

By: Representative Dedeaux

To: Judiciary B

HOUSE BILL NO. 707

1 AN ACT TO AMEND SECTION 99-5-25, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THAT A WARRANT SHALL BE ISSUED FOR FAILURE TO APPEAR IN
3 IMPLIED CONSENT LAW CASES; AND FOR RELATED PURPOSES.

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

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

7 99-5-25. (1) (a) If a defendant in any criminal case,
8 proceeding, or matter, including all Implied Consent Law
9 violations, fails to appear for any proceeding as ordered by the
10 court, then the court shall order the bail forfeited and a bench
11 warrant issued immediately at the time of nonappearance. The
12 purpose of bail is to guarantee appearance and bail shall not be
13 forfeited for any other reason. Upon declaration of such
14 forfeiture, the court shall issue a judgment nisi. The clerk of
15 the court shall notify the surety of the forfeiture by writ of
16 scire facias, with a copy of the judgment nisi and bench warrant
17 attached thereto, within ten (10) working days of such order of
18 judgment nisi either by personal service or by certified mail.
19 Failure of the clerk to provide the required notice within ten
20 (10) working days shall constitute prima facie evidence that the
21 order should be set aside.

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

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

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

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

57 **SECTION 2.** This act shall take effect and be in force from
58 and after July 1, 2004.