



GOV. MSG. NO. 1326

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 6, 2016

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 6, 2016, the following bill was signed into law:

SB2849 SD1 HD1 CD1

RELATING TO ESCROW DEPOSITORIES
ACT 224 (16)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

A BILL FOR AN ACT

RELATING TO ESCROW DEPOSITORIES.

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

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

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

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

14 "NMLS" means a licensing system developed and maintained by
15 the Conference of State Bank Supervisors and the American
16 Association of Residential Mortgage Regulators for the state
17 licensing and registration of state-licensed loan originators



1 and other financial services providers, or any system provided
2 by the Consumer Financial Protection Bureau.

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

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

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

- 9 (1) Administer and enforce the provisions and requirements
10 of, this chapter;
- 11 (2) Adopt, amend, or repeal rules or declaratory rulings
12 pursuant to chapter 91 to effectuate the purposes of
13 this chapter;
- 14 (3) Issue informal nonbinding interpretations to
15 effectuate the purposes of this chapter;
- 16 (4) Investigate and conduct hearings regarding any
17 violation of this chapter or any rule or order of the
18 commissioner;
- 19 (5) Contract with or employ qualified persons, including
20 investigators, examiners, or auditors who shall be
21 exempt from chapter 76 and who shall assist the



1 commissioner in exercising the commissioner's powers
2 and duties;

3 (6) Deposit all fees, fines, and charges collected by the
4 commissioner under this chapter into the compliance
5 resolution fund established pursuant to section
6 26-9(o);

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

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

16 (9) Enter into agreements or contracts with the operators
17 of NMLS or other entities designated by NMLS to
18 collect and maintain records and process transaction
19 fees or other fees related to licensees or other
20 persons subject to this chapter; provided that:



- 1 (A) For the purpose and the extent necessary to use
- 2 NMLS, the commissioner may:
- 3 (i) Require all escrow depositories to register
- 4 with NMLS; and
- 5 (ii) Waive or modify, in whole or in part, by
- 6 rule or order, any or all of the
- 7 requirements of this chapter and establish
- 8 new requirements as reasonably necessary to
- 9 participate in NMLS; and
- 10 (B) In addition to other uses of NMLS, the
- 11 commissioner may use NMLS as an agent for:
- 12 (i) Requesting information from and distributing
- 13 information to the United States Department
- 14 of Justice or any other governmental agency;
- 15 and
- 16 (ii) Requesting and distributing information to
- 17 and from any source directed by the
- 18 commissioner."

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



1 "§449-6 Application for license. (a) Any corporation
2 desiring to be licensed as an escrow depository shall [~~file~~]
3 submit an application [~~upon forms to be furnished~~] in writing and
4 in a form prescribed by NMLS or by the commissioner. The
5 application shall be accompanied by a filing fee no part of which
6 shall be refundable.

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

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

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

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

16 (4) The names of the proposed escrow officers and their
17 qualifications [~~-~~];

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



- 1 (6) Information and authorizations necessary to conduct a
- 2 criminal history record check in accordance with
- 3 section 846-2.7 of each of the applicant's controlling
- 4 persons, and each of the officers, directors, and
- 5 principals who will be in charge of the escrow
- 6 depository's activities upon licensure, accompanied by
- 7 the appropriate payment of the applicable fee for each
- 8 record check; and
- 9 (7) Any other information the commissioner deems necessary
- 10 to participate in NMLS."

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

13 "§449-8 Issuance and renewal of license. After approval
 14 of the application, and payment of the license fee, the
 15 commissioner shall issue to the applicant a license to act as an
 16 escrow depository. The license shall be effective only upon the
 17 applicant's filing with the commissioner an escrow depository's
 18 bond and evidence that fidelity bonds and errors and omissions
 19 insurance, or cash or securities deposits permitted in lieu
 20 thereof, have been obtained, all as provided in sections 449-9,
 21 449-11, and 449-12. The license shall be renewed annually, as



1 of [~~July 17~~] December 31, upon payment of the annual renewal fee
2 and the finding of the commissioner, from the information
3 contained in the annual corporate exhibit of the licensee or
4 investigation or hearing, that the licensee continues to meet
5 the qualifications for licensing and has continued in force the
6 bonds and insurance or the cash or securities deposits permitted
7 in lieu thereof."

8 SECTION 5. Section 449-8.6, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§449-8.6 Sale or transfer of license or change in
11 control. (a) No escrow depository license shall be transferred
12 except as provided in [~~subsection (c)-~~] this section.

13 (b) A bona fide sale of all or substantially all of the
14 ongoing operations of a licensee shall not result in the
15 assignment or transfer of the escrow depository license[~~-~~],
16 until approved by the commissioner as provided in this section.
17 The proposed purchaser of all or substantially all of the
18 ongoing operations of a licensee shall file an application for
19 approval of a proposed change in control of the licensee,
20 accompanied by a nonrefundable application fee in accordance
21 with this chapter, and shall not act as an escrow depository



1 ~~[unless it]~~ until the application has been ~~[licensed]~~ approved
2 by the commissioner.

3 (c) ~~[If the licensee is a corporation, any intended]~~ Any
4 transfer of ~~[its]~~ a licensee's voting stock which may result in
5 the acquisition of control of the licensee may be considered a
6 transfer of license ~~[. Any intended transfer of the voting stock~~
7 ~~which may result in the acquisition of control]~~ under this
8 chapter, and prior to the transfer shall be reported to the
9 commissioner in writing. Upon determination by the commissioner
10 that the intended transfer will result in the acquisition of
11 control, the proposed purchaser or transferee of the stock shall
12 file an application for approval ~~[to act as an escrow~~
13 ~~depository]~~ of a proposed change in control of the licensee,
14 accompanied by a nonrefundable application fee in accordance
15 with this chapter, and shall not ~~[acquire control of]~~ act as an
16 escrow depository until the ~~[transferee]~~ application has been
17 approved by the commissioner.

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

20 (d) At the time of filing an application for approval of a
21 proposed change in control of the licensee, the proposed



1 purchaser or transferee shall provide to the commissioner the
2 history of its material litigation and criminal convictions for
3 the five-year period prior to the date of the application, and
4 any other information requested by the commissioner which may
5 include information similar to that required of an applicant for
6 initial licensure or license renewal under this chapter. The
7 proposed purchaser or transferee shall also provide any
8 authorizations necessary for the commissioner to conduct
9 criminal history record checks of each of the purchaser or
10 transferee's controlling persons, and each of the officers,
11 directors, and principals who will be in charge of the
12 licensee's activities upon approval of the proposed application
13 for change in control. The authorizations shall be accompanied
14 by the appropriate payment of the applicable fee for each record
15 check.

16 (e) Approval of the application for change in control of
17 the licensee shall be granted only if the commissioner finds
18 that following the change in control of the licensee, the
19 character, financial responsibility, experience, ability, and
20 general fitness of the controlling persons of the applicant for
21 proposed change in control of the licensee, and each of the



1 officers, directors, and principals who will be in charge of the
2 licensee's activities upon approval of the proposed application
3 for change in control, are such as to command the confidence of
4 the community in the State and to warrant the beliefs that such
5 persons are competent to successfully control and manage an
6 escrow business and the applicant will be an honest and
7 efficient escrow depository.

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

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

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



- 1 (1) For filing and investigation of an escrow depository's
2 application for license, \$5,000;
- 3 (2) For initial issuance of an escrow depository license,
4 \$2,000;
- 5 [~~2~~] (3) For an application for approval to establish a
6 branch office, \$100;
- 7 [~~3~~] (4) For an application for approval to relocate an
8 existing office or branch, \$100;
- 9 [~~4~~] (5) For annual renewal of an escrow depository's
10 license, \$2,000;
- 11 [~~5~~] (6) For initial issuance and annual renewal of a
12 branch office license, \$100;
- 13 [~~6~~] (7) For reissuance of a license for the change in the
14 business address of its office, \$50; provided that a
15 reissuance caused by changes to the address by the
16 United States Postal Service shall not require payment
17 of a fee; [~~and~~]
- 18 (8) For reissuance of a license for a change in the
19 licensee's name, \$50;
- 20 (9) For an application for a proposed change in control of
21 the licensee, \$5,000; and



1 [~~(7)~~] (10) For an application for approval to cease
2 business as an escrow depository, \$0."

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

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

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

11 (2) The department of health or its designee on
12 prospective employees, persons seeking to serve as
13 providers, or subcontractors in positions that place
14 them in direct contact with clients when providing
15 non-witnessed direct mental health or health care
16 services as provided by section 321-171.5;

17 (3) The department of health or its designee on all
18 applicants for licensure or certification for,
19 operators for, prospective employees, adult
20 volunteers, and all adults, except adults in care, at
21 health care facilities as defined in section 321-15.2;



1 (4) The department of education on employees, prospective
2 employees, and teacher trainees in any public school
3 in positions that necessitate close proximity to
4 children as provided by section 302A-601.5;

5 (5) The counties on employees and prospective employees
6 who may be in positions that place them in close
7 proximity to children in recreation or child care
8 programs and services;

9 (6) The county liquor commissions on applicants for liquor
10 licenses as provided by section 281-53.5;

11 (7) The county liquor commissions on employees and
12 prospective employees involved in liquor
13 administration, law enforcement, and liquor control
14 investigations;

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

19 (9) The department of human services on prospective
20 adoptive parents as established under section
21 346-19.7;



- 1 (10) The department of human services on applicants to
2 operate child care facilities, prospective employees
3 of the applicant, and new employees of the provider
4 after registration or licensure as provided by section
5 346-154;
- 6 (11) The department of human services on persons exempt
7 pursuant to section 346-152 to be eligible to provide
8 child care and receive child care subsidies as
9 provided by section 346-152.5;
- 10 (12) The department of health on operators and employees of
11 home and community-based case management agencies and
12 operators and other adults, except for adults in care,
13 residing in community care foster family homes as
14 provided by section 321-15.2;
- 15 (13) The department of human services on staff members of
16 the Hawaii youth correctional facility as provided by
17 section 352-5.5;
- 18 (14) The department of human services on employees,
19 prospective employees, and volunteers of contracted
20 providers and subcontractors in positions that place
21 them in close proximity to youth when providing



1 services on behalf of the office or the Hawaii youth
2 correctional facility as provided by section 352D-4.3;
3 (15) The judiciary on employees and applicants at detention
4 and shelter facilities as provided by section 571-34;
5 (16) The department of public safety on employees and
6 prospective employees who are directly involved with
7 the treatment and care of persons committed to a
8 correctional facility or who possess police powers
9 including the power of arrest as provided by section
10 353C-5;
11 (17) The board of private detectives and guards on
12 applicants for private detective or private guard
13 licensure as provided by section 463-9;
14 (18) Private schools and designated organizations on
15 employees and prospective employees who may be in
16 positions that necessitate close proximity to
17 children; provided that private schools and designated
18 organizations receive only indications of the states
19 from which the national criminal history record
20 information was provided pursuant to section 302C-1;



- 1 (19) The public library system on employees and prospective
2 employees whose positions place them in close
3 proximity to children as provided by section
4 302A-601.5;
- 5 (20) The State or any of its branches, political
6 subdivisions, or agencies on applicants and employees
7 holding a position that has the same type of contact
8 with children, vulnerable adults, or persons committed
9 to a correctional facility as other public employees
10 who hold positions that are authorized by law to
11 require criminal history record checks as a condition
12 of employment as provided by section 78-2.7;
- 13 (21) The department of health on licensed adult day care
14 center operators, employees, new employees,
15 subcontracted service providers and their employees,
16 and adult volunteers as provided by section 321-15.2;
- 17 (22) The department of human services on purchase of
18 service contracted and subcontracted service providers
19 and their employees serving clients of the adult
20 protective and community services branch, as provided
21 by section 346-97;



- 1 (23) The department of human services on foster grandparent
2 program, senior companion program, and respite
3 companion program participants as provided by section
4 346-97;
- 5 (24) The department of human services on contracted and
6 subcontracted service providers and their current and
7 prospective employees that provide home and community-
8 based services under section 1915(c) of the Social
9 Security Act, title 42 United States Code section
10 1396n(c), or under any other applicable section or
11 sections of the Social Security Act for the purposes
12 of providing home and community-based services, as
13 provided by section 346-97;
- 14 (25) The department of commerce and consumer affairs on
15 proposed directors and executive officers of a bank,
16 savings bank, savings and loan association, trust
17 company, and depository financial services loan
18 company as provided by section 412:3-201;
- 19 (26) The department of commerce and consumer affairs on
20 proposed directors and executive officers of a



- 1 nondepository financial services loan company as
2 provided by section 412:3-301;
- 3 (27) The department of commerce and consumer affairs on the
4 original chartering applicants and proposed executive
5 officers of a credit union as provided by section
6 412:10-103;
- 7 (28) The department of commerce and consumer affairs on:
- 8 (A) Each principal of every non-corporate applicant
9 for a money transmitter license; and
- 10 (B) The executive officers, key shareholders, and
11 managers in charge of a money transmitter's
12 activities of every corporate applicant for a
13 money transmitter license,
14 as provided by sections 489D-9 and 489D-15;
- 15 (29) The department of commerce and consumer affairs on
16 applicants for licensure and persons licensed under
17 title 24;
- 18 (30) The Hawaii health systems corporation on:
- 19 (A) Employees;
- 20 (B) Applicants seeking employment;



1 (C) Current or prospective members of the corporation
2 board or regional system board; or

3 (D) Current or prospective volunteers, providers, or
4 contractors,

5 in any of the corporation's health facilities as
6 provided by section 323F-5.5;

7 (31) The department of commerce and consumer affairs on:

8 (A) An applicant for a mortgage loan originator
9 license; and

10 (B) Each control person, executive officer, director,
11 general partner, and manager of an applicant for
12 a mortgage loan originator company license,
13 as provided by chapter 454F;

14 (32) The state public charter school commission or public
15 charter schools on employees, teacher trainees,
16 prospective employees, and prospective teacher
17 trainees in any public charter school for any position
18 that places them in close proximity to children, as
19 provided in section 302D-33;



- 1 (33) The counties on prospective employees who work with
2 children, vulnerable adults, or senior citizens in
3 community-based programs;
- 4 (34) The counties on prospective employees for fire
5 department positions which involve contact with
6 children or vulnerable adults;
- 7 (35) The counties on prospective employees for emergency
8 medical services positions which involve contact with
9 children or vulnerable adults;
- 10 (36) The counties on prospective employees for emergency
11 management positions and community volunteers whose
12 responsibilities involve planning and executing
13 homeland security measures including viewing,
14 handling, and engaging in law enforcement or
15 classified meetings and assisting vulnerable citizens
16 during emergencies or crises;
- 17 (37) The State and counties on employees, prospective
18 employees, volunteers, and contractors whose position
19 responsibilities require unescorted access to secured
20 areas and equipment related to a traffic management
21 center;



- 1 (38) The State and counties on employees and prospective
2 employees whose positions involve the handling or use
3 of firearms for other than law enforcement purposes;
- 4 (39) The State and counties on current and prospective
5 systems analysts and others involved in an agency's
6 information technology operation whose position
7 responsibilities provide them with access to
8 proprietary, confidential, or sensitive information;
- 9 (40) The department of commerce and consumer affairs on
10 applicants for real estate appraiser licensure or
11 certification as provided by chapter 466K;
- 12 (41) The department of health or its designee on all
13 license applicants, licensees, employees, contractors,
14 and prospective employees of medical marijuana
15 dispensaries, and individuals permitted to enter and
16 remain in medical marijuana dispensary facilities as
17 provided under sections 329D-15(a)(4) and
18 329D-16(a)(3); [and]
- 19 (42) The department of commerce and consumer affairs on:
20 (A) Each of the controlling persons of the applicant
21 for licensure as an escrow depository, and each



1 of the officers, directors, and principals who
2 will be in charge of the escrow depository's
3 activities upon licensure; and

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

11 ~~(42)~~ (43) Any other organization, entity, or the State,
12 its branches, political subdivisions, or agencies as
13 may be authorized by state law."

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

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

APPROVED this 6 day of JUL , 2016



GOVERNOR OF THE STATE OF HAWAII