

By: Senator(s) Wilemon

To: Judiciary, Division B

SENATE BILL NO. 2848

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 an 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 maliciously causes death, serious bodily injury or extreme
44 physical suffering to an animal; aggravated animal cruelty is a
45 felony.

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

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

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

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

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

69 income and other costs incurred as a result of actions in
70 violation of this section.

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

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

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

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

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

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

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

97 (ii) The person is certified by and in good
98 standing with the Association of Certified Cruelty Investigators
99 or another certifying organization which provides education
100 regarding animal husbandry and legal aspects of investigation,

101 tests applicants for proficiency, and requires continuing
102 education to remain in good standing; and

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

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

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

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

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

134 (4) If an animal is seized, with or without a warrant, as
135 evidence of a violation of Section 97-41-1, contraband, fruits of
136 a violation of Section 97-41-1, property illegally possessed, or
137 property intended for use, or used in committing a violation of
138 Section 97-41-1, the court shall appoint a * * * temporary
139 custodian for the * * * animal, pending final disposition of the
140 animal at the conclusion of the criminal case. The temporary
141 custodian shall directly contract and be responsible for any care
142 rendered to the animal, and may make arrangements for such care as
143 may be necessary. Upon seizure of an animal, the law enforcement
144 agency responsible for removal of the animal shall serve notice
145 upon the owner of the animal, if possible, and shall also post
146 prominently a notice to the owner or custodian * * * that the
147 animal has been seized. The 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 (5) At the conclusion of the criminal case, unless there has
153 been a plea of guilty or nolo contendere, or a finding of guilt,
154 the court shall make a finding of whether, by a preponderance of
155 the evidence, the animal is:

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

157 (b) Contraband;

158 (c) Fruits of a violation of Section 97-41-1;

159 (d) Property illegally possessed; or

160 (e) Property intended for use, or used in committing a
161 violation of Section 97-41-2.

162 (6) If there has been a plea of guilty or nolo contendere, a
163 finding of guilt, or a finding by the court by a preponderance of
164 the evidence that one or more of the conditions enumerated in
165 subsection (5) of this section exists, the animal shall be
166 forfeited to the state and released to an animal control agency or

167 to an organization qualified under Section 501(c)(3) of the
168 Internal Revenue Code whose purpose is the protection of animals.

169 * * *

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

175 * * *

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

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

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.