

By: Senator(s) Tollison

To: Judiciary, Division B

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2703

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 PROVIDE
10 EXEMPTIONS FROM THE APPLICATION OF THE CHAPTER; TO REPEAL SECTION
11 97-41-5, MISSISSIPPI CODE OF 1972, WHICH PROVIDES THAT CARRYING
12 ANY CREATURE IN A CRUEL OR INHUMAN MANNER IS A MISDEMEANOR; TO
13 REPEAL SECTION 97-41-7, MISSISSIPPI CODE OF 1972, WHICH PROVIDES
14 THAT CONFINING ANY LIVING CREATURE WITHOUT SUFFICIENT FOOD AND
15 WATER IS A MISDEMEANOR; TO REPEAL SECTION 97-41-9, MISSISSIPPI
16 CODE OF 1972, WHICH PROVIDES THAT A CUSTODIAN OF ANY LIVING
17 CREATURE WHO FAILS TO PROVIDE SUFFICIENT FOOD AND DRINK IS GUILTY
18 OF A MISDEMEANOR; TO REPEAL SECTION 97-41-13, MISSISSIPPI CODE OF
19 1972, WHICH PROVIDES PENALTIES FOR CERTAIN ACTS OF CRUELTY TO
20 ANIMALS; AND FOR RELATED PURPOSES.

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

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

24 97-41-1. (1) (a) A person shall be guilty of simple animal
25 cruelty who knowingly, 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, kicking, starving, tormenting
32 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 shall be guilty of aggravated animal cruelty
36 who knowingly, intentionally or recklessly tortures, maims or
37 mutilates an animal; aggravated animal cruelty is a felony.

38 (3) (a) (i) A first conviction of simple animal cruelty
39 shall be a misdemeanor punishable by a fine of not more than One
40 Thousand Dollars (\$1,000.00), imprisonment in jail not to exceed
41 six (6) months, or both.

42 (ii) A second conviction of simple animal cruelty
43 shall be a misdemeanor punishable by a fine of not less than Two
44 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
45 (\$1,000.00), imprisonment in jail not less than one (1) nor more
46 than six (6) months, or both.

47 (iii) A third or subsequent conviction of simple
48 animal cruelty shall constitute a felony.

49 (b) A conviction of a felony under this section shall
50 be punishable by a fine of not more than Five Thousand Dollars
51 (\$5,000.00), imprisonment in the custody of the Department of
52 Corrections not to exceed five (5) years, or both.

53 (c) For any conviction under this section, the court
54 may order restitution to the animal's owner as well as to law
55 enforcement agencies or animal control or humane societies for the
56 costs of investigation, sheltering, rehabilitation and other costs
57 related to securing the conviction.

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

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

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

66 97-41-2. (1) All courts in the State of Mississippi may
67 order the seizure of an animal by a law enforcement agency, for

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

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

101 the animal upon the expiration of the bond or security, the animal
102 shall be forfeited to the court unless the court orders otherwise.

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

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

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

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

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

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

117 (f) Any other evidence the court considers to be
118 material or relevant.

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

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

134 expenses and costs relating to the care and treatment of such
135 animal, and any excess amount shall be paid to the owner of the
136 animal.

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

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

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

151 * * *

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

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

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

165 (a) "Minimum care" means the provision of necessary
166 sustenance to maintain the health of an animal, including an

167 adequate quality and quantity 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 (b) "Physical injury" means physical trauma, impairment
172 of condition, or inflicted pain, except for that which is
173 necessary for veterinary treatment.

174 (c) "Torture" means an act primarily done to inflict
175 pain or suffering.

176 (d) "Torment" means an act primarily intended to cause
177 anguish, fear or suffering.

178 **SECTION 5.** (1) The following activities will not be
179 violations of this chapter: any and all activities associated
180 with or incidental to the lawful hunting or trapping of wildlife,
181 fishing, herding of domestic animals, accepted animal husbandry
182 practices including slaughter, accepted dog handling and training
183 practices, accepted veterinary practices, humane euthanasia
184 performed at an animal shelter, accepted pest control practices,
185 livestock shows, accepted equine activities, rodeo practices
186 accepted by the Professional Rodeo Cowboy's Association, or
187 activities carried on for teaching or for scientific or medical
188 research governed by accepted standards.

189 (2) Nothing in this chapter shall be construed as
190 prohibiting a person from:

191 (a) Defending his person or property, or the person or
192 property of another, from injury or damage being caused by an
193 animal; or

194 (b) Injuring or killing an animal reasonably believed
195 to constitute a threat of injury or damage to property, livestock
196 or poultry.

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

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

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

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

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

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