

By: Representative Hines

To: Judiciary B

HOUSE BILL NO. 1533

1 AN ACT TO CLARIFY WHERE A LIMITED SURETY MAY WRITE BONDS; TO
2 SPECIFY REQUIREMENTS FOR THE WRITING OF SUCH BONDS; TO PROHIBIT
3 WRITING FOR LESS THAN A CERTAIN PERCENTAGE OF A BOND AND TO
4 PROVIDE PENALTIES FOR VIOLATIONS; TO AMEND SECTIONS 83-39-3,
5 83-39-15, 99-5-5 AND 99-5-7, MISSISSIPPI CODE OF 1972, IN
6 CONFORMITY; TO BRING FORWARD SECTIONS 87-5-1, 87-5-3, 87-5-5,
7 87-5-7, 87-5-9, 87-5-11 AND 87-5-13, MISSISSIPPI CODE OF 1972,
8 WHICH RELATE TO PRINCIPAL AND SURETY; TO BRING FORWARD SECTIONS
9 83-27-1, 83-27-3, 83-27-5, 83-27-7, 83-27-9 AND 83-27-11,
10 MISSISSIPPI CODE OF 1972, WHICH REGULATE SURETY COMPANIES; AND FOR
11 RELATED PURPOSES.

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

13 **SECTION 1.** (1) A limited surety may write bonds anywhere in
14 the state provided that such limited surety has an audited annual
15 financial statement and a qualified power of attorney indicating
16 the amount that such limited surety is qualified to write. A
17 personal surety shall only be allowed to write bonds for the types
18 of surety for which they are licensed.

19 (2) Bonds written through a personal surety shall only cover
20 one (1) individual bondsman.

21 (3) All bonds must be written for at least ten percent (10%)
22 of the total value of the bond. Any bond written for less than
23 ten percent (10%) shall be grounds for license revocation and
24 shall be a misdemeanor punishable by a fine of Five Thousand
25 Dollars (\$5,000.00) and imprisonment up to one (1) year in the
26 county jail.

27 (4) A bondsman who forfeits a bond shall be prohibited from
28 writing bonds in the state and shall have his or her license
29 revoked until the forfeited bond is paid. If a bondsman has more
30 than three (3) forfeitures in a year and the forfeitures are not

31 paid within ninety (90) days, such bondsman shall be subject to a
32 permanent license revocation.

33 **SECTION 2.** Section 83-39-3, Mississippi Code of 1972, is
34 amended as follows:

35 83-39-3. (1) No person shall act in the capacity of
36 professional bail agent, soliciting bail agent or bail enforcement
37 agent, as defined in Section 83-39-1, or perform any of the
38 functions, duties or powers of the same unless that person shall
39 be qualified and licensed as provided in this chapter. The terms
40 of this chapter shall not apply to any automobile club or
41 association, financial institution, insurance company or other
42 organization or association or their employees who execute bail
43 bonds on violations arising out of the use of a motor vehicle by
44 their members, policyholders or borrowers when bail bond is not
45 the principal benefit of membership, the policy of insurance or of
46 a loan to such member, policyholder or borrower.

47 (2) (a) No license shall be issued except in compliance
48 with this chapter, and none shall be issued except to an
49 individual. No firm, partnership, association or corporation, as
50 such, shall be so licensed. No professional bail agent shall
51 operate under more than one (1) trade name. A soliciting bail
52 agent and bail enforcement agent shall operate only under the
53 professional bail agent's name. No person who has ever been
54 convicted of a felony or any crime involving moral turpitude, or
55 who has not been a resident of this state for at least one (1)
56 year, unless presently licensed for bail bonds, or who is under
57 twenty-one (21) years of age, shall be issued a license hereunder.
58 No person engaged as a law enforcement or judicial official or
59 attorney shall be licensed hereunder.

60 (b) (i) No person who is a spouse of: 1. a county or
61 municipal law enforcement official; 2. an employee of a county or
62 municipal law enforcement official; or 3. an employee of a law
63 enforcement entity shall write a bond for a person arrested by the

64 spouse or the law enforcement entity which the person's spouse
65 serves as a law enforcement official or employee; violation of
66 this prohibition shall result in license revocation.

67 (ii) No person licensed under this chapter shall
68 act as a personal surety agent in the writing of bail during a
69 period he or she is licensed as a limited surety agent, as defined
70 herein.

71 (iii) No person licensed under this chapter shall
72 give legal advice or a legal opinion in any form.

73 (3) The department is vested with the authority to enforce
74 this chapter. The department may conduct investigations or
75 request other state, county or local officials to conduct
76 investigations and promulgate such rules and regulations as may be
77 necessary for the enforcement of this chapter. The department may
78 establish monetary fines and collect such fines as necessary for
79 the enforcement of such rules and regulations. All fines
80 collected shall be deposited in the Special Insurance Department
81 Fund for the operation of that agency.

82 (4) Each license issued hereunder shall expire annually on
83 the last day of May, unless revoked or suspended prior thereto by
84 the department, or upon notice served upon the commissioner by the
85 insurer that the authority of a limited surety agent to act for or
86 in behalf of such insurer had been terminated, or upon notice
87 served upon the commissioner by a professional bail agent that the
88 employment of a soliciting bail agent or bail enforcement agent
89 had been terminated by such professional bail agent.

90 (5) The department shall prepare and deliver to each
91 licensee a certificate showing the name, address and
92 classification of such licensee, and shall certify that the person
93 is a licensed professional bail agent, being either a personal
94 surety agent or a limited surety agent, a soliciting bail agent or
95 a bail enforcement agent. In addition, the certificate, if for a
96 soliciting bail agent or bail enforcement agent, shall show the

97 name of the professional bail agent and any other information as
98 the commissioner deems proper.

99 (6) The commissioner, after a hearing under Section
100 83-39-17, may refuse to issue a privilege license for a soliciting
101 bail agent to change from one professional bail agent to another
102 if he owes any premium or debt to the professional bail agent with
103 whom he is currently licensed. The commissioner, after a hearing
104 under Section 83-39-17, may refuse to issue a license for a
105 limited surety agent if he owes any premium or debt to an insurer
106 to which he has been appointed.

107 (7) From and after May 1, 2006, prior to the issuance of any
108 professional bail agent, soliciting bail agent or bail enforcement
109 agent license, the applicant shall submit proof of successful
110 completion of forty (40) classroom hours of prelicensing education
111 approved by the Professional Bail Agents Association of
112 Mississippi, Inc., and conducted by persons or entities approved
113 by the Professional Bail Agents Association of Mississippi, Inc.
114 The hours required by this subsection shall be classroom hours and
115 may not be acquired through correspondence or over the Internet.

116 (8) From and after May 1, 2000, prior to the renewal of any
117 professional bail agent, soliciting bail agent or bail enforcement
118 agent license, the applicant shall submit proof of successful
119 completion of eight (8) classroom hours of continuing education
120 approved by the department and the Professional Bail Agents
121 Association of Mississippi, Inc., and provided by persons or
122 entities approved by the Professional Bail Agents Association of
123 Mississippi, Inc. The hours required by this subsection shall be
124 classroom hours and may not be acquired through correspondence or
125 over the Internet.

126 (9) All bail agents shall comply with the provisions of
127 Section 1 of this act.

128 **SECTION 3.** Section 83-39-15, Mississippi Code of 1972, is
129 amended as follows:

130 83-39-15. (1) The department may deny, suspend, revoke or
131 refuse to renew, as may be appropriate, the license of any person
132 engaged in the business of professional bail agent, soliciting
133 bail agent, or bail enforcement agent for any of the following
134 reasons:

135 (a) Any cause for which the issuance of the license
136 would have been refused had it then existed and been known to the
137 department.

138 (b) Failure to post a qualification bond in the
139 required amount with the department during the period the person
140 is engaged in the business within this state or, if the bond has
141 been posted, the forfeiture or cancellation of the bond.

142 (c) Material misstatement, misrepresentation or fraud
143 in obtaining the license.

144 (d) Willful failure to comply with, or willful
145 violation of, any provision of this chapter or of any proper
146 order, rule or regulation of the department or any court of this
147 state.

148 (e) Conviction of felony or crime involving moral
149 turpitude.

150 (f) Default in payment to the court should any bond
151 issued by such bail agent be forfeited by order of the court.

152 (g) Being elected or employed as a law enforcement or
153 judicial official.

154 (h) Engaging in the practice of law.

155 (i) Writing a bond for a person arrested by a spouse or
156 the law enforcement entity which a spouse serves as a law
157 enforcement official or employee.

158 (j) Giving legal advice or a legal opinion in any form.

159 (k) Failure to comply with the provisions of Section 1
160 of this act.

161 (2) In addition to the grounds specified in subsection (1)
162 of this section, the department shall be authorized to suspend the

163 license, registration or permit of any person for being out of
164 compliance with an order for support, as defined in Section
165 93-11-153. The procedure for suspension of a license,
166 registration or permit for being out of compliance with an order
167 for support, and the procedure for the reissuance or reinstatement
168 of a license, registration or permit suspended for that purpose,
169 and the payment of any fees for the reissuance or reinstatement of
170 a license, registration or permit suspended for that purpose,
171 shall be governed by Section 93-11-157 or 93-11-163, as the case
172 may be. If there is any conflict between any provision of Section
173 93-11-157 or 93-11-163 and any provision of this chapter, the
174 provisions of Section 93-11-157 or 93-11-163, as the case may be,
175 shall control.

176 **SECTION 4.** Section 99-5-5, Mississippi Code of 1972, is
177 amended as follows:

178 99-5-5. (1) All bonds and recognizances taken for the
179 appearance of any party, either as defendant, prosecutor, or
180 witness in any criminal proceeding or matter, shall be made
181 payable to the state, shall be secured by an insurance company and
182 shall have the effect to bind the accused and his sureties on the
183 bond or recognizance until the principal shall be discharged by
184 due course of law, and shall be in full force, from term to term,
185 for a period of three (3) years, except that a bond returnable to
186 the Supreme Court shall be in full force for a period of five (5)
187 years. If it is necessary to renew a bond, it shall be renewed
188 without additional premium. At the end of the applicable period,
189 a bond or recognizance that is not renewed shall expire and shall
190 be uncollectible unless the collection process was started on or
191 before the expiration date of such bond or recognizance. Any bond
192 or recognizance taken prior to July 1, 1996, shall expire on July
193 1, 1999. If a defendant is charged with multiple counts in one
194 (1) warrant only one (1) bond shall be taken.

195 (2) A bond written through a surety company shall comply
196 with the provisions of Section 1 of this act.

197 **SECTION 5.** Section 99-5-7, Mississippi Code of 1972, is
198 amended as follows:

199 99-5-7. Bail may be given to the sheriff or officer holding
200 the defendant in custody, by a fidelity or surety insurance
201 company authorized to act as surety within the State of
202 Mississippi. Any such company may execute the undertaking as
203 surety by the hand of officer or attorney authorized thereto by a
204 resolution of its board of directors, a certified copy of which,
205 under its corporate seal, shall be on file with the clerk of the
206 circuit court and the sheriff of the county, and such authority
207 shall be deemed in full force and effect until revoked in writing
208 by notice to said clerk and sheriff. Bail written through a
209 surety company shall comply with the provisions of Section 1 of
210 this act.

211 **SECTION 6.** Section 87-5-1, Mississippi Code of 1972, is
212 brought forward as follows:

213 87-5-1. Any person bound as surety or accommodation indorser
214 for another, may, at any time after the debt has become due or
215 liability been incurred, give notice in writing to the creditor to
216 commence and prosecute legal proceedings against the principal
217 debtor, if living and resident within this state, for the recovery
218 of the debt; and if the creditor fails to commence legal
219 proceedings by the next term of the court in which the same shall
220 be instituted, to be held after the expiration of thirty (30) days
221 from the giving of the notice, and to prosecute the same to
222 effect, the surety who shall have given the notice shall be
223 discharged from liability. It shall not be lawful to plead or to
224 give in evidence under this section a notice not in writing, and
225 any act of the creditor shall not be a waiver of notice in writing
226 as herein required.

227 **SECTION 7.** Section 87-5-3, Mississippi Code of 1972, is
228 brought forward as follows:

229 87-5-3. When any person who is bound as surety or indorser
230 for another on any writing, for the payment of money or other
231 thing, which shall remain unpaid, in whole or in part, by the
232 principal debtor, after the maturity thereof, shall pay or tender
233 to the creditor or holder of such writing the amount due thereon,
234 the creditor or holder shall assign such writing to the surety or
235 indorser paying or tendering the money or other thing due; and
236 such assignee may have an action in his own name against the
237 principal debtor upon the writing, to recover the amount paid in
238 satisfaction of it.

239 **SECTION 8.** Section 87-5-5, Mississippi Code of 1972, is
240 brought forward as follows:

241 87-5-5. When any surety or guaranty company has executed any
242 bond or other contract as surety for any person, company or
243 corporation, guaranteeing the performance of any duty or the
244 payment of any money, and such person, company or corporation make
245 default therein and said surety or guaranty company pays the
246 amount for which the party insured or guaranteed is legally
247 liable, the said surety or guaranty company becomes thereby
248 subrogated to all the rights of the party in whose favor the
249 security or guaranty is given, and such company may have and
250 maintain an action against the principal in its own name to
251 recover the amount paid out in satisfaction thereof.

252 **SECTION 9.** Section 87-5-7, Mississippi Code of 1972, is
253 brought forward as follows:

254 87-5-7. A surety or indorser shall not suffer judgment or a
255 decree to be rendered against him by confession or default,
256 without the consent of the principal debtor. And a surety or
257 indorser who shall be sued alone, shall give notice of the suit to
258 the principal debtor, if resident in this state, and if he have
259 knowledge or information of any defense to the action which the

260 principal debtor has, he shall make such defense; and if a surety
261 or indorser, when sued alone, fail to give such notice to the
262 principal debtor, in case he be a resident of this state, or to
263 make such defense in the action of which he has knowledge or
264 information, he shall be barred of all recovery against the
265 principal debtor in case the principal debtor have at the time a
266 good defense to the action of the creditor.

267 **SECTION 10.** Section 87-5-9, Mississippi Code of 1972, is
268 brought forward as follows:

269 87-5-9. If a judgment or decree be rendered by any court
270 against a principal debtor and his surety, or against his
271 sureties, and one or more of his sureties shall pay and satisfy
272 the judgment or decree, the same shall, by operation of law, be
273 thereby transferred and assigned to the surety or sureties paying
274 and satisfying it, who shall have all the liens and equities of
275 such judgment or decree and of the debt or claim on which the same
276 is founded, which the creditor therein had. The surety, on making
277 affidavit of his suretyship, and of his having paid the judgment
278 or decree, and filing the affidavit and any evidence of such
279 payment that he may hold, with the officer authorized to issue
280 execution on the judgment or decree to whom he may apply for
281 execution, shall be entitled to have execution issued on the
282 judgment or decree, in the name of the plaintiff or complainant
283 against the defendants therein, as if the judgment or decree had
284 not been paid and satisfied. The officer issuing the execution
285 shall indorse thereon that it is issued for the use of the surety
286 who paid the judgment or decree; and the officer serving it shall
287 collect the money, for the use of the surety, from the principal
288 debtor, if he be a party to the judgment or decree and the money
289 can be made out of him; and, if not, he shall collect a ratable
290 proportion of the money from each of the cosureties.

291 **SECTION 11.** Section 87-5-11, Mississippi Code of 1972, is
292 brought forward as follows:

293 87-5-11. If such judgment or decree as is referred to in
294 Section 87-5-9 shall appear to be satisfied, either on the
295 judgment-roll, execution docket, or other record, property
296 conveyed or encumbered thereafter by the principal debtor or
297 sureties to any one for a valuable consideration, without notice
298 of the fact that it was paid and satisfied by a surety, shall not
299 be liable to such judgment or decree, unless at the time the
300 property was conveyed or encumbranced, the record which showed the
301 satisfaction of the judgment or decree, shall also show the fact
302 that it was paid and satisfied by a surety, and the name of such
303 surety.

304 **SECTION 12.** Section 87-5-13, Mississippi Code of 1972, is
305 brought forward as follows:

306 87-5-13. When execution shall issue on any judgment or
307 decree rendered against a principal and surety, and the surety
308 shall make affidavit that he is only surety on the instrument upon
309 which the judgment or decree is founded, and deliver it to the
310 officer serving the execution, the officer shall make the money,
311 or as much thereof as possible, out of the property of the
312 principal debtor, if he have any in the county to which the
313 execution is issued subject to execution; and the officer shall
314 return the affidavit with the execution.

315 **SECTION 13.** Section 83-27-1, Mississippi Code of 1972, is
316 brought forward as follows:

317 83-27-1. Any company incorporated and organized under the
318 laws of any state of the United States for the purpose of
319 transacting business as surety on obligations of persons or
320 corporations, which has complied with all the requirements of this
321 chapter may be accepted as surety in part, or as sole surety, upon
322 the bond of any person, officer or corporation required by the
323 laws of this state to execute a bond or bonds. Such company may
324 be substituted as sole surety or as cosurety for a surety or
325 sureties on bonds already given, and may be released from

326 liability on the same terms and conditions as are by law
327 prescribed for the substitution and release of individuals as
328 sureties. Where a surety company subscribes to a bond, it shall
329 not be necessary that there shall be additional sureties. In all
330 cases where such company shall become surety for part only of any
331 bond, its liability on such bond shall be limited to the amount
332 for which it becomes surety. All surety companies shall possess
333 the capital and surplus requirements as required in Sections
334 83-19-31 and 83-21-3.

335 **SECTION 14.** Section 83-27-3, Mississippi Code of 1972, is
336 brought forward as follows:

337 83-27-3. Before such company shall be accepted as surety, it
338 shall produce to the judge, head of department, or other officer
339 authorized to approve such bond satisfactory evidence of its
340 compliance with and fulfillment of all the requirements of this
341 chapter.

342 **SECTION 15.** Section 83-27-5, Mississippi Code of 1972, is
343 brought forward as follows:

344 83-27-5. No such company shall be accepted as surety unless
345 the amount of at least One Hundred Thousand Dollars (\$100,000.00)
346 of its said paid-up capital is invested in solvent securities
347 created by the laws of the United States or of the State of
348 Mississippi or by or under the laws of the state by which such
349 company is incorporated, or in other safe securities the value of
350 which, at the time of such acceptance, shall be at or above par
351 and which are deposited with the Insurance Commissioner, Auditor,
352 Comptroller, or Chief Financial Officer of the state under whose
353 laws such company is incorporated, and the Commissioner of
354 Insurance of this state is furnished with the certificate of such
355 Commissioner, Auditor, Comptroller, or Officer, under his hand and
356 official seal that he, as said Insurance Commissioner, Auditor,
357 Comptroller, or Chief Financial Officer of said state holds the
358 said securities in trust and on deposit for the benefit of such

359 obligees of such company, which certificate shall describe the
360 items of security so held and shall state that he is satisfied
361 they are worth One Hundred Thousand Dollars (\$100,000.00).

362 **SECTION 16.** Section 83-27-7, Mississippi Code of 1972, is
363 brought forward as follows:

364 83-27-7. Every person who shall so represent any such
365 company as to receive or transmit applications for suretyship, or
366 to receive for delivery bonds founded on applications from this
367 state, or otherwise to procure suretyship to be effected by said
368 company upon the bonds of persons or corporations in this state,
369 or upon bonds given to persons or corporations in this state,
370 shall be deemed as an agent for such company. No person shall act
371 as agent for such company until such company shall have complied
372 with all of the requirements of this chapter, under penalty of a
373 fine of One Thousand Dollars (\$1,000.00).

374 **SECTION 17.** Section 83-27-9, Mississippi Code of 1972, is
375 brought forward as follows:

376 83-27-9. No company shall be accepted as surety on any bond
377 for an amount larger than one tenth (1/10) of the company's
378 paid-up capital and surplus as reflected in its last annual
379 statement, unless it shall be secured from loss beyond such amount
380 by reinsurance in an authorized company or by the amount of any
381 cosuretyship, provided such reinsurance or cosurety shall not
382 exceed the limits set forth herein for the prime surety, or by the
383 value of any security deposited, pledged, or held subject to the
384 company's consent and for its protection.

385 **SECTION 18.** Section 83-27-11, Mississippi Code of 1972, is
386 brought forward as follows:

387 83-27-11. Any company who shall execute any bond as surety
388 shall, in any proceeding to enforce the liability which it shall
389 have assumed to incur, be estopped to deny its corporate power to
390 execute such instrument or assume such liability. Nor shall any

391 failure to comply with any or all of the provisions of this
392 chapter avail said company as a defense in any such proceedings.

393 **SECTION 19.** This act shall take effect and be in force from
394 and after July 1, 2007.