

By: Representative Snowden

To: Agriculture

HOUSE BILL NO. 1542

1 AN ACT TO REVISE THE CRIME OF CRUELTY TO ANIMALS; TO
2 DISTINGUISH BETWEEN MISDEMEANOR AND FELONY DEGREES OF THE OFFENSE;
3 TO DEFINE CERTAIN TERMS RELATING TO THE CRIME OF ANIMAL CRUELTY;
4 TO PROVIDE THAT CERTAIN ACTIVITIES WILL NOT CONSTITUTE THE CRIME
5 OF ANIMAL CRUELTY; TO SPECIFY THOSE EXEMPT ACTIVITIES AS THE
6 LAWFUL HUNTING OR TRAPPING OF WILDLIFE, FISHING, HERDING OF
7 DOMESTIC ANIMALS, ANIMAL HUSBANDRY PRACTICES, HANDLING AND
8 TRAINING PRACTICES, VETERINARY PRACTICES, HUMANE EUTHANASIA OF
9 ANIMALS, PEST CONTROL PRACTICES, EQUINE ACTIVITIES, RODEO
10 PRACTICES, OR ACTIVITIES CARRIED ON FOR TEACHING OR SCIENTIFIC OR
11 MEDICAL RESEARCH; TO PROVIDE THAT THE PROVISIONS OF THE CHAPTER
12 PERTAINING TO THE CRIME OF ANIMAL CRUELTY SHALL NOT PROHIBIT A
13 PERSON FROM INJURING OR KILLING AN ANIMAL REASONABLY BELIEVED TO
14 CONSTITUTE A THREAT OF INJURY OR DEATH TO HUMANS, LIVESTOCK,
15 POULTRY OR OTHER LAWFULLY KEPT ANIMALS; TO AMEND SECTION 97-41-1,
16 MISSISSIPPI CODE OF 1972, TO INCORPORATE ELEMENTS OF OFFENSES
17 FOUND ELSEWHERE IN CHAPTER 41, TITLE 97, MISSISSIPPI CODE OF 1972;
18 TO AMEND SECTION 97-41-2, MISSISSIPPI CODE OF 1972, TO ALLOW
19 ANIMALS IN IMMEDIATE DANGER BECAUSE OF A NATURAL DISASTER OR
20 EMERGENCY TO BE LAWFULLY SEIZED; TO AMEND SECTION 97-41-3,
21 MISSISSIPPI CODE OF 1972, TO REVISE THE PROCESS BY WHICH AN ANIMAL
22 MAY BE LAWFULLY DESTROYED, AND TO GRANT IMMUNITY TO THOSE ACTING
23 UNDER THE SECTION IN GOOD FAITH; TO AMEND SECTION 97-41-19,
24 MISSISSIPPI CODE OF 1972, IN CONFORMITY AND TO PROVIDE EXEMPTIONS
25 FOR THE LAWFUL EUTHANASIA OF A DOG; TO REPEAL SECTIONS 97-41-5,
26 97-41-7, 97-41-9, 97-41-13, 97-41-16 AND 97-41-17, MISSISSIPPI
27 CODE OF 1972, WHICH CONSTITUTE CERTAIN MISDEMEANOR OFFENSES AND
28 PENALTIES FOUND IN THE CHAPTER OF LAW PERTAINING TO THE CRIME OF
29 ANIMAL CRUELTY; AND FOR RELATED PURPOSES.

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

31 **SECTION 1.** (1) Any and all of the activities associated
32 with or incidental to the lawful practices and activities
33 described in this section will not be violations of this chapter
34 or any other state law pertaining to the criminal offense of
35 animal cruelty. Those exempt activities include:
36 (a) Hunting or trapping of wildlife;
37 (b) Fishing;
38 (c) Herding of domestic animals;
39 (d) Accepted animal husbandry practices including
40 slaughter;

- 41 (e) Accepted handling and training practices;
- 42 (f) Accepted veterinary practices;
- 43 (g) Humane euthanasia of animals performed by trained
44 persons;
- 45 (h) Accepted pest control practices;
- 46 (i) Accepted animal handling practices at livestock
47 shows;
- 48 (j) Accepted equine activities;
- 49 (k) Rodeo practices accepted by the Professional Rodeo
50 Cowboy's Association; or
- 51 (l) Activities carried on for teaching or for
52 scientific or medical research governed by the Federal Animal
53 Welfare Act or recommended by the American Veterinary Medical
54 Association.
- 55 (2) Nothing in this chapter shall be construed as
56 prohibiting a person from injuring or killing an animal, except
57 those animals otherwise protected by state or federal law,
58 reasonably believed to constitute a threat of injury or death to
59 humans, livestock, poultry or other domestic or lawfully kept
60 animals.

61 **SECTION 2.** For the purposes of this chapter, the following
62 words and phrases shall have the meanings ascribed unless the
63 context clearly requires otherwise:

64 (a) "Animal" means any nonhuman mammal, bird, reptile
65 or amphibian.

66 (b) "Critical physical injury" means physical injury
67 that creates a substantial risk of death, or that causes any
68 protracted disfigurement, impairment of health or loss or
69 impairment of a bodily function.

70 (c) "Owner" means a person who has control, custody,
71 possession, title or other legal interest in an animal.

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

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

76 (i) Food of sufficient quality and quantity to
77 allow for normal growth or maintaining of body weight;

78 (ii) Access to potable water of a drinkable
79 temperature in sufficient quantity for an animal or group of
80 animals;

81 (iii) Shelter that protects an animal from the
82 adverse effects of weather and extreme temperatures which is
83 species and breed appropriate;

84 (iv) Veterinary care sufficient to relieve
85 distress from injury, neglect or disease;

86 (v) Adequate exercise to prevent debility;

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

92 (e) "Physical injury" means physical trauma, impairment
93 of condition or inflicted pain except for that which is necessary
94 for relief of injury or veterinary treatment.

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

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

100 (h) "Torment" means an act primarily intended to cause
101 distress, fear or suffering.

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

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

106 97-41-1. (1) A person shall * * * be guilty of simple
107 animal cruelty who knowingly, intentionally or recklessly:

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

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

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

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

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

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

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

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

137 (b) A conviction of a felony under this section shall
138 be punishable by a fine of not more than Five Thousand Dollars

139 (\$5,000.00), imprisonment in the custody of the Department of
140 Corrections not to exceed five (5) years, or both.

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

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

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

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

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

158 97-41-2. (1) (a) If an animal is in immediate danger
159 because of a natural disaster or emergency such as a hurricane,
160 tornado, flooding, or other disaster or emergency causing
161 destruction of the animal's shelter or enclosure, or if the animal
162 poses a threat to the safety of the community because of like
163 causes, a law enforcement officer may seize or cause to be seized
164 such animal without the necessity of a court order. If possible,
165 such law enforcement officer shall make an attempt to contact the
166 owner or custodian of the animal to alert them of the danger, and
167 if contact is not made, the officer must prominently post a note
168 or notice as to what action has been taken and who to contact with
169 regard to the location of the animal.

170 (b) The law enforcement agency or any agent engaged by
171 law enforcement for the seizure of animals or the temporary repair

172 to an enclosure, such as a downed or broken fence, may seek fair
173 reimbursement for associated costs.

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

197 (3) Within five (5) days of seizure of an animal, the owner
198 or custodian of the animal may request a hearing in the court
199 ordering the animal to be seized to determine whether the owner or
200 custodian is able to provide adequately for the animal and is fit
201 to have custody of the animal. The court shall hold such hearing
202 within fourteen (14) days of receiving such request. The hearing
203 shall be concluded and the court order entered thereon within
204 twenty-one (21) days after the hearing is commenced. Upon

205 requesting a hearing, the owner shall have three (3) business days
206 to post a bond or security with the court clerk in an amount
207 determined by the court to be sufficient to repay all reasonable
208 costs sufficient to provide for the animal's care, including, but
209 not limited to, transporting, feeding, essential grooming,
210 providing hoof care and medical care that may include treatment,
211 vaccinations or tests required by the temporary custodian or
212 attending veterinarian. Failure to post such bond within three
213 (3) business days shall result in forfeiture of the animal to the
214 court. If the temporary custodian has custody of the animal upon
215 the expiration of the bond or security, the animal shall be
216 forfeited to the court unless the court orders otherwise.

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

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

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

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

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

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

232 (f) Any other evidence the court considers to be
233 material or relevant.

234 (5) If the court determines that an animal was properly
235 seized, and upon proof of costs incurred as a result of the
236 animal's seizure, including, but not limited to, costs of
237 transporting, boarding or providing medical or veterinarian

238 treatment of the animal, the court shall order that the animal's
239 owner or custodian reimburse the temporary custodian for such
240 costs. A lien for authorized expenses is hereby created upon all
241 animals seized under this section, and shall have priority as to
242 any other lien on such animal.

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

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

262 (8) If the court determines the owner or custodian is able
263 to provide adequately for, and have custody of, the animal, the
264 court shall order the animal be claimed and removed by the owner
265 or custodian within seven (7) days after the date of the order.

266 (9) Nothing in this section shall be construed to prevent or
267 otherwise interfere with a law enforcement officer's authority to
268 seize an animal as evidence or require court action for the taking
269 into custody and making proper disposition of animals as
270 authorized in Sections 21-19-9, 41-53-1, 41-53-11, 97-3-45, or

271 other municipal, county or state-mandated ordinances or laws, nor
272 be construed to prevent the immediate euthanasia of an animal or
273 animals determined to be ill or injured beyond recovery as
274 provided for in Section 97-41-3.

275 * * *

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

278 97-41-3. Any law enforcement officer, animal control
279 officer, veterinarian or agent of a society for the prevention of
280 cruelty to animals may euthanize, or cause to be euthanized, in a
281 humane manner, any stray animal found neglected, injured or
282 abandoned if it is injured, diseased or severely debilitated past
283 reasonable recovery. Anyone acting in good faith pursuant to this
284 section shall not be held liable either criminally or civilly for
285 that action.

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

288 97-41-19. (1) If any person (a) shall sponsor, promote,
289 stage or conduct a fight or fighting match between dogs, or (b)
290 shall wager or bet, promote or encourage the wagering or betting
291 of any money or other valuable thing upon any such fight or upon
292 the result thereof, or (c) shall have possession or custody of a
293 dog with the intent to willfully enter it or to participate in any
294 such fight, or (d) shall train or transport a dog for the purposes
295 of participation in any such fight, he shall be guilty of a felony
296 and, upon conviction, shall be punished by a fine of not less than
297 One Thousand Dollars (\$1,000.00) nor more than Five Thousand
298 Dollars (\$5,000.00), or by imprisonment in the State Penitentiary
299 for a term of not less than one (1) nor more than three (3) years,
300 or by both such fine and imprisonment, in the discretion of the
301 court.

302 (2) If any person shall be present, as a spectator, at any
303 location where preparations are being made for an exhibition of a

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

313 (3) Any law enforcement officer making an arrest under
314 subsection (1) of this section may lawfully take possession of all
315 dogs and all paraphernalia, implements, equipment or other
316 property used in violation of subsection (1) of this section.
317 Such officer shall file with the circuit court of the county
318 within which the alleged violation occurred an affidavit stating
319 therein (a) the name of the person charged, (b) a description of
320 the property taken, (c) the time and place of the taking, (d) the
321 name of the person who claims to own such property, if known, and
322 (e) that the affiant has reason to believe, stating the ground of
323 such belief, that the property taken was used in such violation.
324 He shall thereupon deliver the property to such court which shall,
325 by order in writing, place such dogs, paraphernalia, implements,
326 equipment, or other property in the custody of a licensed
327 veterinarian, the local humane society or other animal welfare
328 agency, or other suitable custodian, to be kept by such custodian
329 until the conviction or final discharge of the accused, and shall
330 send a copy of such order without delay to the district attorney
331 of the county. The custodian named and designated in such order
332 shall immediately assume the custody of such property and shall
333 retain same, subject to order of the court.

334 Upon the certification of a licensed veterinarian or officer
335 of the humane society or animal welfare agency that, in his
336 professional judgment, a dog which has been seized is not likely

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

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

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

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

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

371 (d) The euthanasia of a dog pursuant to Section
372 97-41-3.

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

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

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

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

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

389 **SECTION 12.** Sections 1 and 2 of this act shall be codified
390 within Chapter 41, Title 97, Mississippi Code of 1972.

391 **SECTION 13.** 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 14.** This act shall take effect and be in force from
395 and after July 1, 2007.