

By: Representative McLean

To: Judiciary B

HOUSE BILL NO. 1382

1 AN ACT TO AMEND SECTIONS 21-23-8, 83-39-7 AND 99-5-25,  
 2 MISSISSIPPI CODE OF 1972, TO REQUIRE COURT CLERKS TO ACCEPT  
 3 SET-ASIDE ORDERS ON BEHALF OF A SURETY WHERE THE SURETY WAS NOT  
 4 PROVIDED WITH NOTICE OF THE DEFENDANT'S FAILURE TO APPEAR IN A  
 5 CRIMINAL COURT PROCEEDING; TO REQUIRE ALL FELONY WARRANTS ISSUED  
 6 BY A COURT FOR NONAPPEARANCE PLACED ON THE NATIONAL CRIME  
 7 INFORMATION CENTER INDEX WITH NO RESTRICTIONS UNTIL THE DEFENDANT  
 8 IS RETURNED TO CUSTODY; TO EXTEND THE NUMBER OF DAYS BETWEEN THE  
 9 NOTIFICATION OF REVOCATION OF LICENSE TO A SURETY BY THE  
 10 DEPARTMENT OF INSURANCE AND THE DAY THE REVOCATION WILL BECOME  
 11 EFFECTIVE; TO AUTHORIZE A SURETY TO SUBMIT PROOF TO THE DEPARTMENT  
 12 OF INSURANCE THAT THE DEFENDANT HAS BEEN SURRENDERED TO THE  
 13 APPROPRIATE AUTHORITIES OR THAT THE BOND HAS BEEN PAID DIRECTLY TO  
 14 THE COURT OR OTHER PROPER AUTHORITIES BEFORE REVOCATION OF THE  
 15 SURETY'S LICENSE; AND FOR RELATED PURPOSES.

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

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

19 21-23-8. (1) (a) The purpose of bail is to guarantee  
 20 appearance and a bail bond shall not be forfeited for any other  
 21 reason.

22 (b) (i) If a defendant in any criminal case,  
 23 proceeding or matter fails to appear for any proceeding as ordered  
 24 by the municipal court, then the court shall order the bail



25 forfeited and a judgment nisi and a bench warrant issued at the  
26 time of nonappearance. The clerk of the municipal court shall  
27 notify the surety of the forfeiture by writ of scire facias, with  
28 a copy of the judgment nisi and bench warrant attached thereto,  
29 within ten (10) working days of such order of judgment nisi either  
30 by personal service or by certified mail. Failure \* \* \* to  
31 provide the required notice within ten (10) working days shall  
32 constitute prima facie evidence that the order \* \* \* shall be set  
33 aside, and the clerk shall accept a set-aside order on behalf of  
34 the surety to that effect. All felony warrants issued by a court  
35 for nonappearance shall be put on the National Crime Information  
36 Center (NCIC) index with no restrictions until the defendant is  
37 returned to custody.

38 (ii) 1. The judgment nisi shall be returnable for  
39 ninety (90) days from the date of issuance. If during that period  
40 the defendant appears before the municipal court, or is arrested  
41 and surrendered, then the judgment nisi shall be set aside. If  
42 the surety produces the defendant or provides to the municipal  
43 court reasonable mitigating circumstances upon such showing, then  
44 the forfeiture shall not be made final. If the forfeiture is made  
45 final, a copy of the final judgment shall be served on the surety  
46 within ten (10) working days by either personal service or  
47 certified mail.

48 2. Reasonable mitigating circumstances shall  
49 be that the defendant is incarcerated in another jurisdiction;



50 that the defendant is hospitalized under a doctor's care; that the  
51 defendant is in a recognized drug rehabilitation program; that the  
52 defendant has been placed in a witness protection program, in  
53 which case it shall be the duty of any agency placing the  
54 defendant into a witness protection program to notify the  
55 municipal court and the municipal court to notify the surety; or  
56 any other reason justifiable to the municipal court.

57 (2) (a) If a final judgment is entered against a surety  
58 licensed by the Department of Insurance and has not been set aside  
59 after ninety (90) days, or later if such time is extended by the  
60 municipal court issuing the judgment nisi, then the municipal  
61 court shall order the department to revoke the authority of the  
62 surety to write bail bonds. The Commissioner of Insurance shall,  
63 upon notice of the municipal court, notify the surety within five  
64 (5) working days of receipt of the order of revocation. If  
65 after \* \* \* twenty (20) working days of the notification the  
66 revocation order has not been set aside by the municipal court,  
67 then the commissioner shall revoke the authority of the surety and  
68 all agents of the surety and shall notify the sheriff of every  
69 county of such revocation.

70 (b) Before the revocation authorized in paragraph (a)  
71 of this subsection, the surety may submit proof to the department  
72 that the defendant has been surrendered to the appropriate  
73 authorities or that the bond has been paid directly to the court



74 or other proper authorities, such proof to include, but not be  
75 limited to:

- 76 (i) A receipt of payment to the bond;  
77 (ii) A surrender certificate; or  
78 (iii) A notice of surrender from the proper  
79 authorities, including foreign jurisdictions.

80 (3) If within eighteen (18) months of the date of the final  
81 forfeiture the defendant appears for municipal court, is arrested  
82 or surrendered to the municipal court, or if the defendant is  
83 found to be incarcerated in another jurisdiction and a hold order  
84 placed on the defendant, then the amount of bail, less reasonable  
85 extradition cost, excluding attorney fees, shall be refunded by  
86 the municipal court upon application by the surety.

87 (4) (a) The municipal judge shall set the amount of bail  
88 for persons charged with offenses in municipal court and may  
89 approve the bond or recognizance therefor.

90 (b) The court shall not set the financial conditions of  
91 bail solely for the purpose of detaining the defendant. When bail  
92 is set, it is presumed that the amount of bail is both necessary  
93 to reasonably assure the safety of a victim, witness or the  
94 general public and to guarantee the appearance of a defendant as  
95 required by the court. The amount of bail is also presumed to be  
96 attainable by the defendant. The presumption that bail is  
97 attainable by the defendant may be rebutted by the defendant who  
98 may file a motion to reduce or set aside the bail requirement with



99 the court due to lack of financial means, which shall also  
100 consider the availability of a third-party support system to  
101 obtain the defendant's release. The court shall rule on any such  
102 motion within forty-eight (48) hours of the filing.

103 (c) If the defendant or his counsel asserts that the  
104 defendant is indigent and cannot afford the amount of bail, the  
105 municipal judge shall make a determination of whether the  
106 defendant can be released on recognizance, based on the standards  
107 enumerated in the Mississippi Rules of Criminal Procedure and any  
108 other factors considered relevant by the municipal judge. No  
109 misdemeanor defendant shall be incarcerated solely because the  
110 defendant cannot afford to post bail; nor shall a misdemeanor  
111 defendant be released solely because the defendant cannot afford  
112 bail. It is the duty of the municipal judge to ensure that  
113 release of the defendant does not jeopardize the community.

114 (d) The accused may waive an appearance before the  
115 judge and execute an appearance bond in an amount determined by  
116 the court from the bond guidelines set out in the Mississippi  
117 Rules of Criminal Procedure and agree to appear at a specified  
118 time and place.

119 (e) If the municipal judge is unavailable and has not  
120 provided a bail schedule or otherwise provided for the setting of  
121 bail, it is lawful for any officer or officers designated by order  
122 of the municipal judge to take bond, cash, property or  
123 recognizance, with or without sureties, in the amount of the



124 minimum bail specified in the bond guidelines set out in the  
125 Mississippi Rules of Criminal Procedure, payable to the  
126 municipality and conditioned for the appearance of the person on  
127 the return day and time of the writ before the court to which the  
128 warrant is returnable, or in cases of arrest without a warrant, on  
129 the day and time set by the court or officer for arraignment, and  
130 there remain from day to day and term to term until discharged.

131 (f) In circumstances involving an offense against any  
132 of the following: (i) a current or former spouse of the accused  
133 or child of that person; (ii) a person living as a spouse or who  
134 formerly lived as a spouse with the accused or a child of that  
135 person; (iii) a parent, grandparent, child, grandchild or someone  
136 similarly situated to the accused; (iv) a person who has a current  
137 or former dating relationship with the accused; or (v) a person  
138 with whom the accused has had a biological or legally adopted  
139 child, the municipal judge shall check, or cause to be made a  
140 check of the status of the person for whom recognizance or bond is  
141 taken before ordering bail in the Mississippi Protection Order  
142 Registry authorized under Section 93-21-25, and the existence of a  
143 domestic abuse protection order against the accused shall be  
144 considered when determining appropriate bail.

145 (g) All bonds shall be promptly returned to the court,  
146 together with any cash deposited, and be filed and proceeded on by  
147 the court in a case of forfeiture. The chief of the municipal



148 police or a police officer or officers designated by order of the  
149 municipal judge may approve bonds or recognizances.

150 (h) All bonds and recognizances in municipal court  
151 where the municipal court shall have the jurisdiction to hear and  
152 determine the case may be made payable to the municipality and  
153 shall have the effect to bind the principal and any sureties on  
154 the bond or recognizance until they shall be discharged by due  
155 course of law without renewal.

156 **SECTION 2.** Section 83-39-7, Mississippi Code of 1972, is  
157 amended as follows:

158 83-39-7. (1) (a) Each applicant for a professional bail  
159 agent license who acts as personal surety shall be required to  
160 post a qualification bond in the amount of Thirty Thousand Dollars  
161 (\$30,000.00).

162 (b) The Insurance Department shall submit a report to  
163 the Senate and House of Representatives Committees on  
164 Accountability, Efficiency and Transparency that details the  
165 amount of all bonds or undertakings that each bail bondsman has  
166 written in this state on which the bail bondsman is absolutely or  
167 conditionally liable since the Bail Bond Database was established  
168 by the department. The report shall be submitted on or before  
169 December 1, 2017. The report shall also include the number of  
170 bail bondsmen who have failed to comply with the database  
171 reporting requirements, if any, the technical issues that may have  
172 occurred since the database was established and any suggested



173 legislation to ensure each bail bondsman's continued compliance  
174 with the database reporting requirements.

175 (2) The qualification bond shall be made by depositing with  
176 the commissioner the aforesaid amount of bonds of the United  
177 States, the State of Mississippi or any agency or subdivision  
178 thereof, or a certificate of deposit issued by an institution  
179 whose deposits are insured by the Federal Deposit Insurance  
180 Corporation and made payable jointly to the owner and the  
181 Department of Insurance, or shall be written by an insurer as  
182 defined in this chapter, shall meet the specifications as may be  
183 required and defined in this chapter, and shall meet such  
184 specifications as may be required and approved by the department.  
185 The bond shall be conditioned upon the full and prompt payment of  
186 any bail bond issued by such professional bail agent into the  
187 court ordering the bond forfeited. The bond shall be to the  
188 people of the State of Mississippi in favor of any court of this  
189 state, whether municipal, justice, county, circuit, Supreme or  
190 other court.

191 (3) (a) If any bond issued by a professional bail agent is  
192 declared forfeited and judgment entered thereon by a court of  
193 proper jurisdiction as authorized in Section 99-5-25, and the  
194 amount of the bond is not paid within ninety (90) days, that court  
195 shall order the department to declare the qualification bond of  
196 the professional bail agent to be forfeited and the license  
197 revoked. If the bond was not forfeited correctly under Section





198 99-5-25, it shall be returned to the court as uncollectible. The  
199 department shall then order the surety on the qualification bond  
200 to deposit with the court an amount equal to the amount of the  
201 bond issued by the professional bail agent and declared forfeited  
202 by the court, or the amount of the qualification bond, whichever  
203 is the smaller amount. The department shall, after a hearing held  
204 upon not less than \* \* \* twenty (20) days' written notice, suspend  
205 the license of the professional bail agent until such time as  
206 another qualification bond in the required amount is posted with  
207 the department. The revocation of the license of the professional  
208 bail agent shall also serve to revoke the license of each  
209 soliciting bail agent and bail enforcement agent employed or used  
210 by such professional bail agent. In the event of a final judgment  
211 of forfeiture of any bail bond written under the provisions of  
212 this chapter, the amount of money so forfeited by the final  
213 judgment of the proper court, less all accrued court costs and  
214 excluding any interest charges or attorney's fees, shall be  
215 refunded to the bail agent or his insurance company upon proper  
216 showing to the court as to which is entitled to same, provided the  
217 defendant in such cases is returned to the sheriff of the county  
218 to which the original bail bond was returnable within eighteen  
219 (18) months of the date of such final judgment, or proof made of  
220 incarceration of the defendant in another jurisdiction, and that a  
221 "Hold Order" has been placed upon the defendant for return of the  
222 defendant to the sheriff upon release from the other jurisdiction,



223 the return to the sheriff to be the responsibility of the  
224 professional bail agent, then the bond forfeiture shall be stayed  
225 and remission made upon petition to the court, in the amount found  
226 in the court's discretion to be just and proper. A bail agent  
227 licensed under this chapter shall have a right to apply for and  
228 obtain from the proper court an extension of time delaying a final  
229 judgment of forfeiture if such bail agent can satisfactorily  
230 establish to the court wherein such forfeiture is pending that the  
231 defendant named in the bail bond is lawfully in custody outside of  
232 the State of Mississippi.

233 (b) Before the revocation authorized in paragraph (a)  
234 of this subsection, the surety may submit proof to the department  
235 that the defendant has been surrendered to the appropriate  
236 authorities or that the bond has been paid directly to the court  
237 or other proper authorities, such proof to include, but not be  
238 limited to:

239 (i) A receipt of payment to the bond;  
240 (ii) A surrender certificate; or  
241 (iii) A notice of surrender from the proper  
242 authorities, including foreign jurisdictions.

243 (4) The qualification bond may be released by the department  
244 to the professional bail personal surety agent upon an order to  
245 release the qualification bond issued by a court of competent  
246 jurisdiction, or upon written request to the department by the



247 professional bail personal surety agent no earlier than five (5)  
248 years after the expiration date of his last license.

249 **SECTION 3.** Section 99-5-25, Mississippi Code of 1972, is  
250 amended as follows:

251 99-5-25. (1) (a) The purpose of bail is to guarantee  
252 appearance and a bail bond shall not be forfeited for any other  
253 reason.

254 (b) If a defendant in any criminal case, proceeding or  
255 matter fails to appear for any proceeding as ordered by the court,  
256 then the court shall order the bail forfeited and a judgment nisi  
257 and a bench warrant issued at the time of nonappearance. The  
258 clerk of the court shall notify the surety of the forfeiture by  
259 writ of scire facias, with a copy of the judgment nisi and bench  
260 warrant attached thereto, within ten (10) working days of such  
261 order of judgment nisi either by personal service or by certified  
262 mail. Failure \* \* \* to provide the required notice within ten  
263 (10) working days shall constitute prima facie evidence that the  
264 order \* \* \* shall be set aside, and the clerk shall accept a  
265 set-aside order on behalf of the surety to that effect. \* \* \* All  
266 felony warrants issued by a court for nonappearance shall be put  
267 on the National Crime Information Center (NCIC) index with no  
268 restrictions until the defendant is returned to custody.

269 (c) The judgment nisi shall be returnable for ninety  
270 (90) days from the date of issuance. If during such period the  
271 defendant appears before the court, or is arrested and



272 surrendered, then the judgment nisi shall be set aside and a copy  
273 of the judgment that is set aside shall be served on the surety by  
274 personal service or certified mail. If the surety produces the  
275 defendant or provides to the court reasonable mitigating  
276 circumstances upon such showing, then the forfeiture shall not be  
277 made final. If the forfeiture is made final, a copy of the final  
278 judgment shall be served on the surety within ten (10) working  
279 days by either personal service or certified mail. Reasonable  
280 mitigating circumstances shall be that the defendant is  
281 incarcerated in another jurisdiction, that the defendant is  
282 hospitalized under a doctor's care, that the defendant is in a  
283 recognized drug rehabilitation program, that the defendant has  
284 been placed in a witness protection program and it shall be the  
285 duty of any such agency placing such defendant into a witness  
286 protection program to notify the court and the court to notify the  
287 surety, or any other reason justifiable to the court.

288 (d) Execution upon the final judgment shall be  
289 automatically stayed for ninety (90) days from the date of entry  
290 of the final judgment. If, at any time before execution of the  
291 final judgment, the defendant appears in court either voluntarily  
292 or in custody after surrender or arrest, the court shall on its  
293 own motion direct that the forfeiture be set aside and the bond  
294 exonerated as of the date the defendant first appeared in court.

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



297 after ninety (90) days, or later if such time is extended by the  
298 court issuing the judgment nisi, then the court shall order the  
299 department to revoke the authority of the surety to write bail  
300 bonds. The commissioner shall, upon notice of the court, notify  
301 the surety within five (5) working days of receipt of revocation.  
302 If after \* \* \* twenty (20) working days of such notification the  
303 revocation order has not been set aside by the court, then the  
304 commissioner shall revoke the authority of the surety and all  
305 agents of the surety and shall notify the sheriff of every county  
306 of such revocation.

307 (b) Before the revocation authorized in paragraph (a)  
308 of this subsection, the surety may submit proof to the department  
309 that the defendant has been surrendered to the appropriate  
310 authorities or that the bond has been paid directly to the court  
311 or other proper authorities, such proof to include, but not be  
312 limited to:

313 (i) A receipt of payment to the bond;  
314 (ii) A surrender certificate; or  
315 (iii) A notice of surrender from the proper  
316 authorities, including foreign jurisdictions.

317 (3) If within eighteen (18) months of the date of the final  
318 forfeiture the defendant appears for court, is arrested or  
319 surrendered to the court, or if the defendant is found to be  
320 incarcerated in another jurisdiction and a hold order placed on  
321 the defendant, then the amount of bail, less reasonable



322 extradition cost, excluding attorney fees, shall be refunded by  
323 the court upon application by the surety.

324         **SECTION 4.** This act shall take effect and be in force from  
325 and after July 1, 2024.

