

By: Senator(s) Dawkins

To: Judiciary, Division B

SENATE BILL NO. 2388

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 OF TITLE 97, MISSISSIPPI
 4 CODE OF 1972, TO ENACT DEFINITIONS, AND TO DISTINGUISH BETWEEN
 5 MISDEMEANOR AND FELONY DEGREES OF THE OFFENSE; TO AMEND SECTION
 6 97-41-2, MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND SECTION
 7 97-41-3, MISSISSIPPI CODE OF 1972, TO REVISE THE PROCESS BY WHICH
 8 AN ANIMAL MAY BE LAWFULLY DESTROYED, AND TO GRANT IMMUNITY TO
 9 THOSE ACTING UNDER THE SECTION IN GOOD FAITH; TO REPEAL SECTION
 10 97-41-7, MISSISSIPPI CODE OF 1972, WHICH PROVIDES THAT CONFINING
 11 ANY LIVING CREATURE WITHOUT SUFFICIENT FOOD AND WATER IS A
 12 MISDEMEANOR; TO REPEAL SECTION 97-41-9, MISSISSIPPI CODE OF 1972,
 13 WHICH PROVIDES THAT A CUSTODIAN OF ANY LIVING CREATURE WHO FAILS
 14 TO PROVIDE SUFFICIENT FOOD AND DRINK IS GUILTY OF A MISDEMEANOR;
 15 TO REPEAL SECTION 97-41-13, MISSISSIPPI CODE OF 1972, WHICH
 16 PROVIDES PENALTIES FOR CERTAIN ACTS OF CRUELTY TO ANIMALS; AND FOR
 17 RELATED PURPOSES.

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

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

21 97-41-1. (1) For the purposes of this chapter, the
 22 following terms shall have the meanings ascribed to them unless
 23 the context clearly requires otherwise:

24 (a) "Animal" means any mammal, bird, reptile or
 25 amphibian.

26 (b) "Critical physical injury" means physical injury
 27 that creates a substantial risk of death, or that causes any
 28 protracted disfigurement, impairment of health or loss or
 29 impairment of a bodily function.

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

32 (d) "Minimum care" means care sufficient to preserve
 33 the health and well-being of an animal and, except for emergencies

34 or circumstances beyond the reasonable control of the guardian,
35 includes, but is not limited to, the following:

36 (i) Food of sufficient quality and quantity to
37 allow for normal growth or maintaining of body weight.

38 (ii) Access to potable water of a drinkable
39 temperature in sufficient quantity for an animal or group of
40 animals.

41 (iii) Shelter that protects an animal from the
42 adverse effects of weather and extreme temperatures which is
43 species and breed appropriate.

44 (iv) Veterinary care sufficient to relieve
45 distress from injury, neglect or disease.

46 (v) Adequate exercise to prevent debility,
47 including, if an animal or animals are penned, at least one
48 hundred (100) square feet per animal in the pen.

49 (vi) If enclosed, adequate ventilation for normal
50 breathing to prevent injury or suffering, lighting cycles of
51 either natural or artificial light, and an area free of excess
52 waste, debris or other contaminants that could injure or adversely
53 affect the animal's health.

54 (e) "Physical injury" means physical trauma, impairment
55 of condition or inflicted pain except that necessary for
56 veterinary treatment.

57 (f) "Physical trauma" means fractures, cuts, burns,
58 bruises, abrasions, punctures or other wounds, or illnesses
59 produced by violence, neglect or a thermal or chemical agent.

60 (g) "Possession" means to have physical custody, or to
61 exercise dominion or control over an animal.

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

64 (i) "Torture" means an act primarily taken to inflict
65 pain or suffering.

66 (2) (a) Any person who intentionally or with criminal
67 negligence commits any of the following shall be guilty of
68 misdemeanor cruelty to animals:

69 (i) Overdrives, overloads, drives when overloaded
70 or overworks a living animal;

71 (ii) Torments or unjustifiably injures a living
72 animal;

73 (iii) Having charge, custody or possession of any
74 animal, either as owner or otherwise, and unjustifiably deprives
75 of necessary sustenance, food, drink, sanitary shelter or
76 veterinary care, or abandons any animal;

77 (iv) Impounds or confines, or causes to be
78 impounded or confined, in a pound, stable, lot or other place, a
79 living animal and fails to supply it during such confinement with
80 proper food, proper drink and proper shelter;

81 (v) Carries, or causes to be carried, by hand or
82 in or upon any vehicle or other conveyance, any living animal in a
83 cruel or inhumane manner;

84 (vi) Intentionally injures any animal belonging to
85 another person without legal privilege or consent of the owner;

86 (vii) Mistreats any living animal by any act or
87 omission whereby unnecessary or unjustifiable physical pain,
88 suffering or death is caused to or permitted upon the animal;

89 (viii) Causes or procures to be done by any person
90 any act enumerated in this subsection (2);

91 (b) (i) A person convicted of the crime of misdemeanor
92 cruelty to animals shall be fined not more than One Thousand
93 Dollars (\$1,000.00), imprisoned for not more than six (6) months,
94 or both.

95 (ii) In addition to any other penalty imposed, a
96 person convicted of the crime of misdemeanor cruelty to animals
97 may be ordered to participate in either or both of court-approved
98 community service or court-approved counseling, and further, the

99 defendant may also be prohibited from owning or possessing an
100 animal or animals for up to three (3) years.

101 (3) (a) Any person who intentionally or with criminal
102 negligence tortures, cruelly beats, maims, mutilates or
103 intentionally kills any living animal, or unjustifiably
104 administers any poisonous or noxious drug or substance to any
105 domestic animal or unjustifiably exposes any such drug or
106 substance with intent that the same shall be taken or swallowed by
107 any domestic animal, or, because of extreme deprivation of minimum
108 care, causes critical physical injury to any living animal,
109 whether belonging to himself or another, shall be guilty of felony
110 cruelty to animals.

111 (b) Any person who causes or procures to be done by any
112 person any act enumerated in this subsection (3) shall also be
113 guilty of felony cruelty to animals.

114 (c) A person convicted of the crime of felony cruelty
115 to animals shall be fined not less than One Thousand Dollars
116 (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00),
117 imprisoned in the custody of the Department of Corrections for not
118 more than five (5) years, or both. A person so convicted may also
119 be ordered to counseling and may be prohibited from owning or
120 possessing an animal or animals for not less than five (5) years.

121 (4) For purposes of this section, each incident of cruelty
122 and each animal treated cruelly shall constitute the basis for a
123 separate offense.

124 (5) The prohibitions in this section shall not apply to the
125 lawful hunting or trapping of wildlife, herding of domestic
126 animals, accepted animal husbandry practices, accepted veterinary
127 practices, and activities carried on for scientific or medical
128 research governed by accepted standards.

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

131 97-41-2. (1) All courts in the State of Mississippi may
132 order the seizure of an animal by a law enforcement agency, for
133 its care and protection upon a finding of probable cause to
134 believe said animal is being cruelly treated, neglected or
135 abandoned. Such probable cause may be established upon sworn
136 testimony of any person who has witnessed the condition of said
137 animal. The court may appoint an animal control agency, agent of
138 an animal shelter organization, veterinarian or other person as
139 temporary custodian for the said animal, pending final disposition
140 of the animal pursuant to this section. Such temporary custodian
141 shall directly contract and be responsible for any care rendered
142 to such animal, and may make arrangements for such care as may be
143 necessary. Upon seizure of an animal, the law enforcement agency
144 responsible for removal of the animal shall serve notice upon the
145 owner of the animal, if possible, and shall also post prominently
146 a notice to the owner or custodian to inform such person that the
147 animal has been seized. Such process and notice shall contain a
148 description of the animal seized, the date seized, the name of the
149 law enforcement agency seizing the animal, the name of the
150 temporary custodian, if known at the time, and shall include a
151 copy of the order of the court authorizing the seizure.

152 (2) Within five (5) days of seizure of an animal, the owner
153 of the animal may request a hearing in the court ordering the
154 animal to be seized to determine whether the owner is able to
155 provide adequately for the animal and is fit to have custody of
156 the animal. The court shall hold such hearing within fourteen
157 (14) days of receiving such request. The hearing shall be
158 concluded and the court order entered thereon within twenty-one
159 (21) days after the hearing is commenced. Upon requesting a
160 hearing, the owner shall have three (3) business days to post a
161 bond or security with the court clerk in an amount determined by
162 the court to be sufficient to repay all reasonable costs
163 sufficient to provide for the animal's care. Failure to post such

164 bond within three (3) days shall result in forfeiture of the
165 animal to the court. If the temporary custodian has custody of
166 the animal upon the expiration of the bond or security, the animal
167 shall be forfeited to the court unless the court orders otherwise.

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

170 (a) Testimony from law enforcement officers, animal
171 control officers, animal protection officials, and other witnesses
172 as to the condition the animal was kept in by its owner or
173 custodian.

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

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

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

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

182 (f) Any other evidence the court considers to be
183 material or relevant.

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

190 (5) If the court finds the owner of the animal is unable or
191 unfit to adequately provide for the animal, or that the animal is
192 severely injured, diseased, or suffering, and, therefore, not
193 likely to recover, the court may order that the animal be
194 permanently forfeited and released to an animal control agency,
195 animal protection organization or to the appropriate entity to be
196 euthanized or the court may order that such animal be sold at

197 public sale in the manner now provided for judicial sales; any
198 proceeds from such sale shall go first toward the payment of
199 expenses and costs relating to the care and treatment of such
200 animal, and any excess amount shall be paid to the owner of the
201 animal.

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

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

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

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

219 97-41-3. Any law enforcement officer, animal control
220 officer, veterinarian or agent of a society for the prevention of
221 cruelty to animals may kill, or cause to be killed, any animal
222 found neglected, injured or abandoned, if in the opinion of three
223 (3) respectable citizens it is injured or diseased past reasonable
224 recovery, or by age has become useless. Anyone acting in good
225 faith pursuant to this section shall not be held liable either
226 criminally or civilly for that action.

227 **SECTION 4.** Section 97-41-5, Mississippi Code of 1972, which
228 provides that carrying any creature in a cruel or inhuman manner
229 is a misdemeanor, is repealed.

230 **SECTION 5.** Section 97-41-7, Mississippi Code of 1972, which
231 provides that confining any living creature without sufficient
232 food and water is a misdemeanor, is repealed.

233 **SECTION 6.** Section 97-41-9, Mississippi Code of 1972, which
234 provides that a custodian of any living creature who fails to
235 provide sufficient food and drink is guilty of a misdemeanor, is
236 repealed.

237 **SECTION 7.** Section 97-41-13, Mississippi Code of 1972, which
238 provides penalties for certain acts of cruelty to animals, is
239 repealed.

240 **SECTION 8.** This act shall take effect and be in force from
241 and after July 1, 2005.