

By: Senator(s) Thames

To: Judiciary

SENATE BILL NO. 2496

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 in any criminal case,
18 proceeding, or matter, fails to appear for any proceeding as
19 ordered by the court, then the court shall order the bail
20 forfeited and a bench warrant issued at the time of nonappearance.
21 The purpose of bail is to guarantee appearance and bail shall not
22 be forfeited for any other reason. Upon declaration of such
23 forfeiture, the court shall issue a judgment nisi. The clerk of
24 the court shall notify the surety of the forfeiture by writ of
25 scire facias, with a copy of the judgment nisi and bench warrant
26 attached thereto, within ten (10) working days of such order of
27 judgment nisi either by personal service or by certified mail.
28 Failure of the clerk to provide the required notice within ten



29 (10) working days shall constitute prima facie evidence that the
30 order should be set aside.

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

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

59 (3) If within twelve (12) months of the date of the final
60 forfeiture the defendant appears for court, is arrested or
61 surrendered to the court, or if the defendant is found to be



62 incarcerated in another jurisdiction and a hold order placed on
63 the defendant, then the amount of bail, less reasonable
64 extradition cost, excluding attorney fees, shall be refunded by
65 the court upon application by the surety.

66 (4) A defendant may be tried in absentia.

67 **SECTION 3.** This act shall take effect and be in force from
68 and after July 1, 2002.

