

By: Representative Rogers

To: Judiciary B

HOUSE BILL NO. 1033

1 AN ACT TO AMEND SECTION 21-23-8 AND 99-5-25, MISSISSIPPI CODE
2 OF 1972, TO PROVIDE THAT JUDGMENT NISI FORFEITING BOND MAY BE SET
3 ASIDE IF THE CLERK OF THE COURT DOES NOT PROVIDE NOTICE OF
4 FORFEITURE WITHIN THE PRESCRIBED NOTICE PERIOD; AND FOR RELATED
5 PURPOSES.

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

7 SECTION 1. Section 21-23-8, Mississippi Code of 1972, is
8 amended as follows:

9 21-23-8. (1) The municipal judge shall set the amount of
10 bail for persons charged with offenses in municipal court and may
11 approve the bond or recognizance therefor. In instances where the
12 municipal judge is unavailable and has not provided a bail
13 schedule or otherwise provided for the setting of bail, it is
14 lawful for any officer or officers designated by order of the
15 municipal judge to take bond, cash, property or recognizance, with
16 or without sureties, in a sum to be determined by such officer, of
17 not less than Fifty Dollars (\$50.00) nor more than One Thousand
18 Dollars (\$1,000.00), payable to the municipality and conditioned
19 for the appearance of such person on the return day and time of
20 the writ before the court before whom the warrant is returnable,
21 or in cases of arrest without a warrant, on the day and time set
22 by the court or officer for arraignment, and there remain from day
23 to day and term to term until discharged. All bonds shall be
24 promptly returned to the court, together with any cash deposited,
25 and be filed and proceeded on by the court in a case of
26 forfeiture. The chief of the municipal police or a police officer
27 or officers designated by order of the municipal judge may approve
28 bonds or recognizances.

29 (2) All bonds and recognizances in municipal court where the
30 municipal court shall have the jurisdiction to hear and determine
31 the case may be made payable to the municipality and shall have
32 the effect to bind the principal and any sureties on the bond or
33 recognizance until they shall be discharged by due course of law
34 without renewal.

35 (3) (a) If a defendant in any criminal case, proceeding, or
36 matter, fails to appear for any proceeding as ordered by the
37 court, then the court shall order the bail forfeited and a bench
38 warrant issued at the time of nonappearance. The purpose of bail
39 is to guarantee appearance and bail shall not be forfeited for any
40 other reason. Upon declaration of such forfeiture, the court
41 shall issue a judgment nisi. The clerk of the court shall notify
42 the surety of the forfeiture by writ of scire facias with a copy
43 of the judgment nisi and a bench warrant attached thereto within
44 ten (10) working days of such order of judgment nisi either by
45 personal service or by certified mail. Failure of the clerk to
46 provide the required notice within ten (10) working days shall
47 constitute conclusive and irrebuttable evidence that the order
48 should be set aside.

49 (b) The judgment nisi shall be returnable for ninety
50 (90) days from the date of issuance. If during such period the
51 defendant appears before the court, or is arrested and
52 surrendered, then the judgement nisi shall be set aside. If the
53 surety fails to produce the defendant and does not provide to the
54 court reasonable mitigating circumstances upon such showing, then
55 the forfeiture shall be made final and a copy of the final
56 judgment shall be served on the surety. Reasonable mitigating
57 circumstances shall be that the defendant is incarcerated in
58 another jurisdiction, that the defendant is hospitalized under a
59 doctor's care, that the defendant is in a recognized drug
60 rehabilitation program, that the defendant has been placed in a
61 witness protection program and it shall be the duty of any such

62 agency placing such defendant into a witness protection program to
63 notify the court and the court to notify the surety, or any other
64 reason justifiable to the court.

65 (4) If a final judgment is entered against a surety licensed
66 by the Department of Insurance and has not been set aside after
67 ninety (90) days, or later if such time is extended by the court
68 issuing the judgment nisi, then the court shall order the
69 department to revoke the authority of such surety to write bail
70 bonds. The commissioner shall, upon notice of the court, notify
71 said surety within five (5) working days of receipt of revocation.
72 If after ten (10) working days of such notification the revocation
73 order has not been set aside by the court, then the commissioner
74 shall revoke the authority of the surety and all agents of the
75 surety and shall notify the sheriff of every county of such
76 revocation.

77 (5) If within twelve (12) months of the date of the final
78 forfeiture the defendant appears for court, is arrested or
79 surrendered to the court, or if the defendant is found to be
80 incarcerated in another jurisdiction and a hold order placed on
81 the defendant, then the amount of bail, less reasonable
82 extradition cost, excluding attorney fees, shall be refunded by
83 the court upon application by the surety.

84 SECTION 2. Section 99-5-25, Mississippi Code of 1972, is
85 amended as follows:

86 99-5-25. (1) (a) If a defendant * * * in any criminal
87 case, proceeding, or matter, fails to appear for any proceeding as
88 ordered by the court, then the court shall order the bail
89 forfeited and a bench warrant issued at the time of nonappearance.
90 The purpose of bail is to guarantee appearance and bail shall not
91 be forfeited for any other reason. Upon declaration of such
92 forfeiture, the court shall issue a judgment nisi. The clerk of
93 the court shall notify the surety of the forfeiture by writ of
94 scire facias with a copy of the judgment nisi and a bench warrant

95 attached thereto within ten (10) working days of * * * such order
96 of judgment nisi either by personal service or by certified mail.
97 Failure of the clerk to provide the required notice within ten
98 (10) working days shall constitute conclusive and irrebuttable
99 evidence that the order should be set aside.

100 (b) The judgment nisi shall be returnable for ninety
101 (90) days from the date of issuance. If during such period the
102 defendant appears before the court, or is arrested and
103 surrendered, then the judgement nisi shall be set aside. If the
104 surety fails to produce the defendant and does not provide to the
105 court reasonable mitigating circumstances upon such showing, then
106 the forfeiture shall be made final and a copy of the final
107 judgment shall be served on the surety. Reasonable mitigating
108 circumstances shall be that the defendant is incarcerated in
109 another jurisdiction, that the defendant is hospitalized under a
110 doctor's care, that the defendant is in a recognized drug
111 rehabilitation program, that the defendant has been placed in a
112 witness protection program and it shall be the duty of any such
113 agency placing such defendant into a witness protection program to
114 notify the court and the court to notify the surety, or any other
115 reason justifiable to the court.

116 (2) If a final judgment is entered against a surety licensed
117 by the Department of Insurance and has not been set aside after
118 ninety (90) days, or later if such time is extended by the court
119 issuing the judgment nisi, then the court shall order the
120 department to revoke the authority of such surety to write bail
121 bonds. The commissioner shall, upon notice of the court, notify
122 said surety within five (5) working days of receipt of revocation.
123 If after ten (10) working days of such notification the revocation
124 order has not been set aside by the court, then the commissioner
125 shall revoke the authority of the surety and all agents of the
126 surety and shall notify the sheriff of every county of such
127 revocation.

128 (3) If within twelve (12) months of the date of the final
129 forfeiture the defendant appears for court, is arrested or
130 surrendered to the court, or if the defendant is found to be
131 incarcerated in another jurisdiction and a hold order placed on
132 the defendant, then the amount of bail, less reasonable
133 extradition cost, excluding attorney fees, shall be refunded by
134 the court upon application by the surety.

135 SECTION 3. This act shall take effect and be in force from
136 and after July 1, 2001.