or cause to be carried
118 by hand or in or upon any vehicle or other conveyance, any
119 creature in a cruel or inhuman manner, he shall be guilty of a
120 misdemeanor.

121 SECTION 5. Section 97-41-7, Mississippi Code of 1972, is
122 brought forward as follows:

123 97-41-7. If any person shall confine, or cause to be
124 confined, in any stable, lot, or other place, any living creature,
125 without supplying the same during such confinement with a
126 sufficient quantity of good and wholesome food and water, he shall
127 be guilty of a misdemeanor.

128 SECTION 6. Section 97-41-9, Mississippi Code of 1972, is
129 brought forward as follows:

130 97-41-9. If any person be the owner or have the custody of
131 any living creature and unjustifiably neglect or refuse to furnish
132 it necessary sustenance, food, or drink, he shall be guilty of a
133 misdemeanor.

134 SECTION 7. Section 97-41-11, Mississippi Code of 1972, is

135 brought forward as follows:

136 97-41-11. Any person who shall keep or use, or in any way be
137 connected with or interested in the management of, or shall
138 receive money for the admission of any person to, any place kept
139 or used for the purpose of fighting any bear, cock or other
140 creature, except a dog, or of tormenting or torturing the same,
141 and every person who shall encourage, aid, or assist therein, or
142 who shall permit or suffer any place to be so kept or used, shall
143 be guilty of a misdemeanor. It shall be the duty of any policeman
144 or other officer of the law, county or municipal, to enter into
145 any such place kept for such purpose, and to arrest each and every
146 person concerned or participating therein.

147 SECTION 8. Section 97-41-13, Mississippi Code of 1972, is
148 brought forward as follows:

149 97-41-13. Any person who shall violate any of Sections
150 97-41-3 to 97-41-11, or Section 97-27-7 on the subject of cruelty
151 to animals shall, on conviction, be fined not less than ten
152 dollars nor more than One Hundred Dollars (\$100.00), or shall be
153 imprisoned in the county jail not less than ten (10) days nor more
154 than one hundred (100) days or both.

155 SECTION 9. Section 97-41-15, Mississippi Code of 1972, is
156 brought forward as follows:

157 97-41-15. (1) Any person who shall maliciously, either out
158 of a spirit of revenge or wanton cruelty, or who shall
159 mischievously kill, maim or wound, or injure any livestock, or
160 cause any person to do the same, shall be guilty of a felony and
161 upon conviction, shall be committed to the custody of the State
162 Department of Corrections for not less than twelve (12) months nor
163 more than five years, and fined an amount not less than One
164 Thousand Five Hundred Dollars (\$1,500.00), nor more than Ten
165 Thousand Dollars (\$10,000.00).

166 (2) In addition to any such fine or imprisonment which may
167 be imposed, the court shall order that restitution be made to the
168 owner of any animal listed in subsection (1) of this section. The

169 measure for restitution in money shall be the current replacement
170 value of such loss and/or the actual veterinarian fees, special
171 supplies, loss of income and other costs incurred as a result of
172 actions in violation of subsection (1) of this section.

173 (3) For purposes of this section, the term "livestock" shall
174 mean horses, cattle, swine, sheep and other domestic animals
175 produced for profit.

176 SECTION 10. Section 97-41-16, Mississippi Code of 1972, is
177 brought forward as follows:

178 97-41-16. (1) Any person who shall maliciously, either out
179 of a spirit of revenge or wanton cruelty, or who shall
180 mischievously kill, maim or wound, or injure any dog, or cause any
181 person to do the same, shall be fined not more than One Thousand
182 Dollars (\$1,000.00) or be imprisoned not exceeding six (6) months.

183 (2) In addition to such fine or imprisonment which may be
184 imposed, the court shall order that restitution be made to the
185 owner of such dog. The measure for restitution in money shall be
186 the current replacement value of such loss and/or the actual
187 veterinarian fees, special supplies, loss of income and other cost
188 incurred as a result of actions in violation of subsection (1) of
189 this section.

190 SECTION 11. Section 97-41-17, Mississippi Code of 1972, is
191 brought forward as follows:

192 97-41-17. Every person who shall wilfully and unlawfully
193 administer any poison to any horse, mare, colt, mule, jack,
194 jennet, cattle, deer, dog, hog, sheep, chicken, duck, goose,
195 turkey, pea-fowl, guinea-fowl, or partridge, or shall maliciously
196 expose any poison substance with intent that the same should be
197 taken or swallowed by any horse, mare, colt, mule, jack, jennet,
198 cattle, dog, hog, sheep, chicken, duck, goose, turkey, pea-fowl,
199 guinea-fowl, or partridge, shall, upon conviction, be punished by
200 imprisonment in the Penitentiary not exceeding three (3) years, or
201 in the county jail not exceeding one (1) year, and by a fine not
202 exceeding Five Hundred Dollars (\$500.00).

203 SECTION 12. Section 97-41-19, Mississippi Code of 1972, is
204 brought forward as follows:

205 97-41-19. (1) If any person (a) shall sponsor, promote,
206 stage or conduct a fight or fighting match between dogs, or (b)
207 shall wager or bet, promote or encourage the wagering or betting
208 of any money or other valuable thing upon any such fight or upon
209 the result thereof, or (c) shall own a dog with the intent to
210 wilfully enter it or to participate in any such fight, or (d)
211 shall train or transport a dog for the purposes of participation
212 in any such fight, he shall be guilty of a felony and, upon
213 conviction, shall be punished by a fine of not less than One
214 Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars
215 (\$5,000.00), or by imprisonment in the State Penitentiary for a
216 term of not less than one (1) nor more than three (3) years, or by
217 both such fine and imprisonment, in the discretion of the court.

218 (2) If any person shall be present, as a spectator, at any
219 location where preparations are being made for an exhibition of a
220 fight between dogs with the intent to be present at such
221 preparations, or if any person shall be present at an exhibition
222 of a fight between dogs with the intent to be present at such
223 exhibition, he shall be guilty of a felony and, upon conviction,
224 shall be punished by a fine of not less than Five Hundred Dollars
225 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or by
226 imprisonment in the State Penitentiary for a term of not more than
227 one (1) year, or by both such fine and imprisonment, in the
228 discretion of the court.

229 (3) Any law enforcement officer making an arrest under
230 subsection (1) of this section may lawfully take possession of all
231 dogs and all paraphernalia, implements, equipment or other
232 property used in violation of subsection (1) of this section. Such
233 officer shall file with the circuit court of the county within
234 which the alleged violation occurred an affidavit stating therein
235 (a) the name of the person charged, (b) a description of the
236 property taken, (c) the time and place of the taking, (d) the name

237 of the person who claims to own such property, if known, and (e)
238 that the affiant has reason to believe, stating the ground of such
239 belief, that the property taken was used in such violation. He
240 shall thereupon deliver the property to such court which shall, by
241 order in writing, place such dogs, paraphernalia, implements,
242 equipment, or other property in the custody of a licensed
243 veterinarian, the local humane society or other animal welfare
244 agency, or other suitable custodian, to be kept by such custodian
245 until the conviction or final discharge of the accused, and shall
246 send a copy of such order without delay to the district attorney
247 of the county. The custodian named and designated in such order
248 shall immediately assume the custody of such property and shall
249 retain same, subject to order of the court.

250 Upon the certification of a licensed veterinarian or officer
251 of the humane society or animal welfare agency that, in his
252 professional judgment, a dog which has been seized is not likely
253 to survive the final disposition of the charges or that, by reason
254 of the physical condition of the dog, it should be humanely
255 euthanized before such time, the court may order the dog humanely
256 euthanized. The court shall make its finding of whether to issue
257 such an order within seven (7) days from the certification by the
258 veterinarian or officer of the humane society or animal welfare
259 agency. The owner of a dog which is euthanized without an order
260 of the court with such certification of a licensed veterinarian or
261 officer of the humane society or other animal welfare agency shall
262 have a right of action for damages against the department or
263 agency by which the arresting or seizing officer is employed. Upon
264 conviction of the person charged with a violation of subsection
265 (1) of this section, all dogs seized shall be adjudged by the
266 court to be forfeited and the court shall order a humane
267 disposition of the same. In no event shall the court order the
268 dog to be euthanized without the certification of a licensed
269 veterinarian or officer of the humane society or other animal
270 welfare agency that, in his judgment, the dog is not likely to

271 survive or that, by reason of its physical condition, the dog
272 should be humanely euthanized. In the event of the acquittal or
273 final discharge without conviction of the accused, the court shall
274 direct the delivery of the property so held in custody to the
275 owner thereof. All reasonable expenses incurred by the custodian
276 of seized dogs and property shall be charged as costs of court, to
277 be taxed against the owner or county in the discretion of the
278 court.

279 (4) Nothing in subsection (1) of this section shall prohibit
280 any of the following:

281 (a) The use of dogs in the management of livestock, by
282 the owner of such livestock or other persons in lawful custody
283 thereof;

284 (b) The use of dogs in lawful hunting; and

285 (c) The training of dogs for any purpose not prohibited
286 by law.

287 SECTION 13. Section 97-41-21, Mississippi Code of 1972, is
288 brought forward as follows:

289 97-41-21. (1) An individual shall not do either of the
290 following:

291 (a) Willfully and maliciously assault, beat, harass,
292 injure, or attempt to assault, beat, harass or injure, a dog that
293 he or she knows or has reason to believe is a guide or leader dog
294 for a blind individual, a hearing dog for a deaf or audibly
295 impaired individual, or a service dog for a physically limited
296 individual.

297 (b) Willfully and maliciously impede or interfere with,
298 or attempt to impede or interfere with, duties performed by a dog
299 that he or she knows or has reason to believe is a guide or leader
300 dog for a blind individual, a hearing dog for a deaf or audibly
301 impaired individual, or a service dog for a physically limited
302 individual.

303 (2) An individual who violates subsection (1) is guilty of a
304 misdemeanor punishable by imprisonment for not more than ninety

305 (90) days or a fine of not more than Five Hundred Dollars
306 (\$500.00), or both.

307 (3) In a prosecution for a violation of subsection (1),
308 evidence that the defendant initiated or continued conduct
309 directed toward a dog described in subsection (1) after being
310 requested to avoid or discontinue that conduct or similar conduct
311 by a blind, deaf, audibly impaired or physically limited
312 individual being served or assisted by the dog shall give rise to
313 a rebuttable presumption that the conduct was initiated or
314 continued maliciously.

315 (4) A conviction and imposition of a sentence under this
316 section does not prevent a conviction and imposition of a sentence
317 under any other applicable provision of law.

318 (5) As used in this section:

319 (a) "Audibly impaired" means the inability to hear air
320 conduction thresholds at an average of forty (40) decibels or
321 greater in the individual's better ear.

322 (b) "Blind" means having a visual acuity of 20/200 or
323 less in the individual's better eye with correction, or having a
324 limitation of the individual's field of vision such that the
325 widest diameter of the visual field subtends an angular distance
326 not greater than twenty (20) degrees.

327 (c) "Deaf" means the individual's hearing is totally
328 impaired or the individual's hearing, with or without
329 amplification, is so seriously impaired that the primary means of
330 receiving spoken language is through other sensory input,
331 including, but not limited to, lip reading, sign language, finger
332 spelling or reading.

333 (d) "Harass" means to engage in any conduct directed
334 toward a guide, leader, hearing or service dog that is likely to
335 impede or interfere with the dog's performance of its duties or
336 that places the blind, deaf, audibly impaired or physically
337 limited individual being served or assisted by the dog in danger
338 of injury.

339 (e) "Injure" means to cause any physical injury to a
340 dog described in subsection (1).

341 (f) "Maliciously" means any of the following:

342 (i) With intent to assault, beat, harass or injure
343 a dog described in subsection (1).

344 (ii) With intent to impede or interfere with
345 duties performed by a dog described in subsection (1).

346 (iii) With intent to disturb, endanger or cause
347 emotional distress to a blind, deaf, audibly impaired or
348 physically limited individual being served or assisted by a dog
349 described in subsection (1).

350 (iv) With knowledge that the individual's conduct
351 will, or is likely to, harass or injure a dog described in
352 subsection (1).

353 (v) With knowledge that the individual's conduct
354 will, or is likely to, impede or interfere with duties performed
355 by a dog described in subsection (1).

356 (vi) With knowledge that the individual's conduct
357 will, or is likely to, disturb, endanger or cause emotional
358 distress to a blind, deaf, audibly impaired or physically limited
359 individual being served or assisted by a dog described in
360 subsection (1).

361 (g) "Physically limited" means having limited
362 ambulatory abilities and includes, but is not limited to, having a
363 temporary or permanent impairment or condition that does one or
364 more of the following:

365 (i) Causes the individual to use a wheelchair or
366 walk with difficulty or insecurity.

367 (ii) Affects sight or hearing to the extent that
368 an individual is insecure or exposed to danger.

369 (iii) Causes faulty coordination.

370 (iv) Reduces mobility, flexibility, coordination
371 or perceptiveness.

372 SECTION 14. (1) For the purpose of this chapter, the

373 following words shall have the meanings ascribed herein unless the
374 context clearly requires otherwise:

375 (a) "Abandon" or "abandonment" means that an owner or
376 custodian of an animal has moved leaving an animal behind without
377 making provisions for its care, has carried an animal away from
378 his or her property and intentionally deserted the animal, has
379 forced the animal to leave, or has otherwise neglected or refused
380 to provide an animal with sustenance and humane care.

381 (b) "Animal" shall include every living vertebrate.

382 (c) "Cruelty," "torture," or "torment" shall be held to
383 include every act, omission or neglect whereby unnecessary or
384 unjustifiable pain or suffering is caused.

385 (d) "Euthanize" or "euthanasia" means the humane
386 killing of an animal by a licensed veterinarian, or by an animal
387 control officer, a law enforcement officer, or an agent of a
388 society for the prevention of cruelty, by means of a method
389 recognized by the American and Mississippi Veterinary Medical
390 Association as humane.

391 (e) "Injury" or "injured" means physical damage or harm
392 inflicted or suffered.

393 (f) "Diseased" means deviated from a healthy or normal
394 condition of any of the functions of tissues of the body, an
395 alteration in the state of the body or some of its organs,
396 interrupted or disturbed performance of the vital functions
397 causing or threatening pain or weakness, suffering from an illness
398 or an abnormal state having a definite pattern of symptoms.

399 (g) "Neglect" means an owner or custodian of an animal
400 who omits, fails, disregards or refuses to provide that which is
401 necessary sustenance or protection for the well-being of the
402 animal.

403 (h) "Owner," "person," and "custodian" shall be held to
404 include corporations, and the knowledge and acts of agents and
405 employees of corporations in regard to animals transported, owned,
406 employed by or in the custody of a corporation.

407 (i) "Sanitary conditions" means living space free from
408 health hazards such as accumulated animal excreta, exposure to
409 disease, overcrowding or other conditions that endanger an
410 animal's well-being.

411 (j) "Shelter" means appropriate protection or housing
412 from discomfort and the elements suitable for the age, breed and
413 species of an animal to sustain the animal in good health.

414 (k) "Sustenance" or "care" means the provision of
415 sufficient and appropriate wholesome food and unpolluted water,
416 shelter, sanitary conditions, veterinary medical attention and
417 necessary grooming to maintain an animal's well-being.

418 (2) Nothing in this section shall be construed to prohibit
419 the lawful killing of livestock, any customary animal husbandry or
420 framing practice involving livestock or the lawful killing and use
421 of an animal pursuant to fish and wildlife regulations, pest
422 control or scientific research that is being conducted in
423 compliance with federal regulations.

424 SECTION 15. Section 14 of this act shall be codified in
425 Chapter 41 of Title 97, Mississippi Code of 1972.

426 SECTION 16. This act shall take effect and be in force from
427 and after July 1, 1999.