

ACT 154

H.B. NO. 980

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:

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

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

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

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

“§804-51 Procedure. Whenever the court, in any criminal cause, forfeits any bond or recognizance given in a criminal cause, the court shall immediately enter up judgment in favor of the State and against the principal or principals [~~and~~], surety or sureties, and surety insurer or surety insurers on the bond, jointly and severally, for the full amount of the penalty thereof, and shall cause execution to issue thereon immediately after the expiration of thirty days from the date that notice is given via personal service or certified mail, return receipt requested, to the surety or sureties or the surety insurer or surety insurers on the bond, of the entry of the judgment in favor of the State, unless before the expiration of thirty days from the date that notice is given to the surety or sureties or the surety insurer or surety insurers on the bond of the entry of the judgment in favor of the State, a motion or application of the principal or principals, surety or sureties, surety insurer or surety insurers, or any of them, showing good cause why execution should not issue upon the judgment, is filed with the court. If the motion or application, after a hearing held thereon, is sustained, the court shall vacate the judgment of forfeiture and, if the principal surrenders or is surrendered pursuant to section 804-14 or section 804-41, return the bond or recognizance to the principal, [~~or~~] surety, or surety insurer, whoever shall have given it, less the amount of any cost, as established

at the hearing, incurred by the State as a result of the nonappearance of the principal or other event on the basis of which the court forfeited the bond or recognizance. If the motion or application, after a hearing held thereon, is overruled, execution shall forthwith issue and shall not be stayed unless the order overruling the motion or application is appealed from as in the case of a final judgment. If the motion or application, after a hearing held thereon, is granted, the State may appeal the order granting the motion or application as in the case of a final judgment.

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

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

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

(Approved June 29, 2023.)