

By: Senator(s) Fillingane

To: Judiciary, Division B

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2315

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 FOR PRESENTATION TO THE COURT; TO
6 REQUIRE ALL FELONY WARRANTS ISSUED BY A COURT FOR NONAPPEARANCE
7 PLACED ON THE NATIONAL CRIME INFORMATION CENTER INDEX WITH NO
8 RESTRICTIONS UNTIL THE DEFENDANT IS RETURNED TO CUSTODY; TO EXTEND
9 THE NUMBER OF DAYS BETWEEN THE NOTIFICATION OF REVOCATION OF
10 LICENSE TO A SURETY BY THE DEPARTMENT OF INSURANCE AND THE DAY THE
11 REVOCATION WILL BECOME EFFECTIVE; TO AUTHORIZE A SURETY TO SUBMIT
12 PROOF TO THE DEPARTMENT OF INSURANCE THAT THE DEFENDANT HAS BEEN
13 SURRENDERED TO THE APPROPRIATE AUTHORITIES OR THAT THE BOND HAS
14 BEEN PAID DIRECTLY TO THE COURT OR OTHER PROPER AUTHORITIES BEFORE
15 REVOCATION OF THE SURETY'S LICENSE; TO CREATE NEW SECTION 99-5-41,
16 MISSISSIPPI CODE OF 1972, TO PROVIDE WHEN A BAIL BOND OR
17 OBLIGATION THEREUNDER IS DISCHARGED AND BECOMES NULL AND VOID; AND
18 FOR RELATED PURPOSES.

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

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

22 21-23-8. (1) (a) The purpose of bail is to guarantee
23 appearance and a bail bond shall not be forfeited for any other
24 reason.

25 (b) (i) If a defendant in any criminal case,
26 proceeding or matter fails to appear for any proceeding as ordered



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

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



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

60 (2) (a) If a final judgment is entered against a surety
61 licensed by the Department of Insurance and has not been set aside
62 after ninety (90) days, or later if such time is extended by the
63 municipal court issuing the judgment nisi, then the municipal
64 court shall order the department to revoke the authority of the
65 surety to write bail bonds. The Commissioner of Insurance shall,
66 upon notice of the municipal court, notify the surety within five
67 (5) working days of receipt of the order of revocation. If
68 after * * * thirty (30) working days of the notification the
69 revocation order has not been set aside by the municipal court,
70 then the commissioner shall revoke the authority of the surety and
71 all agents of the surety and shall notify the sheriff of every
72 county of such revocation.

73 (b) Before the revocation authorized in paragraph (a)
74 of this subsection, the surety may submit proof to the department
75 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 municipal court, is arrested or surrendered to the municipal 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 municipal court upon application by the surety.

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

(b) The court shall not set the financial conditions of bail solely for the purpose of detaining the defendant. When bail is set, it is presumed that the amount of bail is both necessary to reasonably assure the safety of a victim, witness or the general public and to guarantee the appearance of a defendant as required by the court. The amount of bail is also presumed to be attainable by the defendant. The presumption that bail is attainable by the defendant may be rebutted by the defendant who



101 may file a motion to reduce or set aside the bail requirement with
102 the court due to lack of financial means, which shall also
103 consider the availability of a third-party support system to
104 obtain the defendant's release. The court shall rule on any such
105 motion within forty-eight (48) hours of the filing.

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

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

122 (e) If the municipal judge is unavailable and has not
123 provided a bail schedule or otherwise provided for the setting of
124 bail, it is lawful for any officer or officers designated by order
125 of the municipal judge to take bond, cash, property or



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

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

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



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

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

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

161 83-39-7. (1) (a) Each applicant for a professional bail
162 agent license who acts as personal surety shall be required to
163 post a qualification bond in the amount of Thirty Thousand Dollars
164 (\$30,000.00).

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



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

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

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



201 99-5-25, it shall be returned to the court as uncollectible. The
202 department shall then order the surety on the qualification bond
203 to deposit with the court an amount equal to the amount of the
204 bond issued by the professional bail agent and declared forfeited
205 by the court, or the amount of the qualification bond, whichever
206 is the smaller amount. The department shall, after a hearing held
207 upon not less than * * * thirty (30) days' written notice, suspend
208 the license of the professional bail agent until such time as
209 another qualification bond in the required amount is posted with
210 the department. The revocation of the license of the professional
211 bail agent shall also serve to revoke the license of each
212 soliciting bail agent and bail enforcement agent employed or used
213 by such professional bail agent. In the event of a final judgment
214 of forfeiture of any bail bond written under the provisions of
215 this chapter, the amount of money so forfeited by the final
216 judgment of the proper court, less all accrued court costs and
217 excluding any interest charges or attorney's fees, shall be
218 refunded to the bail agent or his insurance company upon proper
219 showing to the court as to which is entitled to same, provided the
220 defendant in such cases is returned to the sheriff of the county
221 to which the original bail bond was returnable within eighteen
222 (18) months of the date of such final judgment, or proof made of
223 incarceration of the defendant in another jurisdiction, and that a
224 "Hold Order" has been placed upon the defendant for return of the
225 defendant to the sheriff upon release from the other jurisdiction,



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

(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.

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



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

SECTION 3. Section 99-5-25, Mississippi Code of 1972, is 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 for submission to the court. * * * 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



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

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



299 (2) (a) If a final judgment is entered against a surety
300 licensed by the Department of Insurance and has not been set aside
301 after ninety (90) days, or later if such time is extended by the
302 court issuing the judgment nisi, then the court shall order the
303 department to revoke the authority of the surety to write bail
304 bonds. The commissioner shall, upon notice of the court, notify
305 the surety within five (5) working days of receipt of revocation.
306 If after * * * thirty (30) working days of such notification the
307 revocation order has not been set aside by the court, then the
308 commissioner shall revoke the authority of the surety and all
309 agents of the surety and shall notify the sheriff of every county
310 of such revocation.

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

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

321 (3) If within eighteen (18) months of the date of the final
322 forfeiture the defendant appears for court, is arrested or
323 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. The following shall be codified as Section 99-5-41, Mississippi Code of 1972:

99-5-41. A bail bond and the obligation thereunder is discharged and becomes null and void when:

(a) The defendant is found guilty and sentence is pronounced;

(b) The charge is dismissed or nolle prosequi;

(c) The charge is retired or remanded to the files;

(d) The defendant is surrendered by a bail agent in open court or to the sheriff or chief of police or respective jailer of the proper jurisdiction, or a verbal or written, including electronic detention, notice of surrender is delivered thereto as required in Section 99-5-27; or

(e) The defendant is sentenced to nonadjudication, an alternative sentence, or an intervention court program.

SECTION 5. This act shall take effect and be in force from and after July 1, 2025.

