

By: Representative Holland (By Request)

To: Agriculture

HOUSE BILL NO. 1539

1 AN ACT TO REVISE THE CRIME OF ANIMAL CRUELTY; TO AMEND
2 SECTION 97-41-1, MISSISSIPPI CODE OF 1972, TO INCORPORATE ELEMENTS
3 OF OFFENSES FOUND ELSEWHERE IN CHAPTER 41 PERTAINING TO CRIMES
4 AGAINST ANIMALS AND TO DISTINGUISH BETWEEN MISDEMEANOR AND FELONY
5 DEGREES OF THE OFFENSE; TO AMEND SECTION 97-41-2, MISSISSIPPI CODE
6 OF 1972, TO CREATE THE POSITION OF "CRUELTY INVESTIGATOR" AND TO
7 REQUIRE THAT A PERSON HOLDING SUCH POSITION SHALL POSSESS CERTAIN
8 CREDENTIALS; TO ALLOW DISTRICT ATTORNEYS AND LAW ENFORCEMENT
9 OFFICERS TO RELY UPON AFFIDAVITS MADE BY CRUELTY INVESTIGATORS; TO
10 SET FORTH PENALTIES FOR ACTING AS A CRUELTY INVESTIGATOR WITHOUT
11 POSSESSING THE PROPER CREDENTIALS; TO REVISE THE PROCEDURE FOR
12 LAWFULLY SEIZING AN ANIMAL; TO PROVIDE THAT IF AN ANIMAL IS SEIZED
13 UNDER CERTAIN CONDITIONS, THE ANIMAL SHALL BE FORFEITED TO THE
14 STATE FOR RELEASE TO AN ORGANIZATION THAT HAS AS ITS PURPOSE THE
15 PROTECTION OF ANIMALS; TO AMEND SECTION 97-41-3, MISSISSIPPI CODE
16 OF 1972, TO REVISE THE PROCESS BY WHICH AN ANIMAL MAY BE LAWFULLY
17 DESTROYED; TO PROVIDE EXEMPTIONS FROM THE APPLICATION OF THE
18 CHAPTER; TO REPEAL SECTIONS 97-41-5, 97-41-7, 97-41-9 AND
19 97-41-13, MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE CERTAIN
20 MISDEMEANOR OFFENSES AND PENALTIES FOUND IN THE CHAPTER OF LAW
21 PERTAINING TO THE CRIME OF ANIMAL CRUELTY; AND FOR RELATED
22 PURPOSES.

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

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

26 97-41-1. (1) A person shall * * * be guilty of simple
27 animal cruelty who knowingly, intentionally or recklessly:

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

30 (b) Subjects any animal to cruel mistreatment, or
31 subjects an animal in the custody of the person to cruel neglect,
32 and for purposes of this paragraph, cruel treatment and cruel
33 neglect include every act or omission where unjustifiable physical
34 injury, suffering or death is caused or permitted;

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

37 (d) Causes any act listed in this subsection (1) to be
38 done.

39 (2) A person shall be guilty of the felony of aggravated
40 animal cruelty who maliciously causes death, serious bodily injury
41 or extreme physical suffering to an animal.

42 (3) (a) (i) A first conviction of simple animal cruelty
43 shall be a misdemeanor punishable by a fine of not more than One
44 Thousand Dollars (\$1,000.00), imprisonment in jail not to exceed
45 six (6) months, or both.

46 (ii) A second conviction of simple animal cruelty
47 shall be a misdemeanor punishable by a fine of not less than Two
48 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
49 (\$1,000.00), imprisonment in jail not less than one (1) nor more
50 than six (6) months, or both.

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

53 (b) A conviction of a felony under this section shall
54 be punishable by a fine of not more than Five Thousand Dollars
55 (\$5,000.00), imprisonment in the custody of the Department of
56 Corrections not to exceed five (5) years, or both.

57 (c) For purposes of this section, each incident of
58 cruelty and each animal treated cruelly shall constitute the basis
59 for a separate offense.

60 (d) For any conviction under this section, the court
61 may order restitution to the animal's owner as well as the
62 temporary custodian appointed by the court pursuant to Section
63 97-41-2(4) for the costs of boarding, professional fees,
64 equipment, medicine, supplies, rehabilitation and other costs
65 related to the care of the animal. Court-ordered restitution to
66 an owner also shall include the cost of replacing the animal at
67 the market value of such an animal at the time of its death, the
68 actual expenses incurred for treatment by a veterinarian, special
69 supplies or food, loss of the owner's income caused by the

70 animal's death or by caring for the animal after its injury, and,
71 in the discretion of the court, any other costs related to the
72 animal's injury and/or death.

73 (e) A person convicted under this section may be
74 enjoined from possessing an animal or animals or from residing or
75 working where animals are kept, or in the discretion of the court
76 may be prohibited from possessing any animal as a condition of
77 probation or parole.

78 (f) A person convicted under this section, in addition
79 to any other punishment that may be imposed, may be ordered to
80 perform community service, to participate in professional
81 counseling, or both.

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

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

91 (2) District attorneys, assistant district attorneys, or law
92 enforcement officers making application for a search warrant may
93 rely upon supplemental affidavits made by cruelty investigators.

94 (3) (a) A cruelty investigator is any person, other than a
95 law enforcement officer as defined in Section 45-6-1 et seq., who
96 investigates violations of, or seeks to enforce any criminal
97 provision of state law relating to the humane care, treatment, or
98 handling of animals under color of authority of either an
99 organization the purpose of which is the prevention of cruelty to
100 animals or a political subdivision of the state.

101 (b) No person shall act as a cruelty investigator
102 unless:

103 (i) The person has been duly appointed as a
104 cruelty investigator by the governing board of the organization or
105 political subdivision; and

106 (ii) The person is certified by and in good
107 standing with the Association of Certified Cruelty Investigators
108 or another certifying organization which provides education
109 regarding animal husbandry and legal aspects of investigation,
110 tests applicants for proficiency and requires continuing education
111 to remain in good standing.

112 (c) Any person who violates, or attempts or conspires
113 to violate this section, shall be guilty of a misdemeanor
114 punishable by a fine of not more than One Thousand Dollars
115 (\$1,000.00), imprisonment not to exceed six (6) months, or both.

116 (4) The court may issue a search warrant upon a finding of
117 probable cause that:

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

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

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

122 (ii) Contraband, fruits of a violation of Section
123 97-41-1, or other items illegally possessed; or

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

126 (5) If an animal is seized, with or without a warrant, as
127 evidence of a violation of Section 97-41-1, contraband, fruits of
128 a violation of Section 97-41-1, property illegally possessed,
129 intended for use or used in committing a violation of Section
130 97-41-1, the court shall appoint * * * a temporary custodian for
131 the * * * animal, pending final disposition of the animal at the
132 conclusion of the criminal case. The temporary custodian
133 shall * * * be responsible for directly contracting for or
134 administering any care rendered to the animal and may make
135 arrangements for such care as may be necessary. Upon seizure of

136 an animal, the law enforcement agency responsible for removal of
137 the animal shall serve notice upon the owner of the animal, if
138 possible, and shall also post prominently a notice to the owner or
139 custodian to inform such person that the animal has been seized.
140 The process and notice shall contain a description of the animal
141 seized, the date and time of seizure, the name of the law
142 enforcement agency seizing the animal, the name of the temporary
143 custodian, if known at the time, and shall include a copy of the
144 order of the court authorizing the seizure.

145 (6) At the conclusion of the criminal case, unless there has
146 been a plea of guilty or nolo contendere, or a finding of guilt,
147 the court shall make a finding of whether, by a preponderance of
148 the evidence, the animal is:

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

150 (b) Contraband;

151 (c) Fruits of a violation of Section 97-41-1;

152 (d) Property illegally possessed; or

153 (e) Property intended for use, or used in committing a
154 violation of Section 97-41-2.

155 (7) If there has been a plea of guilty or nolo contendere, a
156 finding of guilt, or a finding by the court by a preponderance of
157 the evidence that one or more of the conditions enumerated in
158 subsection (6) of this section exists, the animal shall be
159 forfeited to the state.

160 (8) Any animal forfeited to the state under this section
161 shall be released to an organization exempt from federal income
162 tax under Section 501(c)(3) of the Internal Revenue Code the
163 purpose of which is the protection of animals. If no such
164 organization is willing to receive the animal, the animal shall be
165 released to an animal control agency for adoption or other humane
166 disposition.

167 (9) Nothing in this section shall be construed to prevent or
168 otherwise interfere with a law enforcement officer's authority to

169 seize an animal as evidence or require court action for the taking
170 into custody and making proper disposition of animals as
171 authorized in Sections 21-19-9 and 41-53-11.

172 * * *

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

175 97-41-3. Any law enforcement officer, cruelty investigator
176 or veterinarian may kill, or cause to be killed, in a humane
177 manner, any animal found neglected, injured or abandoned, after
178 all reasonable attempts have been made to locate the animal's
179 legal owner. This shall not be construed to prevent immediate
180 euthanasia by such persons, if it is necessary to prevent the
181 animal's suffering when it cannot be relieved otherwise. A method
182 of killing approved by the most recent report of the American
183 Veterinary Medical Association Panel on Euthanasia in effect at
184 the time of the euthanasia shall be presumed to be humane.

185 **SECTION 4.** (1) Any and all of the activities associated
186 with or incidental to the lawful practices and activities
187 enumerated in this section will not be violations of this chapter
188 or any other state law pertaining to the criminal offense of
189 animal cruelty. Those activities include:

- 190 (a) Hunting or trapping of wildlife;
- 191 (b) Fishing;
- 192 (c) Herding of domestic animals;
- 193 (d) Accepted animal husbandry practices including
194 slaughter;
- 195 (e) Accepted dog handling and training practices;
- 196 (f) Accepted veterinary practices;
- 197 (g) Humane euthanasia of animals performed at an animal
198 shelter;
- 199 (h) Accepted pest control practices;
- 200 (i) Accepted animal handling practices at livestock
201 shows;

202 (j) Accepted equine activities;
203 (k) Rodeo practices accepted by the Professional Rodeo
204 Cowboy's Association; or

205 (l) Activities carried on for teaching or for
206 scientific or medical research governed by accepted standards.

207 (2) Nothing in this chapter shall be construed as
208 prohibiting a person from injuring or killing an animal,
209 reasonably believed to constitute a threat of injury or death to
210 himself or another, or to property, livestock or poultry.

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

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

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

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

224 **SECTION 9.** Section 4 of this act shall be codified within
225 Chapter 41, Title 97, Mississippi Code of 1972.

226 **SECTION 10.** This act shall take effect and be in force from
227 and after July 1, 2007.