

By: Representative Smith (39th)

To: Agriculture

HOUSE BILL NO. 1538

1 AN ACT TO REVISE THE CRIME OF ANIMAL CRUELTY; TO DEFINE
2 CERTAIN TERMS RELATING TO THE CRIME; TO PROVIDE EXEMPTIONS FOR
3 CERTAIN ACTIVITIES FROM THE APPLICATION OF THE CHAPTER PERTAINING
4 TO THE CRIME OF ANIMAL CRUELTY; TO AMEND SECTION 97-41-1,
5 MISSISSIPPI CODE OF 1972, TO INCORPORATE ELEMENTS OF OFFENSES
6 FOUND ELSEWHERE IN CHAPTER 41, AND TO DISTINGUISH BETWEEN
7 MISDEMEANOR AND FELONY DEGREES OF THE OFFENSE; TO AMEND SECTION
8 97-41-2, MISSISSIPPI CODE OF 1972, TO ALLOW ANIMALS IN IMMEDIATE
9 DANGER BECAUSE OF A NATURAL DISASTER OR EMERGENCY TO BE LAWFULLY
10 SEIZED; TO REVISE THE PROCESS BY WHICH AN ANIMAL MAY BE LAWFULLY
11 SEIZED; TO AMEND SECTION 97-41-3, MISSISSIPPI CODE OF 1972, TO
12 REVISE THE PROCESS BY WHICH AN ANIMAL MAY BE LAWFULLY DESTROYED
13 AND TO GRANT IMMUNITY TO THOSE ACTING UNDER THE SECTION IN GOOD
14 FAITH; TO AMEND SECTION 97-41-19, MISSISSIPPI CODE OF 1972, TO
15 REVISE PROVISIONS REGARDING DOG FIGHTS; TO CREATE THE MISDEMEANOR
16 CRIME OF INTERFERING WITH ANY ACTIVITIES EXEMPTED BY THIS ACT; TO
17 REPEAL SECTIONS 97-41-5, 97-41-7, 97-41-9, 97-41-13, 97-41-16 AND
18 97-41-17, MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE CERTAIN
19 MISDEMEANOR OFFENSES AND PENALTIES FOUND IN THE CHAPTER OF LAW
20 PERTAINING TO THE CRIME OF ANIMAL CRUELTY; AND FOR RELATED
21 PURPOSES.

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

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

26 (a) "Animal" means any nonhuman mammal, bird, reptile
27 or fish.

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

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

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

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

57 (f) "Torture" means an act primarily committed to
58 inflict pain or suffering.

59 (g) "Torment" means an act primarily intended to cause
60 distress, fear or suffering.

61 **SECTION 2.** (1) Any and all of the activities associated
62 with or incidental to the lawful practices and activities
63 enumerated in this section will not be violations of this chapter
64 or any other state law pertaining to the criminal offense of
65 animal cruelty. Those exempt activities include:

66 (a) Hunting or trapping of wildlife;

67 (b) Fishing;

- 68 (c) Herding of domestic animals;
- 69 (d) Accepted animal husbandry practices including
70 slaughter;
- 71 (e) Destruction of diseased or imperiled livestock,
72 poultry or fish that have been abandoned, or constructively
73 abandoned, due to calamity;
- 74 (f) Accepted handling and training practices;
- 75 (g) Accepted veterinary practices;
- 76 (h) Humane euthanasia of animals performed by trained
77 persons;
- 78 (i) Accepted pest control practices;
- 79 (j) Accepted animal handling practices at livestock
80 shows;
- 81 (k) Accepted equine activities;
- 82 (l) Rodeo practices accepted by the Professional Rodeo
83 Cowboy's Association; or
- 84 (m) Activities carried on for teaching or for
85 scientific or medical research governed by the Federal Animal
86 Welfare Act or recommended by the American Veterinary Medical
87 Association.

88 (2) Nothing in this chapter shall be construed as
89 prohibiting a person from injuring or killing an animal, except
90 those animals otherwise protected by state or federal law,
91 reasonably believed to constitute a threat of injury or death to
92 humans, livestock, poultry or other domestic or lawfully kept
93 exotic animals.

94 **SECTION 3.** Section 97-41-1, Mississippi Code of 1972, is
95 amended as follows:

96 97-41-1. (1) A person shall * * * be guilty of simple
97 animal cruelty who knowingly, intentionally or recklessly:

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

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

101 (c) Causes physical pain, stress or injury to an animal
102 including, but without limitation, overriding, or overdriving to
103 the point of exhaustion, kicking, hitting, tormenting or
104 inhumanely carrying or transporting an animal in a manner that
105 restricts the animal from normal postural adjustments or causes
106 hyperthermia or hypothermia, confining or tethering an animal in a
107 manner that restricts the animal from normal postural adjustments,
108 access to food, water or shelter, or poses or causes damage or
109 injury; or

110 (d) Causes any act listed in this subsection (1) to be
111 done.

112 (2) A person shall be guilty of the felony of aggravated
113 animal cruelty who knowingly, intentionally or maliciously starves
114 or dehydrates, tortures, poisons or beats, burns, shoots or
115 otherwise mutilates or kills an animal.

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

120 (ii) A second conviction of simple animal cruelty
121 shall be a misdemeanor punishable by a fine of not less than Two
122 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
123 (\$1,000.00), imprisonment in jail not less than one (1) nor more
124 than six (6) months, or both.

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

127 (b) A conviction of a felony under this section shall
128 be punishable by a fine of not more than Five Thousand Dollars
129 (\$5,000.00), imprisonment in the custody of the Department of
130 Corrections not to exceed five (5) years, or both.

131 (c) For purposes of this section, each incident of
132 cruelty and each animal treated cruelly shall constitute the basis
133 for a separate offense.

134 (d) For any conviction under this section, the court
135 may order restitution to the animal's owner as well as to law
136 enforcement agencies or animal control or humane societies for the
137 costs of investigation, sheltering, transporting, rehabilitation
138 and other costs related to securing the conviction.

139 (e) A person convicted under this section may be
140 enjoined from possessing an animal or animals or from residing or
141 working where animals are kept.

142 (f) A person convicted under this section, in addition
143 to any other punishment that may be imposed, may be ordered to
144 perform community service, to participate in professional
145 counseling, or both.

146 **SECTION 4.** Section 97-41-2, Mississippi Code of 1972, is
147 amended as follows:

148 97-41-2. (1) (a) If an animal is in immediate danger
149 because of a natural disaster or emergency such as a hurricane,
150 tornado, flooding, or other disaster or emergency causing
151 destruction of the animal's shelter or enclosure, or if the animal
152 poses a threat to the safety of the community because of like
153 causes, a law enforcement officer may seize or cause to be seized
154 such animal without the necessity of a court order. If possible,
155 such law enforcement officer shall make an attempt to contact the
156 owner or custodian of the animal to alert them of the danger, and
157 if contact is not made, the officer must prominently post a note
158 or notice as to what action has been taken and who to contact with
159 regard to the location of the animal.

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

164 (2) All courts in the State of Mississippi may order the
165 seizure of an animal by a law enforcement agency, for the animal's
166 care and protection upon a finding of probable cause to believe

167 the animal is being cruelly treated, neglected or abandoned. Such
168 probable cause may be established upon sworn testimony of any
169 person who has witnessed the condition of the animal. The court
170 may appoint an animal control agency, agent of an animal shelter
171 organization, agent of a humane society duly registered with the
172 Mississippi Secretary of State, veterinarian or other appropriate
173 person or agency as temporary custodian for the * * * animal,
174 pending final disposition of the animal pursuant to this section.
175 Such temporary custodian shall * * * be responsible for directly
176 contracting for or administering any care rendered to the
177 animal * * *. Upon seizure of an animal, the law enforcement
178 agency responsible for removal of the animal shall serve notice
179 upon the owner of the animal, if possible, and shall also post
180 prominently a notice to the owner or custodian to inform such
181 person that the animal has been seized. Such process and notice
182 shall contain a description of the animal seized, the date and
183 time of seizure, the name of the law enforcement agency seizing
184 the animal, the name of the temporary custodian, if known at the
185 time, and shall include a copy of the order of the court
186 authorizing the seizure.

187 (3) Within five (5) days of seizure of an animal, the owner
188 or custodian of the animal may request a hearing in the court
189 ordering the animal to be seized to determine whether the owner or
190 custodian is able to provide adequately for the animal and is fit
191 to have custody of the animal. The court shall hold such hearing
192 within fourteen (14) days of receiving such request. The hearing
193 shall be concluded and the court order entered thereon within
194 twenty-one (21) days after the hearing is commenced. Upon
195 requesting a hearing, the owner shall have three (3) business days
196 to post a bond or security with the court clerk in an amount
197 determined by the court to be sufficient to repay all reasonable
198 costs sufficient to provide for the animal's care, including, but
199 not limited to, transporting, feeding, essential grooming,

200 providing hoof care and medical care that may include treatment,
201 vaccinations or tests required by the temporary custodian or
202 attending veterinarian. Failure to post such bond within three
203 (3) business days from the request for the hearing shall result in
204 forfeiture of the animal to the court. If the temporary custodian
205 has custody of the animal upon the expiration of the bond or
206 security, the animal shall be forfeited to the court unless the
207 court orders otherwise.

208 (4) In determining the owner's or custodian's fitness to
209 have custody of an animal, the court may consider, among other
210 matters:

211 (a) Testimony from law enforcement officers, animal
212 control officers, animal protection officials or agents, and other
213 witnesses as to the condition the animal was kept in by its owner
214 or custodian.

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

217 (c) Expert testimony as to the proper and reasonable
218 care of the same or like type of animal.

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

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

223 (f) Any other evidence the court considers to be
224 material or relevant.

225 (5) If the court determines that an animal was properly
226 seized, and upon proof of costs incurred as a result of the
227 animal's seizure, including, but not limited to, costs of
228 transporting, boarding or providing medical or veterinarian
229 treatment of the animal, the court shall order that the animal's
230 owner or custodian reimburse the temporary custodian for such
231 costs. A lien for authorized expenses is hereby created upon all

232 animals seized under this section, and shall have priority as to
233 any other lien on such animal.

234 (6) If the court finds the owner of the animal is unable or
235 unfit to adequately provide for the animal, or that the animal is
236 severely injured, diseased, or suffering, and, therefore, not
237 likely to recover, the court may order that the animal be
238 permanently forfeited and released to an animal control agency,
239 animal welfare or protection organization, veterinarian or other
240 agent appointed as temporary custodian to * * * be sold at public
241 auction in the manner now provided for judicial sales; any
242 proceeds from such sale shall go first toward the payment of
243 expenses and costs relating to the care and treatment of such
244 animal and court costs, and at the court's discretion, any excess
245 amount may be paid to the owner of the animal or directed to be
246 revenue for the involved law enforcement agency, or the municipal,
247 county or state jurisdiction in which the offense occurred.

248 (7) Upon notice and hearing as provided in this section, or
249 as a part of any proceeding conducted under the terms of this
250 section, the court may order that other animals in the custody of
251 the owner that were not seized be surrendered and further enjoin
252 the owner from having custody of other animals in the future.

253 (8) If the court determines the owner or custodian is able
254 to provide adequately for, and have custody of, the animal, the
255 court shall order the animal be claimed and removed by the owner
256 or custodian within seven (7) days after the date of the order.

257 (9) Nothing in this section shall be construed to prevent or
258 otherwise interfere with a law enforcement officer's authority to
259 seize an animal as evidence or require court action for the taking
260 into custody and making proper disposition of animals as
261 authorized in Sections 21-19-9, 41-53-1, 41-53-11, 97-3-45, or
262 other municipal, county or state-mandated ordinances or laws, nor
263 be construed to prevent the immediate euthanasia of an animal or

264 animals determined to be ill or injured beyond recovery as
265 provided for in Section 97-41-3.

266 * * *

267 **SECTION 5.** Section 97-41-3, Mississippi Code of 1972, is
268 amended as follows:

269 97-41-3. Any law enforcement officer, animal control
270 officer, veterinarian or agent of a society for the prevention of
271 cruelty to animals may euthanize, or cause to be euthanized, in a
272 humane manner, any stray animal found neglected, injured or
273 abandoned if it is injured, diseased or severely debilitated past
274 reasonable recovery. Anyone acting in good faith pursuant to this
275 section shall not be held liable either criminally or civilly for
276 that action.

277 **SECTION 6.** Section 97-41-19, Mississippi Code of 1972, is
278 amended as follows:

279 97-41-19. (1) If any person (a) shall sponsor, promote,
280 stage or conduct a fight or fighting match between dogs, or (b)
281 shall wager or bet, promote or encourage the wagering or betting
282 of any money or other valuable thing upon any such fight or upon
283 the result thereof, or (c) shall own or have possession or custody
284 of a dog or dogs with the intent to willfully enter it or them or
285 to participate in any such fight, or (d) shall train or transport
286 a dog for the purposes of participation in any such fight, he
287 shall be guilty of a felony and, upon conviction, shall be
288 punished by a fine of not less than One Thousand Dollars
289 (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or by
290 imprisonment in the State Penitentiary for a term of not less than
291 one (1) nor more than three (3) years, or by both such fine and
292 imprisonment, in the discretion of the court.

293 (2) If any person shall be present, as a spectator, at any
294 location where preparations are being made for an exhibition of a
295 fight between dogs with the intent to be present at such
296 preparations, or if any person shall be present at an exhibition

297 of a fight between dogs with the intent to be present at such
298 exhibition, he shall be guilty of a felony and, upon conviction,
299 shall be punished by a fine of not less than Five Hundred Dollars
300 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or by
301 imprisonment in the State Penitentiary for a term of not more than
302 one (1) year, or by both such fine and imprisonment, in the
303 discretion of the court.

304 (3) Any law enforcement officer making an arrest under
305 subsection (1) of this section may lawfully take possession of all
306 dogs and all paraphernalia, implements, equipment or other
307 property used in violation of subsection (1) of this section.
308 Such officer shall file with the circuit court of the county
309 within which the alleged violation occurred an affidavit stating
310 therein (a) the name of the person charged, (b) a description of
311 the property taken, (c) the time and place of the taking, (d) the
312 name of the person who claims to own such property, if known, and
313 (e) that the affiant has reason to believe, stating the ground of
314 such belief, that the property taken was used in such violation.
315 He shall thereupon deliver the property to such court which shall,
316 by order in writing, place such dogs, paraphernalia, implements,
317 equipment, or other property in the custody of a licensed
318 veterinarian, the local humane society or other animal welfare
319 agency, or other suitable custodian, to be kept by such custodian
320 until the conviction or final discharge of the accused, and shall
321 send a copy of such order without delay to the district attorney
322 of the county. The custodian named and designated in such order
323 shall immediately assume the custody of such property and shall
324 retain same, subject to order of the court.

325 Upon the certification of a licensed veterinarian or officer
326 of the humane society or animal welfare agency that, in his
327 professional judgment, a dog which has been seized is not likely
328 to survive the final disposition of the charges or that, by reason
329 of the physical condition of the dog, it should be humanely

330 euthanized before such time, the court may order the dog humanely
331 euthanized. The court shall make its finding of whether to issue
332 such an order within seven (7) days from the certification by the
333 veterinarian or officer of the humane society or animal welfare
334 agency. The owner of a dog which is euthanized without an order
335 of the court with such certification of a licensed veterinarian or
336 officer of the humane society or other animal welfare agency shall
337 have a right of action for damages against the department or
338 agency by which the arresting or seizing officer is employed.
339 Upon conviction of the person charged with a violation of
340 subsection (1) of this section, all dogs seized shall be adjudged
341 by the court to be forfeited and the court shall order a humane
342 disposition of the same. In no event shall the court order the
343 dog to be euthanized without the certification of a licensed
344 veterinarian or officer of the humane society or other animal
345 welfare agency that, in his judgment, the dog is not likely to
346 survive or that, by reason of its physical condition, the dog
347 should be humanely euthanized. In the event of the acquittal or
348 final discharge without conviction of the accused, the court shall
349 direct the delivery of the property so held in custody to the
350 owner thereof. All reasonable expenses incurred by the custodian
351 of seized dogs and property shall be charged as costs of court, to
352 be taxed against the owner or county in the discretion of the
353 court.

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

356 (a) The use of dogs in the management of livestock, by
357 the owner of such livestock or other persons in lawful custody
358 thereof;

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

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

362 (d) The euthanasia of a dog pursuant to Section
363 97-41-3.

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

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

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

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

377 **SECTION 11.** Section 97-41-16, Mississippi Code of 1972,
378 which provides that malicious or mischievous injury to a dog or
379 cat is a misdemeanor, is repealed.

380 **SECTION 12.** Section 97-41-17, Mississippi Code of 1972,
381 which provides that administering poison to an animal is a
382 misdemeanor, is repealed.

383 **SECTION 13.** Sections 1 and 2 of this act shall be codified
384 within Chapter 41, Title 97, Mississippi Code of 1972.

385 **SECTION 14.** This act shall take effect and be in force from
386 and after its passage.