
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 four 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, or delivers money, other
6 consideration, or any 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 that a security breach, as defined in
12 chapter 487N, has occurred or is reasonably believed to have
13 occurred, the escrow depository shall provide notice of the
14 security breach to the commissioner. The notice shall be made
15 without unreasonable delay and shall be consistent with any
16 measures necessary to determine the scope of the breach and to



1 restore the reasonable integrity, security, and confidentiality
2 of the data system.

3 **§449- Temporary closures and relocations.** (a) An
4 escrow depository may temporarily close or relocate an office
5 for up to one hundred eighty days, or longer if determined to be
6 necessary by the commissioner, in the event of an emergency or
7 for other good cause. For purposes of this section, an
8 "emergency" means a situation of unusual or compelling urgency
9 that creates a threat to life, public health, welfare, or safety
10 by reason of major natural disaster, epidemic, riot, fire,
11 flood, or as determined by the commissioner.

12 (b) Written notice of a temporary closure or relocation
13 shall be provided to the commissioner as soon as practicable.
14 Notice shall also be provided to the escrow depository's
15 customers in the form of a sign posted in a safe, conspicuous
16 location on or in proximity to the primary public entrance of
17 the office that has been or will be temporarily closed or
18 relocated. The written notices provided to the commissioner and
19 to the escrow depository's customers shall state the reasons for
20 the temporary closure or relocation, the expected date of
21 reopening, and information regarding where and how customers of



1 the closed or relocated office will be accommodated during the
2 temporary closure or relocation.

3 (c) Notice of the reopening of the office that was
4 temporarily closed or relocated shall be provided to the
5 commissioner within five days of the reopening.

6 **§449- Education.** Any trade association with a
7 membership composed of escrow depositories licensed to do
8 business in the state pursuant to this chapter shall provide its
9 member escrow depositories with educational material, updated
10 legislation, and any other industry-pertinent information or
11 materials on a regular basis."

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

14 1. By adding a new definition to be appropriately
15 designated and to read:

16 "Tangible net worth" means the net worth of a company,
17 corporation, partnership, limited liability company, limited
18 liability partnership, or other business entity regardless of
19 corporate designation exclusive of any value derived from
20 goodwill and other intangible assets as defined by the financial
21 accounting standards board."

22 2. By amending the definition of "escrow" to read:



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

13 SECTION 3. Section 449-1.8, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[~~f~~]**§449-1.8[~~f~~]** **Confidential portion of application or**
16 **records[~~r~~]; consumer complaints, statistical data.** (a)

17 Information contained in any application or record shall be made
18 available to the public unless that information may be withheld
19 from public disclosure by the commissioner under chapter 92F.

20 (b) The commissioner may disclose statistical data
21 regarding the number of consumer complaints filed against an



1 escrow depository, the general nature of each complaint, and the
2 resolution of each complaint."

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

5 "**§449-4 Administrative penalty.** Any person who [wilfully]
6 violates any of the provisions of this chapter, shall be subject
7 to an administrative fine of up to \$5,000 for each violation.
8 ~~[No licensee shall be subject to this penalty for a violation of~~
9 ~~section 449-16(b) or (c) if the violation was not intentional or~~
10 ~~resulted from a bona fide error, notwithstanding the maintenance~~
11 ~~of procedures reasonably adopted to avoid that error. Examples~~
12 ~~of bona fide errors include, but are not limited to, clerical~~
13 ~~miscalculations, computer malfunction, printing errors, and~~
14 ~~computer programming errors.] "~~

15 SECTION 5. Section 449-5.5, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§449-5.5 [Net] Tangible net capital.** The tangible net
18 capital of any corporation, partnership, limited liability
19 company, limited liability partnership, or other business entity
20 regardless of corporate designation engaging in the escrow
21 depository business under this chapter shall be not less than
22 ~~[\$50,000.]~~ \$250,000. A corporation in lieu of the tangible net



1 capital requirement may alternatively file a bond for [~~\$50,000~~
 2 \$250,000 conditional upon its satisfactory performance of escrow
 3 conditions and satisfaction of all escrow liabilities. The
 4 amount of the minimum tangible net capital of [~~\$50,000,~~
 5 \$250,000, or the bond, or a combination of both tangible net
 6 capital [~~e~~] and bond totalling [~~\$50,000~~] \$250,000 shall be
 7 maintained at all times by the licensee.

8 [~~Licenseses in operation on May 24, 1973, pursuant to this~~
 9 ~~chapter with a net capital of less than \$50,000 shall increase~~
 10 ~~its net capital to \$50,000 or file a bond for \$50,000, or take~~
 11 ~~action so that a combination of its net capital and bond totals~~
 12 ~~\$50,000, before May 24, 1978.] "~~

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

15 "(b) The application shall contain the following
 16 information:

- 17 (1) The corporate name, amount of capital, and office
 18 address of the applicant;
- 19 (2) The names of the stockholders, officers, and directors
 20 of the applicant;



- 1 (3) Evidence of the character, financial responsibility,
- 2 experience, and ability of the officers and directors;
- 3 [and]
- 4 (4) The names of the proposed escrow officers and their
- 5 qualifications[-]; and
- 6 (5) Information necessary to conduct a criminal history
- 7 record check in accordance with section 846-2.7 for
- 8 each of the proposed officers, directors, and escrow
- 9 officers of the applicant, accompanied by payment of
- 10 the applicable fee for each record check to be
- 11 conducted."

12 SECTION 7. Section 449-9, Hawaii Revised Statutes, is
 13 amended to read as follows:

14 "**§449-9 Escrow depository's bond.** [~~Before an escrow~~
 15 ~~depository's license becomes effective, the]~~ (a) An escrow
 16 depository shall [give] maintain at all times a bond given to
 17 the commissioner in the penal sum of not less than [~~\$100,000~~
 18 \$200,000, executed by a surety insurer authorized to do business
 19 in this [State, conditioned+] state, with the following
 20 conditions:

- 21 (1) That the escrow depository will honestly, faithfully,
- 22 and with diligence apply all funds, other

1 consideration, or property and instruments affecting
2 title in accordance with the instructions under which
3 the same were deposited with it, and will promptly
4 account for the same; and

5 (2) That the escrow depository will satisfy all judgments
6 and decrees which may be recovered against it in any
7 action or proceeding brought under this chapter.

8 (b) The aggregate liability of the surety for all breaches
9 of the conditions of the bond [~~shall~~], in no event, shall exceed
10 the penal sum of the bond. In lieu of the bond, an escrow
11 depository may deposit cash[~~, a~~] or an unconditional and
12 irrevocable letter of credit[~~, or securities acceptable to the~~
13 ~~commissioner~~]."

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

16 "**§449-11 Fidelity bonds[+] or fidelity insurance;**
17 **deposit.** [A] For all of its directors, officers, and employees
18 who have access to money, negotiable securities, or instruments
19 in their possession or under their control, a licensed escrow
20 depository shall at all times either:

21 (1) Maintain a fidelity bond [~~executed~~] or fidelity
22 insurance issued by a surety insurer authorized to do



1 business in the [State] state in an amount not less
2 than [~~\$25,000; provided that any bond which is subject~~
3 ~~to a deductible thereunder in excess of \$5,000 per~~
4 ~~occurrence shall require the prior approval of the~~
5 ~~commissioner, who may take into consideration, among~~
6 ~~other factors, the amount of the proposed bond;~~
7 \$125,000; or

8 (2) Deposit an equivalent amount of cash or [~~securities~~
9 ~~under such terms and conditions as are acceptable to~~
10 ~~the commissioner, an unconditional and irrevocable~~
11 ~~letter of credit~~

12 ~~upon all of its directors, officers, and employees who have~~
13 ~~access to money or negotiable securities or instruments in its~~
14 ~~possession or under its control. Notwithstanding the above~~
15 ~~provision, the escrow depository may carry bonds or deposit cash~~
16 ~~or securities above the amounts required by the commissioner.]~~
17 an unconditional and irrevocable letter of credit."

18 SECTION 9. Section 449-12, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§449-12 Errors and omissions insurance; deposit.** A
21 licensed escrow depository shall at all times either:



- 1 (1) Maintain a policy of errors and omissions insurance
2 executed by an insurer authorized to do business in
3 the [~~State~~] state in an amount not less than
4 [~~\$100,000; provided that any policy which is subject~~
5 ~~to a deductible thereunder in excess of \$10,000, per~~
6 ~~occurrence, shall require the prior approval of the~~
7 ~~commissioner, who may take into consideration, among~~
8 ~~other factors, the amount of the proposed coverage;~~]
9 \$250,000; or
- 10 (2) Deposit an equivalent amount of cash or [~~securities~~
11 ~~under such terms and conditions as are acceptable to~~
12 ~~the commissioner.] an unconditional and irrevocable
13 letter of credit."~~

14 SECTION 10. Section 449-15, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) The audited financial statements shall be prepared in
17 accordance with generally accepted accounting principles and the
18 examination by the independent certified public accountant shall
19 be performed in accordance with generally accepted auditing
20 standards. The financial statements and the independent
21 certified public accountant's report shall include [~~but not be~~
22 ~~limited to the following~~]:



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



1 extent that these amounts differ, a reconciliation of
2 the amounts; [~~and~~]

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

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

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

14 "**§449-16 Accounting for moneys, property, etc.** (a) Every
15 licensee under this chapter shall have the responsibility of a
16 trustee for all moneys, other consideration, or instruments
17 received by it. No licensee shall [~~mingle~~] commingle any such
18 moneys or other property with its own moneys or other property,
19 or with moneys or other property held by it in any other
20 capacity. All moneys held by a licensee in escrow as herein
21 defined shall be deposited in financial institutions, payable on
22 demand. Under this chapter, deposits in financial institutions



1 are limited to sweep accounts as described in this section,
2 checking accounts, money market deposit accounts, and savings
3 accounts with no specified maturity date. Deposits at financial
4 institutions may be held in sweep accounts[7]; provided that:

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

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

- 12 (A) The United States government;
- 13 (B) Agencies backed by the full faith and credit of
14 the United States government; or
- 15 (C) Agencies originally established or chartered by
16 the United States government to serve public
17 purposes; and

18 periodically recredited to the sweep account; and

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



1 (b) No licensee shall [~~disburse funds from an escrow~~
2 ~~account until cash and or items sufficient to fund any~~
3 ~~disbursements from the account have been received and deposited~~
4 ~~to the account, and with respect to such items the licensee~~
5 ~~complies with the provisions of either paragraphs (1) or (2)~~
6 ~~hereof.~~

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

13 ~~(2) No licensee shall disburse funds from the escrow~~
14 ~~account with respect to an item drawn on a financial~~
15 ~~institution until the licensee confirms that~~
16 ~~sufficient collected funds are on deposit in the~~
17 ~~drawer's account.~~

18 ~~(c) A licensee may deliver any money, consideration, or~~
19 ~~instrument affecting the title to real property prior to funds~~
20 ~~becoming available for disbursement under subsection (b) if it~~
21 ~~has received the written consent of the parties to the~~
22 ~~transaaction.] make a disbursement on behalf of a specific escrow~~



1 account unless sufficient collected funds have been received for
2 that escrow."

3 SECTION 12. 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 on operators of adult foster
7 homes or developmental disabilities domiciliary homes
8 and their employees, as provided by section 333F-22;

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

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



- 1 program, intermediate care facility for the mentally
2 retarded, hospital, rural health center and
3 rehabilitation agency, and, in the case of any of the
4 above-related facilities operating in a private
5 residence, on any adult living in the facility other
6 than the client as provided by section 321-15.2;
- 7 (4) The department of education on employees, prospective
8 employees, and teacher trainees in any public school
9 in positions that necessitate close proximity to
10 children as provided by section 302A-601.5;
- 11 (5) The counties on employees and prospective employees
12 who may be in positions that place them in close
13 proximity to children in recreation or child care
14 programs and services;
- 15 (6) The county liquor commissions on applicants for liquor
16 licenses as provided by section 281-53.5;
- 17 (7) The department of human services on operators and
18 employees of child caring institutions, child placing
19 organizations, and foster boarding homes as provided
20 by section 346-17;



- 1 (8) The department of human services on prospective
2 adoptive parents as established under section 346-
3 19.7;
- 4 (9) The department of human services on applicants to
5 operate child care facilities, prospective employees
6 of the applicant, and new employees of the provider
7 after registration or licensure as provided by section
8 346-154;
- 9 (10) The department of human services on persons exempt
10 pursuant to section 346-152 to be eligible to provide
11 child care and receive child care subsidies as
12 provided by section 346-152.5;
- 13 (11) The department of human services on operators and
14 employees of [~~home~~] home- and community-based case
15 management agencies and operators and other adults,
16 except for adults in care, residing in foster family
17 homes as provided by section 346-335;
- 18 (12) The department of human services on staff members of
19 the Hawaii youth correctional facility as provided by
20 section 352-5.5;
- 21 (13) The department of human services on employees,
22 prospective employees, and volunteers of contracted



1 providers and subcontractors in positions that place
2 them in close proximity to youth when providing
3 services on behalf of the office or the Hawaii youth
4 correctional facility as provided by section 352D-4.3;

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

7 (15) The department of public safety on employees and
8 prospective employees who are directly involved with
9 the treatment and care of persons committed to a
10 correctional facility or who possess police powers
11 including the power of arrest as provided by section
12 353C-5;

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

16 (17) Private schools and designated organizations on
17 employees and prospective employees who may be in
18 positions that necessitate close proximity to
19 children; provided that private schools and designated
20 organizations receive only indications of the states
21 from which the national criminal history record



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



1 community care services branch, as provided by section
2 346-97;

3 (22) The department of human services on foster grandparent
4 program, retired and senior volunteer program, senior
5 companion program, and respite companion program
6 participants as provided by section 346-97;

7 (23) The department of human services on contracted and
8 subcontracted service providers and their current and
9 prospective employees that provide home and community-
10 based services under Section 1915(c) of the Social
11 Security Act (Title 42 United States Code Section
12 1396n(c)), or under any other applicable section or
13 sections of the Social Security Act for the purposes
14 of providing home and community-based services, as
15 provided by section 346-97;

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

21 (25) The department of commerce and consumer affairs on
22 proposed directors and executive officers of a



1 nondepository financial services loan company as
2 provided by section 412:3-301;

3 (26) 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 [+] (27) [+] 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 section 489D-9; [and]

15 (28) The department of commerce and consumer affairs on
16 proposed officers, directors, and escrow officers of
17 the applicant for a license as an escrow depository as
18 provided by section 449-6; and

19 [+(28)+] (29) Any other organization, entity, or the State,
20 its branches, political subdivisions, or agencies as
21 may be authorized by state law."



1 SECTION 13. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 14. This Act shall take effect on January 1, 2090;
4 provided that sections 6 and 12 shall take effect on July 2,
5 2009, and sections 5, 7, 8, and 9 shall take effect on January
6 1, 2010.

7



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. (SB887 SD1 HD2)

