

By: Representative Smith (39th)

To: Agriculture; Judiciary B

HOUSE BILL NO. 1188

1 AN ACT TO AMEND SECTION 97-41-1, MISSISSIPPI CODE OF 1972, TO
 2 REVISE THE CRIME OF CRUELTY TO ANIMALS; TO PROVIDE THAT CERTAIN
 3 MISDEMEANOR OFFENSES OF THE CRIME SHALL APPLY ONLY TO DOMESTICATED
 4 ANIMALS; TO CREATE THE OFFENSE OF RECEIVING A CONTRIBUTION OR
 5 DONATION FOR THE CARE OF AN ANIMAL AND THEN NOT PROVIDING SUCH
 6 CARE; TO REVISE THE PENALTIES FOR THE CRIME OF CRUELTY TO ANIMALS;
 7 TO CREATE THE FELONY OFFENSE OF AGGRAVATED CRUELTY TO ANIMALS AND
 8 PRESCRIBE PENALTIES THEREFOR; TO AMEND SECTION 97-41-2,
 9 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO PROVIDE THAT
 10 CERTAIN ACTIVITIES INVOLVING ANIMALS WILL NOT CONSTITUTE THE CRIME
 11 OF CRUELTY TO ANIMALS; TO SPECIFY THOSE EXEMPT ACTIVITIES; AND FOR
 12 RELATED PURPOSES.

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

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

16 97-41-1. (1) If any person, knowingly or with criminal
 17 negligence shall receive any contribution or donation, whether in
 18 the form of money or services or staples, for the care of any
 19 animal and not provide care for the animal; override, overdrive,
 20 overload, * * * torment, unjustifiably injure, deprive of
 21 necessary sustenance, food, or drink; or cruelly beat * * *; or
 22 cause or procure to be overridden, overdriven, overloaded, * * *
 23 unjustifiably injured, tormented, or deprived of necessary
 24 sustenance, food or drink; or to be cruelly beaten * * * or
 25 killed, any domesticated animal, every such offender * * * for
 26 every offense, shall be guilty of the misdemeanor of cruelty to
 27 animals.

28 (2) If any person shall knowingly torture, mutilate, maim,
 29 burn, poison or maliciously starve, disfigure or kill any animal,
 30 every such offender for every offense, shall be guilty of the
 31 felony of aggravated cruelty to animals, and shall be punished by
 32 a fine of not more than Five Thousand Dollars (\$5,000.00) or by

33 imprisonment in the custody of the Department of Corrections not
34 to exceed five (5) years, or both.

35 (3) If a person is convicted of more than one (1)
36 misdemeanor of receiving any contribution or donation, whether in
37 the form of money or services or staples, for the care of any
38 animal and then not providing care for the animal, and the person
39 is the owner or established caregiver of the animal, the person
40 shall be guilty, upon conviction, of the felony of aggravated
41 cruelty to animals, punishable as prescribed in subsection (2) of
42 this section.

43 (4) For any conviction under this section, the court may
44 order restitution to the animal's owner as well as to law
45 enforcement agencies or animal control or humane societies for the
46 costs of sheltering, transporting or rehabilitating the animal,
47 and for investigative and other costs related to securing the
48 conviction.

49 (5) A person convicted under this section may be enjoined
50 from possessing an animal or animals or from residing or working
51 where animals are kept.

52 (6) A person convicted under this section, in addition to
53 any other punishment that may be imposed, may be ordered to
54 perform community service, to participate in professional
55 counseling, or both.

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

58 97-41-2. (1) All courts in the State of Mississippi may
59 order the seizure of an animal by a law enforcement agency, for
60 its care and protection upon a finding of probable cause to
61 believe said animal is being cruelly treated, neglected or
62 abandoned. Such probable cause may be established upon sworn
63 testimony of any person who has witnessed the condition of said
64 animal. The court may appoint an animal control agency, agent of
65 an animal shelter organization, veterinarian or other person as

66 temporary custodian for the said animal, pending final disposition
67 of the animal pursuant to this section. Such temporary custodian
68 shall directly contract and be responsible for any care rendered
69 to such animal, and may make arrangements for such care as may be
70 necessary. Upon seizure of an animal, the law enforcement agency
71 responsible for removal of the animal shall serve notice upon the
72 owner of the animal, if possible, and shall also post prominently
73 a notice to the owner or custodian to inform such person that the
74 animal has been seized. Such process and notice shall contain a
75 description of the animal seized, the date seized, the name of the
76 law enforcement agency seizing the animal, the name of the
77 temporary custodian, if known at the time, and shall include a
78 copy of the order of the court authorizing the seizure.

79 (2) Within five (5) days of seizure of an animal, the owner
80 of the animal may request a hearing in the court ordering the
81 animal to be seized to determine whether the owner is able to
82 provide adequately for the animal and is fit to have custody of
83 the animal. The court shall hold such hearing within fourteen
84 (14) days of receiving such request. The hearing shall be
85 concluded and the court order entered thereon within twenty-one
86 (21) days after the hearing is commenced. Upon requesting a
87 hearing, the owner shall have three (3) business days to post a
88 bond or security with the court clerk in an amount determined by
89 the court to be sufficient to repay all reasonable costs
90 sufficient to provide for the animal's care. Failure to post such
91 bond within three (3) days shall result in forfeiture of the
92 animal to the court. If the temporary custodian has custody of
93 the animal upon the expiration of the bond or security, the animal
94 shall be forfeited to the court unless the court orders otherwise.

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

97 (a) Testimony from law enforcement officers, animal
98 control officers, animal protection officials, and other witnesses

99 as to the condition the animal was kept in by its owner or
100 custodian.

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

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

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

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

109 (f) Any other evidence the court considers to be
110 material or relevant.

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

117 (5) If the court finds that the owner or established
118 caregiver of the animal is unable or unfit to adequately provide
119 for the animal, or that the animal is severely injured, diseased,
120 or suffering, and, therefore, not likely to recover, then the
121 court may order that the animal be permanently forfeited and
122 released to an animal control agency, animal protection
123 organization or to the appropriate entity to be euthanized or the
124 court may order that such animal be sold at public sale in the
125 manner now provided for judicial sales; any proceeds from such
126 sale shall go first toward the payment of expenses and costs
127 relating to the care and treatment of such animal, and any excess
128 amount shall be paid to the owner of the animal.

129 (6) Upon notice and hearing as provided in this section, or
130 as a part of any proceeding conducted under the terms of this
131 section, the court may order that other animals in the custody of

132 the owner that were not seized be surrendered and further enjoin
133 the owner from having custody of other animals in the future.

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

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

143 (9) For the purposes of this section, the term "animal" or
144 "animals" means any feline, exotic animal, canine, horse, mule,
145 jack or jennet.

146 **SECTION 3.** (1) Any and all of the activities associated
147 with or incidental to the lawful practices and activities
148 described in this section will not be violations of this chapter
149 or any other state law pertaining to the criminal offense of
150 animal cruelty. Those exempt activities include:

- 151 (a) Hunting or trapping of wildlife;
- 152 (b) Fishing;
- 153 (c) Herding of domestic animals;
- 154 (d) Accepted animal husbandry practices including
155 slaughter;
- 156 (e) Accepted handling and training practices;
- 157 (f) Accepted veterinary practices;
- 158 (g) Humane euthanasia of animals performed by trained
159 persons;
- 160 (h) Accepted pest control practices;
- 161 (i) Accepted animal handling practices at livestock
162 shows;
- 163 (j) Accepted equine activities;

164 (k) Rodeo practices accepted by the Professional Rodeo
165 Cowboy's Association; or

166 (l) Activities carried on for teaching or for
167 scientific or medical research governed by the Federal Animal
168 Welfare Act or recommended by the American Veterinary Medical
169 Association.

170 (2) Nothing in this chapter shall be construed as
171 prohibiting a person from injuring or killing an animal, except
172 those animals otherwise protected by state or federal law,
173 reasonably believed to constitute a threat of injury or death to
174 humans, livestock, poultry or other domestic or lawfully kept
175 animals.

176 **SECTION 4.** This act shall take effect and be in force from
177 and after July 1, 2007.