

By: Senator(s) Minor

To: Judiciary

SENATE BILL NO. 2317

1 AN ACT TO AMEND SECTION 99-5-25, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY 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; TO AMEND SECTION 21-23-8,
5 MISSISSIPPI CODE OF 1972, TO INCORPORATE THE SAME PROVISIONS FOR
6 AN APPEARANCE BOND PAYABLE TO A MUNICIPALITY; AND FOR RELATED
7 PURPOSES.

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

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

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

25 (b) The judgment nisi shall be returnable for ninety
26 (90) days from the date of issuance. If during such period the
27 defendant appears before the court, or is arrested and
28 surrendered, then the judgment nisi shall be set aside. If the

29 surety fails to produce the defendant and does not provide to the
30 court reasonable mitigating circumstances upon such showing, then
31 the forfeiture shall be made final with a copy of the final
32 judgment to be served on the surety. Reasonable mitigating
33 circumstances shall be that the defendant is incarcerated in
34 another jurisdiction, that the defendant is hospitalized under a
35 doctor's care, that the defendant is in a recognized drug
36 rehabilitation program, that the defendant has been placed in a
37 witness protection program and it shall be the duty of any such
38 agency placing such defendant into a witness protection program to
39 notify the court and the court to notify the surety, or any other
40 reason justifiable to the court.

41 (2) If a final judgment is entered against a surety licensed
42 by the Department of Insurance and has not been set aside after
43 ninety (90) days, or later if such time is extended by the court
44 issuing the judgment nisi, then the court shall order the
45 department to revoke the authority of such surety to write bail
46 bonds. The commissioner shall, upon notice of the court, notify
47 said surety within five (5) working days of receipt of revocation.
48 If after ten (10) working days of such notification the revocation
49 order has not been set aside by the court, then the commissioner
50 shall revoke the authority of the surety and all agents of the
51 surety and shall notify the sheriff of every county of such
52 revocation.

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

60 SECTION 2. Section 21-23-8, Mississippi Code of 1972, is
61 amended as follows:

62 21-23-8. (1) The municipal judge shall set the amount of
63 bail for persons charged with offenses in municipal court and may
64 approve the bond or recognizance therefor. In instances where the
65 municipal judge is unavailable and has not provided a bail
66 schedule or otherwise provided for the setting of bail, it is
67 lawful for any officer or officers designated by order of the
68 municipal judge to take bond, cash, property or recognizance, with
69 or without sureties, in a sum to be determined by such officer, of
70 not less than Fifty Dollars (\$50.00) nor more than One Thousand
71 Dollars (\$1,000.00), payable to the municipality and conditioned
72 for the appearance of such person on the return day and time of
73 the writ before the court before whom the warrant is returnable,
74 or in cases of arrest without a warrant, on the day and time set
75 by the court or officer for arraignment, and there remain from day
76 to day and term to term until discharged. All bonds shall be
77 promptly returned to the court, together with any cash deposited,
78 and be filed and proceeded on by the court in a case of
79 forfeiture. The chief of the municipal police or a police officer
80 or officers designated by order of the municipal judge may approve
81 bonds or recognizances.

82 (2) (a) All bonds and recognizances in municipal court
83 where the municipal court shall have the jurisdiction to hear and
84 determine the case may be made payable to the municipality and
85 shall have the effect to bind the principal and any sureties on
86 the bond or recognizance until they shall be discharged by due
87 course of law without renewal.

88 (b) If a defendant * * * fails to appear for any
89 proceeding as ordered by the court, then the court shall order the
90 bail forfeited and a bench warrant issued at the time of
91 nonappearance. The purpose of bail is to guarantee appearance and
92 bail shall not be forfeited for any other reason. Upon
93 declaration of such forfeiture, the court shall issue a judgment
94 nisi. The clerk of the court shall notify the surety of the

95 forfeiture by writ of scire facias, with a copy of the judgment
96 nisi and bench warrant attached thereto, within ten (10) working
97 days of such order of judgment nisi either by personal service or
98 by certified mail. Failure of the clerk to provide the required
99 notice within ten (10) working days shall constitute conclusive
100 and irrebuttable evidence that the order should be set aside.

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

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