

# S.B. NO. 1278

JAN 25 2023

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## 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

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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 or  
21 sureties and surety insurer or surety insurers on the bond,  
22 jointly and severally, for the full amount of the penalty

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

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

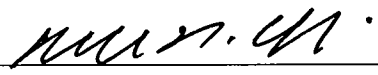
7 This section shall be considered to be set forth in full in  
8 words and figures in, and to form a part of, and to be included  
9 in, each and every bond or recognizance given in a criminal  
10 cause, whether actually set forth in the bond or recognizance,  
11 or not."

12 SECTION 3. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: 

17

BY REQUEST

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**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.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

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DEPARTMENT: ATTORNEY GENERAL

TITLE: A BILL FOR AN ACT RELATING TO FORFEITURE PURSUANT TO SECTION 804-51, HAWAII REVISED STATUTES.

PURPOSE: To allow a 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 period for the surety or surety insurer to locate and surrender the principal or file a motion or application to set aside the bond or recognizance forfeiture before the forfeiture of the bond or recognizance. To allow the State to file an appeal when a court grants a motion to set aside a bond or recognizance forfeiture without good cause.

MEANS: Amend section 804-51, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Although the Judiciary currently sends letters to surety insurers, informing them of bond and recognizance forfeitures and demanding payment, the Hawaii Supreme Court has declined to recognize these letters as notices as required under section 804-501, HRS. The receipt of the forfeiture notice starts the thirty-day countdown to locate and surrender a principal (criminal defendant) or file a motion or application to set aside a bond or recognizance forfeiture. See *State v. Nelson*, 139 Hawai'i 147, 159, 384 P.3d 923, 935 (2016) (declining to adopt the State's argument that a letter sent to a surety insurer providing notice of a bond or recognizance forfeiture and demanding payment of the bond or recognizance forfeiture is sufficient notice under section 804-51, HRS). The bill would allow a notice of a bond or recognizance forfeiture to be sent to either

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the surety or surety insurer by certified mail.

The proposed amendments also allow the State to appeal from an order granting a motion or application to set aside a bond or recognizance forfeiture. Currently, the appellate courts lack jurisdiction over an appeal by the State from an order granting a motion or application to set aside a bond or recognizance forfeiture. See *State v. Lukela*, No. CAAP-17-0000713, 2018 WL 2479362 (Haw. App. June 4, 2018) (dismissing appeal because section 804-51, HRS, does not provide a basis for the State to appeal). The Hawaii Supreme Court has held that good cause for setting aside a bond or recognizance forfeiture is limited to circumstances where the principal is surrendered to the court before the expiration of the thirty-day search period, or the principal provides an explanation to the court's satisfaction that the principal was unable to appear in court due to uncontrollable circumstances. *State v. Camara*, 81 Hawai'i 324, 330-31, 916 P.2d 1225, 1231-32, (1996). The State should have the ability to appeal when a bond or recognizance forfeiture is set aside without good cause.

Impact on the public: None.

Impact on the department and other agencies: This bill will allow the Judiciary and the county prosecutors to serve notices of bond and recognizance forfeitures directly upon the surety insurers, who are more reliable in signing for certified mail.

GENERAL FUND:

OTHER FUNDS:

PPBS PROGRAM  
DESIGNATION:

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OTHER AFFECTED  
AGENCIES:

Judiciary; county prosecutors.

EFFECTIVE DATE:

Upon its approval.