

By: Senator(s) Dawkins

To: Judiciary, Division B

SENATE BILL NO. 2814

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 paragraph  
8 (c), if a defendant in any criminal case, proceeding, or matter,  
9 fails to appear for any proceeding as ordered by the court, then  
10 the court shall order the bail forfeited and a bench warrant  
11 issued at the time of nonappearance. The purpose of bail is to  
12 guarantee appearance and bail shall not be forfeited for any other  
13 reason. Upon declaration of such forfeiture, the court shall  
14 issue a judgment nisi. The clerk of the court shall notify the  
15 surety of the forfeiture by writ of scire facias, with a copy of  
16 the judgment nisi and bench warrant attached thereto, within ten  
17 (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) (i) Any bail bonds written in any municipal court  
39 or justice court in Jackson, Harrison or Hancock Counties in the  
40 one-year period before August 29, 2005, shall not be subject to  
41 forfeiture for three (3) years from and after August 29, 2005.  
42 This suspension of forfeitures shall not apply to bonds already in  
43 the process of being revoked on or before August 29, 2005.

44 (ii) After the expiration of the suspension  
45 period, bonds may be subject to forfeiture on a case-by-case  
46 basis. Before a bond may be forfeited, the court shall provide  
47 notice to the bail agent underwriting the bond to show cause why  
48 the bond should not be forfeited. The bail agent may request a  
49 hearing within thirty (30) days of receipt of such notice, which  
50 hearing shall be set by the court.

51 (iii) This paragraph shall stand repealed on  
52 February 1, 2010.

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

61 order has not been set aside by the court, then the commissioner  
62 shall revoke the authority of the surety and all agents of the  
63 surety and shall notify the sheriff of every county of such  
64 revocation.

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

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