

By: Representative Whittington

To: Agriculture; Judiciary B

HOUSE BILL NO. 1377

1 AN ACT TO DEFINE CERTAIN TERMS RELATING TO ANIMAL CRUELTY; TO
2 AMEND SECTION 97-41-1, MISSISSIPPI CODE OF 1972, TO REVISE THE
3 CRIME OF CRUELTY TO ANIMALS, TO INCORPORATE ELEMENTS OF OFFENSES
4 FOUND ELSEWHERE IN CHAPTER 41, AND TO DISTINGUISH BETWEEN
5 MISDEMEANOR AND FELONY DEGREES OF THE OFFENSE; TO AMEND SECTION
6 97-41-2, MISSISSIPPI CODE OF 1972, TO REVISE THE PROCESS BY WHICH
7 AN ANIMAL MAY BE LAWFULLY SEIZED, TO REQUIRE CERTIFICATION OF
8 HUMANE ENFORCEMENT OFFICERS AND TO PROVIDE A PENALTY FOR
9 NONCOMPLIANCE; TO AMEND SECTION 97-41-3, MISSISSIPPI CODE OF 1972,
10 TO REVISE THE PROCESS BY WHICH AN ANIMAL MAY BE LAWFULLY
11 DESTROYED; TO AMEND SECTION 97-41-19, MISSISSIPPI CODE OF 1972, TO
12 REVISE PROVISIONS REGARDING DOG FIGHTS; TO PROVIDE EXEMPTIONS FROM
13 THE APPLICATION OF THE CHAPTER; TO REPEAL SECTION 97-41-5,
14 MISSISSIPPI CODE OF 1972, WHICH PROVIDES THAT CARRYING ANY
15 CREATURE IN A CRUEL AND INHUMANE MANNER IS A MISDEMEANOR; TO
16 REPEAL SECTION 97-41-7, MISSISSIPPI CODE OF 1972, WHICH PROVIDES
17 THAT CONFINING ANY LIVING CREATURE WITHOUT SUFFICIENT FOOD AND
18 WATER IS A MISDEMEANOR; TO REPEAL SECTION 97-41-9, MISSISSIPPI
19 CODE OF 1972, WHICH PROVIDES THAT A CUSTODIAN OF ANY LIVING
20 CREATURE WHO FAILS TO PROVIDE SUFFICIENT FOOD AND DRINK IS GUILTY
21 OF A MISDEMEANOR; TO REPEAL SECTION 97-41-13, MISSISSIPPI CODE OF
22 1972, WHICH PROVIDES PENALTIES FOR CERTAIN ACTS OF CRUELTY TO
23 ANIMALS; TO REPEAL SECTION 97-41-16, MISSISSIPPI CODE OF 1972,
24 WHICH PROVIDES PENALTY AND RESTITUTION FOR MALICIOUS OR
25 MISCHIEVOUS INJURY TO ANY DOG; AND FOR RELATED PURPOSES.

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

27 **SECTION 1.** For the purposes of this act, the following words
28 and phrases shall have the meanings ascribed unless the context
29 clearly requires otherwise:

30 (a) "Minimum care" means the provision of necessary
31 sustenance and environment to maintain the health of an animal,
32 including an adequate quality and quantity of food, potable water,
33 shelter that provides protection from the elements of adverse
34 weather such as heat, cold, rain and wind, which is age, health
35 and species appropriate, and veterinary care to maintain health
36 and prevent suffering or distress.

37 (b) "Physical injury" means physical trauma, impairment
38 of condition or inflicted pain, except for that which is necessary
39 for relief of injury or veterinary treatment.

40 (c) "Pain" is an awareness of acute or chronic
41 discomfort occurring in varying degrees of severity resulting from
42 potential or actual injury, disease or emotional distress and
43 evidenced by biological or behavioral changes, or both. Acute
44 pain results from traumatic, surgical or infectious events of
45 abrupt onset. Chronic pain results from long-standing physical
46 disorder or emotional distress that is usually slow in onset and
47 long in duration. Distress is an aversive state of physical or
48 mental stress resulting from pain, anxiety or fear to which an
49 animal is unable to adapt.

50 (d) "Stress" is the effect produced by external
51 physical or environmental events or internal physiologic or
52 psychologic factors which induce an alteration in an animal's
53 biologic equilibrium. Physiologic stress can be the result of
54 injury, disease, starvation or dehydration. Psychologic stress is
55 the result of fear, anxiety, boredom, loneliness or separation.
56 Environmental stress is the result of restraint, noise, odors,
57 unfavorable habitat, chemicals, pheromones or exposure to
58 incompatible animals.

59 (e) "Torture" means an act primarily committed to
60 inflict pain or suffering.

61 (f) "Torment" means an act primarily intended to cause
62 distress, fear or suffering.

63 **SECTION 2.** Section 97-41-1, Mississippi Code of 1972, is
64 amended as follows:

65 97-41-1. (1) A person shall be guilty of simple animal
66 cruelty who knowingly, intentionally or recklessly:

67 (a) Abandons or leaves an animal at a location without
68 providing for or arranging for the animal's continued sustenance;

69 (b) Fails to provide minimum care for an animal;

70 (c) Causes physical pain, stress or injury to an animal
71 including, but without limitation, overriding, or overriding to
72 the point of exhaustion, kicking, hitting, tormenting or
73 inhumanely carrying or transporting an animal in a manner that
74 restricts the animal from normal postural adjustments or causes
75 hyper or hypothermia, confining or tethering an animal in a manner
76 that restricts the animal from normal postural adjustments, access
77 to food, water or shelter, or poses or causes damage or injury; or

78 (d) Causes any act listed in this paragraph (a) to be
79 done.

80 (2) A person shall be guilty of aggravated animal cruelty
81 who knowingly, intentionally or maliciously starves or dehydrates,
82 tortures, poisons or beats, burns, shoots or otherwise mutilates
83 or kills an animal; aggravated animal cruelty is a felony.

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

88 (ii) A second conviction of simple animal cruelty
89 shall be a misdemeanor punishable by a fine of not less than Two
90 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
91 (\$1,000.00), imprisonment in jail not less than one (1) nor more
92 than six (6) months, or both.

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

95 (b) A conviction of a felony under this section shall
96 be punishable by a fine of not more than Five Thousand Dollars
97 (\$5,000.00), imprisonment in the custody of the Department of
98 Corrections not to exceed five (5) years, or both.

99 (c) For any conviction under this section, the court
100 may order restitution to the animal's owner as well as to law
101 enforcement agencies or animal control or humane societies for the

102 costs of investigation, sheltering, transporting, rehabilitation
103 and other costs related to securing the conviction.

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

107 (e) A person convicted under this section, in addition
108 to any other punishment that may be imposed, may be ordered to
109 perform community service, to participate in professional
110 counseling, or both.

111 **SECTION 3.** Section 97-41-2, Mississippi Code of 1972, is
112 amended as follows:

113 97-41-2. (1) (a) If an animal is in immediate danger
114 because of a natural disaster such as flooding, destruction of
115 shelter or enclosure, or poses a threat to the safety of the
116 community because of like causes, a law enforcement officer may
117 seize or cause to be seized such animal without the necessity of a
118 court order. Such law enforcement officer shall, if possible,
119 make an attempt to contact the owner or custodian of the animal to
120 alert them of the danger, and if contact is not made, the officer
121 must prominently post a note or notice as to what action has been
122 taken and who to contact.

123 (b) The law enforcement agency or any agent engaged by
124 law enforcement for the seizure of animals or the temporary repair
125 to an enclosure, such as a downed or broken fence, may seek fair
126 reimbursement for associated costs.

127 (2) All courts in the State of Mississippi may order the
128 seizure of an animal by a law enforcement agency for care and
129 protection upon a finding of probable cause to believe the animal
130 is being cruelly treated, neglected or abandoned. Such probable
131 cause may be established upon sworn testimony of any person who
132 has witnessed the condition of the animal. The court may appoint
133 an animal control agency, agent of an animal shelter, agent of a
134 humane society duly registered with the Mississippi Secretary of

135 State, veterinarian or appropriate agent or agency as temporary
136 custodian for the animal, pending final disposition of the animal
137 pursuant to this section. Such temporary custodian shall be
138 responsible for directly contracting or administering any care
139 rendered to the animal. Upon seizure of an animal, the law
140 enforcement agency responsible for removal of the animal shall
141 serve notice upon the owner of the animal, if possible, or shall
142 prominently post a notice for the owner or custodian to inform
143 such person that the animal has been seized. Such process and
144 notice shall contain a description of the animal seized, the date
145 and time of seizure, the law enforcement agency seizing the
146 animal, the name of the temporary custodian, if known at the time,
147 and shall include a copy of the order of the court authorizing the
148 seizure.

149 (3) Within five (5) days of the seizure of an animal, the
150 owner or custodian of the animal may request a hearing in the
151 court that ordered the animal seized to determine whether the
152 owner or custodian is able to provide adequately for the animal
153 and is fit to have custody of the animal. The court shall hold
154 such hearing within fourteen (14) days of receiving such request.
155 The hearing shall be concluded and the court order entered thereon
156 within twenty-one (21) days after the hearing is commenced. Upon
157 requesting a hearing, the owner or custodian shall have three (3)
158 business days to post a bond or security with the court clerk in
159 an amount determined by the court to be sufficient to repay all
160 reasonable costs sufficient to provide for the animal's care
161 including, but not limited to, transporting, feeding, essential
162 grooming, hoof care and medical care that may include treatment,
163 vaccinations or tests required by the temporary custodian or
164 attending veterinarian. Failure to post such bond within three
165 (3) business days from requesting a hearing shall result in
166 forfeiture of the animal to the court. If the temporary custodian
167 has custody of the animal upon expiration of the bond or security,

168 the animal shall be forfeited to the court unless the court orders
169 otherwise.

170 (4) In determining the fitness of an owner or custodian to
171 have custody of an animal, the court may consider among other
172 matters:

173 (a) Testimony from law enforcement officers, animal
174 control officers, animal protection agents and other witnesses as
175 to the condition the animal was kept in by the owner or custodian.

176 (b) Testimony as to the type and amount of care
177 provided to the animal by the owner or custodian.

178 (c) Expert testimony as to the proper and reasonable
179 care of a like animal.

180 (d) Testimony of witnesses as to prior treatment or
181 condition of this or other animals in the same custody.

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

184 (f) Any other evidence the court considers to be
185 material or relevant.

186 (5) If the court determines that an animal was duly seized,
187 and upon proof of costs incurred as a result of the seizure of an
188 animal including, but not limited to, transporting, boarding and
189 medical, the court shall order that the owner or custodian
190 reimburse the temporary custodian costs. A lien for authorized
191 expenses is hereby created upon all animals seized under this
192 section and shall have priority to any other lien on such animals.

193 (6) If the court finds the owner of the animal is unable or
194 unfit to adequately provide for the animal, the court may order
195 that the animal be permanently forfeited and released to animal
196 control, animal welfare agency, veterinarian or other agent
197 appointed temporary custody or may be ordered sold at auction in
198 the manner now provided for judicial sales; any proceeds from such
199 sale shall go first toward the payment of expenses and costs
200 relating to the care and treatment of such animal and court costs,

201 and at the court's discretion any excess may be paid to the owner
202 of the animal or directed to be revenue for the involved law
203 enforcement agency, municipal, county or state jurisdiction in
204 which the offense occurred.

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

211 (8) If the court determines that the owner or custodian is
212 able to provide adequately for and is fit to care for the animal,
213 the court shall order the animal be claimed and removed by the
214 owner or custodian within seven (7) days after the date of the
215 order.

216 (9) Nothing in this section shall be construed to prevent or
217 otherwise interfere with a law enforcement officer's authority to
218 seize an animal as evidence or require court action for the taking
219 into custody and making proper disposition as authorized in
220 Sections 21-19-9, 41-53-1, 41-53-11, 97-3-45, or other municipal,
221 county or state-mandated ordinances or laws nor be construed to
222 prevent the immediate euthanasia of an animal or animals
223 determined to be ill or injured beyond recovery as provided for in
224 Section 97-41-3.

225 **SECTION 4.** Section 97-41-3, Mississippi Code of 1972, is
226 amended as follows:

227 97-41-3. Any law enforcement officer, animal control
228 officer, veterinarian or agent of a society for the prevention of
229 cruelty to animals may euthanize, or cause to be euthanized, in a
230 humane manner, any stray animal found neglected, injured or
231 abandoned if it is injured, diseased or severely debilitated past
232 reasonable recovery. Anyone acting in good faith pursuant to this

233 section shall not be held liable either criminally or civilly for
234 that action.

235 **SECTION 5.** Section 97-41-19, Mississippi Code of 1972, is
236 amended as follows:

237 97-41-19. (1) If any person (a) shall sponsor, promote,
238 stage or conduct a fight or fighting match between dogs, or (b)
239 shall wager or bet, promote or encourage the wagering or betting
240 of any money or other valuable thing upon any such fight or upon
241 the result thereof, or (c) shall have possession or custody of a
242 dog with the intent to wilfully enter it or to participate in any
243 such fight, or (d) shall train or transport a dog for the purposes
244 of participation in any such fight, he shall be guilty of a felony
245 and, upon conviction, shall be punished by a fine of not less than
246 One Thousand Dollars (\$1,000.00) nor more than Five Thousand
247 Dollars (\$5,000.00), or by imprisonment in the State Penitentiary
248 for a term of not less than one (1) nor more than three (3) years,
249 or by both such fine and imprisonment, in the discretion of the
250 court.

251 (2) If any person shall be present, as a spectator, at any
252 location where preparations are being made for an exhibition of a
253 fight between dogs with the intent to be present at such
254 preparations, or if any person shall be present at an exhibition
255 of a fight between dogs with the intent to be present at such
256 exhibition, he shall be guilty of a felony and, upon conviction,
257 shall be punished by a fine of not less than Five Hundred Dollars
258 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or by
259 imprisonment in the State Penitentiary for a term of not more than
260 one (1) year, or by both such fine and imprisonment, in the
261 discretion of the court.

262 (3) Any law enforcement officer making an arrest under
263 subsection (1) of this section may lawfully take possession of all
264 dogs and all paraphernalia, implements, equipment or other
265 property used in violation of subsection (1) of this section.

266 Such officer shall file with the circuit court of the county
267 within which the alleged violation occurred an affidavit stating
268 therein (a) the name of the person charged, (b) a description of
269 the property taken, (c) the time and place of the taking, (d) the
270 name of the person who claims to own such property, if known, and
271 (e) that the affiant has reason to believe, stating the ground of
272 such belief, that the property taken was used in such violation.
273 He shall thereupon deliver the property to such court which shall,
274 by order in writing, place such dogs, paraphernalia, implements,
275 equipment, or other property in the custody of a licensed
276 veterinarian, the local humane society or other animal welfare
277 agency, or other suitable custodian, to be kept by such custodian
278 until the conviction or final discharge of the accused, and shall
279 send a copy of such order without delay to the district attorney
280 of the county. The custodian named and designated in such order
281 shall immediately assume the custody of such property and shall
282 retain same, subject to order of the court.

283 Upon the certification of a licensed veterinarian or officer
284 of the humane society or animal welfare agency that, in his
285 professional judgment, a dog which has been seized is not likely
286 to survive the final disposition of the charges or that, by reason
287 of the physical condition of the dog, it should be humanely
288 euthanized before such time, the court may order the dog humanely
289 euthanized. The court shall make its finding of whether to issue
290 such an order within seven (7) days from the certification by the
291 veterinarian or officer of the humane society or animal welfare
292 agency. The owner of a dog which is euthanized without an order
293 of the court with such certification of a licensed veterinarian or
294 officer of the humane society or other animal welfare agency shall
295 have a right of action for damages against the department or
296 agency by which the arresting or seizing officer is employed.
297 Upon conviction of the person charged with a violation of
298 subsection (1) of this section, all dogs seized shall be adjudged

299 by the court to be forfeited and the court shall order a humane
300 disposition of the same. In no event shall the court order the
301 dog to be euthanized without the certification of a licensed
302 veterinarian or officer of the humane society or other animal
303 welfare agency that, in his judgment, the dog is not likely to
304 survive or that, by reason of its physical condition, the dog
305 should be humanely euthanized. In the event of the acquittal or
306 final discharge without conviction of the accused, the court shall
307 direct the delivery of the property so held in custody to the
308 owner thereof. All reasonable expenses incurred by the custodian
309 of seized dogs and property shall be charged as costs of court, to
310 be taxed against the owner or county in the discretion of the
311 court.

312 (4) Nothing in subsection (1) or (3) of this section shall
313 prohibit any of the following:

314 (a) The use of dogs in the management of livestock, by
315 the owner of such livestock or other persons in lawful custody
316 thereof;

317 (b) The use of dogs in lawful hunting; * * *

318 (c) The training of dogs for any purpose not prohibited
319 by law; and

320 (d) The euthanasia of a dog pursuant to Section
321 97-41-3.

322 **SECTION 6.** (1) The following activities will not be
323 violations of this chapter: any and all activities associated
324 with or incidental to the lawful hunting or trapping of wildlife,
325 fishing, herding of domestic animals, accepted animal husbandry
326 practices including slaughter, accepted handling and training
327 practices, accepted veterinary practices, humane euthanasia
328 performed by trained persons, accepted pest control practices,
329 accepted handling practices at livestock shows, accepted equine
330 activities, rodeo practices accepted by the Professional Rodeo
331 Cowboy's Association, or activities carried on for teaching or for

332 scientific or medical research governed by the Federal Animal
333 Welfare Act or recommended by the American Veterinary Medical
334 Association.

335 (2) Nothing in this chapter shall be construed as
336 prohibiting a person from injuring or killing an animal except
337 those animals otherwise protected by state or federal law,
338 reasonably believed to constitute a threat of injury or death to
339 humans, livestock, poultry or other domestic or lawfully kept
340 animals.

341 **SECTION 7.** Section 97-41-5, Mississippi Code of 1972, which
342 provides that carrying any creature in a cruel or inhumane manner
343 is a misdemeanor, is repealed.

344 **SECTION 8.** Section 97-41-7, Mississippi Code of 1972, which
345 provides that confining any living creature without sufficient
346 food and water is a misdemeanor, is repealed.

347 **SECTION 9.** Section 97-41-9, Mississippi Code of 1972, which
348 provides that a custodian of any living creature who fails to
349 provide sufficient food and drink is guilty of a misdemeanor, is
350 repealed.

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

354 **SECTION 11.** Section 97-41-16, Mississippi Code of 1972,
355 which provides for penalty for malicious or mischievous injury to
356 dogs, is repealed.

357 **SECTION 12.** Sections 1 and 6 of this act shall be codified
358 within Chapter 41, Title 97, Mississippi Code of 1972.

359 **SECTION 13.** This act shall take effect and be in force from
360 and after July 1, 2006.