A BILL FOR AN ACT

RELATING TO ESCROW DEPOSITORIES.

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

SECTION 1. Section 449-1, Hawaii Revised Statutes, is amended by adding four new definitions to be appropriately inserted and to read as follows:

"Control", in the context of control of an applicant or licensee, means ownership of or the power to vote twenty-five per cent or more of the outstanding voting securities of a licensee or controlling person. For purposes of determining the percentage of a licensee controlled by any person, there shall be aggregated with the controlling person's interest the interest of any other person controlled by the person, or by any spouse, parent, or child of the person.

"Controlling person" means any person in control of a licensee or applicant.

"NMLS" means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the state licensing and registration of state-licensed loan originators
and other financial services providers, or any system provided
by the Consumer Financial Protection Bureau.

"Principal" means a manager and anyone else who supervises
or is in charge of the applicant or licensee."

SECTION 2. Section 449-1.9, Hawaii Revised Statutes, is
amended to read as follows:

"§449-1.9 [1] Powers of commissioner. In addition to
any other powers provided by law, the commissioner may:

(1) Administer and enforce the provisions and requirements
of this chapter;

(2) Adopt, amend, or repeal rules or declaratory rulings
pursuant to chapter 91 to effectuate the purposes of
this chapter;

(3) Issue informal nonbinding interpretations to
effectuate the purposes of this chapter;

(4) Investigate and conduct hearings regarding any
violation of this chapter or any rule or order of the
commissioner;

(5) Contract with or employ qualified persons, including
investigators, examiners, or auditors who shall be
exempt from chapter 76 and who shall assist the
(6) Deposit all fees, fines, and charges collected by the commissioner under this chapter into the compliance resolution fund established pursuant to section 26-9(o);

(7) Process and investigate complaints, subpoena witnesses and documents, administer oaths, and receive affidavits and oral testimony, including through electronic means, and conduct contested case proceedings; [and]

(8) Report any violation of this chapter or violation of federal or state law to the United States Commissioner of Housing and Urban Development or any other federal agency having jurisdiction over the licensee[; and]

(9) Enter into agreements or contracts with the operators of NMLS or other entities designated by NMLS to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

(A) For the purpose and the extent necessary to use NMLS, the commissioner may:
(i) Require all escrow depositories to register with NMLS; and

(ii) Waive or modify, in whole or in part, by rule or order, any or all of the requirements of this chapter and establish new requirements as reasonably necessary to participate in NMLS; and

(B) In addition to other uses of NMLS, the commissioner may use NMLS as an agent for:

(i) Requesting information from and distributing information to the United States Department of Justice or any other governmental agency; and

(ii) Requesting and distributing information to and from any source directed by the commissioner.

SECTION 3. Section 449-6, Hawaii Revised Statutes, is amended to read as follows:

"§449-6 Application for license. (a) Any corporation desiring to be licensed as an escrow depository shall [file] submit an application [upon forms to be furnished] in writing and in a form prescribed by NMLS or by the commissioner. The
application shall be accompanied by a filing fee no part of which
shall be refundable.

(b) The application shall contain the following
[information]:

(1) The corporate name, amount of capital, and office
   address of the applicant;

(2) The names of the stockholders, officers, and directors
   of the applicant;

(3) Evidence of the character, financial responsibility,
   experience, and ability of the officers and directors;
   [and]

(4) The names of the proposed escrow officers and their
   qualifications[·];

(5) The history of the applicant's material litigation and
   criminal convictions for the five-year period prior to
   the date of the application;

(6) Information and authorizations necessary to conduct a
   criminal history record check in accordance with
   section 846-2.7 of each of the applicant's controlling
   persons, and each of the officers, directors, and
   principals who will be in charge of the escrow
   depository's activities upon licensure, accompanied by
the appropriate payment of the applicable fee for each
record check; and

(7) Any other information the commissioner deems necessary
to participate in NMLS."

SECTION 4. Section 449-8, Hawaii Revised Statutes, is
amended to read as follows:

"§449-8 Issuance and renewal of license. After approval of
the application, and payment of the license fee, the commissioner
shall issue to the applicant a license to act as an escrow
depository. The license shall be effective only upon the
applicant's filing with the commissioner an escrow depository's
bond and evidence that fidelity bonds and errors and omissions
insurance, or cash or securities deposits permitted in lieu
thereof, have been obtained, all as provided in sections 449-9,
449-11, and 449-12. The license shall be renewed annually, as of
[July 1] December 31, upon payment of the annual renewal fee and
the finding of the commissioner, from the information contained in
the annual corporate exhibit of the licensee or investigation or
hearing, that the licensee continues to meet the qualifications
for licensing and has continued in force the bonds and insurance
or the cash or securities deposits permitted in lieu thereof."
SECTION 5. Section 449-8.6, Hawaii Revised Statutes, is amended to read as follows:

§ 449-8.6 Sale or transfer of license or change in control.

(a) No escrow depository license shall be transferred except as provided in subsection (e).

(b) A bona fide sale of all or substantially all of the ongoing operations of a licensee shall not result in the assignment or transfer of the escrow depository license until approved by the commissioner as provided in this section. The proposed purchaser of all or substantially all of the ongoing operations of a licensee shall file an application for approval of a proposed change in control of the licensee, accompanied by a nonrefundable application fee in accordance with this chapter, and shall not act as an escrow depository until the application has been approved by the commissioner.

(c) Any transfer of a licensee's voting stock which may result in the acquisition of control of the licensee may be considered a transfer of license. Any intended transfer of the voting stock which may result in the acquisition of control under this chapter, and prior to the transfer shall be reported to the commissioner in writing. Upon determination by the commissioner
that the intended transfer will result in the acquisition of
control, the proposed purchaser or transferee of the stock shall
file an application for approval [to act as an escrow depository]
of a proposed change in control of the licensee, accompanied by a
nonrefundable application fee in accordance with this chapter, and
shall not [acquire control of] act as an escrow depository until
the [transferee] application has been approved by the
commissioner.

[(d) The fee for the transfer and change in control of an
escrow-depository-license shall be $5,000.]

(d) At the time of filing an application for approval of a
proposed change in control of the licensee, the proposed
purchaser or transferee shall provide to the commissioner the
history of its material litigation and criminal convictions for
the five-year period prior to the date of the application, and
any other information requested by the commissioner which may
include information similar to that required of an applicant for
initial licensure or license renewal under this chapter. The
proposed purchaser or transferee shall also provide any
authorizations necessary for the commissioner to conduct
criminal history record checks of each of the purchaser or
transferee's controlling persons, and each of the officers,
directors, and principals who will be in charge of the
licensee's activities upon approval of the proposed application
for change in control. The authorizations shall be accompanied
by the appropriate payment of the applicable fee for each record
check.

(e) Approval of the application for change in control of the
licensee shall be granted only if the commissioner finds that
following the change in control of the licensee, the character,
financial responsibility, experience, ability, and general fitness
of the controlling persons of the applicant for proposed change
in control of the licensee, and each of the officers, directors,
and principals who will be in charge of the licensee's
activities upon approval of the proposed application for change
in control, are such as to command the confidence of the community
in the State and to warrant the beliefs that such persons are
competent to successfully control and manage an escrow business
and the applicant will be an honest and efficient escrow
depository.

(f) In granting approval, the commissioner may impose such
conditions and restrictions as shall be in the public interest,
including without limitation requiring the proposed purchaser or
transfer to fulfill representations contained in its application
for approval of a proposed change in control of the licensee, and
agreements made during the application process."

SECTION 6. Section 449-14, Hawaii Revised Statutes, is
amended by amending subsection (a) to read as follows:

"(a) The following fees shall be paid by licensed escrow
depositories to the commissioner and, together with any
administrative penalty or other charge assessed under this
chapter, shall be deposited into the compliance resolution fund
established pursuant to section 26-9(o):

(1) For filing and investigation of an escrow depository's
application for license, $5,000;

(2) For initial issuance of an escrow depository license,
$2,000;

(3) For an application for approval to establish a
branch office, $100;

(4) For an application for approval to relocate an
existing office or branch, $100;

(5) For annual renewal of an escrow depository's
license, $2,000;

(6) For initial issuance and annual renewal of a
branch office license, $100;
For reissuance of a license for the change in the business address of its office, $50; provided that a reissuance caused by changes to the address by the United States Postal Service shall not require payment of a fee; [and]

For reissuance of a license for a change in the licensee's name, $50;

For an application for a proposed change in control of the licensee, $5,000; and

For an application for approval to cease business as an escrow depository, $0."

SECTION 7. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Criminal history record checks may be conducted by:

(1) The department of health or its designee on operators of adult foster homes for individuals with developmental disabilities or developmental disabilities domiciliary homes and their employees, as provided by section 321-15.2;

(2) The department of health or its designee on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place
them in direct contact with clients when providing
non-witnessed direct mental health or health
care services as provided by section 321-171.5;
(3) The department of health or its designee on all
applicants for licensure or certification for,
operators for, prospective employees,
adult volunteers, and all adults, except adults in
care, at health care facilities as defined in section
321-15.2;
(4) The department of education on employees, prospective
employees, and teacher trainees in any public school
in positions that necessitate close proximity to
children as provided by section 302A-601.5;
(5) The counties on employees and prospective employees
who may be in positions that place them in close
proximity to children in recreation or child care
programs and services;
(6) The county liquor commissions on applicants for liquor
licenses as provided by section 281-53.5;
(7) The county liquor commissions on employees and
prospective employees involved in liquor
administration, law enforcement, and liquor control investigations;

(8) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;

(9) The department of human services on prospective adoptive parents as established under section 346-19.7;

(10) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;

(11) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;

(12) The department of health on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care,
residing in community care foster family homes as
provided by section 321-15.2;

(13) The department of human services on staff members of
the Hawaii youth correctional facility as provided by
section 352-5.5;

(14) The department of human services on employees,
prospective employees, and volunteers of contracted
providers and subcontractors in positions that place
them in close proximity to youth when providing
services on behalf of the office or the Hawaii youth
correctional facility as provided by section 352D-4.3;

(15) The judiciary on employees and applicants at detention
and shelter facilities as provided by section 571-34;

(16) The department of public safety on employees and
prospective employees who are directly involved with
the treatment and care of persons committed to a
correctional facility or who possess police powers
including the power of arrest as provided by section
353C-5;

(17) The board of private detectives and guards on
applicants for private detective or private guard
licensure as provided by section 463-9;
(18) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided pursuant to section 302C-1;

(19) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;

(20) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;

(21) The department of health on licensed adult day care center operators, employees, new employees,
subcontracted service providers and their employees, and adult volunteers as provided by section 321-15.2;

(22) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the [adult protective and community services branch], as provided by section 346-97;

(23) The department of human services on foster grandparent program, senior companion program, and respite companion program participants as provided by section 346-97;

(24) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under section 1915(c) of the Social Security Act, title 42 United States Code section 1396n(c), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;

(25) The department of commerce and consumer affairs on proposed directors and executive officers of a bank,
savings bank, savings and loan association, trust
company, and depository financial services loan
company as provided by section 412:3-201;

(26) The department of commerce and consumer affairs on
proposed directors and executive officers of a
nondepository financial services loan company as
provided by section 412:3-301;

(27) The department of commerce and consumer affairs on the
original chartering applicants and proposed executive
officers of a credit union as provided by section
412:10-103;

(28) The department of commerce and consumer affairs on:

(A) Each principal of every non-corporate applicant
for a money transmitter license; and

(B) The executive officers, key shareholders, and
managers in charge of a money transmitter's
activities of every corporate applicant for a
money transmitter license,
as provided by sections 489D-9 and 489D-15;

(29) The department of commerce and consumer affairs on
applicants for licensure and persons licensed under
title 24;
(30) The Hawaii health systems corporation on:
(A) Employees;
(B) Applicants seeking employment;
(C) Current or prospective members of the corporation board or regional system board; or
(D) Current or prospective volunteers, providers, or contractors,
in any of the corporation's health facilities as provided by section 323F-5.5;

(31) The department of commerce and consumer affairs on:
(A) An applicant for a mortgage loan originator license; and
(B) Each control person, executive officer, director, general partner, and manager of an applicant for a mortgage loanoriginator company license,
as provided by chapter 454F;

(32) The state public charter school commission or public charter schools on employees, teacher trainees, prospective employees, and prospective teacher trainees in any public charter school for any position that places them in close proximity to children, as provided in section 302D-33;
(33) The counties on prospective employees who work with children, vulnerable adults, or senior citizens in community-based programs;

(34) The counties on prospective employees for fire department positions which involve contact with children or vulnerable adults;

(35) The counties on prospective employees for emergency medical services positions which involve contact with children or vulnerable adults;

(36) The counties on prospective employees for emergency management positions and community volunteers whose responsibilities involve planning and executing homeland security measures including viewing, handling, and engaging in law enforcement or classified meetings and assisting vulnerable citizens during emergencies or crises;

(37) The State and counties on employees, prospective employees, volunteers, and contractors whose position responsibilities require unescorted access to secured areas and equipment related to a traffic management center;
(38) The State and counties on employees and prospective employees whose positions involve the handling or use of firearms for other than law enforcement purposes;

(39) The State and counties on current and prospective systems analysts and others involved in an agency's information technology operation whose position responsibilities provide them with access to proprietary, confidential, or sensitive information;

(40) The department of commerce and consumer affairs on applicants for real estate appraiser licensure or certification as provided by chapter 466K; [and]

(41) The department of health or its designee on all license applicants, licensees, employees, contractors, and prospective employees of medical marijuana dispensaries, and individuals permitted to enter and remain in medical marijuana dispensary facilities as provided under sections 329D-15(a)(4) and 329D-16(a)(3); [and]

(42) The department of commerce and consumer affairs on:

(A) Each of the controlling persons of the applicant for licensure as an escrow depository, and each of the officers, directors, and principals who
will be in charge of the escrow depository's activities upon licensure; and

(B) Each of the controlling persons of an applicant for proposed change in control of an escrow depository licensee, and each of the officers, directors, and principals who will be in charge of the licensee's activities upon approval of such application,
as provided by chapter 449; and

Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

INTRODUCED BY: [Signature]

BY REQUEST
Report Title:
Escrow Depositories; Division of Financial Institutions; Chapter 449D; Chapter 846; Change In Control; Controlling Person; NMLS; Principal; Transfer or Sale; Fee; Criminal Background Check;

Description:
Clarifies chapter 449, Hawaii Revised Statutes, by adding definitions and change in control requirements. Identifies previously authorized fees for initial license issuance; adds a nominal fee for license reissuance upon licensee name change; moves fee for application for proposed change in control to fee section. Authorizes the commissioner to implement use of NMLS, and changes license renewal date from July 1 to December 31 to conform to NMLS. Adds criminal background check and disclosure requirements to licensure and change in control applications, and amends section 846-2.7, Hawaii Revised Statutes, accordingly.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.
DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO ESCROW DEPOSITORIES.

PURPOSE: To clarify and update the escrow depositories law by adding definitions; specifying the amount of a previously authorized initial license fee and a nominal new fee for license reissuance on name change; adding criminal background checks and disclosures for licensure and change in control; and providing authority for the Commissioner of Financial Institutions to use NMLS, a nationwide online licensing and registration system. Changes license renewal date to conform to NMLS. Clarifies requirements for change in control.

MEANS: Amend sections 449-1, 449-1.9, 449-6, 449-8, 449-8.6, 449-14, and 846-2.7, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Escrow depositories are responsible for holding and properly delivering hundreds of millions of dollars of consumer funds annually, usually in connection with real estate transactions. Criminal background checks on key personnel will prevent unsuitable persons from controlling an escrow depository licensee. The licensing process will be streamlined by moving from a paper-based system to NMLS. Rewording the change in control provision will clarify the steps to obtain approval of a change in control. Moving the fee for a change in control application from the subject matter section to the fee section will add consistency. A fee for the initial issuance of a license is permitted by section 449-8, HRS, and this bill provides the fee amount.
Impact on the public: Criminal background checks of key escrow depository personnel will enhance protection of consumer funds and transactions involving escrow depositories. NMLS will allow the public internet access to updated licensee information. Clarifying change in control and other chapter requirements will make the chapter more understandable. Setting a fee amount for the initial issuance of a license will impact license applicants. However, this fee category is already permitted in section 449-8, HRS. The proposed new fee for license reissuance on a name change is nominal and should have little impact on the public.

Impact on the department and other agencies: Criminal background checks will increase work for the Department of Commerce and Consumer Affairs (DCCA), and the Hawaii Criminal Justice Data Center within the Department of the Attorney General, however it should be minimal as currently there are only eight licensees. NMLS will streamline licensing and regulation of licensees. Chapter clarifications will reduce staff time answering questions from the public and licensees. Adding the initial issuance of license fee, already permitted in section 449-8, HRS, and a new fee for license reissuance on a name change other fees, will help DCCA cover the cost of operating the escrow depository program.

GENERAL FUNDS: None.
OTHER FUNDS: None.
PPBS PROGRAM DESIGNATION: CCA-104.
OTHER AFFECTED AGENCIES: Department of the Attorney General.
EFFECTIVE DATE: Upon approval.