

By: Senator(s) Thames

To: Agriculture

SENATE BILL NO. 2548
(As Passed the Senate)

1 AN ACT TO AMEND SECTIONS 75-40-103, 75-40-107, 75-40-109,
2 75-40-111, 75-40-113, 75-40-115 AND 75-40-117, MISSISSIPPI CODE OF
3 1972, TO CHANGE THE ADMINISTRATION OF THE MISSISSIPPI BIRD DEALERS
4 LICENSING ACT FROM THE COMMISSIONER OF AGRICULTURE TO THE BOARD OF
5 ANIMAL HEALTH AND THE STATE VETERINARIAN; AND FOR RELATED
6 PURPOSES.

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

8 SECTION 1. Section 75-40-103, Mississippi Code of 1972, is
9 amended as follows:

10 75-40-103. For the purposes of this article, the following
11 words shall have the meanings ascribed herein unless the context
12 clearly requires otherwise:

13 (a) "Bird dealer" means any person engaged in the
14 business of dealing in, purchasing, breeding or offering for sale,
15 whether at wholesale or retail, any exotic or pet birds or birds
16 customarily kept as pets. For purposes of this article, ratites,
17 including the ostrich, the rhea and the emu, are classified as
18 commercial birds or livestock and not as exotic or pet birds.

19 (b) "Board" means the Mississippi Board of Animal
20 Health.

21 (c) "Person" means any individual, firm, partnership,
22 corporation, estate, trust, fiduciary or other group or
23 combination acting as a unit.

24 (d) "State Veterinarian" means the officer appointed by
25 the Board of Animal Health as provided in Section 69-15-7.

26 SECTION 2. Section 75-40-107, Mississippi Code of 1972, is
27 amended as follows:

28 75-40-107. Bird dealers' licenses shall be issued by the

29 board for a period of one (1) year and shall be annually
30 renewable. The board may establish separate classes of licenses,
31 including wholesale and retail licenses. The board shall fix fees
32 for licenses so that the revenue derived therefrom shall
33 approximate the total direct and indirect costs of administering
34 this article; provided, however, that the annual cost of a
35 wholesale license shall not exceed Twenty-five Dollars (\$25.00)
36 and the annual cost of a retail license shall not exceed Ten
37 Dollars (\$10.00).

38 SECTION 3. Section 75-40-109, Mississippi Code of 1972, is
39 amended as follows:

40 75-40-109. (1) Every bird dealer shall keep records
41 sufficient to identify:

42 (a) Each exotic or pet bird in his possession or sold
43 by him by species and description;

44 (b) The name, address and telephone number of the
45 person from whom each such bird was acquired and, if such person
46 is a licensed bird dealer, his license number, or if such person
47 is not a licensed dealer, his driver's license number or Social
48 Security number or federal tax identification number, if any, or
49 other such identification as may be available;

50 (c) The name, address and telephone number of the
51 person to whom each such bird is transferred and, if that person
52 is a licensed bird dealer, his license number, or, if that person
53 is not a licensed bird dealer, his driver's license number or
54 Social Security number, if any, or other such identification as
55 may be available; and

56 (d) Any bird which the dealer knows to be or have been
57 sick or diseased or to have died.

58 (2) The board may require periodic reports of any or all of
59 the records required by subsection (1) of this section and may
60 require the keeping of additional records. All required records
61 shall be made available for inspection by the board. Failure to

62 keep or make available any required records shall be grounds for
63 revocation of a license.

64 (3) Every bird dealer shall keep all of such records for at
65 least one (1) year.

66 SECTION 4. Section 75-40-111, Mississippi Code of 1972, is
67 amended as follows:

68 75-40-111. The * * * State Veterinarian may quarantine,
69 seize and destroy any birds which present a hazard of carrying
70 exotic or untreatable disease as determined by rules and
71 regulations promulgated by the board. The board shall pay an
72 indemnity to the owner of any seized or destroyed birds from any
73 federal funds made available for that purpose or any state funds
74 hereafter appropriated for that purpose.

75 SECTION 5. Section 75-40-113, Mississippi Code of 1972, is
76 amended as follows:

77 75-40-113. The State Veterinarian may make any rules and
78 regulations not inconsistent with this article governing the
79 business of dealing in or the transportation of exotic or pet
80 birds.

81 SECTION 6. Section 75-40-115, Mississippi Code of 1972, is
82 amended as follows:

83 75-40-115. (1) Whenever it may appear to the State
84 Veterinarian or to his agent, either upon investigation or
85 otherwise, that any person has engaged in, or is engaging in, or
86 is about to engage in any act, practice or transaction which is
87 prohibited by any law or regulation governing activities for which
88 a license from the Board of Animal Health is required by this
89 article, whether or not the person has so registered or obtained
90 such a license or permit, the State Veterinarian may issue an
91 order, if he deems it to be in the public interest or necessary
92 for the protection of the citizens of this state, prohibiting such
93 person from continuing such act, practice or transaction or
94 suspending or revoking any such registration, license or permit

95 held by such person.

96 (2) In situations where persons otherwise would be entitled
97 to a hearing prior to an order entered pursuant to subsection (1)
98 of this section, the State Veterinarian may issue such an order to
99 be effective upon a later date without hearing unless a person
100 subject to the order requests a hearing within ten (10) days after
101 receipt of the order. Failure to make such request shall
102 constitute a waiver of any provision of law for a hearing. The
103 order shall contain or shall be accompanied by a notice of
104 opportunity for hearing stating that a hearing must be requested
105 within ten (10) days of receipt of the notice and order. The
106 order and notice shall be served in person by the State
107 Veterinarian, or his agent, or by certified mail, return receipt
108 requested. In the case of an individual registered with or issued
109 a license or permit by the Board of Animal Health receipt of the
110 order and notice will be conclusively presumed five (5) days after
111 the mailing of the order by certified mail, return receipt
112 requested, to the address provided by such person in his most
113 recent registration or license or permit application.

114 (3) In situations where persons otherwise would be entitled
115 to a hearing prior to an order, the State Veterinarian may issue
116 an order to be effective immediately if the State Veterinarian, or
117 his agent, has reasonable cause to believe that an act, practice
118 or transaction is occurring or is about to occur; that the
119 situation constitutes a situation of imminent peril to the public
120 safety or welfare; and that the situation therefore requires
121 emergency action. The emergency order shall contain findings to
122 this effect and reasons for the determination. The order shall
123 contain or be accompanied by a notice of opportunity for hearing
124 which may provide that a hearing will be held if and only if a
125 person subject to the order requests a hearing within ten (10)
126 days of the receipt of the order and notice. The order and notice
127 shall be served by the State Veterinarian, or his agent, by

certified mail, return receipt requested. In the case of an individual registered with or issued a license or permit by the Board of Animal Health, receipt of the order and notice will be conclusively presumed five (5) days after the mailing of the order by certified mail, return receipt requested, to the address provided by such person in his most recent registration or license or permit application.

(4) Any request for hearing made pursuant to subsections (2) and (3) of this section shall specify: (a) in what respects such person is aggrieved, (b) any and all defenses such person intends to assert at the hearing, (c) affirmation or denial of all the facts and findings alleged in the order, and (d) an address to which any further correspondence or notices in the proceeding may be mailed. Upon such a request for hearing, the State Veterinarian shall schedule and hold the hearing, unless postponed by mutual consent, within thirty (30) days after receipt by the State Veterinarian of the request therefor. The State Veterinarian shall give the person requesting the hearing notice of the time and place of the hearing by certified mail to the address specified in the request for hearing at least fifteen (15) days prior to the time of the hearing.

SECTION 7. Section 75-40-117, Mississippi Code of 1972, is amended as follows:

75-40-117. (1) The State Veterinarian may institute suits or other legal proceedings in any court of proper venue as may be required for the enforcement of any law or regulation governing activities for which registration with or a license or permit from the board is required by this article.

(2) The State Veterinarian may institute an action in any court of proper venue to enforce any order made by him pursuant to the provisions of Section 75-40-115.

(3) In cases in which the State Veterinarian institutes a suit or other legal proceeding to enforce his order, the court

161 may, among other appropriate relief, issue a temporary restraining
162 order or a preliminary, interlocutory or permanent injunction
163 restraining or enjoining persons, and those in active concert with
164 them, from engaging in any acts, practices or transactions
165 prohibited by orders of the State Veterinarian or any law or
166 regulation governing activities for which registration with or a
167 license or permit from the Board of Animal Health is required.

168 SECTION 8. This act shall take effect and be in force from
169 and after July 1, 1999.