

By: Representative Johnson (87th)

To: Judiciary B

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1135

1 AN ACT TO AMEND SECTIONS 21-23-8, 99-5-9 AND 99-5-11,  
2 MISSISSIPPI CODE OF 1972, TO REVISE BAIL PROCEDURES FOR MUNICIPAL,  
3 COUNTY AND JUSTICE COURTS; TO CREATE NEW SECTION 83-39-14,  
4 MISSISSIPPI CODE OF 1972, TO REGULATE HOW THE BAIL BOND DATABASE  
5 MAY BE USED; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 21-23-8, Mississippi Code of 1972, is  
8 amended as follows:

9 21-23-8. (1) (a) The purpose of bail is to guarantee  
10 appearance and a bail bond shall not be forfeited for any other  
11 reason.

12 (b) (i) If a defendant in any criminal case,  
13 proceeding or matter fails to appear for any proceeding as ordered  
14 by the municipal court, then the court shall order the bail  
15 forfeited and a judgment nisi and a bench warrant issued at the  
16 time of nonappearance. The clerk of the municipal court shall  
17 notify the surety of the forfeiture by writ of scire facias, with  
18 a copy of the judgment nisi and bench warrant attached thereto,  
19 within ten (10) working days of such order of judgment nisi either



20 by personal service or by certified mail. Failure of the clerk to  
21 provide the required notice within ten (10) working days shall  
22 constitute prima facie evidence that the order should be set  
23 aside.

24 (ii) 1. The judgment nisi shall be returnable for  
25 ninety (90) days from the date of issuance. If during that period  
26 the defendant appears before the municipal court, or is arrested  
27 and surrendered, then the judgment nisi shall be set aside. If  
28 the surety produces the defendant or provides to the municipal  
29 court reasonable mitigating circumstances upon such showing, then  
30 the forfeiture shall not be made final. If the forfeiture is made  
31 final, a copy of the final judgment shall be served on the surety  
32 within ten (10) working days by either personal service or  
33 certified mail.

34 2. Reasonable mitigating circumstances shall  
35 be that the defendant is incarcerated in another jurisdiction;  
36 that the defendant is hospitalized under a doctor's care; that the  
37 defendant is in a recognized drug rehabilitation program; that the  
38 defendant has been placed in a witness protection program, in  
39 which case it shall be the duty of any agency placing the  
40 defendant into a witness protection program to notify the  
41 municipal court and the municipal court to notify the surety; or  
42 any other reason justifiable to the municipal court.

43 (2) If a final judgment is entered against a surety licensed  
44 by the Department of Insurance and has not been set aside after



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

56 (3) If within eighteen (18) months of the date of the final  
57 forfeiture the defendant appears for municipal court, is arrested  
58 or surrendered to the municipal court, or if the defendant is  
59 found to be incarcerated in another jurisdiction and a hold order  
60 placed on the defendant, then the amount of bail, less reasonable  
61 extradition cost, excluding attorney fees, shall be refunded by  
62 the municipal court upon application by the surety.

63 (4) (a) The municipal judge shall set the amount of bail  
64 for persons charged with offenses in municipal court and may  
65 approve the bond or recognizance therefor. Any defendant who has  
66 previously failed to appear on a criminal charge within the  
67 previous twelve (12) months or who has previously failed to appear  
68 on a criminal charge two (2) or more times within the previous



69 five (5) years shall only be released with a secured appearance  
70 bond as defined in the Mississippi Rules of Criminal Procedure.

71 (b) \* \* \* If the municipal judge is unavailable and has  
72 not \* \* \* otherwise provided for the setting of bail, it is lawful  
73 for any officer or officers designated by order of the municipal  
74 judge to take bond, cash, property or recognizance, with or  
75 without sureties, in a sum to be determined by the officer from  
76 the bond guidelines set out in the Mississippi Rules of Criminal  
77 Procedure, payable to the municipality and conditioned for the  
78 appearance of the person on the return day and time of the writ  
79 before the court to which the warrant is returnable, or in cases  
80 of arrest without a warrant, on the day and time set by the court  
81 or officer for arraignment, and there remain from day to day and  
82 term to term until discharged.

83 (c) All bonds shall be promptly returned to the court,  
84 together with any cash deposited, and be filed and proceeded on by  
85 the court in a case of forfeiture. The chief of the municipal  
86 police or a police officer or officers designated by order of the  
87 municipal judge may approve bonds or recognizances.

88 (d) All bonds and recognizances in municipal court  
89 where the municipal court shall have the jurisdiction to hear and  
90 determine the case may be made payable to the municipality and  
91 shall have the effect to bind the principal and any sureties on  
92 the bond or recognizance until they shall be discharged by due  
93 course of law without renewal.



94           **SECTION 2.** Section 99-5-9, Mississippi Code of 1972, is  
95 amended as follows:

96           99-5-9. (1) In addition to any type of bail allowed by  
97 statute, any committing court, in its discretion, may allow, but  
98 not require, any defendant, to whom bail is allowable, to deposit  
99 cash as bail bond in lieu of a surety or property bail bond, by  
100 depositing such cash sum as the court may direct with the sheriff  
101 or officer having custody of defendant, who shall receipt therefor  
102 and who shall forthwith deliver the said monies to the county  
103 treasurer, who shall receipt therefor in duplicate. The sheriff,  
104 or other officer, upon receipt of the county treasurer, shall  
105 forthwith deliver one (1) copy of such receipt to the committing  
106 court who shall then order the release of such defendant.

107           (2) The order of the court shall set forth the conditions  
108 upon which such cash bond is allowed and shall be determined to be  
109 the agreement upon which the \* \* \* defendant has agreed.

110           (3) The sums received by the county treasurer shall be  
111 deposited by him in a special fund to be known as "Cash Bail  
112 Fund," and shall be received by him subject to the terms and  
113 conditions of the order of the court.

114           (4) If the committing court authorizes bail by a cash  
115 deposit under subsection (1) of this section, but anyone  
116 authorized to release a criminal defendant allows the deposit of  
117 an amount less than the full amount of the bail ordered by the  
118 court, the defendant may post bail by a professional bail agent in



119 an amount equal to one-fourth (1/4) of the full amount fixed under  
120 subsection (1) or the amount of the actual deposit whichever is  
121 greater.

122 **SECTION 3.** Section 99-5-11, Mississippi Code of 1972, is  
123 amended as follows:

124 99-5-11. (1) All justice court judges and all other  
125 conservators of the peace are authorized, whenever a person is  
126 brought before them charged with any offense not capital for which  
127 bail is allowed by law, to take the recognizance or bond of the  
128 person, with sufficient sureties, in such penalty as the justice  
129 court judge or conservator of the peace may require, for his  
130 appearance before the justice court judge or conservator of the  
131 peace for an examination of his case at some future day. Any  
132 defendant who has previously failed to appear on a criminal charge  
133 within the previous twelve (12) months or who has previously  
134 failed to appear on a criminal charge two (2) or more times within  
135 the previous five (5) years shall only be released with a secured  
136 appearance bond as defined in the Mississippi Rules of Criminal  
137 Procedure.

138 (2) \* \* \* If the person thus recognized or thus giving bond  
139 fails to appear at the appointed time, it shall be the duty of the  
140 justice court judge or conservator of the peace to return the  
141 recognizance or bond, with his certificate of default, to the  
142 court having jurisdiction of the case, and a recovery may be had  
143 therein by scire facias, as in other cases of forfeiture. The



144 justice court judge or other conservator of the peace shall also  
145 issue an alias warrant for the defaulter.

146 (3) If the justice court judge or conservator of the peace  
147 is unavailable and has not otherwise provided for the setting of  
148 bail, it is lawful for any officer or officers designated by order  
149 of the justice court judge or conservator of the peace to take  
150 bond, cash, property or recognizance, with or without sureties, in  
151 a sum to be determined by the officer from the bond guidelines set  
152 out in the Mississippi Rules of Criminal Procedure, payable to the  
153 county and conditioned for the appearance of the person on the  
154 return day and time of the writ before the court to which the  
155 warrant is returnable, or in cases of arrest without a warrant, on  
156 the day and time set by the court or officer for arraignment, and  
157 there remain from day-to-day and term-to-term until discharged.

158 ( \* \* \*4) In circumstances involving an offense against any  
159 of the following: (a) a current or former spouse of the accused  
160 or child of that person; (b) a person living as a spouse or who  
161 formerly lived as a spouse with the accused or a child of that  
162 person; (c) a parent, grandparent, child, grandchild or someone  
163 similarly situated to the accused; (d) a person who has a current  
164 or former dating relationship with the accused; or (e) a person  
165 with whom the accused has had a biological or legally adopted  
166 child, the justice court judge or other conservator of the peace  
167 shall check, or cause to be made a check, of the status of the  
168 person for whom recognizance or bond is taken before ordering bail



169 in the Mississippi Protection Order Registry authorized under  
170 Section 93-21-25, and the existence of a domestic abuse protection  
171 order against the accused shall be considered when determining  
172 appropriate bail.

173 **SECTION 4.** The following section shall be codified as  
174 Section 83-39-14, Mississippi Code of 1972:

175 83-39-14. (1) Information in the Bail Bond Database as  
176 described by Section 83-39-13(3) may not be the basis for  
177 restrictions on the amount of bonds a professional bail agent may  
178 have outstanding at any given time until such time that the  
179 information in the database is reliable and accurate, as certified  
180 by the commissioner.

181 (2) Notwithstanding the provisions of subsection (1) of this  
182 section, the Bail Bond Database will be considered reliable and  
183 accurate at such time that: (a) all of the criminal courts of  
184 this state have access to and participate in a unified court  
185 filing system that allows those courts to reliably access and to  
186 accurately enter, correct or modify all necessary information into  
187 the Bail Bond Database; and (b) professional bail agents have  
188 access to verify and modify their individual information in the  
189 Bail Bond Database.

190 **SECTION 5.** This act shall take effect and be in force from  
191 and after July 1, 2018.

