

By: Senator(s) Tollison

To: Judiciary, Division B

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 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 more than One Thousand  
40 Dollars (\$1,000.00), imprisonment in jail not to exceed six (6)  
41 months, or both.

42       (b) A conviction of a felony under this section shall  
43 be punishable by a fine of not more than Five Thousand Dollars  
44 (\$5,000.00), imprisonment in the custody of the Department of  
45 Corrections not to exceed five (5) years, or both.

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

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

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

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

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

62       97-41-2. (1) All courts in the State of Mississippi may  
63 order the seizure of an animal by a law enforcement agency, for  
64 its care and protection upon a finding of probable cause to  
65 believe said animal is being cruelly treated, neglected or  
66 abandoned. Such probable cause may be established upon sworn  
67 testimony of any person who has witnessed the condition of said

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

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

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

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

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

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

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

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

113           (f) Any other evidence the court considers to be  
114 material or relevant.

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

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

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

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

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

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

150 97-41-3. Any law enforcement officer, animal control  
151 officer, veterinarian or agent of a society for the prevention of  
152 cruelty to animals may kill, or cause to be killed, any animal  
153 found neglected, injured or abandoned, if in the opinion of three  
154 (3) respectable citizens it is injured or diseased past reasonable  
155 recovery, or by age has become useless. Anyone acting in good  
156 faith pursuant to this section shall not be held liable either  
157 criminally or civilly for that action.

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

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

163 (b) "Minimum care" means the provision of necessary  
164 sustenance to maintain the health of an animal, including an  
165 adequate quality and quantity of food, potable water, shelter

166 which provides protection from the elements of adverse weather  
167 such as heat, cold, rain and wind, which is species appropriate,  
168 and veterinary care to prevent suffering.

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

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

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

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

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

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

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

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

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

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

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

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

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