

By: Senator(s) Dawkins

To: Judiciary, Division B

SENATE BILL NO. 3003

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

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

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

21 97-41-1. (1) For the purposes of this chapter, the
 22 following terms shall have the meanings ascribed to them unless
 23 the context clearly requires otherwise:

24 (a) "Animal" means any mammal, bird, reptile or
 25 amphibian.

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

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

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

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

36 (i) Food of sufficient quality and quantity to
37 allow for normal growth or maintaining of body weight.

38 (ii) Access to potable water of a drinkable
39 temperature in sufficient quantity for an animal or group of
40 animals.

41 (iii) Shelter that protects an animal from the
42 adverse effects of weather and extreme temperatures which is
43 species and breed appropriate.

44 (iv) Veterinary care sufficient to relieve
45 distress from injury, neglect or disease.

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

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

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

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

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

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

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

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

69 (i) Overdrives, overloads, drives when overloaded or
70 overworks a living animal;

71 (ii) Torments or unjustifiably injures a living animal;

72 (iii) Having charge, custody or possession of any
73 animal, either as owner or otherwise, and unjustifiably deprives
74 of necessary sustenance, food drink, sanitary shelter or
75 veterinary care, or abandons any animal.

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

80 (v) Carries, or causes to be carried, by hand or in or
81 upon any vehicle or other conveyance, any living animal in a cruel
82 or inhumane manner.

83 (vi) Intentionally injures any animal belonging to
84 another person without legal privilege or consent of the owner.

85 (vii) Mistreats any living animal by any act or
86 omission whereby unnecessary or unjustifiable physical pain,
87 suffering or death is caused to or permitted upon the animal.

88 (viii) Causes or procures to be done by any person any
89 act enumerated in this subsection (1).

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

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

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

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

110 (b) Any person who causes or procures to be done by any
111 person any act enumerated in this subsection (2) shall also be
112 guilty of felony cruelty to animals.

113 (c) A person convicted of the crime of felony cruelty
114 to animals shall be fined not less than One Thousand Dollars
115 (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00),
116 imprisoned in the custody of the Department of Corrections for not
117 more than five (5) years, or both. A person so convicted may also
118 be ordered to counseling and may be prohibited from owning or
119 possessing an animal or animals for not less than five (5) years.

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

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

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

130 97-41-2. (1) All courts in the State of Mississippi may
131 order the seizure of an animal by a law enforcement agency, for
132 its care and protection upon a finding of probable cause to
133 believe said animal is being cruelly treated, neglected or
134 abandoned. Such probable cause may be established upon sworn
135 testimony of any person who has witnessed the condition of said
136 animal. The court may appoint an animal control agency, agent of
137 an animal shelter organization, veterinarian or other person as
138 temporary custodian for the said animal, pending final disposition
139 of the animal pursuant to this section. Such temporary custodian
140 shall directly contract and be responsible for any care rendered
141 to such animal, and may make arrangements for such care as may be
142 necessary. Upon seizure of an animal, the law enforcement agency
143 responsible for removal of the animal shall serve notice upon the
144 owner of the animal, if possible, and shall also post prominently
145 a notice to the owner or custodian to inform such person that the
146 animal has been seized. Such process and notice shall contain a
147 description of the animal seized, the date seized, the name of the
148 law enforcement agency seizing the animal, the name of the
149 temporary custodian, if known at the time, and shall include a
150 copy of the order of the court authorizing the seizure.

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

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

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

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

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

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

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

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

181 (f) Any other evidence the court considers to be
182 material or relevant.

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

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

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

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

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

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

215 * * *

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

218 97-41-3. Any law enforcement officer, animal control
219 officer, veterinarian or agent of a society for the prevention of
220 cruelty to animals may kill, or cause to be killed, any animal
221 found neglected, injured or abandoned, if in the opinion of three
222 (3) respectable citizens it is injured or diseased past reasonable
223 recovery, or by age has become useless. Anyone acting in good
224 faith pursuant to this section shall not be held liable either
225 criminally or civilly for that action.

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

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

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

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

239 **SECTION 8.** This act shall take effect and be in force from
240 and after July 1, 2004.