

By: Senator(s) Fillingane

To: Judiciary, Division B

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; 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,



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

(d) Execution upon the final judgment shall be automatically stayed for ninety (90) days from the date of entry of the final judgment. If, at any time before execution of the final judgment, the defendant appears in court either voluntarily or in custody after surrender or arrest, the court shall on its own motion direct that the forfeiture be set aside and the bond exonerated as of the date the defendant first appeared in 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 court issuing the judgment nisi, then the court shall order the department to revoke the authority of the surety to write bail 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



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, 2025.

