

By: Representatives Compretta, Dedeaux,  
Upshaw

To: Judiciary B

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1310

1 AN ACT TO AMEND SECTION 99-5-25, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE FACTORS FOR THE COURT TO CONSIDER BEFORE REVOKING CERTAIN  
3 BONDS; 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) Except as otherwise provided in Section 1  
8 of this act, if a defendant in any criminal case, proceeding, or  
9 matter, 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 at the time of nonappearance. The purpose of bail  
12 is to guarantee appearance and bail shall not be forfeited for any  
13 other reason. Upon declaration of such forfeiture, the court  
14 shall issue a judgment nisi. The clerk of the court shall notify  
15 the surety of the forfeiture by writ of scire facias, with a copy  
16 of the judgment nisi and bench warrant attached thereto, within  
17 ten (10) working days of such order of judgment nisi either by  
18 personal service or by certified mail. Failure of the clerk to  
19 provide the required notice within ten (10) working days shall  
20 constitute prima facie evidence that the order should be set  
21 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 (c) Before forfeiting the bond, the court shall  
39 consider, among other factors, the following: the circumstances  
40 due to Hurricane Katrina, that the effect on the defendant's  
41 whereabouts and the bail agent's ability to determine the  
42 defendant's whereabouts and whether or not justice and public  
43 safety will be served by forfeiture of the bond. This paragraph  
44 shall stand repealed on February 1, 2007.

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         **SECTION 2.** This act shall take effect and be in force from  
65 and after its passage.