

By: Senator(s) Turner

To: Judiciary

SENATE BILL NO. 2765

1 AN ACT TO AMEND SECTIONS 99-17-9 AND 99-5-25, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE THAT A DEFENDANT MAY BE TRIED IN ABSENTIA
3 WHO RECEIVED A NOTICE AND FAILED TO APPEAR AT THE APPOINTED TIME;
4 AND FOR RELATED PURPOSES.

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

6 SECTION 1. Section 99-17-9, Mississippi Code of 1972, is
7 amended as follows:

8 99-17-9. In criminal cases a defendant may waive the right
9 to be present at any proceeding by voluntarily absenting himself
10 or herself from it. The court may infer that an absence is
11 voluntary if the defendant had personal notice of the time of the
12 proceeding, the right to be present at it, and a warning that the
13 proceeding would go forward in his or her absence should he or she
14 fail to appear * * *.

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

17 99-5-25. (1) (a) If a defendant, prosecutor, or witness in
18 any criminal case, proceeding, or matter, fails to appear for any
19 proceeding as ordered by the court, then the court shall order the
20 bail forfeited and a bench warrant issued at the time of
21 nonappearance. The purpose of bail is to guarantee appearance and
22 bail shall not be forfeited for any other reason. Upon
23 declaration of such forfeiture, the court shall issue a judgment
24 nisi. The clerk of the court shall notify the surety of the
25 forfeiture by writ of scire facias within five (5) working days of
26 the entry of such order of judgment nisi either by personal
27 service or by certified mail. Failure of the clerk to provide the

28 required notice within ten (10) working days shall constitute
29 prima facie evidence that the order should be set aside.

30 (b) The judgment nisi shall be returnable for ninety
31 (90) days from the date of issuance. If during such period the
32 defendant appears before the court, or is arrested and
33 surrendered, then the judgment nisi shall be set aside. If the
34 surety fails to produce the defendant and does not provide to the
35 court reasonable mitigating circumstances upon such showing, then
36 the forfeiture shall be made final. Reasonable mitigating
37 circumstances shall be that the defendant is incarcerated in
38 another jurisdiction, that the defendant is hospitalized under a
39 doctor's care, that the defendant is in a recognized drug
40 rehabilitation program, that the defendant has been placed in a
41 witness protection program and it shall be the duty of any such
42 agency placing such defendant into a witness protection program to
43 notify the court and the court to notify the surety, or any other
44 reason justifiable to the court.

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

57 (3) If within twelve (12) months of the date of the final
58 forfeiture the defendant appears for court, is arrested or
59 surrendered to the court, or if the defendant is found to be
60 incarcerated in another jurisdiction and a hold order placed on

61 the defendant, then the amount of bail, less reasonable
62 extradition cost, excluding attorney fees, shall be refunded by
63 the court upon application by the surety.

64 (4) A defendant may be tried in absentia as provided in
65 Section 99-17-9.

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