

By: Representative Holland

To: Agriculture; Judiciary B

## HOUSE BILL NO. 1419

1 AN ACT TO AMEND SECTION 97-41-1, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE CRIME OF CRUELTY TO ANIMALS, TO INCORPORATE ELEMENTS OF  
3 OFFENSES FOUND ELSEWHERE IN CHAPTER 41, AND TO DISTINGUISH BETWEEN  
4 MISDEMEANOR AND FELONY DEGREES OF THE OFFENSE; TO AMEND SECTION  
5 97-41-2, MISSISSIPPI CODE OF 1972, TO ELIMINATE THE DEFINITION OF  
6 "ANIMAL" CONTAINED IN THAT SECTION; TO AMEND SECTION 97-41-3,  
7 MISSISSIPPI CODE OF 1972, TO REVISE THE PROCESS BY WHICH AN ANIMAL  
8 MAY BE LAWFULLY DESTROYED, AND TO GRANT IMMUNITY TO THOSE ACTING  
9 UNDER THE SECTION IN GOOD FAITH; TO ENACT DEFINITIONS; TO REPEAL  
10 SECTION 97-41-5, MISSISSIPPI CODE OF 1972, WHICH PROVIDES THAT  
11 CARRYING ANY CREATURE IN A CRUEL OR INHUMAN MANNER IS A  
12 MISDEMEANOR; TO REPEAL SECTION 97-41-7, MISSISSIPPI CODE OF 1972,  
13 WHICH PROVIDES THAT CONFINING ANY LIVING CREATURE WITHOUT  
14 SUFFICIENT FOOD AND WATER IS A MISDEMEANOR; TO REPEAL SECTION  
15 97-41-9, MISSISSIPPI CODE OF 1972, WHICH PROVIDES THAT A CUSTODIAN  
16 OF ANY LIVING CREATURE WHO FAILS TO PROVIDE SUFFICIENT FOOD AND  
17 DRINK IS GUILTY OF A MISDEMEANOR; TO REPEAL SECTION 97-41-13,  
18 MISSISSIPPI CODE OF 1972, WHICH PROVIDES PENALTIES FOR CERTAIN  
19 ACTS OF CRUELTY TO ANIMALS; AND FOR RELATED PURPOSES.

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

21 **SECTION 1.** Section 97-41-1, Mississippi Code of 1972, is  
22 amended as follows:

23 97-41-1. (1) (a) Except as otherwise authorized by law, a  
24 person shall be guilty of a misdemeanor who knowingly,  
25 intentionally or recklessly:

26 (i) Abandons or leaves an animal at a location  
27 without providing for or arranging for the animal's continued  
28 sustenance;

29 (ii) Fails to provide minimum care for or causes  
30 physical pain or injury to an animal, including without  
31 limitation, overriding, overdriving, beating, kicking, starving,  
32 tormenting or cutting; or

33 (iii) Causes any act listed in item (i) or (ii) of  
34 this paragraph (a) to be done.

35       (2) A person who violates subsection (1) of this section  
36 shall be guilty of a felony if the animal dies or is permanently  
37 debilitated as a result of the person's actions.

38       (3) (a) A conviction of a misdemeanor under this section  
39 shall be punishable by a fine of not less than Two Hundred Fifty  
40 Dollars (\$250.00) and not more than One Thousand Dollars  
41 (\$1,000.00), imprisonment in jail not to exceed six (6) months, or  
42 both.

43       (b) A conviction of a felony under this section shall  
44 be punishable by a fine of not less than One Thousand Dollars  
45 (\$1,000.00) and not more than Ten Thousand Dollars (\$10,000.00),  
46 imprisonment in the custody of the Department of Corrections not  
47 less than one (1) year and not more than five (5) years, or both.

48       (c) For any conviction under this section, the court  
49 may order restitution to the animal's guardian as well as to law  
50 enforcement agencies or animal control or humane societies for the  
51 costs of investigation, sheltering, rehabilitation and other costs  
52 related to securing the conviction.

53       (d) A person convicted under this section may be  
54 enjoined from possessing an animal or animals or residing or  
55 working where animals are kept.

56       (e) A person convicted under this section may be  
57 ordered to perform community service, to participate in  
58 professional counseling, or both.

59       (4) Each incident of abuse, and each animal abused, as  
60 prohibited by this section, shall constitute a separate incident  
61 of abuse.

62       **SECTION 2.** Section 97-41-2, Mississippi Code of 1972, is  
63 amended as follows:

64       97-41-2. (1) All courts in the State of Mississippi may  
65 order the seizure of an animal by a law enforcement agency, for  
66 its care and protection upon a finding of probable cause to  
67 believe said animal is being cruelly treated, neglected or

68 abandoned. Such probable cause may be established upon sworn  
69 testimony of any person who has witnessed the condition of said  
70 animal. The court may appoint an animal control agency, agent of  
71 an animal shelter organization, veterinarian or other person as  
72 temporary custodian for the said animal, pending final disposition  
73 of the animal pursuant to this section. Such temporary custodian  
74 shall directly contract and be responsible for any care rendered  
75 to such animal, and may make arrangements for such care as may be  
76 necessary. Upon seizure of an animal, the law enforcement agency  
77 responsible for removal of the animal shall serve notice upon the  
78 owner of the animal, if possible, and shall also post prominently  
79 a notice to the owner or custodian to inform such person that the  
80 animal has been seized. Such process and notice shall contain a  
81 description of the animal seized, the date seized, the name of the  
82 law enforcement agency seizing the animal, the name of the  
83 temporary custodian, if known at the time, and shall include a  
84 copy of the order of the court authorizing the seizure.

85 (2) Within five (5) days of seizure of an animal, the owner  
86 of the animal may request a hearing in the court ordering the  
87 animal to be seized to determine whether the owner is able to  
88 provide adequately for the animal and is fit to have custody of  
89 the animal. The court shall hold such hearing within fourteen  
90 (14) days of receiving such request. The hearing shall be  
91 concluded and the court order entered thereon within twenty-one  
92 (21) days after the hearing is commenced. Upon requesting a  
93 hearing, the owner shall have three (3) business days to post a  
94 bond or security with the court clerk in an amount determined by  
95 the court to be sufficient to repay all reasonable costs  
96 sufficient to provide for the animal's care. Failure to post such  
97 bond within three (3) days shall result in forfeiture of the  
98 animal to the court. If the temporary custodian has custody of  
99 the animal upon the expiration of the bond or security, the animal  
100 shall be forfeited to the court unless the court orders otherwise.

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

103           (a) Testimony from law enforcement officers, animal  
104 control officers, animal protection officials, and other witnesses  
105 as to the condition the animal was kept in by its owner or  
106 custodian.

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

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

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

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

115           (f) Any other evidence the court considers to be  
116 material or relevant.

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

123           (5) If the court finds the owner of the animal is unable or  
124 unfit to adequately provide for the animal, or that the animal is  
125 severely injured, diseased, or suffering, and, therefore, not  
126 likely to recover, the court may order that the animal be  
127 permanently forfeited and released to an animal control agency,  
128 animal protection organization or to the appropriate entity to be  
129 euthanized or the court may order that such animal be sold at  
130 public sale in the manner now provided for judicial sales; any  
131 proceeds from such sale shall go first toward the payment of  
132 expenses and costs relating to the care and treatment of such

133 animal, and any excess amount shall be paid to the owner of the  
134 animal.

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

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

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

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150 **SECTION 3.** Section 97-41-3, Mississippi Code of 1972, is  
151 amended as follows:

152 97-41-3. Any law enforcement officer, animal control  
153 officer, veterinarian or agent of a society for the prevention of  
154 cruelty to animals may kill, or cause to be killed, any animal  
155 found neglected, injured or abandoned, if in the opinion of three  
156 (3) respectable citizens it is injured or diseased past reasonable  
157 recovery, or by age has become useless. Anyone acting in good  
158 faith pursuant to this section shall not be held liable either  
159 criminally or civilly for that action.

160 **SECTION 4.** For the purposes of this chapter, the following  
161 words and phrases shall have the meanings ascribed unless the  
162 context clearly requires otherwise:

163 (a) "Guardian" means a person who has control, custody,  
164 possession, title or other legal interest in an animal.

165           (b) "Minimum care" means the provision of necessary  
166 sustenance to maintain the health of an animal, including an  
167 adequate quality and quantify of food, potable water, shelter  
168 which provides protection from the elements of adverse weather  
169 such as heat, cold, rain and wind, which is species appropriate,  
170 and veterinary care to prevent suffering.

171           (c) "Physical injury" means physical trauma, impairment  
172 of condition, or inflicted pain, except for that which is  
173 necessary for veterinary treatment.

174           (d) "Physical trauma" means fractures, cuts, burns,  
175 bruises, abrasions, punctures or other wounds, or illnesses  
176 produced by violence or neglect or a thermal or chemical agent.

177           (e) "Possession" means to have physical custody, or to  
178 exercise dominion or control over an animal.

179           (f) "Critical physical injury" means physical injury  
180 that creates a substantial risk of death, or that causes  
181 protracted disfigurement, protracted impairment of health, or  
182 protracted loss or impairment of a bodily function.

183           (g) "Torture" means an act primarily done to inflict  
184 pain or suffering.

185           (h) "Torment" means an act primarily intended to cause  
186 anguish, fear or suffering.

187           **SECTION 5.** The following activities will not be violations  
188 of this chapter: the lawful hunting or trapping of wildlife,  
189 fishing, herding of domestic animals, accepted animal husbandry  
190 practices including slaughter, accepted veterinary practices,  
191 accepted pest control practices, livestock shows, equine  
192 activities, rodeo practices accepted by the Professional Rodeo  
193 Cowboy's Association, or activities carried on for teaching or for  
194 scientific or medical research governed by accepted standards.

195           **SECTION 6.** Section 97-41-5, Mississippi Code of 1972, which  
196 provides that carrying any creature in a cruel or inhuman manner  
197 is a misdemeanor, is repealed.

198           **SECTION 7.** Section 97-41-7, Mississippi Code of 1972, which  
199 provides that confining any living creature without sufficient  
200 food and water is a misdemeanor, is repealed.

201           **SECTION 8.** Section 97-41-9, Mississippi Code of 1972, which  
202 provides that a custodian of any living creature who fails to  
203 provide sufficient food and drink is guilty of a misdemeanor, is  
204 repealed.

205           **SECTION 9.** Section 97-41-13, Mississippi Code of 1972, which  
206 provides penalties for certain acts of cruelty to animals, is  
207 repealed.

208           **SECTION 10.** Sections 4 and 5 of this act shall be codified  
209 within Title 97, Chapter 41, Mississippi Code of 1972.

210           **SECTION 11.** This act shall take effect and be in force from  
211 and after July 1, 2004.