

By: Representatives Cockerham, Myers

To: Agriculture

HOUSE BILL NO. 1540

1 AN ACT TO REVISE THE CRIME OF ANIMAL CRUELTY; TO DEFINE
2 CERTAIN TERMS RELATING TO THE CRIME; TO AMEND SECTION 97-41-1,
3 MISSISSIPPI CODE OF 1972, TO INCORPORATE ELEMENTS OF OFFENSES
4 FOUND ELSEWHERE IN CHAPTER 41, AND TO DISTINGUISH BETWEEN
5 MISDEMEANOR AND FELONY DEGREES OF THE OFFENSE; TO AMEND SECTION
6 97-41-2, MISSISSIPPI CODE OF 1972, TO ALLOW ANIMALS IN IMMEDIATE
7 DANGER BECAUSE OF A NATURAL DISASTER OR EMERGENCY TO BE LAWFULLY
8 SEIZED; TO REVISE THE PROCESS BY WHICH AN ANIMAL MAY BE LAWFULLY
9 SEIZED; TO AMEND SECTION 97-41-3, MISSISSIPPI CODE OF 1972, TO
10 REVISE THE PROCESS BY WHICH AN ANIMAL MAY BE LAWFULLY DESTROYED
11 AND TO GRANT IMMUNITY TO THOSE ACTING UNDER THE SECTION IN GOOD
12 FAITH; TO AMEND SECTION 97-41-19, MISSISSIPPI CODE OF 1972, TO
13 REVISE PROVISIONS REGARDING DOG FIGHTS; TO PROVIDE EXEMPTIONS FROM
14 THE APPLICATION OF THE CHAPTER; TO CREATE THE MISDEMEANOR CRIME OF
15 INTERFERING WITH ANY ACTIVITIES EXEMPTED BY THIS ACT; TO REPEAL
16 SECTIONS 97-41-5, 97-41-7, 97-41-9, 97-41-13, 97-41-16 AND
17 97-41-17, MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE CERTAIN
18 MISDEMEANOR OFFENSES AND PENALTIES FOUND IN THE CHAPTER OF LAW
19 PERTAINING TO THE CRIME OF ANIMAL CRUELTY; AND FOR RELATED
20 PURPOSES.

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

22 **SECTION 1.** For the purposes of this act, the following words
23 and phrases shall have the meanings ascribed unless the context
24 clearly requires otherwise:

25 (a) "Animal" means any nonhuman mammal, bird, reptile
26 or fish.

27 (b) "Minimum care" means the provision of necessary
28 sustenance and environment to maintain the health of an animal,
29 including an adequate quality and quantity of food, potable water,
30 shelter that provides protection from the elements of adverse
31 weather such as heat, cold, rain and wind, that is age, health and
32 species appropriate, and veterinary care to maintain health and
33 prevent suffering or distress.

34 (c) "Physical injury" means physical trauma, impairment
35 of condition or inflicted pain, except for that which is necessary
36 for relief of injury or veterinary treatment.

37 (d) "Pain" is an awareness of acute or chronic
38 discomfort occurring in varying degrees of severity resulting from
39 potential or actual injury, disease or emotional distress and
40 evidenced by biological or behavioral changes, or both. Acute
41 pain results from traumatic, surgical or infectious events of
42 abrupt onset. Chronic pain results from long-standing physical
43 disorder or emotional distress that is usually slow in onset and
44 long in duration. Distress is an aversive state of physical or
45 mental stress resulting from pain, anxiety or fear to which an
46 animal is unable to adapt.

47 (e) "Stress" is the effect produced by external
48 physical or environmental events or internal physiologic or
49 psychologic factors which induce an alteration in an animal's
50 biologic equilibrium. Physiologic stress can be the result of
51 injury, disease, starvation or dehydration. Psychologic stress is
52 the result of fear, anxiety, boredom, loneliness or separation.
53 Environmental stress is the result of restraint, noise, odors,
54 unfavorable habitat, chemicals, pheromones or exposure to
55 incompatible animals.

56 (f) "Torture" means an act primarily committed to
57 inflict pain or suffering.

58 (g) "Torment" means an act primarily intended to cause
59 distress, fear or suffering.

60 **SECTION 2.** (1) Any and all of the activities associated
61 with or incidental to the lawful practices and activities
62 enumerated in this section will not be violations of this chapter
63 or any other state law pertaining to the criminal offense of
64 animal cruelty. Those activities include:

65 (a) Hunting or trapping of wildlife;

66 (b) Fishing;

67 (c) Herding of domestic animals;

68 (d) Accepted animal husbandry practices including
69 slaughter;

70 (e) Destruction of diseased or imperiled livestock,
71 poultry or fish that have been abandoned, or constructively
72 abandoned, due to calamity;

73 (f) Accepted handling and training practices;

74 (g) Accepted veterinary practices;

75 (h) Humane euthanasia of animals performed by trained
76 persons;

77 (i) Accepted pest control practices;

78 (j) Accepted animal handling practices at livestock
79 shows;

80 (k) Accepted equine activities;

81 (l) Rodeo practices accepted by the Professional Rodeo
82 Cowboy's Association; or

83 (m) Activities carried on for teaching or for
84 scientific or medical research governed by the Federal Animal
85 Welfare Act or recommended by the American Veterinary Medical
86 Association.

87 (2) If any person knowingly and intentionally interferes
88 with an animal or animals, handler, keeper, trainer, owner, anyone
89 in the capacity of oversight or care of an animal, or anyone
90 engaged in an activity occurring at an agricultural event, animal
91 show event or field trial, with the intent to disrupt the
92 activities of the animal(s) or person engaging in the lawful use,
93 activity or accepted practice under this section, the person shall
94 be guilty of a misdemeanor, and upon conviction, shall be punished
95 by a fine of not less than One Hundred Dollars (\$100.00) and no
96 more than Five Hundred Dollars (\$500.00), and shall pay
97 restitution for any monetary loss resulting from the activities
98 for which he or she was convicted.

99 (3) Nothing in this chapter shall be construed as
100 prohibiting a person from injuring or killing an animal, except
101 those animals otherwise protected by state or federal law,
102 reasonably believed to constitute a threat of injury or death to

103 humans, livestock, poultry or other domestic or lawfully kept
104 exotic animals.

105 **SECTION 3.** Section 97-41-1, Mississippi Code of 1972, is
106 amended as follows:

107 97-41-1. (1) A person shall * * * be guilty of simple
108 animal cruelty who knowingly, intentionally or recklessly:

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

111 (b) Fails to provide minimum care for an animal;

112 (c) Causes physical pain, stress or injury to an animal
113 including, but without limitation, overriding, or overdriving to
114 the point of exhaustion, kicking, hitting, tormenting or
115 inhumanely carrying or transporting an animal in a manner that
116 restricts the animal from normal postural adjustments or causes
117 hyperthermia or hypothermia, confining or tethering an animal in a
118 manner that restricts the animal from normal postural adjustments,
119 access to food, water or shelter, or poses or causes damage or
120 injury; or

121 (d) Causes any act listed in this subsection (1) to be
122 done.

123 (2) A person shall be guilty of the felony of aggravated
124 animal cruelty who knowingly, intentionally or maliciously starves
125 or dehydrates, tortures, poisons or beats, burns, shoots or
126 otherwise mutilates or kills an animal.

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

131 (ii) A second conviction of simple animal cruelty
132 shall be a misdemeanor punishable by a fine of not less than Two
133 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
134 (\$1,000.00), imprisonment in jail not less than one (1) nor more
135 than six (6) months, or both.

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

138 (b) A conviction of a felony under this section shall
139 be punishable by a fine of not more than Five Thousand Dollars
140 (\$5,000.00), imprisonment in the custody of the Department of
141 Corrections not to exceed five (5) years, or both.

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

145 (d) For any conviction under this section, the court
146 may order restitution to the animal's owner as well as to law
147 enforcement agencies or animal control or humane societies for the
148 costs of investigation, sheltering, transporting, rehabilitation
149 and other costs related to securing the conviction.

150 (e) A person convicted under this section may be
151 enjoined from possessing an animal or animals or from residing or
152 working where animals are kept.

153 (f) A person convicted under this section, in addition
154 to any other punishment that may be imposed, may be ordered to
155 perform community service, to participate in professional
156 counseling, or both.

157 **SECTION 4.** Section 97-41-2, Mississippi Code of 1972, is
158 amended as follows:

159 97-41-2. (1) (a) If an animal is in immediate danger
160 because of a natural disaster or emergency such as a hurricane,
161 tornado, flooding, or other disaster or emergency causing
162 destruction of the animal's shelter or enclosure, or if the animal
163 poses a threat to the safety of the community because of like
164 causes, a law enforcement officer may seize or cause to be seized
165 such animal without the necessity of a court order. If possible,
166 such law enforcement officer shall make an attempt to contact the
167 owner or custodian of the animal to alert them of the danger, and
168 if contact is not made, the officer must prominently post a note

169 or notice as to what action has been taken and who to contact with
170 regard to the location of the animal.

171 (b) The law enforcement agency or any agent engaged by
172 law enforcement for the seizure of animals or the temporary repair
173 to an enclosure, such as a downed or broken fence, may seek fair
174 reimbursement for associated costs.

175 (2) All courts in the State of Mississippi may order the
176 seizure of an animal by a law enforcement agency, for the animal's
177 care and protection upon a finding of probable cause to believe
178 the animal is being cruelly treated, neglected or abandoned. Such
179 probable cause may be established upon sworn testimony of any
180 person who has witnessed the condition of the animal. The court
181 may appoint an animal control agency, agent of an animal shelter
182 organization, agent of a humane society duly registered with the
183 Mississippi Secretary of State, veterinarian or other appropriate
184 person or agency as temporary custodian for the * * * animal,
185 pending final disposition of the animal pursuant to this section.
186 Such temporary custodian shall * * * be responsible for directly
187 contracting for or administering any care rendered to the
188 animal * * *. Upon seizure of an animal, the law enforcement
189 agency responsible for removal of the animal shall serve notice
190 upon the owner of the animal, if possible, and shall also post
191 prominently a notice to the owner or custodian to inform such
192 person that the animal has been seized. Such process and notice
193 shall contain a description of the animal seized, the date and
194 time of seizure, the name of the law enforcement agency seizing
195 the animal, the name of the temporary custodian, if known at the
196 time, and shall include a copy of the order of the court
197 authorizing the seizure.

198 (3) Within five (5) days of seizure of an animal, the owner
199 or custodian of the animal may request a hearing in the court
200 ordering the animal to be seized to determine whether the owner or
201 custodian is able to provide adequately for the animal and is fit

202 to have custody of the animal. The court shall hold such hearing
203 within fourteen (14) days of receiving such request. The hearing
204 shall be concluded and the court order entered thereon within
205 twenty-one (21) days after the hearing is commenced. Upon
206 requesting a hearing, the owner shall have three (3) business days
207 to post a bond or security with the court clerk in an amount
208 determined by the court to be sufficient to repay all reasonable
209 costs sufficient to provide for the animal's care, including, but
210 not limited to, transporting, feeding, essential grooming,
211 providing hoof care and medical care that may include treatment,
212 vaccinations or tests required by the temporary custodian or
213 attending veterinarian. Failure to post such bond within three
214 (3) business days from the request for the hearing shall result in
215 forfeiture of the animal to the court. If the temporary custodian
216 has custody of the animal upon the expiration of the bond or
217 security, the animal shall be forfeited to the court unless the
218 court orders otherwise.

219 (4) In determining the owner's or custodian's fitness to
220 have custody of an animal, the court may consider, among other
221 matters:

222 (a) Testimony from law enforcement officers, animal
223 control officers, animal protection officials or agents, and other
224 witnesses as to the condition the animal was kept in by its owner
225 or custodian.

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

228 (c) Expert testimony as to the proper and reasonable
229 care of the same or like type of animal.

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

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

234 (f) Any other evidence the court considers to be
235 material or relevant.

236 (5) If the court determines that an animal was properly
237 seized, and upon proof of costs incurred as a result of the
238 animal's seizure, including, but not limited to, costs of
239 transporting, boarding or providing medical or veterinarian
240 treatment of the animal, the court shall order that the animal's
241 owner or custodian reimburse the temporary custodian for such
242 costs. A lien for authorized expenses is hereby created upon all
243 animals seized under this section, and shall have priority as to
244 any other lien on such animal.

245 (6) If the court finds the owner of the animal is unable or
246 unfit to adequately provide for the animal, or that the animal is
247 severely injured, diseased, or suffering, and, therefore, not
248 likely to recover, the court may order that the animal be
249 permanently forfeited and released to an animal control agency,
250 animal welfare or protection organization, veterinarian or other
251 agent appointed as temporary custodian to * * * be sold at public
252 auction in the manner now provided for judicial sales; any
253 proceeds from such sale shall go first toward the payment of
254 expenses and costs relating to the care and treatment of such
255 animal and court costs, and at the court's discretion, any excess
256 amount may be paid to the owner of the animal or directed to be
257 revenue for the involved law enforcement agency, or the municipal,
258 county or state jurisdiction in which the offense occurred.

259 (7) Upon notice and hearing as provided in this section, or
260 as a part of any proceeding conducted under the terms of this
261 section, the court may order that other animals in the custody of
262 the owner that were not seized be surrendered and further enjoin
263 the owner from having custody of other animals in the future.

264 (8) If the court determines the owner or custodian is able
265 to provide adequately for, and have custody of, the animal, the

266 court shall order the animal be claimed and removed by the owner
267 or custodian within seven (7) days after the date of the order.

268 (9) Nothing in this section shall be construed to prevent or
269 otherwise interfere with a law enforcement officer's authority to
270 seize an animal as evidence or require court action for the taking
271 into custody and making proper disposition of animals as
272 authorized in Sections 21-19-9, 41-53-1, 41-53-11, 97-3-45, or
273 other municipal, county or state-mandated ordinances or laws, nor
274 be construed to prevent the immediate euthanasia of an animal or
275 animals determined to be ill or injured beyond recovery as
276 provided for in Section 97-41-3.

277 * * *

278 **SECTION 5.** Section 97-41-3, Mississippi Code of 1972, is
279 amended as follows:

280 97-41-3. Any law enforcement officer, animal control
281 officer, veterinarian or agent of a society for the prevention of
282 cruelty to animals may euthanize, or cause to be euthanized, in a
283 humane manner, any stray animal found neglected, injured or
284 abandoned if it is injured, diseased or severely debilitated past
285 reasonable recovery. Anyone acting in good faith pursuant to this
286 section shall not be held liable either criminally or civilly for
287 that action.

288 **SECTION 6.** Section 97-41-19, Mississippi Code of 1972, is
289 amended as follows:

290 97-41-19. (1) If any person (a) shall sponsor, promote,
291 stage or conduct a fight or fighting match between dogs, or (b)
292 shall wager or bet, promote or encourage the wagering or betting
293 of any money or other valuable thing upon any such fight or upon
294 the result thereof, or (c) shall own or have possession or custody
295 of a dog or dogs with the intent to willfully enter it or them or
296 to participate in any such fight, or (d) shall train or transport
297 a dog for the purposes of participation in any such fight, he
298 shall be guilty of a felony and, upon conviction, shall be

299 punished by a fine of not less than One Thousand Dollars
300 (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or by
301 imprisonment in the State Penitentiary for a term of not less than
302 one (1) nor more than three (3) years, or by both such fine and
303 imprisonment, in the discretion of the court.

304 (2) If any person shall be present, as a spectator, at any
305 location where preparations are being made for an exhibition of a
306 fight between dogs with the intent to be present at such
307 preparations, or if any person shall be present at an exhibition
308 of a fight between dogs with the intent to be present at such
309 exhibition, he shall be guilty of a felony and, upon conviction,
310 shall be punished by a fine of not less than Five Hundred Dollars
311 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or by
312 imprisonment in the State Penitentiary for a term of not more than
313 one (1) year, or by both such fine and imprisonment, in the
314 discretion of the court.

315 (3) Any law enforcement officer making an arrest under
316 subsection (1) of this section may lawfully take possession of all
317 dogs and all paraphernalia, implements, equipment or other
318 property used in violation of subsection (1) of this section.
319 Such officer shall file with the circuit court of the county
320 within which the alleged violation occurred an affidavit stating
321 therein (a) the name of the person charged, (b) a description of
322 the property taken, (c) the time and place of the taking, (d) the
323 name of the person who claims to own such property, if known, and
324 (e) that the affiant has reason to believe, stating the ground of
325 such belief, that the property taken was used in such violation.
326 He shall thereupon deliver the property to such court which shall,
327 by order in writing, place such dogs, paraphernalia, implements,
328 equipment, or other property in the custody of a licensed
329 veterinarian, the local humane society or other animal welfare
330 agency, or other suitable custodian, to be kept by such custodian
331 until the conviction or final discharge of the accused, and shall

332 send a copy of such order without delay to the district attorney
333 of the county. The custodian named and designated in such order
334 shall immediately assume the custody of such property and shall
335 retain same, subject to order of the court.

336 Upon the certification of a licensed veterinarian or officer
337 of the humane society or animal welfare agency that, in his
338 professional judgment, a dog which has been seized is not likely
339 to survive the final disposition of the charges or that, by reason
340 of the physical condition of the dog, it should be humanely
341 euthanized before such time, the court may order the dog humanely
342 euthanized. The court shall make its finding of whether to issue
343 such an order within seven (7) days from the certification by the
344 veterinarian or officer of the humane society or animal welfare
345 agency. The owner of a dog which is euthanized without an order
346 of the court with such certification of a licensed veterinarian or
347 officer of the humane society or other animal welfare agency shall
348 have a right of action for damages against the department or
349 agency by which the arresting or seizing officer is employed.
350 Upon conviction of the person charged with a violation of
351 subsection (1) of this section, all dogs seized shall be adjudged
352 by the court to be forfeited and the court shall order a humane
353 disposition of the same. In no event shall the court order the
354 dog to be euthanized without the certification of a licensed
355 veterinarian or officer of the humane society or other animal
356 welfare agency that, in his judgment, the dog is not likely to
357 survive or that, by reason of its physical condition, the dog
358 should be humanely euthanized. In the event of the acquittal or
359 final discharge without conviction of the accused, the court shall
360 direct the delivery of the property so held in custody to the
361 owner thereof. All reasonable expenses incurred by the custodian
362 of seized dogs and property shall be charged as costs of court, to
363 be taxed against the owner or county in the discretion of the
364 court.

365 (4) Nothing in subsection (1) or (3) of this section shall
366 prohibit any of the following:

367 (a) The use of dogs in the management of livestock, by
368 the owner of such livestock or other persons in lawful custody
369 thereof;

370 (b) The use of dogs in lawful hunting; * * *

371 (c) The training of dogs for any purpose not prohibited
372 by law; and

373 (d) The euthanasia of a dog pursuant to Section
374 97-41-3.

375 **SECTION 7.** Section 97-41-5, Mississippi Code of 1972, which
376 provides that carrying any creature in a cruel or inhumane manner
377 is a misdemeanor, is repealed.

378 **SECTION 8.** Section 97-41-7, Mississippi Code of 1972, which
379 provides that confining any living creature without sufficient
380 food and water is a misdemeanor, is repealed.

381 **SECTION 9.** Section 97-41-9, Mississippi Code of 1972, which
382 provides that a custodian of any living creature who fails to
383 provide sufficient food and drink is guilty of a misdemeanor, is
384 repealed.

385 **SECTION 10.** Section 97-41-13, Mississippi Code of 1972,
386 which provides penalties for certain acts of cruelty to animals,
387 is repealed.

388 **SECTION 11.** Section 97-41-16, Mississippi Code of 1972,
389 which provides that malicious or mischievous injury to a dog or
390 cat is a misdemeanor, is repealed.

391 **SECTION 12.** Section 97-41-17, Mississippi Code of 1972,
392 which provides that administering poison to an animal is a
393 misdemeanor, is repealed.

394 **SECTION 13.** Sections 1 and 2 of this act shall be codified
395 within Chapter 41, Title 97, Mississippi Code of 1972.

396 **SECTION 14.** This act shall take effect and be in force from
397 and after its passage.