

By: Senator(s) Burton

To: Judiciary, Division B

SENATE BILL NO. 2976

1 AN ACT TO PROVIDE THAT CERTAIN BONDS SHALL NOT BE FORFEITED
2 AS A RESULT OF HURRICANE KATRINA; TO PROVIDE FACTORS FOR THE COURT
3 TO CONSIDER REGARDING SUCH BONDS; TO AMEND SECTION 99-5-25,
4 MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Any bail bonds outstanding in any court in
7 Jackson, Harrison and Hancock Counties shall not be subject to
8 forfeiture until August 29, 2006. This suspension of forfeitures
9 shall not apply to bonds already in the process of being revoked
10 before August 29, 2005.

11 After the expiration of the suspension period, bonds may be
12 subject to forfeiture on a case-by-case basis. Before a bond may
13 be forfeited, the court shall provide notice to the bail agent
14 underwriting the bond to show cause why the bond should not be
15 forfeited. The bail agent shall request a hearing within thirty
16 (30) days of receipt of such notice, which hearing shall be set by
17 the court.

18 Before forfeiting the bond, the court shall consider, among
19 other factors, the following: the circumstances due to Hurricane
20 Katrina, the effect on the defendant's whereabouts and the bail
21 agent's ability to determine the defendant's whereabouts, and
22 whether justice and public safety will be served by forfeiture of
23 the bond.

24 **SECTION 2.** Section 99-5-25, Mississippi Code of 1972, is
25 amended as follows:

26 99-5-25. (1) (a) Except as otherwise provided in Section 1
27 of Senate Bill No. 2976, 2006 Regular Session, if a defendant in
28 any criminal case, proceeding, or matter, fails to appear for any

29 proceeding as ordered by the court, then the court shall order the
30 bail forfeited and a bench warrant issued at the time of
31 nonappearance. The purpose of bail is to guarantee appearance and
32 bail shall not be forfeited for any other reason. Upon
33 declaration of such forfeiture, the court shall issue a judgment
34 nisi. The clerk of the court shall notify the surety of the
35 forfeiture by writ of scire facias, with a copy of the judgment
36 nisi and bench warrant attached thereto, within ten (10) working
37 days of such order of judgment nisi either by personal service or
38 by certified mail. Failure of the clerk to provide the required
39 notice within ten (10) working days shall constitute prima facie
40 evidence that the order should be set aside.

41 (b) The judgment nisi shall be returnable for ninety
42 (90) days from the date of issuance. If during such period the
43 defendant appears before the court, or is arrested and
44 surrendered, then the judgment nisi shall be set aside. If the
45 surety fails to produce the defendant and does not provide to the
46 court reasonable mitigating circumstances upon such showing, then
47 the forfeiture shall be made final with a copy of the final
48 judgment to be served on the surety. Reasonable mitigating
49 circumstances shall be that the defendant is incarcerated in
50 another jurisdiction, that the defendant is hospitalized under a
51 doctor's care, that the defendant is in a recognized drug
52 rehabilitation program, that the defendant has been placed in a
53 witness protection program and it shall be the duty of any such
54 agency placing such defendant into a witness protection program to
55 notify the court and the court to notify the surety, or any other
56 reason justifiable to the court.

57 (2) If a final judgment is entered against a surety licensed
58 by the Department of Insurance and has not been set aside after
59 ninety (90) days, or later if such time is extended by the court
60 issuing the judgment nisi, then the court shall order the
61 department to revoke the authority of such surety to write bail

62 bonds. The commissioner shall, upon notice of the court, notify
63 said surety within five (5) working days of receipt of revocation.
64 If after ten (10) working days of such notification the revocation
65 order has not been set aside by the court, then the commissioner
66 shall revoke the authority of the surety and all agents of the
67 surety and shall notify the sheriff of every county of such
68 revocation.

69 (3) If within twelve (12) months of the date of the final
70 forfeiture the defendant appears for court, is arrested or
71 surrendered to the court, or if the defendant is found to be
72 incarcerated in another jurisdiction and a hold order placed on
73 the defendant, then the amount of bail, less reasonable
74 extradition cost, excluding attorney fees, shall be refunded by
75 the court upon application by the surety.

76 **SECTION 3.** This act shall take effect and be in force from
77 and after its passage.