
A BILL FOR AN ACT

RELATING TO FORFEITURE PURSUANT TO SECTION 804-51, HAWAII
REVISED STATUTES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that section 804-51,
2 Hawaii Revised Statutes, currently requires that a notice be
3 personally served on or sent by certified mail to a surety to
4 start the thirty-day period before any bond or recognizance
5 given in a criminal cause is forfeited to the State. There have
6 been cases where a surety avoids its obligations on a bond or
7 recognizance by evading the service of the notice. Under
8 chapter 804, Hawaii Revised Statutes, a surety and a surety
9 insurer form an agency relationship when the surety registers a
10 bond or recognizance with a court, pursuant to a power of
11 attorney issued by the surety insurer. Because of this agency
12 relationship, a notice to either the surety or surety insurer by
13 certified mail should start the thirty-day period for the surety
14 or surety insurer to locate and surrender a principal or file a
15 motion or application showing good cause why execution should
16 not issue upon the judgment. Allowing a notice to be sent to



1 either a surety or surety insurer will reduce a loophole used by
2 a surety to avoid its obligations on the bond or recognizance.

3 The legislature also finds that the appellate courts
4 currently lack jurisdiction over an appeal by the State from an
5 order granting a motion or application to set aside a bond or
6 recognizance forfeiture. The State should have the ability to
7 appeal when it believes that a bond or recognizance forfeiture
8 is set aside without good cause.

9 The purpose of this Act is to amend section 804-51, Hawaii
10 Revised Statutes, to allow a notice of a bond or recognizance
11 forfeiture to be sent to either the surety or surety insurer and
12 to provide a means for the State to appeal an order granting a
13 motion or application to set aside a bond or recognizance
14 forfeiture.

15 SECTION 2. Section 804-51, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§804-51 Procedure. Whenever the court, in any criminal
18 cause, forfeits any bond or recognizance given in a criminal
19 cause, the court shall immediately enter up judgment in favor of
20 the State and against the principal or principals [~~and~~], surety
21 or sureties, and surety insurer or surety insurers on the bond,



1 jointly and severally, for the full amount of the penalty
2 thereof, and shall cause execution to issue thereon immediately
3 after the expiration of thirty days from the date that notice is
4 given via personal service or certified mail, return receipt
5 requested, to the surety or sureties or the surety insurer or
6 surety insurers on the bond, of the entry of the judgment in
7 favor of the State, unless before the expiration of thirty days
8 from the date that notice is given to the surety or sureties or
9 the surety insurer or surety insurers on the bond of the entry
10 of the judgment in favor of the State, a motion or application
11 of the principal or principals, surety or sureties, surety
12 insurer or surety insurers, or any of them, showing good cause
13 why execution should not issue upon the judgment, is filed with
14 the court. If the motion or application, after a hearing held
15 thereon, is sustained, the court shall vacate the judgment of
16 forfeiture and, if the principal surrenders or is surrendered
17 pursuant to section 804-14 or section 804-41, return the bond or
18 recognizance to the principal, [~~or~~] surety, or surety insurer,
19 whoever shall have given it, less the amount of any cost, as
20 established at the hearing, incurred by the State as a result of
21 the nonappearance of the principal or other event on the basis



1 of which the court forfeited the bond or recognizance. If the
2 motion or application, after a hearing held thereon, is
3 overruled, execution shall forthwith issue and shall not be
4 stayed unless the order overruling the motion or application is
5 appealed from as in the case of a final judgment. If the motion
6 or application, after a hearing held thereon, is granted, the
7 State may appeal the order granting the motion or application as
8 in the case of a final judgment.

9 This section shall be considered to be set forth in full in
10 words and figures in, and to form a part of, and to be included
11 in, each and every bond or recognizance given in a criminal
12 cause, whether actually set forth in the bond or recognizance,
13 or not."

14 SECTION 3. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect upon its approval.



Report Title:

Forfeiture; Bond or Recognizance

Description:

Allows notice of a bond or recognizance forfeiture to be sent to either the surety (bond company) or surety insurer (insurance company), by certified mail, to start the thirty-day forfeiture countdown for the surety or surety insurer to locate and surrender a principal (criminal defendant) or file a motion or application to set aside the bond or recognizance forfeiture. Provides the State with an avenue to appeal when the court grants a motion or application to set aside a bail bond forfeiture. (SD1)

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