

S.B. NO. 2849

JAN 27 2016

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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 "[+]§449-1.9[+] 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

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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.

21 (A) For the purpose and the extent necessary to use  
22 NMLS, the commissioner may:

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

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

19                 "§449-6 Application for license. (a) Any corporation  
 20 desiring to be licensed as an escrow depository shall [file]  
 21 submit an application [upon forms to be furnished] in writing and  
 22 in a form prescribed by NMLS or by the commissioner. The

1 application shall be accompanied by a filing fee no part of which  
2 shall be refundable.

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

- 5 (1) The corporate name, amount of capital, and office  
6 address of the applicant;
- 7 (2) The names of the stockholders, officers, and directors  
8 of the applicant;
- 9 (3) Evidence of the character, financial responsibility,  
10 experience, and ability of the officers and directors;  
11 [and]
- 12 (4) The names of the proposed escrow officers and their  
13 qualifications[-];
- 14 (5) The history of the applicant's material litigation and  
15 criminal convictions for the five-year period prior to  
16 the date of the application;
- 17 (6) Information and authorizations necessary to conduct a  
18 criminal history record check in accordance with  
19 section 846-2.7 of each of the applicant's controlling  
20 persons, and each of the officers, directors, and  
21 principals who will be in charge of the escrow  
22 depository's activities upon licensure, accompanied by

1           the appropriate payment of the applicable fee for each  
2           record check; and  
3           (7) Any other information the commissioner deems necessary  
4           to participate in NMLS."

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

7           "**§449-8 Issuance and renewal of license.** After approval of  
8 the application, and payment of the license fee, the commissioner  
9 shall issue to the applicant a license to act as an escrow  
10 depository. The license shall be effective only upon the  
11 applicant's filing with the commissioner an escrow depository's  
12 bond and evidence that fidelity bonds and errors and omissions  
13 insurance, or cash or securities deposits permitted in lieu  
14 thereof, have been obtained, all as provided in sections 449-9,  
15 449-11, and 449-12. The license shall be renewed annually, as of  
16 [~~July 1,~~] December 31, upon payment of the annual renewal fee and  
17 the finding of the commissioner, from the information contained in  
18 the annual corporate exhibit of the licensee or investigation or  
19 hearing, that the licensee continues to meet the qualifications  
20 for licensing and has continued in force the bonds and insurance  
21 or the cash or securities deposits permitted in lieu thereof."

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

3 "§449-8.6 Sale or transfer of license or change in control.

4 (a) No escrow depository license shall be transferred except as  
5 provided in [~~subsection (c).~~] this section.

6 (b) A bona fide sale of all or substantially all of the  
7 ongoing operations of a licensee shall not result in the  
8 assignment or transfer of the escrow depository license[~~.-~~], until  
9 approved by the commissioner as provided in this section. The  
10 proposed purchaser of all or substantially all of the ongoing  
11 operations of a licensee shall file an application for approval of  
12 a proposed change in control of the licensee, accompanied by a  
13 nonrefundable application fee in accordance with this chapter, and  
14 shall not act as an escrow depository [~~unless it~~] until the  
15 application has been [licensed] approved by the commissioner.

16 (c) [~~If the licensee is a corporation, any intended~~] Any  
17 transfer of [its] a licensee's voting stock which may result in  
18 the acquisition of control of the licensee may be considered a  
19 transfer of license[~~.- Any intended transfer of the voting stock~~  
20 ~~which may result in the acquisition of control~~] under this  
21 chapter, and prior to the transfer shall be reported to the  
22 commissioner in writing. Upon determination by the commissioner

1 that the intended transfer will result in the acquisition of  
2 control, the proposed purchaser or transferee of the stock shall  
3 file an application for approval [~~to act as an escrow depository~~]  
4 of a proposed change in control of the licensee, accompanied by a  
5 nonrefundable application fee in accordance with this chapter, and  
6 shall not [~~acquire control of~~] act as an escrow depository until  
7 the [~~transferee~~] application has been approved by the  
8 commissioner.

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

11 (d) At the time of filing an application for approval of a  
12 proposed change in control of the licensee, the proposed  
13 purchaser or transferee shall provide to the commissioner the  
14 history of its material litigation and criminal convictions for  
15 the five-year period prior to the date of the application, and  
16 any other information requested by the commissioner which may  
17 include information similar to that required of an applicant for  
18 initial licensure or license renewal under this chapter. The  
19 proposed purchaser or transferee shall also provide any  
20 authorizations necessary for the commissioner to conduct  
21 criminal history record checks of each of the purchaser or  
22 transferee's controlling persons, and each of the officers,



1 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. The authorizations shall be accompanied  
4 by the appropriate payment of the applicable fee for each record  
5 check.

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

19 (f) In granting approval, the commissioner may impose such  
20 conditions and restrictions as shall be in the public interest,  
21 including without limitation requiring the proposed purchaser or  
22 transferee to fulfill representations contained in its application

1 for approval of a proposed change in control of the licensee, and  
2 agreements made during the application process."

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

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

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

12 (2) For initial issuance of an escrow depository license,  
13 \$2,000;

14 [~~2~~] (3) For an application for approval to establish a  
15 branch office, \$100;

16 [~~3~~] (4) For an application for approval to relocate an  
17 existing office or branch, \$100;

18 [~~4~~] (5) For annual renewal of an escrow depository's  
19 license, \$2,000;

20 [~~5~~] (6) For initial issuance and annual renewal of a  
21 branch office license, \$100;

1       ~~[(6)]~~ (7) For reissuance of a license for the change in the  
2           business address of its office, \$50; provided that a  
3           reissuance caused by changes to the address by the  
4           United States Postal Service shall not require payment  
5           of a fee; ~~[and]~~

6       (8) For reissuance of a license for a change in the  
7           licensee's name, \$50;

8       (9) For an application for a proposed change in control of  
9           the licensee, \$5,000; and

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

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

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

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

20       (2) The department of health or its designee on  
21           prospective employees, persons seeking to serve as  
22           providers, or subcontractors in positions that place

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- 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

- 1 administration, law enforcement, and liquor control  
2 investigations;
- 3 (8) The department of human services on operators and  
4 employees of child caring institutions, child placing  
5 organizations, and foster boarding homes as provided  
6 by section 346-17;
- 7 (9) The department of human services on prospective  
8 adoptive parents as established under section  
9 346-19.7;
- 10 (10) The department of human services on applicants to  
11 operate child care facilities, prospective employees  
12 of the applicant, and new employees of the provider  
13 after registration or licensure as provided by section  
14 346-154;
- 15 (11) The department of human services on persons exempt  
16 pursuant to section 346-152 to be eligible to provide  
17 child care and receive child care subsidies as  
18 provided by section 346-152.5;
- 19 (12) The department of health on operators and employees of  
20 home and community-based case management agencies and  
21 operators and other adults, except for adults in care,

1           residing in community care foster family homes as  
2           provided by section 321-15.2;

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

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

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

14          (16) The department of public safety on employees and  
15          prospective employees who are directly involved with  
16          the treatment and care of persons committed to a  
17          correctional facility or who possess police powers  
18          including the power of arrest as provided by section  
19          353C-5;

20          (17) The board of private detectives and guards on  
21          applicants for private detective or private guard  
22          licensure as provided by section 463-9;

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- 1           (18) Private schools and designated organizations on  
2                   employees and prospective employees who may be in  
3                   positions that necessitate close proximity to  
4                   children; provided that private schools and designated  
5                   organizations receive only indications of the states  
6                   from which the national criminal history record  
7                   information was provided pursuant to section 302C-1;
- 8           (19) The public library system on employees and prospective  
9                   employees whose positions place them in close  
10                  proximity to children as provided by section  
11                  302A-601.5;
- 12          (20) The State or any of its branches, political  
13                  subdivisions, or agencies on applicants and employees  
14                  holding a position that has the same type of contact  
15                  with children, vulnerable adults, or persons committed  
16                  to a correctional facility as other public employees  
17                  who hold positions that are authorized by law to  
18                  require criminal history record checks as a condition  
19                  of employment as provided by section 78-2.7;
- 20          (21) The department of health on licensed adult day care  
21                  center operators, employees, new employees,

- 1 subcontracted service providers and their employees,  
2 and adult volunteers as provided by section 321-15.2;
- 3 (22) The department of human services on purchase of  
4 service contracted and subcontracted service providers  
5 and their employees serving clients of the [f]adult  
6 protective and community services branch[+], as  
7 provided by section 346-97;
- 8 (23) The department of human services on foster grandparent  
9 program, senior companion program, and respite  
10 companion program participants as provided by section  
11 346-97;
- 12 (24) The department of human services on contracted and  
13 subcontracted service providers and their current and  
14 prospective employees that provide home and community-  
15 based services under section 1915(c) of the Social  
16 Security Act, title 42 United States Code section  
17 1396n(c), or under any other applicable section or  
18 sections of the Social Security Act for the purposes  
19 of providing home and community-based services, as  
20 provided by section 346-97;
- 21 (25) The department of commerce and consumer affairs on  
22 proposed directors and executive officers of a bank,



1 savings bank, savings and loan association, trust  
2 company, and depository financial services loan  
3 company as provided by section 412:3-201;

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

8 (27) The department of commerce and consumer affairs on the  
9 original chartering applicants and proposed executive  
10 officers of a credit union as provided by section  
11 412:10-103;

12 (28) The department of commerce and consumer affairs on:  
13 (A) Each principal of every non-corporate applicant  
14 for a money transmitter license; and  
15 (B) The executive officers, key shareholders, and  
16 managers in charge of a money transmitter's  
17 activities of every corporate applicant for a  
18 money transmitter license,

19 as provided by sections 489D-9 and 489D-15;

20 (29) The department of commerce and consumer affairs on  
21 applicants for licensure and persons licensed under  
22 title 24;

- 1       (30) The Hawaii health systems corporation on:
  - 2           (A) Employees;
  - 3           (B) Applicants seeking employment;
  - 4           (C) Current or prospective members of the corporation
  - 5                 board or regional system board; or
  - 6           (D) Current or prospective volunteers, providers, or
  - 7                 contractors,
  - 8                 in any of the corporation's health facilities as
  - 9                 provided by section 323F-5.5;
  
- 10       (31) The department of commerce and consumer affairs on:
  - 11           (A) An applicant for a mortgage loan originator
  - 12                 license; and
  - 13           (B) Each control person, executive officer, director,
  - 14                 general partner, and manager of an applicant for
  - 15                 a mortgage loan originator company license,
  - 16                 as provided by chapter 454F;
  
- 17       (32) The state public charter school commission or public
- 18           charter schools on employees, teacher trainees,
- 19           prospective employees, and prospective teacher
- 20           trainees in any public charter school for any position
- 21           that places them in close proximity to children, as
- 22           provided in section 302D-33;

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- 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; [~~and~~]
- 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  
22                  of the officers, directors, and principals who



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**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.*

JUSTIFICATION SHEET

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.