

By: Senator(s) Wilemon

To: Judiciary, Division B

SENATE BILL NO. 2007

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 REQUIRE CERTIFICATION OF  
 7 HUMANE ENFORCEMENT OFFICERS AND TO PROVIDE A PENALTY FOR  
 8 NONCOMPLIANCE; TO AMEND SECTION 97-41-3, MISSISSIPPI CODE OF 1972,  
 9 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; TO REPEAL SECTION 97-41-16,  
 21 MISSISSIPPI CODE OF 1972, WHICH PROVIDES PENALTY AND RESTITUTION  
 22 FOR MALICIOUS OR MISCHIEVOUS INJURY TO ANY DOG; AND FOR RELATED  
 23 PURPOSES.

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

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

27 97-41-1. (1) (a) A person shall be guilty of simple animal  
 28 cruelty who knowingly, intentionally or recklessly:

29 (i) Abandons or leaves an animal at a location  
 30 without providing for or arranging for the animal's continued  
 31 sustenance;

32 (ii) Subjects any animal to cruel mistreatment;

33 (iii) Subjects an animal in the custody of the  
 34 person to cruel neglect;

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

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

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

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

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

50                   (ii) A second conviction of simple animal cruelty  
51 shall be a misdemeanor punishable by a fine of not less than Two  
52 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars  
53 (\$1,000.00), imprisonment not less than one (1) nor more than six  
54 (6) months, or both.

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

57                   (b) A conviction of a felony under this section shall  
58 be punishable by a fine of not more than Five Thousand Dollars  
59 (\$5,000.00), imprisonment in the custody of the Department of  
60 Corrections not to exceed five (5) years, or both.

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

69 income and other costs incurred as a result of actions in  
70 violation of this section.

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

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

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

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

88 (2) (a) District attorneys, assistant district attorneys,  
89 or law enforcement officers making application for a search  
90 warrant may rely upon supplemental affidavits made by humane  
91 enforcement officers.

92 (b) No person shall perform as a humane enforcement  
93 officer under color of authority of an organization whose purpose  
94 is the prevention of cruelty to animals unless:

95 (i) The person has been duly appointed as a humane  
96 enforcement officer by the governing board of the organization;

97 (ii) The person is certified by and in good  
98 standing with the Association of Certified Cruelty Investigators  
99 or another certifying organization which provides education  
100 regarding animal husbandry and legal aspects of investigation,

101 tests applicants for proficiency, and requires continuing  
102 education to remain in good standing; and

103 (iii) The governing body of the organization has  
104 posted a surety bond in the amount of One Hundred Thousand Dollars  
105 (\$100,000.00) for acts and omissions committed by the humane  
106 enforcement officer.

107 (c) No person shall perform as a humane enforcement  
108 officer under color of authority of a political subdivision of the  
109 State of Mississippi unless:

110 (i) The person has been duly appointed as a humane  
111 enforcement officer by the governing body of that political  
112 subdivision; and

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

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

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

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

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

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

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

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

133 \* \* \*

134           (4) 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  
139 custodian for the \* \* \* animal, pending final disposition of the  
140 animal at the conclusion of the criminal case. The temporary  
141 custodian shall directly contract and be responsible for any care  
142 rendered to the animal, and may make arrangements for such care as  
143 may be necessary. Upon seizure of an animal, the law enforcement  
144 agency responsible for removal of the animal shall serve notice  
145 upon the owner of the animal, if possible, and shall also post  
146 prominently a notice to the owner or custodian \* \* \* that the  
147 animal has been seized. The process and notice shall contain a  
148 description of the animal seized, the date seized, the name of the  
149 law enforcement agency seizing the animal, the name of the  
150 temporary custodian, if known at the time, and shall include a  
151 copy of the order of the court authorizing the seizure.

152           (5) 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           (6) 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 (5) of this section exists, the animal shall be  
166 forfeited to the state and released to an animal control agency or

167 to an organization qualified under Section 501(c)(3) of the  
168 Internal Revenue Code whose purpose is the protection of animals.

169 \* \* \*

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

175 \* \* \*

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

178 97-41-3. Any law enforcement officer, humane enforcement  
179 officer or veterinarian may kill, or cause to be killed, in a  
180 humane manner, any animal found neglected, injured or abandoned  
181 after all reasonable attempts have been made to locate the  
182 animal's legal owner. This shall not be construed to prevent  
183 immediate euthanasia by such persons if it is necessary to prevent  
184 unrelievable suffering of the animal. A method of killing  
185 approved by the most recent report of the American Veterinary  
186 Medical Association Panel on Euthanasia in effect at the time  
187 shall be presumed to be humane.

188 **SECTION 4.** (1) The following activities will not be  
189 violations of this chapter: any and all activities associated  
190 with or incidental to the lawful hunting or trapping of wildlife,  
191 fishing, herding of domestic animals, accepted animal husbandry  
192 practices including slaughter, accepted dog handling and training  
193 practices, accepted veterinary practices, humane euthanasia  
194 performed at an animal shelter, accepted pest control practices,  
195 livestock shows, accepted equine activities, rodeo practices  
196 accepted by the Professional Rodeo Cowboy's Association, or  
197 activities carried on for teaching or for scientific or medical  
198 research governed by accepted standards.

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

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

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

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

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

216           **SECTION 9.** Section 97-41-16, Mississippi Code of 1972, which  
217 provides for penalty for malicious or mischievous injury to dogs,  
218 is repealed.

219           **SECTION 10.** Section 4 of this act shall be codified within  
220 Title 97, Chapter 41, Mississippi Code of 1972.

221           **SECTION 11.** This act shall take effect and be in force from  
222 and after July 1, 2006.