

By: Representatives Compretta, Dedeaux,  
Upshaw

To: Judiciary B

HOUSE BILL NO. 1310

1 AN ACT TO PROVIDE THAT CERTAIN BONDS SHALL NOT BE FORFEITED  
2 AS A RESULT OF HURRICANE KATRINA; TO PROVIDE FACTORS FOR THE COURT  
3 TO CONSIDER REGARDING SUCH BONDS; TO AMEND SECTION 99-5-25,  
4 MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Any bail bonds written in any court in Jackson,  
7 Harrison and Hancock Counties in the one-year period prior to  
8 August 29, 2005, shall not be subject to forfeiture for one (1)  
9 year from August 29, 2005. This suspension of forfeitures shall  
10 not apply to bonds already in the process of being revoked before  
11 August 29, 2005.

12 After the expiration of the suspension period, bonds may be  
13 subject to forfeiture on a case-by-case basis. Before a bond may  
14 be forfeited, the court shall provide notice to the bail agent  
15 underwriting the bond to show cause why the bond should not be  
16 forfeited. The bail agent shall request a hearing within thirty  
17 (30) days of receipt of such notice, which hearing shall be set by  
18 the court.

19 Before forfeiting the bond, the court shall consider, among  
20 other factors, the following: the circumstances due to Hurricane  
21 Katrina, that the affect on the defendant's whereabouts and the  
22 bail agent's ability to determine the defendant's whereabouts and  
23 whether or not justice and public safety will be served by  
24 forfeiture of the bond.

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

27 99-5-25. (1) (a) Except as otherwise provided in Section 1  
28 of this act, if a defendant in any criminal case, proceeding, or

29 matter, fails to appear for any proceeding as ordered by the  
30 court, then the court shall order the bail forfeited and a bench  
31 warrant issued at the time of nonappearance. The purpose of bail  
32 is to guarantee appearance and bail shall not be forfeited for any  
33 other reason. Upon declaration of such forfeiture, the court  
34 shall issue a judgment nisi. The clerk of the court shall notify  
35 the surety of the forfeiture by writ of scire facias, with a copy  
36 of the judgment nisi and bench warrant attached thereto, within  
37 ten (10) working days of such order of judgment nisi either by  
38 personal service or by certified mail. Failure of the clerk to  
39 provide the required notice within ten (10) working days shall  
40 constitute prima facie evidence that the order should be set  
41 aside.

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

58 (2) If a final judgment is entered against a surety licensed  
59 by the Department of Insurance and has not been set aside after  
60 ninety (90) days, or later if such time is extended by the court  
61 issuing the judgment nisi, then the court shall order the

62 department to revoke the authority of such surety to write bail  
63 bonds. The commissioner shall, upon notice of the court, notify  
64 said surety within five (5) working days of receipt of revocation.  
65 If after ten (10) working days of such notification the revocation  
66 order has not been set aside by the court, then the commissioner  
67 shall revoke the authority of the surety and all agents of the  
68 surety and shall notify the sheriff of every county of such  
69 revocation.

70 (3) If within twelve (12) months of the date of the final  
71 forfeiture the defendant appears for court, is arrested or  
72 surrendered to the court, or if the defendant is found to be  
73 incarcerated in another jurisdiction and a hold order placed on  
74 the defendant, then the amount of bail, less reasonable  
75 extradition cost, excluding attorney fees, shall be refunded by  
76 the court upon application by the surety.

77 **SECTION 3.** This act shall take effect and be in force from  
78 and after its passage.