

By: Stogner

To: Agriculture

SENATE BILL NO. 2558
(As Passed the Senate)

1 AN ACT TO AMEND SECTIONS 75-40-107 THROUGH 75-40-117,
2 MISSISSIPPI CODE OF 1972, TO TRANSFER THE ADMINISTRATION OF THE
3 MISSISSIPPI BIRD DEALERS LICENSING ACT FROM THE COMMISSIONER OF
4 AGRICULTURE TO THE BOARD OF ANIMAL HEALTH AND THE STATE
5 VETERINARIAN; TO AMEND SECTION 75-40-103, MISSISSIPPI CODE OF
6 1972, TO REVISE DEFINITIONS; AND FOR RELATED 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 * * * shall approximate the total
33 direct and indirect costs of administering this article; but the
34 annual cost of a wholesale license shall not exceed Twenty-five
35 Dollars (\$25.00) and the annual cost of a retail license shall not
36 exceed Ten Dollars (\$10.00).

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

39 75-40-109. (1) Every bird dealer shall keep records
40 sufficient to identify:

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

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

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

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

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

62 revocation of a license.

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

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

67 75-40-111. The * * * State Veterinarian may quarantine,
68 seize and destroy any birds which present a hazard of carrying
69 exotic or untreatable disease as determined by rules and
70 regulations promulgated by the board. The board shall pay an
71 indemnity to the owner of any seized or destroyed birds from any
72 federal funds made available for that purpose or any state funds
73 hereafter appropriated for that purpose.

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

76 75-40-113. The board may make any rules and regulations not
77 inconsistent with this article governing the business of dealing
78 in or the transportation of exotic or pet birds.

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

81 75-40-115. (1) Whenever it may appear to the State
82 Veterinarian or to his agent, either upon investigation or
83 otherwise, that any person has engaged in, or is engaging in, or
84 is about to engage in any act, practice or transaction which is
85 prohibited by any law or regulation governing activities for which
86 a license from the board is required by this article, whether or
87 not the person has so registered or obtained such a license or
88 permit, the State Veterinarian may issue an order, if he deems it
89 to be in the public interest or necessary for the protection of
90 the citizens of this state, prohibiting such person from
91 continuing such act, practice or transaction or suspending or
92 revoking any such registration, license or permit held by such
93 person.

94 (2) In situations where persons otherwise would be entitled

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

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

128 board, receipt of the order and notice will be conclusively
129 presumed five (5) days after the mailing of the order by certified
130 mail, return receipt requested, to the address provided by such
131 person in his most recent registration or license or permit
132 application.

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

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

149 75-40-117. (1) The State Veterinarian may institute suits
150 or other legal proceedings in any court of proper venue as may be
151 required for the enforcement of any law or regulation governing
152 activities for which registration with or a license or permit from
153 the board is required by this article.

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

157 (3) In cases in which the State Veterinarian institutes a
158 suit or other legal proceeding to enforce his order, the court
159 may, among other appropriate relief, issue a temporary restraining
160 order or a preliminary, interlocutory or permanent injunction

161 restraining or enjoining persons, and those in active concert with
162 them, from engaging in any acts, practices or transactions
163 prohibited by orders of the State Veterinarian or any law or
164 regulation governing activities for which registration with or a
165 license or permit from the board is required.

166 SECTION 8. This act shall take effect and be in force from
167 and after July 1, 2000.