

[Current law with comments in bold print and in brackets]

MISSISSIPPI CODE OF 1972

As Amended

SEC. 97-41-2. Authority to seize maltreated, neglected, or abandoned animals.

(1) All courts in the State of Mississippi may order the seizure of an animal by a law enforcement agency, for its care and protection upon a finding of probable cause to believe said animal is being cruelly treated, neglected or abandoned. **[This statute violates due process in its attempt to seize property from citizens who have committed no crime. For example, the law criminalizing cruelty (Miss. Code Ann. 97-41-1) has been found unconstitutional. Davis v. Miss., 806 So.2d 1098 (2001)]** Such probable cause may be established upon sworn testimony of any person who has witnessed the condition of said animal. **[This is an absolutely incorrect attempt at defining probable cause to believe an animal has been mistreated. First, it is highly irregular (because of its simple impossibility) for a statute to attempt to define probable cause. The finding of probable cause is, and can only be, determined case by case by the judicial branch. This attempt at defining probable cause to believe that cruelty has occurred is spurious, because mere possession of a debilitated animal, alone, does NOT constitute a crime. This clause would criminalize owners of elderly animals, owners taking their ill animals to a veterinarian, a veterinarian in possession of debilitated animals, animal rescuers who are rehabilitating starved animals, and others too numerous to name. Justice Court Judges, without extensive training in the Fourth Amendment, who rely on this statute and allow seizures based upon this, subject the state to federal civil rights judgments, and unnecessarily waste taxpayer money.]** The court may appoint an animal control agency, agent of an animal shelter organization, veterinarian or other person as temporary custodian for the said animal, pending final disposition of the animal pursuant to this section. Such temporary custodian shall directly contract and be responsible for any care rendered to such animal, and may make arrangements for such care as may be necessary. Upon seizure of an animal, the law enforcement agency responsible for removal of the animal shall serve notice upon the owner of the animal, if possible, and shall also post prominently a notice to the owner or custodian to inform such person that the animal has been seized. Such process and notice shall contain a description of the animal seized, the date seized, the name of the law enforcement agency seizing the animal, the name of the temporary custodian, if known at the time, and shall include a copy of the order of the court authorizing the seizure.

(2) Within five (5) days of seizure of an animal, the owner of the animal may request a hearing in the court ordering the animal to be seized to determine whether the owner is able to provide adequately for the animal and is fit to have custody of the animal. **[“able to provide adequately” and “fit to have custody” are constitutionally void for**

vagueness. Since there is no requirement for a criminal conviction or even a criminal prosecution, this is the equivalent of a child welfare law. Animals are not children under Mississippi law. They are property subject to the protections of the Fifth and Fourteenth Amendments.] The court shall hold such hearing within fourteen (14) days of receiving such request. The hearing shall be concluded and the court order entered thereon within twenty-one (21) days after the hearing is commenced. Upon requesting a hearing, the owner shall have three (3) business days to post a bond or security with the court clerk in an amount determined by the court to be sufficient to repay all reasonable costs sufficient to provide for the animal's care. Failure to post such bond within three (3) days shall result in forfeiture of the animal to the court. If the temporary custodian has custody of the animal upon the expiration of the bond or security, the animal shall be forfeited to the court unless the court orders otherwise. **[The requirement to post a bond in order to get a hearing may well be the most unjust and confiscatory provision in this statute.]** (3) In determining the owner's fitness to have custody of an animal, the court may consider, among other matters:

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

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

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

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

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

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

[None of the above is relevant if one does not have the ability to post bond in order to get a hearing.]

(4) Upon proof of costs incurred as a result of the animal's seizure, including, but not limited to, animal medical and boarding, the court may order that the animal's owner reimburse the temporary custodian for such costs. A lien for authorized expenses is hereby created upon all animals seized under this section, and shall have priority to any other lien on such animal. **[This provision is a perfect way for someone who wants particular animals to steal them simply by alleging cruelty or neglect. In almost every animal seizure we're seeing all animals are taken and not just the ones supposedly in poor condition. It doesn't take long to run up so many costs that the owner cannot afford to get his animals back even if he's not charged with a crime.]**

A person charged and found innocent should not be forced to buy his animals back from the local animal shelter if they are still alive and can be found.]

(5) If the court finds the owner of the animal is unable or unfit to adequately provide for the animal, or that the animal is severely injured, diseased, or suffering, and, therefore, not likely to recover, the court may order that the animal be permanently forfeited and released to an animal control agency, animal protection organization or to the appropriate entity to be euthanized or the court may order that such animal be sold at public sale in the manner now provided for judicial sales; any proceeds from such sale shall go first toward the payment of expenses and costs relating to the care and treatment of such animal, and any excess amount shall be paid to the owner of the animal. **[There is far too much potential for abuse for allowing forfeited animals to be sold at public auction. What better way for someone well connected who wants an animal at a cheap price to get it by alleging mistreatment that doesn't constitute a crime and then buy it for a pittance? What better way for animal controls, animal shelters, or humane societies currently under no oversight or subject to no standards under Mississippi law to further the animal rights propaganda being fed to them by the national "animal protection groups"? Over the years animal sheltering has become an industry whose primary goal is to provide salaries for its employees and make a profit. It is no longer about animal "welfare". The state should not have a law that invites and encourages the theft of property.]**

(6) Upon notice and hearing as provided in this section, or as a part of any preceding conducted under the terms of this section, the court may order that other animals in the custody of the owner that were not seized be surrendered and further enjoin the owner from having custody of other animals in the future. **[This is yet another unconstitutional provision. In the event a person is found guilty of a crime, the state may only, as a part of sentencing, prohibit the person from possessing animals as a condition of any probationary or parole term imposed.]**

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

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

(9) For the purposes of this section the term "animal" or "animals" means any feline, exotic animal, canine, horse, mule, jack or jennet. **[While this definition does not presently include livestock, many of us who have opposed these animal rights laws on behalf of farmers, hunters, breeders of pets are fully aware that, once a statute like this has been passed, it is quite easy to amend it later to include all animals in order to satisfy the animal rightist original goal. In addition, another issue involves that of equal protection granted by the 8th and 14th Amendments. If challenged, the**

courts will be asking why dog, cat, equine and exotic owners are being targeted and not cattle, swine, and other livestock owners. All of these are animals.]

SOURCES: 1997 Laws, Chapter 575, Sec. 1, SB3019, Effective July 1, 1997; Laws, 2001, ch. 497, § 1, SB2799; Laws, 2003, ch. 357, § 1, SB 2578, eff from and after passage (approved Mar. 12, 2003.).

[I was not tracking animal legislation at the time this law was passed and then amended. My head was stuck in the sand like the majority of animal owners in Mississippi. I was told some time ago by a Mississippi legislator who was directly involved in law enforcement that it is probably the worst law on the books in Mississippi. I agree with him. It is a direct invitation to theft by simply alleging cruelty. The use of this law by law enforcement and our courts puts our state and our local governments at risk of expensive civil rights violation lawsuits. Taxpayers residing in the poorest state in the country cannot afford that risk. There are better ways to spend our scarce tax dollars. I have tracked questionable animal seizure cases in this state for the past five years. Any one of a number of them could have and should have resulted in a 1983 civil rights violation lawsuit. Yet the victims of such violations are typically too poor or too uneducated to obtain competent legal counsel. It will only take one properly litigated case to bankrupt a Mississippi local government and then the state will be called on to bail it out. I don't imagine any Mississippi voter will be happy with that. It is time for our legislature to fix this statute before that happens and before any more of our citizens are victimized by such an unjust and unconstitutional law.]