

By: Senator(s) Hewes, Gollott

To: Judiciary, Division B

SENATE BILL NO. 2816

1 AN ACT TO AMEND SECTIONS 97-41-1 AND 97-41-2, MISSISSIPPI  
2 CODE OF 1972, TO ESTABLISH MINIMUM GUIDELINES FOR THE CARE AND  
3 TREATMENT OF DOMESTICATED ANIMALS; TO DELETE CERTAIN AMBIGUOUS  
4 REFERENCES; TO REVISE THE PROCESS BY WHICH AN ANIMAL MAY BE  
5 LAWFULLY SEIZED; TO CREATE A DEFINITION OF CRUELTY TO ANIMALS; TO  
6 ESTABLISH A PENALTY FOR VIOLATION OF THE STATUTE; AND FOR RELATED  
7 PURPOSES.

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

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

11 97-41-1. (1) If any person shall knowingly or with criminal  
12 negligence receive any contribution, donation or income for the  
13 care of any animal or not provide for the animal, or shall  
14 override, overdrive, overload, \* \* \* torment, unjustifiably  
15 injure, deprive of necessary sustenance, food or drink; or cruelly  
16 beat \* \* \*; or cause or procure to be overridden, overdriven,  
17 overloaded, \* \* \* unjustifiably injured, tormented, or deprived of  
18 necessary sustenance, food or drink; or to be cruelly beaten \* \* \*  
19 or killed, any domesticated animal, every such offender shall, for  
20 every offense, be guilty of cruelty to animals, which shall be  
21 punished as a misdemeanor.

22 (2) If any person shall knowingly torture, mutilate, maim,  
23 burn, poison, or maliciously starves, disfigures or kills any  
24 animal, the offender shall, for every offense, be guilty of  
25 aggravated cruelty to animals, a felony punishable by a fine of  
26 not more than Five Thousand Dollars (\$5,000.00), imprisonment in  
27 the custody of the Department of Corrections not to exceed five  
28 (5) years, or both.

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

31           97-41-2. (1) All courts in the State of Mississippi may  
32 order the seizure of an animal by a law enforcement agency, for  
33 its care and protection upon a finding of probable cause to  
34 believe said animal is being cruelly treated, neglected or  
35 abandoned. Such probable cause may be established upon sworn  
36 testimony of any person who has witnessed the condition of said  
37 animal. The court may appoint an animal control agency, agent of  
38 an animal shelter organization, veterinarian or other person as  
39 temporary custodian for the said animal, pending final disposition  
40 of the animal pursuant to this section. Such temporary custodian  
41 shall directly contract and be responsible for any care rendered  
42 to such animal, and may make arrangements for such care as may be  
43 necessary. Upon seizure of an animal, the law enforcement agency  
44 responsible for removal of the animal shall serve notice upon the  
45 owner of the animal, if possible, and shall also post prominently  
46 a notice to the owner or custodian to inform such person that the  
47 animal has been seized. Such process and notice shall contain a  
48 description of the animal seized, the date seized, the name of the  
49 law enforcement agency seizing the animal, the name of the  
50 temporary custodian, if known at the time, and shall include a  
51 copy of the order of the court authorizing the seizure.

52           (2) Within five (5) days of seizure of an animal, the owner  
53 of the animal may request a hearing in the court ordering the  
54 animal to be seized to determine whether the owner is able to  
55 provide adequately for the animal and is fit to have custody of  
56 the animal. The court shall hold such hearing within fourteen  
57 (14) days of receiving such request. The hearing shall be  
58 concluded and the court order entered thereon within twenty-one  
59 (21) days after the hearing is commenced. Upon requesting a  
60 hearing, the owner shall have three (3) business days to post a  
61 bond or security with the court clerk in an amount determined by

62 the court to be sufficient to repay all reasonable costs  
63 sufficient to provide for the animal's care. Failure to post such  
64 bond within three (3) days shall result in forfeiture of the  
65 animal to the court. If the temporary custodian has custody of  
66 the animal upon the expiration of the bond or security, the animal  
67 shall be forfeited to the court unless the court orders otherwise.

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

70 (a) Testimony from law enforcement officers, animal  
71 control officers, animal protection officials, and other witnesses  
72 as to the condition the animal was kept in by its owner or  
73 custodian.

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

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

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

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

82 (f) Any other evidence the court considers to be  
83 material or relevant.

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

90 (5) If the court finds the owner or established caregiver of  
91 the animal or animals is unable or unfit to adequately provide for  
92 the animal or animals, or that such person has received monetary  
93 donations, staples, or other income for the relief of the animals  
94 and has not provided the intended care for the animals, or that

95 the animal is severely injured, diseased, or suffering, and,  
96 therefore, not likely to recover, the court may order that the  
97 person or persons responsible for the maltreatment will be charged  
98 with the crime of cruelty to animals and be bound over to the  
99 grand jury; and that the animal be permanently forfeited and  
100 released to an animal control agency, animal protection  
101 organization or to the appropriate entity to be euthanized or the  
102 court may order that such animal be sold at public sale in the  
103 manner now provided for judicial sales; any proceeds from such  
104 sale shall go first toward the payment of expenses and costs  
105 relating to the care and treatment of such animal, and any excess  
106 amount shall be paid to the owner of the animal.

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

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

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

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

124 (10) (a) For any conviction under this section, the court  
125 may order restitution to the animal's owner as well as to law  
126 enforcement agencies or animal control or humane societies for the

127 costs of investigation, sheltering, transporting, rehabilitation  
128 and other costs related to securing the conviction.

129 (b) A person convicted under this section may be  
130 enjoined from possessing an animal or animals or residing or  
131 working where animals are kept.

132 (c) A person convicted under this section, in addition  
133 to any other punishment that may be imposed, may be ordered to  
134 perform community service, to participate in professional  
135 counseling, or both.

136 (11) Nothing in the section shall be construed to prohibit  
137 lawful hunting activities or trapping of wildlife, herding of  
138 domestic animals, accepted animal husbandry practices, accepted  
139 veterinary practices, or activities carried on for scientific or  
140 medical research governed by accepted standards.

141 **SECTION 3.** This act shall take effect and be in force from  
142 and after July 1, 2007.