

By: Representative Carlton (By Request)

To: Agriculture; Judiciary B

HOUSE BILL NO. 1032

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 REVISE THE PROCESS BY WHICH
6 AN ANIMAL MAY BE LAWFULLY SEIZED, TO REQUIRE CERTIFICATION OF
7 HUMANE ENFORCEMENT OFFICERS AND TO PROVIDE A PENALTY FOR
8 NONCOMPLIANCE; TO AMEND SECTION 97-41-3, MISSISSIPPI CODE OF 1972,
9 TO REVISE THE PROCESS BY WHICH AN ANIMAL MAY BE LAWFULLY
10 DESTROYED; TO PROVIDE EXEMPTIONS FROM THE APPLICATION OF THE
11 CHAPTER; TO REPEAL SECTION 97-41-5, MISSISSIPPI CODE OF 1972,
12 WHICH PROVIDES THAT CARRYING ANY CREATURE IN A CRUEL AND INHUMANE
13 MANNER IS A MISDEMEANOR; TO REPEAL SECTION 97-41-7, MISSISSIPPI
14 CODE OF 1972, WHICH PROVIDES THAT CONFINING ANY LIVING CREATURE
15 WITHOUT SUFFICIENT FOOD AND WATER IS A MISDEMEANOR; TO REPEAL
16 SECTION 97-41-9, MISSISSIPPI CODE OF 1972, WHICH PROVIDES THAT A
17 CUSTODIAN OF ANY LIVING CREATURE WHO FAILS TO PROVIDE SUFFICIENT
18 FOOD AND DRINK IS GUILTY OF A MISDEMEANOR; TO REPEAL SECTION
19 97-41-13, MISSISSIPPI CODE OF 1972, WHICH PROVIDES PENALTIES FOR
20 CERTAIN ACTS OF CRUELTY TO ANIMALS; TO REPEAL SECTION 97-41-16,
21 MISSISSIPPI CODE OF 1972, WHICH PROVIDES PENALTY AND RESTITUTION
22 FOR MALICIOUS OR MISCHIEVOUS INJURY TO ANY DOG; AND FOR RELATED
23 PURPOSES.

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

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

27 97-41-1. (1) (a) A person shall be guilty of simple animal
28 cruelty who knowingly, intentionally or recklessly:

29 (i) Abandons or leaves an animal at a location
30 without providing for or arranging for the animal's continued
31 sustenance;

32 (ii) Subjects any animal to cruel mistreatment;

33 (iii) Subjects an animal in the custody of the
34 person to cruel neglect;

35 (iv) Kills or injures any animal belonging to
36 another without legal privilege or consent of the owner; or

37 (v) Causes any act listed in item (i) or (iv) of
38 this paragraph (a) to be done.

39 (b) "Cruel neglect" and "Cruel mistreatment" include
40 every act or omission where unjustifiable physical injury,
41 suffering or death is caused or permitted.

42 (2) A person shall be guilty of aggravated animal cruelty
43 who knowingly, intentionally or recklessly tortures, maims or
44 mutilates an animal; aggravated animal cruelty is a felony.

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

49 (ii) A second conviction of simple animal cruelty
50 shall be a misdemeanor punishable by a fine of not less than Two
51 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
52 (\$1,000.00), imprisonment in jail not less than one (1) nor more
53 than six (6) months, or both.

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

56 (b) A conviction of a felony under this section shall
57 be punishable by a fine of not more than Five Thousand Dollars
58 (\$5,000.00), imprisonment in the custody of the Department of
59 Corrections not to exceed five (5) years, or both.

60 (c) For any conviction under this section, the court
61 may order restitution to the animal's owner as well as to the
62 temporary custodian appointed by the court pursuant to Section
63 97-41-2(4) for the costs of board, professional fees, equipment,
64 medicine, supplies, rehabilitation and other costs related to the
65 care of the animal. The measure for restitution in money to an
66 owner shall include current replacement value of the loss of the
67 animal and the actual veterinarian fees, special supplies, loss of
68 income and other costs incurred as a result of actions in
69 violation of this section.

70 (d) A person convicted under this section, in addition
71 to any other punishment that may be imposed, may be ordered to
72 perform community service, to participate in professional
73 counseling, or both.

74 (e) A person convicted under this section, in the
75 discretion of the sentencing court, may be prohibited from
76 possessing animals as a condition of any probationary or parole
77 term imposed.

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

80 97-41-2. (1) Any district attorney, assistant district
81 attorney, or law enforcement officer certified and meeting the
82 requirements of the Board on Law Enforcement Officers Standard and
83 Training as set forth in Section 45-6-1 et seq., may apply for a
84 warrant for search and seizure to any circuit or county court in
85 the State of Mississippi, within whose jurisdiction an animal is
86 found, for the purpose of enforcing Section 97-41-1.

87 (2) (a) District attorneys, assistant district attorneys,
88 or law enforcement officers making application for a search
89 warrant may rely upon supplemental affidavits made by humane
90 enforcement officers.

91 (b) No person shall perform as a humane enforcement
92 officer under color of authority of an organization whose purpose
93 is the prevention of cruelty to animals unless:

94 (i) The person has been duly appointed as a humane
95 enforcement officer by the governing board of the organization;

96 (ii) The person is certified by and in good
97 standing with the Association of Certified Cruelty Investigators
98 or another certifying organization which provides education
99 regarding animal husbandry and legal aspects of investigation,
100 tests applicants for proficiency, and requires continuing
101 education to remain in good standing; and

102 (iii) The governing body of the organization has
103 posted a surety bond in the amount of One Hundred Thousand Dollars
104 (\$100,000.00) for acts and omissions committed by the humane
105 enforcement officer.

106 (c) No person shall perform as a humane enforcement
107 officer under color of authority of a political subdivision of the
108 State of Mississippi unless:

109 (i) The person has been duly appointed as a humane
110 enforcement officer by the governing body of that political
111 subdivision; and

112 (ii) The person is certified and in good standing
113 with the Association of Certified Cruelty Investigators or another
114 certifying organization which provides education regarding animal
115 husbandry and legal aspects of investigation, tests applicants for
116 proficiency, and requires continuing education to remain in good
117 standing.

118 (d) Any person who violates, or attempts or conspires
119 to violate this section shall be guilty of a misdemeanor
120 punishable by a fine of not more than One Thousand Dollars
121 (\$1,000.00), imprisonment in jail not to exceed six (6) months, or
122 both.

123 (3) The court may issue a search warrant upon a finding of
124 probable cause that:

125 (a) A violation of Section 97-41-1 has been or is being
126 committed, and

127 (b) That on the premises to be searched can be found:

128 (i) Evidence of a violation of Section 97-41-1;

129 (ii) Contraband, fruits of a violation of Section
130 97-41-1, or other items illegally possessed; or

131 (iii) Property designed for use, intended for use,
132 or used in committing a violation of Section 97-41-1.

133 (4) If an animal is seized, with or without a warrant, as
134 evidence of a violation of Section 97-41-1, contraband, fruits of

135 a violation of Section 97-41-1, property illegally possessed, or
136 property intended for use, or used in committing a violation of
137 Section 97-41-1, the court shall appoint a temporary custodian for
138 the * * * animal, pending final disposition of the animal at the
139 conclusion of the criminal case. The temporary custodian shall
140 directly contract and be responsible for any care rendered to the
141 animal, and may make arrangements for such care as may be
142 necessary. Upon seizure of an animal, the law enforcement agency
143 responsible for removal of the animal shall serve notice upon the
144 owner of the animal, if possible, and shall also post prominently
145 a notice to the owner or custodian to inform such person that the
146 animal has been seized. The process and notice shall contain a
147 description of the animal seized, the date seized, the name of the
148 law enforcement agency seizing the animal, the name of the
149 temporary custodian, if known at the time, and shall include a
150 copy of the order of the court authorizing the seizure.

151 (5) At the conclusion of the criminal case, unless there has
152 been a plea of guilty or nolo contendere, or a finding of guilt,
153 the court shall make a finding of whether, by a preponderance of
154 the evidence, the animal is:

- 155 (a) Evidence of a violation of Section 97-41-1;
156 (b) Contraband;
157 (c) Fruits of a violation of Section 97-41-1;
158 (d) Property illegally possessed; or
159 (e) Property intended for use, or used in committing a
160 violation of Section 97-41-2.

161 (6) If there has been a plea of guilty or nolo contendere, a
162 finding of guilt, or a finding by the court by a preponderance of
163 the evidence that one or more of the conditions enumerated in
164 subsection (5) of this section exists, the animal shall be
165 forfeited to the state and released to an animal control agency or
166 to an organization qualified under Section 501(c)(3) of the
167 Internal Revenue Code whose purpose is the protection of animals.

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

173 * * *

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

176 97-41-3. Any law enforcement officer, humane enforcement
177 officer or veterinarian may kill, or cause to be killed, in a
178 humane manner, any animal found neglected, injured or abandoned
179 after all reasonable attempts have been made to locate the
180 animal's legal owner. This shall not be construed to prevent
181 immediate euthanasia by such reasons if it is necessary to prevent
182 unrelievable suffering of said animal. A method of killing
183 approved by the most recent report of the American Veterinary
184 Medical Association Panel on Euthanasia in effect at the time
185 shall be presumed to be humane. Anyone acting in good faith
186 pursuant to this section shall not be held liable either
187 criminally or civilly for that action.

188 **SECTION 4.** (1) The following activities will not be
189 violations of this chapter: any and all activities associated
190 with or incidental to the lawful hunting or trapping of wildlife,
191 fishing, herding of domestic animals, accepted animal husbandry
192 practices including slaughter, accepted dog handling and training
193 practices, accepted veterinary practices, humane euthanasia
194 performed at an animal shelter, accepted pest control practices,
195 livestock shows, accepted equine activities, rodeo practices
196 accepted by the Professional Rodeo Cowboy's Association, or
197 activities carried on for teaching or for scientific or medical
198 research governed by accepted standards.

199 (2) Nothing in this chapter shall be construed as
200 prohibiting a person from injuring or killing an animal reasonably

201 believed to constitute a threat of injury or damage to himself or
202 another, or to property, livestock or poultry.

203 **SECTION 5.** Section 97-41-5, Mississippi Code of 1972, which
204 provides that carrying any creature in a cruel or inhumane manner
205 is a misdemeanor, is repealed.

206 **SECTION 6.** Section 97-41-7, Mississippi Code of 1972, which
207 provides that confining any living creature without sufficient
208 food and water is a misdemeanor, is repealed.

209 **SECTION 7.** Section 97-41-9, Mississippi Code of 1972, which
210 provides that a custodian of any living creature who fails to
211 provide sufficient food and drink is guilty of a misdemeanor, is
212 repealed.

213 **SECTION 8.** Section 97-41-13, Mississippi Code of 1972, which
214 provides penalties for certain acts of cruelty to animals, is
215 repealed.

216 **SECTION 9.** Section 97-41-16, Mississippi Code of 1972, which
217 provides for penalty for malicious or mischievous injury to dogs,
218 is repealed.

219 **SECTION 10.** Section 4 of this act shall be codified within
220 Title 97, Chapter 41, Mississippi Code of 1972.

221 **SECTION 11.** This act shall take effect and be in force from
222 and after July 1, 2005.