

By: Representative Burch

To: Judiciary B

HOUSE BILL NO. 1285

1 AN ACT TO AMEND SECTIONS 21-23-8, 83-39-7 AND 99-5-25,
2 MISSISSIPPI CODE OF 1972, TO REQUIRE ALL FELONY WARRANTS ISSUED BY
3 A COURT FOR NONAPPEARANCE PLACED ON THE NATIONAL CRIME INFORMATION
4 CENTER INDEX WITH NO RESTRICTIONS UNTIL THE DEFENDANT IS RETURNED
5 TO CUSTODY; TO EXTEND THE NUMBER OF DAYS BETWEEN THE NOTIFICATION
6 OF REVOCATION OF LICENSE TO A SURETY BY THE DEPARTMENT OF
7 INSURANCE AND THE DAY THE REVOCATION WILL BECOME EFFECTIVE; TO
8 AUTHORIZE A SURETY TO SUBMIT PROOF TO THE DEPARTMENT OF INSURANCE
9 THAT THE DEFENDANT HAS BEEN SURRENDERED TO THE APPROPRIATE
10 AUTHORITIES OR THAT THE BOND HAS BEEN PAID DIRECTLY TO THE COURT
11 OR OTHER PROPER AUTHORITIES BEFORE REVOCATION OF THE SURETY'S
12 LICENSE; AND FOR RELATED PURPOSES.

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

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

16 21-23-8. (1) (a) The purpose of bail is to guarantee
17 appearance and a bail bond shall not be forfeited for any other
18 reason.

19 (b) (i) If a defendant in any criminal case,
20 proceeding or matter fails to appear for any proceeding as ordered
21 by the municipal court, then the court shall order the bail
22 forfeited and a judgment nisi and a bench warrant issued at the
23 time of nonappearance. The clerk of the municipal court shall



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

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

43 2. Reasonable mitigating circumstances shall
44 be that the defendant is incarcerated in another jurisdiction;
45 that the defendant is hospitalized under a doctor's care; that the
46 defendant is in a recognized drug rehabilitation program; that the
47 defendant has been placed in a witness protection program, in
48 which case it shall be the duty of any agency placing the



defendant into a witness protection program to notify the
municipal court and the municipal court to notify the surety; or
any other reason justifiable to the municipal court.

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

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

(i) A receipt of payment to the bond;

(ii) A surrender certificate; or



73 (iii) A notice of surrender from the proper
74 authorities, including foreign jurisdictions.

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

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

85 (b) The court shall not set the financial conditions of
86 bail solely for the purpose of detaining the defendant. When bail
87 is set, it is presumed that the amount of bail is both necessary
88 to reasonably assure the safety of a victim, witness or the
89 general public and to guarantee the appearance of a defendant as
90 required by the court. The amount of bail is also presumed to be
91 attainable by the defendant. The presumption that bail is
92 attainable by the defendant may be rebutted by the defendant who
93 may file a motion to reduce or set aside the bail requirement with
94 the court due to lack of financial means, which shall also
95 consider the availability of a third-party support system to
96 obtain the defendant's release. The court shall rule on any such
97 motion within forty-eight (48) hours of the filing.



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

109 (d) The accused may waive an appearance before the
110 judge and execute an appearance bond in an amount determined by
111 the court from the bond guidelines set out in the Mississippi
112 Rules of Criminal Procedure and agree to appear at a specified
113 time and place.

114 (e) If the municipal judge is unavailable and has not
115 provided a bail schedule or otherwise provided for the setting of
116 bail, it is lawful for any officer or officers designated by order
117 of the municipal judge to take bond, cash, property or
118 recognizance, with or without sureties, in the amount of the
119 minimum bail specified in the bond guidelines set out in the
120 Mississippi Rules of Criminal Procedure, payable to the
121 municipality and conditioned for the appearance of the person on
122 the return day and time of the writ before the court to which the



warrant is returnable, or in cases of arrest without a warrant, on the day and time set by the court or officer for arraignment, and there remain from day to day and term to term until discharged.

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

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

(h) All bonds and recognizances in municipal court where the municipal court shall have the jurisdiction to hear and determine the case may be made payable to the municipality and



shall have the effect to bind the principal and any sureties on the bond or recognizance until they shall be discharged by due course of law without renewal.

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

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

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

(2) The qualification bond shall be made by depositing with the commissioner the aforesaid amount of bonds of the United States, the State of Mississippi or any agency or subdivision



thereof, or a certificate of deposit issued by an institution whose deposits are insured by the Federal Deposit Insurance Corporation and made payable jointly to the owner and the Department of Insurance, or shall be written by an insurer as defined in this chapter, shall meet the specifications as may be required and defined in this chapter, and shall meet such specifications as may be required and approved by the department. The bond shall be conditioned upon the full and prompt payment of any bail bond issued by such professional bail agent into the court ordering the bond forfeited. The bond shall be to the people of the State of Mississippi in favor of any court of this state, whether municipal, justice, county, circuit, Supreme or other court.

(3) (a) If any bond issued by a professional bail agent is declared forfeited and judgment entered thereon by a court of proper jurisdiction as authorized in Section 99-5-25, and the amount of the bond is not paid within ninety (90) days, that court shall order the department to declare the qualification bond of the professional bail agent to be forfeited and the license revoked. If the bond was not forfeited correctly under Section 99-5-25, it shall be returned to the court as uncollectible. The department shall then order the surety on the qualification bond to deposit with the court an amount equal to the amount of the bond issued by the professional bail agent and declared forfeited by the court, or the amount of the qualification bond, whichever



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



223 obtain from the proper court an extension of time delaying a final
224 judgment of forfeiture if such bail agent can satisfactorily
225 establish to the court wherein such forfeiture is pending that the
226 defendant named in the bail bond is lawfully in custody outside of
227 the State of Mississippi.

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

234 (i) A receipt of payment to the bond;
235 (ii) A surrender certificate; or
236 (iii) A notice of surrender from the proper
237 authorities, including foreign jurisdictions.

238 (4) The qualification bond may be released by the department
239 to the professional bail personal surety agent upon an order to
240 release the qualification bond issued by a court of competent
241 jurisdiction, or upon written request to the department by the
242 professional bail personal surety agent no earlier than five (5)
243 years after the expiration date of his last license.

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



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

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

(c) The judgment nisi shall be returnable for ninety (90) days from the date of issuance. If during such period the defendant appears before the court, or is arrested and surrendered, then the judgment nisi shall be set aside and a copy of the judgment that is set aside shall be served on the surety by personal service or certified mail. If the surety produces the defendant or provides to the court reasonable mitigating



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

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

290 (2) (a) If a final judgment is entered against a surety
291 licensed by the Department of Insurance and has not been set aside
292 after ninety (90) days, or later if such time is extended by the
293 court issuing the judgment nisi, then the court shall order the
294 department to revoke the authority of the surety to write bail
295 bonds. The commissioner shall, upon notice of the court, notify



the surety within five (5) working days of receipt of revocation. If after * * * twenty (20) working days of such notification the revocation order has not been set aside by the court, then the commissioner shall revoke the authority of the surety and all agents of the surety and shall notify the sheriff of every county of such revocation.

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

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

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

SECTION 4. This act shall take effect and be in force from and after July 1, 2025.

