

By: Senator(s) Wilemon

To: Judiciary, Division B

SENATE BILL NO. 2757

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 DEFINE AND TO REQUIRE  
 7 CERTIFICATION OF CRUELTY INVESTIGATORS AND TO PROVIDE A PENALTY  
 8 FOR NONCOMPLIANCE; TO AMEND SECTION 97-41-3, MISSISSIPPI CODE OF  
 9 1972, 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; AND FOR RELATED PURPOSES.

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

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

24 97-41-1. (1) (a) A person shall be guilty of simple animal  
 25 cruelty who knowingly, intentionally or recklessly:

26 (i) Abandons or leaves an animal at a location  
 27 without providing for or arranging for the animal's continued  
 28 sustenance;

29 (ii) Subjects any animal to cruel mistreatment;

30 (iii) Subjects an animal in the custody of the  
 31 person to cruel neglect;

32 (iv) Kills or injures any animal belonging to  
 33 another without legal privilege or consent of the owner; or

34 (v) Causes an act listed in item (i) or (iv) of  
 35 this paragraph (a) to be done.

36 (b) "Cruel neglect" and "cruel mistreatment" include  
37 every act or omission where unjustifiable physical injury,  
38 suffering or death is caused or permitted.

39 (2) A person shall be guilty of aggravated animal cruelty  
40 who maliciously causes death, serious bodily injury or extreme  
41 physical suffering to an animal; aggravated animal cruelty is a  
42 felony.

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

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

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

54 (b) A conviction of a felony under this section shall  
55 be punishable by a fine of not more than Five Thousand Dollars  
56 (\$5,000.00), imprisonment in the custody of the Department of  
57 Corrections not to exceed five (5) years, or both.

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

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

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

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

78           97-41-2. (1) Any district attorney, assistant district  
79 attorney, or law enforcement officer certified and meeting the  
80 requirements of the Board on Law Enforcement Officers Standard and  
81 Training as set forth in Section 45-6-1 et seq. may apply for a  
82 warrant for search and seizure to any circuit or county court in  
83 the State of Mississippi, within whose jurisdiction an animal is  
84 found, for the purpose of enforcing Section 97-41-1.

85           (2) District attorneys, assistant district attorneys or law  
86 enforcement officers making application for a search warrant may  
87 rely upon supplemental affidavits made by cruelty investigators.

88           (3) (a) A cruelty investigator is defined as any person,  
89 other than a law enforcement officer as defined in Section 45-6-1  
90 et seq., who investigates violations of, or seeks to enforce any  
91 criminal provision of Mississippi state law relating to the humane  
92 care, treatment or handling of animals under color of authority of  
93 an organization whose purpose is the prevention of cruelty to  
94 animals or under color of authority of a political subdivision of  
95 the State of Mississippi.

96           (b) No person shall perform as a cruelty investigator  
97 under color of authority of an organization whose purpose is the  
98 prevention of cruelty to animals unless:

99                   (i) The person has been duly appointed as a  
100 cruelty investigator by the governing board of the organization;  
101 and

102                   (ii) The person is certified by and in good  
103 standing with the Association of Certified Cruelty Investigators  
104 or another certifying organization which provides education  
105 regarding animal husbandry and legal aspects of investigation,  
106 tests applicants for proficiency, and requires continuing  
107 education to remain in good standing.

108                   (c) No person shall perform as a cruelty investigator  
109 under color of authority of a political subdivision of the State  
110 of Mississippi unless:

111                   (i) The person has been duly appointed as a  
112 cruelty investigator by the governing body of that political  
113 subdivision; and

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

120                   (d) Any person who violates, or attempts or conspires  
121 to violate, this section shall be guilty of a misdemeanor  
122 punishable by a fine of not more than One Thousand Dollars  
123 (\$1,000.00), imprisonment not to exceed six (6) months, or both.

124                   (4) The court may issue a search warrant upon a finding of  
125 probable cause that:

126                   (a) A violation of Section 97-41-1 has been or is being  
127 committed; and

128                   (b) That on the premises to be searched can be found:

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

130                   (ii) Contraband, fruits of a violation of Section  
131 97-41-1, or other items illegally possessed; or

132                   (iii) Property designed for use, intended for use,  
133 or used in committing a violation of Section 97-41-1.

134           (5) 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 custodian for  
139 the animal, pending final disposition of the animal at the  
140 conclusion of the criminal case. The temporary custodian shall  
141 directly contract and be responsible for any care rendered to the  
142 animal, and may make arrangements for such care as may be  
143 necessary. Upon seizure of an animal, the law enforcement agency  
144 responsible for removal of the animal shall serve notice upon the  
145 owner of the animal, if possible, and shall also post prominently  
146 a notice to the owner or custodian that the animal has been  
147 seized. The process and notice shall contain a description of the  
148 animal seized, the date seized, the name of the law enforcement  
149 agency seizing the animal, the name of the temporary custodian, if  
150 known at the time, and shall include a copy of the order of the  
151 court authorizing the seizure.

152           (6) 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           (7) 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 (6) of this section exists, the animal shall be  
166 forfeited to the state.

167 (8) Any animal forfeited to the state pursuant to this  
168 section shall be released to an organization exempt from federal  
169 income tax under Section 501(c)(3) of the Internal Revenue Code  
170 whose purpose is the protection of animals. If no organization  
171 can be found which is willing to receive the animal, the animal  
172 shall be released to an animal control agency for adoption or  
173 other humane disposition.

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

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

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

192 **SECTION 4.** (1) The following activities will not be  
193 violations of this chapter: any and all activities associated  
194 with or incidental to the lawful hunting or trapping of wildlife,  
195 fishing, herding of domestic animals, accepted animal husbandry  
196 practices including slaughter, accepted dog handling and training  
197 practices, accepted veterinary practices, humane euthanasia

198 performed at an animal shelter, accepted pest control practices,  
199 livestock shows, accepted equine activities, rodeo practices  
200 accepted by the Professional Rodeo Cowboy's Association, or  
201 activities carried on for teaching or for scientific or medical  
202 research governed by accepted standards.

203 (2) Nothing in this chapter shall be construed as  
204 prohibiting a person from injuring or killing an animal reasonably  
205 believed to constitute a threat of injury or damage to himself or  
206 another, or to property, livestock or poultry.

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

210 **SECTION 6.** Section 97-41-7, Mississippi Code of 1972, which  
211 provides that confining any living creature without sufficient  
212 food and water is a misdemeanor, is repealed.

213 **SECTION 7.** Section 97-41-9, Mississippi Code of 1972, which  
214 provides that a custodian of any living creature who fails to  
215 provide sufficient food and drink is guilty of a misdemeanor, is  
216 repealed.

217 **SECTION 8.** Section 97-41-13, Mississippi Code of 1972, which  
218 provides penalties for certain acts of cruelty to animals, is  
219 repealed.

220 **SECTION 9.** This act shall take effect and be in force from  
221 and after July 1, 2007.