

By: Representatives Guice (By Request),
Stevens

To: Agriculture; Judiciary B

HOUSE BILL NO. 790

1 AN ACT TO CREATE CRIMINAL OFFENSES AND PENALTIES RELATED TO
2 ANIMAL ABUSE, AGGRAVATED ANIMAL ABUSE AND ANIMAL ABANDONMENT; TO
3 DEFINE CERTAIN TERMS; TO AMEND SECTION 97-41-2, IN CONFORMITY; TO
4 REPEAL SECTIONS 97-41-1, 97-41-7, 97-41-9, 97-41-13, 97-41-16 AND
5 97-41-17, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR OFFENSES AND
6 PENALTIES REGARDING CRUELTY TO ANIMALS; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** The following words and phrases shall have the
9 meanings ascribed herein, unless the context clearly indicates
10 otherwise:

11 (a) "Animal" means any nonhuman mammal, bird, reptile
12 or amphibian.

13 (b) "Physical injury" means the impairment of physical
14 condition. This includes, but is not limited to, depriving of
15 potable water or food of sufficient quality and quantity to allow
16 for normal growth or maintenance of body weight (ice and snow are
17 not potable water; failing to protect an animal against wind,
18 rain, snow or sun; failing to get the animal adequate treatment
19 for obvious disease.

20 (c) "Serious physical injury" means physical injury
21 that creates a substantial risk of death or suffering, or that
22 causes protracted disfigurement, protracted impairment of health,
23 or protracted loss or impairment of the function of a limb or
24 bodily organ.

25 (d) "Maliciously" means intentionally acting with a
26 depravity of mind and reckless and wanton disregard for life,
27 including out of revenge or wanton cruelty.

28 (e) "Torture" means an action taken for the primary
29 purpose of inflicting pain.

30 **SECTION 2.** (1) A person commits animal abuse in the second
31 degree if the person intentionally, knowingly or recklessly causes
32 physical injury to an animal, or causes any person to do the same.
33 Animal abuse in the second degree is a misdemeanor. Every person
34 who shall be convicted of animal abuse in the second degree shall
35 be fined not more than One Thousand Dollars (\$1,000.00) or be
36 imprisoned not exceeding six (6) months, or both.

37 (2) In addition to such fine or imprisonment, the court
38 shall order that restitution be made to the owner of such animal.
39 The measure for restitution shall be the current replacement value
40 of such loss and/or the actual veterinarian fees, special
41 supplies, loss of income and other costs incurred as a result of
42 actions in violation of subsection (1).

43 (3) As part of the sentence for a violation of subsection
44 (1), the court may order the defendant not to own or possess an
45 animal for any period of time determined by the court, which may
46 be permanent. A person who violates this order is subject to the
47 contempt power of the court, and if found guilty, may be
48 imprisoned or fined as the court sees fit.

49 (4) A person convicted of a violation of this section shall
50 be liable to the impounding officer for all costs of impoundment
51 from the time of seizure. In addition, the court may order the
52 defendant to pay all costs of medical care, boarding and food for
53 the animal that was provided by other agencies, veterinarians or
54 persons.

55 (5) Any practice of good animal husbandry is not a violation
56 of this section.

57 **SECTION 3.** (1) A person commits animal abuse in the first
58 degree if the person intentionally, knowingly or recklessly causes
59 serious physical injury to an animal; or cruelly or wantonly
60 causes the death of an animal, or causes any person to do the
61 same. Every person who shall be convicted of animal abuse in the
62 first degree shall be fined not less than One Thousand Dollars

63 (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or
64 imprisoned in the county jail not less than ninety (90) days, nor
65 more than six (6) months, or both. A second or subsequent
66 conviction under this section is punishable by a fine of not less
67 than Two Thousand Five Hundred Dollars (\$2,500.00) nor more than
68 Seven Thousand Five Hundred Dollars (\$7,500.00) and imprisonment
69 in the county jail not less than ninety (90) days, nor more than
70 six (6) months, or both.

71 (2) In addition to such fine and imprisonment, the court
72 shall order that restitution be made to the owner of such animal.
73 The measure for restitution shall be the current replacement value
74 of such loss and/or the actual veterinarian fees, special
75 supplies, loss of income and other costs incurred as a result of
76 actions in violation of subsection (1).

77 (3) As part of the sentence for a violation of subsection
78 (1), the court may order the defendant not to own or possess an
79 animal for any period of time determined by the court, which may
80 be permanent. A person who violates this order is subject to the
81 contempt power of the court, and if found guilty, may be
82 imprisoned or fined as the court sees fit.

83 (4) A person convicted of a violation of this section shall
84 be liable to the impounding officer for all costs of impoundment
85 from the time of seizure. In addition, the court may order the
86 defendant to pay all costs of medical care, boarding and food for
87 the animal that was provided by other agencies, veterinarians or
88 persons.

89 (5) Any practice of good animal husbandry is not a violation
90 of this section.

91 **SECTION 4.** (1) A person commits aggravated animal abuse in
92 the first degree if the person (a) maliciously kills an animal; or
93 (b) intentionally or knowingly tortures an animal, or causes any
94 person to do the same. Aggravated animal abuse in the first
95 degree is a felony. Every person who shall be convicted of

96 aggravated animal abuse in the first degree shall be confined to
97 the penitentiary for at least one (1), but no more than three (3)
98 years, or in the county jail for at least one (1), but no more
99 than three (3) years, and pay a fine of not less than Five
100 Thousand Dollars (\$5,000.00) nor more than Seven Thousand Five
101 Hundred Dollars (\$7,500.00). A second or subsequent conviction
102 under this section is punishable by confinement to the
103 penitentiary for at least three (3) years and a fine of not less
104 than Seven Thousand Five Hundred Dollars (\$7,500.00) nor more than
105 Ten Thousand Dollars (\$10,000.00).

106 (2) In addition to such fine and imprisonment, the court
107 shall order that restitution be made to the owner of such animal.
108 The measure for restitution shall be the current replacement value
109 of such loss and/or the actual veterinarian fees, special
110 supplies, loss of income and other costs incurred as a result of
111 actions in violation subsection (1).

112 (3) As part of the sentence for a violation of subsection
113 (1), the court may order the defendant not to own or possess an
114 animal for any period of time determined by the court, which may
115 be permanent. A person who violates this order is subject to the
116 contempt power of the court, and if found guilty, may be
117 imprisoned or fined as the court sees fit.

118 (4) A person convicted of a violation of this section shall
119 be liable to the impounding officer for all costs of impoundment
120 from the time of seizure. In addition, the court may order the
121 defendant to pay all costs of medical care, boarding and food for
122 the animal that was provided by other agencies, veterinarians or
123 persons.

124 **SECTION 5.** (1) A person commits the crime of animal
125 abandonment if the person knowingly, intentionally or recklessly
126 leaves a domesticated animal at a location without providing for
127 its continued care. Every person convicted of animal abandonment

128 shall be fined One Thousand Dollars (\$1,000.00) for each animal
129 abandoned.

130 (2) It is no defense to subsection (1) that the animal was
131 abandoned outside an animal shelter, a veterinarian's office, a
132 park, a rest stop or other place of shelter.

133 **SECTION 6.** Section 97-41-2, Mississippi Code of 1972, is
134 amended as follows:

135 97-41-2. (1) All courts in the State of Mississippi may
136 order the seizure of an animal by a law enforcement agency, for
137 its care and protection upon a finding of probable cause to
138 believe said animal is being cruelly treated, neglected or
139 abandoned. Such probable cause may be established upon sworn
140 testimony of any person who has witnessed the condition of said
141 animal. The court may appoint an animal control agency, agent of
142 an animal shelter organization, veterinarian or other person as
143 temporary custodian for the said animal, pending final disposition
144 of the animal pursuant to this section. Such temporary custodian
145 shall directly contract and be responsible for any care rendered
146 to such animal, and may make arrangements for such care as may be
147 necessary. Upon seizure of an animal, the law enforcement agency
148 responsible for removal of the animal shall serve notice upon the
149 owner of the animal, if possible, and shall also post prominently
150 a notice to the owner or custodian to inform such person that the
151 animal has been seized. Such process and notice shall contain a
152 description of the animal seized, the date seized, the name of the
153 law enforcement agency seizing the animal, the name of the
154 temporary custodian, if known at the time, and shall include a
155 copy of the order of the court authorizing the seizure.

156 (2) Within five (5) days of seizure of an animal, the owner
157 of the animal may request a hearing in the court ordering the
158 animal to be seized to determine whether the owner is able to
159 provide adequately for the animal and is fit to have custody of
160 the animal. The court shall hold such hearing within fourteen

161 (14) days of receiving such request. The hearing shall be
162 concluded and the court order entered thereon within twenty-one
163 (21) days after the hearing is commenced. Upon requesting a
164 hearing, the owner shall have three (3) business days to post a
165 bond or security with the court clerk in an amount determined by
166 the court to be sufficient to repay all reasonable costs
167 sufficient to provide for the animal's care. Failure to post such
168 bond within three (3) days shall result in forfeiture of the
169 animal to the court. If the temporary custodian has custody of
170 the animal upon the expiration of the bond or security, the animal
171 shall be forfeited to the court unless the court orders otherwise.

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

174 (a) Testimony from law enforcement officers, animal
175 control officers, animal protection officials, and other witnesses
176 as to the condition the animal was kept in by its owner or
177 custodian.

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

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

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

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

186 (f) Any other evidence the court considers to be
187 material or relevant.

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

194 (5) If the court finds the owner of the animal is unable or
195 unfit to adequately provide for the animal, or that the animal is
196 severely injured, diseased, or suffering, and, therefore, not
197 likely to recover, the court may order that the animal be
198 permanently forfeited and released to an animal control agency,
199 animal protection organization or to the appropriate entity to be
200 euthanized or the court may order that such animal be sold at
201 public sale in the manner now provided for judicial sales; any
202 proceeds from such sale shall go first toward the payment of
203 expenses and costs relating to the care and treatment of such
204 animal, and any excess amount shall be paid to the owner of the
205 animal.

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

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

215 (8) Nothing in this section shall be construed to prevent or
216 otherwise interfere with a law enforcement officer's authority to
217 seize an animal as evidence or require court action for the taking
218 into custody and making proper disposition of animals as
219 authorized in Sections 21-19-9 and 41-53-11.

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221 **SECTION 7.** Sections 97-41-1, 97-41-7, 97-41-9, 97-41-13,
222 97-41-16 and 97-41-17, Mississippi Code of 1972, which provide for
223 offenses and penalties regarding cruelty to animals, are repealed.

224 **SECTION 8.** This act shall take effect and be in force from
225 and after July 1, 2004.