

By: Senator(s) Dearing

To: Judiciary, Division B

SENATE BILL NO. 2097

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 97-41-5, MISSISSIPPI CODE OF 1972, WHICH PROVIDES THAT CARRYING  
 11 ANY CREATURE IN A CRUEL OR INHUMAN MANNER IS A MISDEMEANOR; TO  
 12 REPEAL SECTION 97-41-7, MISSISSIPPI CODE OF 1972, WHICH PROVIDES  
 13 THAT CONFINING ANY LIVING CREATURE WITHOUT SUFFICIENT FOOD AND  
 14 WATER IS A MISDEMEANOR; TO REPEAL SECTION 97-41-9, MISSISSIPPI  
 15 CODE OF 1972, WHICH PROVIDES THAT A CUSTODIAN OF ANY LIVING  
 16 CREATURE WHO FAILS TO PROVIDE SUFFICIENT FOOD AND DRINK IS GUILTY  
 17 OF A MISDEMEANOR; TO REPEAL SECTION 97-41-13, MISSISSIPPI CODE OF  
 18 1972, WHICH PROVIDES PENALTIES FOR CERTAIN ACTS OF CRUELTY TO  
 19 ANIMALS; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

38 (i) Food of sufficient quality and quantity to  
39 allow for normal growth or maintaining of body weight;

40 (ii) Access to potable water of a drinkable  
41 temperature in sufficient quantity for an animal or group of  
42 animals;

43 (iii) Shelter that protects an animal from the  
44 adverse effects of weather and extreme temperatures which is  
45 species and breed appropriate;

46 (iv) Veterinary care sufficient to relieve  
47 distress from injury, neglect or disease;

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

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

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

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

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

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

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

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

71                   (i) Overdrives, overloads, drives when overloaded  
72 or overworks a living animal;

73                   (ii) Torments or unjustifiably injures a living  
74 animal;

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

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

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

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

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

91                   (viii) Causes or procures to be done by any person  
92 any act enumerated in this subsection (2).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

242           **SECTION 8.** This act shall take effect and be in force from  
243 and after July 1, 2007.