

By: Representative Rogers

To: Judiciary B

HOUSE BILL NO. 452
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 99-5-25, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT JUDGMENT NISI FORFEITING BOND MAY BE SET ASIDE IF THE
3 CLERK OF THE COURT DOES NOT PROVIDE NOTICE OF FORFEITURE WITHIN
4 THE PRESCRIBED NOTICE PERIOD; AND FOR RELATED PURPOSES.

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

6 SECTION 1. Section 99-5-25, Mississippi Code of 1972, is
7 amended as follows:

8 99-5-25. (1) (a) If a defendant, prosecutor, or witness in
9 any criminal case, proceeding, or matter, fails to appear for any
10 proceeding as ordered by the court, then the court shall order the
11 bail forfeited and a bench warrant issued at the time of
12 nonappearance. The purpose of bail is to guarantee appearance and
13 bail shall not be forfeited for any other reason. Upon
14 declaration of such forfeiture, the court shall issue a judgment
15 nisi. The clerk of the court shall notify the surety of the
16 forfeiture by writ of scire facias within five (5) working days of
17 the entry of such order of judgment nisi either by personal
18 service or by certified mail. Failure of the clerk to provide the
19 required notice within ten (10) working days shall constitute
20 prima facie evidence that the order should be set aside.

21 (b) The judgment nisi shall be returnable for ninety
22 (90) days from the date of issuance. If during such period the
23 defendant appears before the court, or is arrested and
24 surrendered, then the judgement nisi shall be set aside. If the
25 surety fails to produce the defendant and does not provide to the
26 court reasonable mitigating circumstances upon such showing, then
27 the forfeiture shall be made final. Reasonable mitigating

28 circumstances shall be that the defendant is incarcerated in
29 another jurisdiction, that the defendant is hospitalized under a
30 doctor's care, that the defendant is in a recognized drug
31 rehabilitation program, that the defendant has been placed in a
32 witness protection program and it shall be the duty of any such
33 agency placing such defendant into a witness protection program to
34 notify the court and the court to notify the surety, or any other
35 reason justifiable to the court.

36 (2) If a final judgment is entered against a surety licensed
37 by the Department of Insurance and has not been set aside after
38 ninety (90) days, or later if such time is extended by the court
39 issuing the judgment nisi, then the court shall order the
40 department to revoke the authority of such surety to write bail
41 bonds. The commissioner shall, upon notice of the court, notify
42 said surety within five (5) working days of receipt of revocation.

43 If after ten (10) working days of such notification the
44 revocation order has not been set aside by the court, then the
45 commissioner shall revoke the authority of the surety and all
46 agents of the surety and shall notify the sheriff of every county
47 of such revocation.

48 (3) If within twelve (12) months of the date of the final
49 forfeiture the defendant appears for court, is arrested or
50 surrendered to the court, or if the defendant is found to be
51 incarcerated in another jurisdiction and a hold order placed on
52 the defendant, then the amount of bail, less reasonable
53 extradition cost, excluding attorney fees, shall be refunded by
54 the court upon application by the surety.

55 SECTION 2. This act shall take effect and be in force from
56 and after July 1, 1999.