

By: Turner

To: Judiciary

SENATE BILL NO. 3075

1 AN ACT TO AMEND SECTIONS 99-17-9 AND 99-5-25, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE THAT A DEFENDANT MAY BE TRIED IN ABSENTIA
3 WHO RECEIVED A NOTICE AND FAILED TO APPEAR AT THE APPOINTED TIME;
4 AND FOR RELATED PURPOSES.

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

6 SECTION 1. Section 99-17-9, Mississippi Code of 1972, is
7 amended as follows:

8 99-17-9. In criminal cases a defendant may waive the right
9 to be present at any proceeding by voluntarily being absent from
10 it. The court may infer that an absence is voluntary if the
11 defendant had personal notice of the time of the proceeding, the
12 right to be present at it, and a warning that the proceeding would
13 go forward despite failure to appear.

14 SECTION 2. Section 99-5-25, Mississippi Code of 1972, is
15 amended as follows:[CSQ1]

16 99-5-25. (1) (a) If a defendant, prosecutor, or witness in
17 any criminal case, proceeding, or matter, fails to appear for any
18 proceeding as ordered by the court, then the court shall order the
19 bail forfeited and a bench warrant issued at the time of
20 nonappearance unless the matter is tried and proceeds to judgment
21 in the defendant's absence. The purpose of bail is to guarantee
22 appearance and bail shall not be forfeited for any other reason.
23 Upon declaration of such forfeiture, the court may issue a
24 judgment nisi or may proceed to try the case upon its merits as
25 provided in Section 99-17-9. If the court issues a judgment nisi,
26 the clerk of the court shall notify the surety of the forfeiture
27 by writ of scire facias within five (5) working days of the entry

28 of such order of judgment nisi either by personal service or by
29 certified mail. Failure of the clerk to provide the required
30 notice within ten (10) working days shall constitute prima facie
31 evidence that the order should be set aside.

32 (b) The judgment nisi shall be returnable for ninety
33 (90) days from the date of issuance. If during such period the
34 defendant appears before the court, or is arrested and
35 surrendered, then the judgement nisi shall be set aside. If the
36 surety fails to produce the defendant and does not provide to the
37 court reasonable mitigating circumstances upon such showing, then
38 the forfeiture shall be made final. Reasonable mitigating
39 circumstances shall be that the defendant is incarcerated in
40 another jurisdiction, that the defendant is hospitalized under a
41 doctor's care, that the defendant is in a recognized drug
42 rehabilitation program, that the defendant has been placed in a
43 witness protection program and it shall be the duty of any such
44 agency placing such defendant into a witness protection program to
45 notify the court and the court to notify the surety, or any other
46 reason justifiable to the court.

47 (2) If a final judgment is entered against a surety licensed
48 by the Department of Insurance and has not been set aside after
49 ninety (90) days, or later if such time is extended by the court
50 issuing the judgment nisi, then the court shall order the
51 department to revoke the authority of such surety to write bail
52 bonds. The commissioner shall, upon notice of the court, notify
53 said surety within five (5) working days of receipt of revocation.

54 If after ten (10) working days of such notification the
55 revocation order has not been set aside by the court, then the
56 commissioner shall revoke the authority of the surety and all
57 agents of the surety and shall notify the sheriff of every county
58 of such revocation.

59 (3) If within twelve (12) months of the date of the final
60 forfeiture the defendant appears for court, is arrested or
61 surrendered to the court, or if the defendant is found to be
62 incarcerated in another jurisdiction and a hold order placed on
63 the defendant, then the amount of bail, less reasonable
64 extradition cost, excluding attorney fees, shall be refunded by

65 the court upon application by the surety.

66 SECTION 3. This act shall take effect and be in force from
67 and after July 1, 2000.