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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. Chapter 449, Hawaii Revised Statutes, is  
2 amended by adding two new sections to be appropriately  
3 designated and to read as follows:

4           "§449-   Disclosures involving personal property.   An  
5 escrow depository that receives, holds, and delivers the money,  
6 other consideration, or instrument affecting title to personal  
7 property shall disclose in writing to all parties involved in  
8 the transaction that the transaction is not covered by this  
9 chapter.

10          §449-   Submission of security breach information.   Upon  
11 discovery or notification of any security breach, as defined  
12 under chapter 487N, of the personal information of individuals  
13 whose personal information was, or is reasonably believed to  
14 have been, acquired by an unauthorized person, the escrow  
15 depository shall provide notice of the security breach to the  
16 commissioner. The notice shall be made without unreasonable  
17 delay and shall be consistent with any measures necessary to



1 determine the scope of the breach, and restore the reasonable  
2 integrity, security, and confidentiality of the data system."

3 SECTION 2. Section 449-1, Hawaii Revised Statutes, is  
4 amended by amending the definition of "escrow" to read as  
5 follows:

6 "Escrow" means any transaction affecting the title to real  
7 property, including leaseholds, proprietary leaseholds, and  
8 condominiums, in which a person not a party to the transaction  
9 and neither having nor acquiring any interest in the title  
10 receives from one party to the transaction, holds until the  
11 happening of an event or performance of a condition and then  
12 delivers to another party to the transaction, any money or other  
13 consideration or any instrument affecting the title to that real  
14 property, all in accordance with the terms of the agreement  
15 between the parties to the transaction. For purposes of this  
16 chapter, "escrow" does not mean a transaction affecting title to  
17 personal property."

18 SECTION 3. Section 449-4, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "**§449-4 Administrative penalty.** Any person who [~~wilfully~~]  
21 violates any of the provisions of this chapter, [~~shall~~] may be  
22 subject to an administrative fine of up to \$5,000 for each



1 violation. [~~No licensee shall be subject to this penalty for a~~  
2 ~~violation of section 449-16(b) or (c) if the violation was not~~  
3 ~~intentional or resulted from a bona fide error, notwithstanding~~  
4 ~~the maintenance of procedures reasonably adopted to avoid that~~  
5 ~~error. Examples of bona fide errors include, but are not~~  
6 ~~limited to, clerical miscalculations, computer malfunction,~~  
7 ~~printing errors, and computer programming errors.]"~~

8 SECTION 4. Section 449-5.5, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "**§449-5.5 Net capital.** The net capital of any corporation  
11 engaging in the escrow depository business under this chapter  
12 shall be not less than [~~\$50,000.~~] \$100,000. A corporation in  
13 lieu of the net capital requirement may alternatively file a  
14 bond for [~~\$50,000~~] \$100,000 conditional upon its satisfactory  
15 performance of escrow conditions and satisfaction of all escrow  
16 liabilities. The amount of the minimum net capital of [~~\$50,000,~~]  
17 \$100,000, or the bond, or a combination of both net capital or  
18 bond totalling [~~\$50,000~~] \$100,000 shall be maintained at all  
19 times by the licensee.

20 [~~Licensees in operation~~] Any escrow depository licensed  
21 under this chapter on [May 24, 1973, pursuant to this chapter]  
22 the effective date of this Act with a net capital of less than



1 [~~\$50,000~~] \$100,000 shall increase its net capital to [~~\$50,000~~]  
2 \$100,000 or file a bond for [~~\$50,000,~~] \$100,000, or take action  
3 so that a combination of its net capital and bond totals  
4 [~~\$50,000,~~] \$100,000, before [~~May 24, 1978,~~] July 1, 2008."

5 SECTION 5. Section 449-6, Hawaii Revised Statutes, is  
6 amended by amending subsection (b) to read as follows:

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~~[-]~~; and
- 18 (5) Information for each of the proposed officers,  
19 directors, and escrow officers of the applicant,  
20 accompanied by the appropriate payment of the  
21 applicable fee for each criminal history record check  
22 to be conducted in accordance with section 846-2.7."



1 SECTION 6. Section 449-12, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§449-12 Errors and omissions insurance; deposit.** A  
4 licensed escrow depository shall at all times either:

- 5 (1) Maintain a policy of errors and omissions insurance  
6 executed by an insurer authorized to do business in  
7 the State in an amount not less than [~~\$100,000~~  
8 \$750,000]; provided that any policy which is subject to  
9 a deductible thereunder in excess of \$10,000, per  
10 occurrence, shall require the prior approval of the  
11 commissioner, who may take into consideration, among  
12 other factors, the amount of the proposed coverage; or  
13 (2) Deposit an equivalent amount of cash or securities  
14 under such terms and conditions as are acceptable to  
15 the commissioner."

16 SECTION 7. Section 449-15, Hawaii Revised Statutes, is  
17 amended by amending subsection (b) to read as follows:

- 18 "(b) The audited financial statements shall be prepared in  
19 accordance with generally accepted accounting principles and the  
20 examination by the independent certified public accountant shall  
21 be performed in accordance with generally accepted auditing  
22 standards. The financial statements and the independent



1 certified public accountant's report shall include but not be  
2 limited to the following:

- 3 (1) An unqualified opinion on the fair presentation of the  
4 financial statements taken as a whole. To the extent  
5 that this is not possible, then a detailed footnote  
6 explaining the reason why an unqualified opinion could  
7 not be given shall suffice;
- 8 (2) A direct verification of escrow funds and escrow  
9 liabilities. If less than a one hundred per cent  
10 verification is performed, there shall be a separate  
11 letter from the independent certified public  
12 accountant indicating: the number of accounts  
13 verified; the percentage of the verification; the  
14 basis for determining the sample size; the method used  
15 in selecting the sample items to verify; a description  
16 of the sampling technique used; the discrepancies  
17 noted; and how the discrepancies were resolved;
- 18 (3) Footnotes to the audited financial statement showing  
19 the escrow funds and escrow liabilities and, to the  
20 extent that these amounts differ, a reconciliation of  
21 the amounts; [~~and~~]



1 (4) A statement as to whether the escrow depository is in  
2 compliance with this chapter. If the independent  
3 certified public accountant reports any incident  
4 involving noncompliance, the statement shall address  
5 whether the noncompliance may have a material adverse  
6 impact on the ongoing operations of the company[-];  
7 and

8 (5) A statement as to whether the escrow depository is in  
9 compliance with chapter 523A."

10 SECTION 8. Section 449-16, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 **"§449-16 Accounting for moneys, property, etc.** (a) Every  
13 licensee under this chapter shall have the responsibility of a  
14 trustee for all moneys, other consideration, or instruments  
15 received by it. No licensee shall mingle any such moneys or  
16 other property with its own moneys or other property, or with  
17 moneys or other property held by it in any other capacity. All  
18 moneys held by a licensee in escrow as herein defined shall be  
19 deposited in financial institutions, payable on demand. Under  
20 this chapter, deposits in financial institutions are limited to  
21 sweep accounts as described in this section, checking accounts,  
22 money market deposit accounts, and savings accounts with no



1 specified maturity date. Deposits at financial institutions may  
2 be held in sweep accounts, provided that:

3 (1) The licensee using the sweep account shall have a net  
4 worth of not less than \$1,000,000;

5 (2) The sweep account is a deposit account administered by  
6 a financial institution in which the moneys over a  
7 minimum balance are periodically transferred into a  
8 money market mutual fund account invested only in  
9 obligations of:

10 (A) The United States government;

11 (B) Agencies backed by the full faith and credit of  
12 the United States government; or

13 (C) Agencies originally established or chartered by  
14 the United States government to serve public  
15 purposes; and

16 periodically recredited to the sweep account; and

17 (3) The licensee is liable for all moneys transferred to  
18 the money market mutual fund account under the sweep  
19 account, including any loss of value.

20 (b) No licensee shall [~~disburse funds from an escrow~~  
21 ~~account until cash and or items sufficient to fund any~~  
22 ~~disbursements from the account have been received and deposited~~





1 ~~to the account, and with respect to such items the licensee~~  
2 ~~complies with the provisions of either paragraphs (1) or (2)~~  
3 ~~hereof.~~

4 ~~(1) Where an item has been received and submitted for~~  
5 ~~collection, no licensee shall disburse funds from an~~  
6 ~~escrow account with respect to the item until final~~  
7 ~~settlement of the item has been received by the~~  
8 ~~financial institution to which the item has been~~  
9 ~~submitted for collection.~~

10 ~~(2) No licensee shall disburse funds from the escrow~~  
11 ~~account with respect to an item drawn on a financial~~  
12 ~~institution until the licensee confirms that~~  
13 ~~sufficient collected funds are on deposit in the~~  
14 ~~drawer's account.] make a disbursement on behalf of a~~  
15 ~~specific escrow unless sufficient collected funds have~~  
16 ~~been received for that escrow.~~

17 ~~[(c) A licensee may deliver any money, consideration, or~~  
18 ~~instrument affecting the title to real property prior to funds~~  
19 ~~becoming available for disbursement under subsection (b) if it~~  
20 ~~has received the written consent of the parties to the~~  
21 ~~transaction.] "~~



1 SECTION 9. Section 846-2.7, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

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

4 (1) The department of health on operators of adult foster  
5 homes or developmental disabilities domiciliary homes  
6 and their employees, as provided by section 333F-22;

7 (2) The department of health on prospective employees,  
8 persons seeking to serve as providers, or  
9 subcontractors in positions that place them in direct  
10 contact with clients when providing non-witnessed  
11 direct mental health services as provided by section  
12 321-171.5;

13 (3) The department of health on all applicants for  
14 licensure for, operators for, and prospective  
15 employees, and volunteers at one or more of the  
16 following: skilled nursing facility, intermediate  
17 care facility, adult residential care home, expanded  
18 adult residential care homes, assisted living  
19 facility, home health agency, hospice, adult day  
20 health center, special treatment facility, therapeutic  
21 living program, intermediate care facility for the  
22 mentally retarded, hospital, rural health center and



- 1           rehabilitation agency, and, in the case of any of the  
2           above-related facilities operating in a private  
3           residence, on any adult living in the facility other  
4           than the client as provided by section 321-15.2;
- 5           (4) The department of education on employees, prospective  
6           employees, and teacher trainees in any public school  
7           in positions that necessitate close proximity to  
8           children as provided by section 302A-601.5;
- 9           (5) The counties on employees and prospective employees  
10          who may be in positions that place them in close  
11          proximity to children in recreation or child care  
12          programs and services;
- 13          (6) The county liquor commissions on applicants for liquor  
14          licenses as provided by section 281-53.5;
- 15          (7) 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          (8) The department of human services on prospective  
20          adoptive parents as established under section 346-  
21          19.7;



- 1           (9)    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           (10)   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          (11)   The department of human services on operators and  
11                   employees of home and community-based case management  
12                   agencies and operators and other adults, except for  
13                   adults in care, residing in foster family homes as  
14                   provided by section 346-335;
- 15          (12)   The department of human services on staff members of  
16                   the Hawaii youth correctional facility as provided by  
17                   section 352-5.5;
- 18          (13)   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 (14) The judiciary on employees and applicants at detention  
4 and shelter facilities as provided by section 571-34;

5 (15) 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 (16) The department of commerce and consumer affairs on  
12 applicants for private detective or private guard  
13 licensure as provided by section 463-9;

14 (17) 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 as provided by section 302C-  
21 1;



- 1           (18) The public library system on employees and prospective  
2                   employees whose positions place them in close  
3                   proximity to children as provided by section 302A-  
4                   601.5;
- 5           (19) 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, dependent 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          (20) The department of human services on licensed adult day  
14                  care center operators, employees, new employees,  
15                  subcontracted service providers and their employees,  
16                  and adult volunteers as provided by section 346-97;
- 17          (21) The department of human services on purchase of  
18                  service contracted and subcontracted service providers  
19                  and their employees serving clients of the adult and  
20                  community care services branch, as provided by section  
21                  346-97;



1       (22) 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       (23) 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 (42 U.S.C. §1396n(c)), as provided by  
10          section 346-97; [and]

11       (24) The department of commerce and consumer affairs on  
12          proposed officers, directors, and escrow officers of  
13          the applicant for a license as an escrow depository as  
14          provided by section 449-6; and

15       ~~(24)~~ (25) Any other organization, entity, or the State,  
16           its branches, political subdivisions, or agencies as  
17           may be authorized by state law."

18       SECTION 10. Statutory material to be repealed is bracketed  
19       and stricken. New statutory material is underscored.

20       SECTION 11. This Act shall take effect on July 1, 2059.



**Report Title:**

Escrow depository law

**Description:**

Revises the escrow depository law to: (1) clarify which escrow transactions are covered by the statute and which are not; (2) update the statute to adequately reflect the present day size of the transactions routinely handled by the industry; (3) provide for more flexibility in supervising and regulating the industry; and (4) ensure adequate protection for the consumer. Effective July 1, 2059. (SD1)

