

By: Senator(s) Tollison

To: Judiciary, Division B

SENATE BILL NO. 2135

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; TO AMEND SECTION 97-41-16, MISSISSIPPI CODE OF 1972, TO  
 21 INCLUDE FELINES WITH CANINES IN THE PROHIBITION AGAINST MALICIOUS  
 22 OR MISCHIEVOUS INJURY; AND FOR RELATED PURPOSES.

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

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

26 97-41-1. (1) (a) A person shall be guilty of simple animal  
 27 cruelty who knowingly, intentionally or recklessly:

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

31 (ii) Fails to provide minimum care for or cruelly  
 32 and unnecessarily causes substantial physical pain or injury to an  
 33 animal; or

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

36 (b) It shall not be a violation of this section to  
 37 cause physical pain or injury to an animal if done for the good of

38 the animal or to kill an animal for humane reasons if the animal  
39 is injured or diseased past reasonable recovery or by age has  
40 become useless, or if the animal is a danger to life, property or  
41 other animals.

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 law  
62 enforcement agencies or animal control or humane societies for the  
63 costs of investigation, sheltering, rehabilitation and other costs  
64 related to securing the conviction.

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

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

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

73           97-41-2. (1) All courts in the State of Mississippi may  
74 order the seizure of an animal by a law enforcement agency, for  
75 its care and protection upon a finding of probable cause to  
76 believe said animal is being cruelly treated, neglected or  
77 abandoned. Such probable cause may be established upon sworn  
78 testimony of any person who has witnessed the condition of said  
79 animal. The court may appoint an animal control agency, agent of  
80 an animal shelter organization, veterinarian or other person as  
81 temporary custodian for the said animal, pending final disposition  
82 of the animal pursuant to this section. Such temporary custodian  
83 shall directly contract and be responsible for any care rendered  
84 to such animal, and may make arrangements for such care as may be  
85 necessary. Upon seizure of an animal, the law enforcement agency  
86 responsible for removal of the animal shall serve notice upon the  
87 owner of the animal, if possible, and shall also post prominently  
88 a notice to the owner or custodian to inform such person that the  
89 animal has been seized. Such process and notice shall contain a  
90 description of the animal seized, the date seized, the name of the  
91 law enforcement agency seizing the animal, the name of the  
92 temporary custodian, if known at the time, and shall include a  
93 copy of the order of the court authorizing the seizure.

94           (2) Within five (5) days of seizure of an animal, the owner  
95 of the animal may request a hearing in the court ordering the  
96 animal to be seized to determine whether the owner is able to  
97 provide adequately for the animal and is fit to have custody of  
98 the animal. The court shall hold such hearing within fourteen  
99 (14) days of receiving such request. The hearing shall be  
100 concluded and the court order entered thereon within twenty-one  
101 (21) days after the hearing is commenced. Upon requesting a  
102 hearing, the owner shall have three (3) business days to post a  
103 bond or security with the court clerk in an amount determined by

104 the court to be sufficient to repay all reasonable costs  
105 sufficient to provide for the animal's care. Failure to post such  
106 bond within three (3) days shall result in forfeiture of the  
107 animal to the court. If the temporary custodian has custody of  
108 the animal upon the expiration of the bond or security, the animal  
109 shall be forfeited to the court unless the court orders otherwise.

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

112 (a) Testimony from law enforcement officers, animal  
113 control officers, animal protection officials, and other witnesses  
114 as to the condition the animal was kept in by its owner or  
115 custodian.

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

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

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

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

124 (f) Any other evidence the court considers to be  
125 material or relevant.

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

132 (5) If the court finds the owner of the animal is unable or  
133 unfit to adequately provide for the animal, or that the animal is  
134 severely injured, diseased, or suffering, and, therefore, not  
135 likely to recover, the court may order that the animal be  
136 permanently forfeited and released to an animal control agency,

137 animal protection organization or to the appropriate entity to be  
138 euthanized or the court may order that such animal be sold at  
139 public sale in the manner now provided for judicial sales; any  
140 proceeds from such sale shall go first toward the payment of  
141 expenses and costs relating to the care and treatment of such  
142 animal, and any excess amount shall be paid to the owner of the  
143 animal.

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

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

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

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

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

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

172           (a) "Minimum care" means the provision of necessary  
173 sustenance to maintain the health of an animal, including an  
174 adequate quality and quantity of food, potable water, shelter  
175 which provides protection from the elements of adverse weather  
176 such as heat, cold, rain and wind, which is species appropriate,  
177 and veterinary care to prevent suffering.

178           (b) "Physical injury" means physical trauma, impairment  
179 of condition, or inflicted pain, except for that which is  
180 necessary for veterinary treatment.

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

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

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

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

198           (a) Defending his person or property, or the person or  
199 property of another, from injury or damage being caused by an  
200 animal; or

201           (b) Injuring or killing an animal reasonably believed  
202 to constitute a threat of injury or damage to property, livestock  
203 or poultry.

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

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

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

214           **SECTION 9.** Section 97-41-16, Mississippi Code of 1972, is  
215 amended as follows:

216           97-41-16. (1) Any person who shall maliciously, either out  
217 of a spirit of revenge or wanton cruelty, or who shall  
218 mischievously kill, maim or wound, or injure any dog or cat, or  
219 cause any person to do the same, shall be fined not more than One  
220 Thousand Dollars (\$1,000.00) or be imprisoned not exceeding six  
221 (6) months.

222           (2) In addition to such fine or imprisonment which may be  
223 imposed, the court shall order that restitution be made to the  
224 owner of such dog or cat. The measure for restitution in money  
225 shall be the current replacement value of such loss and/or the  
226 actual veterinarian fees, special supplies, loss of income and  
227 other cost incurred as a result of actions in violation of  
228 subsection (1) of this section.

229           **SECTION 10.** Section 97-41-13, Mississippi Code of 1972,  
230 which provides penalties for certain acts of cruelty to animals,  
231 is repealed.

232           **SECTION 11.** Sections 4 and 5 of this act shall be codified  
233 within Title 97, Chapter 41, Mississippi Code of 1972.

234           **SECTION 12.** This act shall take effect and be in force from  
235 and after July 1, 2005.