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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 a new section to be appropriately designated  
3 and to read as follows:

4 "§449- Compliance resolution fund. Any law to the  
5 contrary notwithstanding, all fees, fines, and payments  
6 collected and any other charges assessed by the commissioner  
7 pursuant to this chapter shall be deposited into the compliance  
8 resolution fund established pursuant to section 26-9(o)."

9 SECTION 2. Section 449-4, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§449-4 Administrative penalty. Any person who wilfully  
12 violates any of the provisions of this chapter, [~~shall~~] may be  
13 subject to an administrative fine of [~~\$5,000~~] not more than  
14 \$\_\_\_\_\_ for each violation. No licensee shall be subject to  
15 this penalty for a violation of section 449-16(b) or (c) if the  
16 violation was not intentional or resulted from a bona fide  
17 error, notwithstanding the maintenance of procedures reasonably  
18 adopted to avoid that error. Examples of bona fide errors



1 include[~~, but are not limited to,~~] clerical miscalculations,  
2 computer malfunction, printing errors, and computer programming  
3 errors."

4 SECTION 3. Section 449-5.5, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "**§449-5.5 Net capital.** The net capital of any corporation  
7 engaging in the escrow depository business under this chapter  
8 shall be not less than [~~\$50,000.~~] \$250,000. A corporation in  
9 lieu of the net capital requirement may alternatively file a  
10 bond for [~~\$50,000~~] \$250,000 conditional upon its satisfactory  
11 performance of escrow conditions and satisfaction of all escrow  
12 liabilities. The amount of the minimum net capital of  
13 [~~\$50,000,~~] \$250,000, or the bond, or a combination of both net  
14 capital or bond totalling [~~\$50,000~~] \$250,000 shall be maintained  
15 at all times by the licensee.

16 [~~Licensees~~] Every licensee in operation on [~~May 24, 1973,~~]  
17 July 1, \_\_\_\_\_, pursuant to this chapter with a net capital of  
18 less than [~~\$50,000~~] \$250,000 shall increase its net capital to  
19 [~~\$50,000~~] \$250,000 or file a bond for [~~\$50,000,~~] \$250,000, or  
20 take action so that a combination of its net capital and bond  
21 totals [~~\$50,000,~~] \$250,000, before [~~May 24, 1978.~~]  
22 July 1, \_\_\_\_\_."



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

3 "**§449-9 Escrow depository's bond.** (a) Before an escrow  
4 depository's license becomes effective, the [~~escrow depository~~]  
5 applicant shall give a bond to the commissioner in the [~~penal~~  
6 ~~sum~~] amount of not less than [~~\$100,000~~] \$ \_\_\_\_\_ executed by a  
7 surety insurer authorized in this State, conditioned:

8 (1) That the escrow depository will honestly, faithfully,  
9 and with diligence apply all funds, other  
10 consideration, or property and instruments affecting  
11 title in accordance with the instructions under which  
12 the same were deposited with it, and will promptly  
13 account for the same; and

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

17 The aggregate liability of the surety for all breaches of  
18 the conditions of the bond shall, in no event, exceed the [~~penal~~  
19 ~~sum~~] amount of the bond. In lieu of the bond, an escrow  
20 depository may deposit cash, a letter of credit, or securities  
21 under such terms and conditions as are acceptable to the  
22 commissioner.



1        (b) The escrow depository bond shall be placed on file  
2 with the commissioner, and insurance coverage shall be  
3 continuous during the period of licensure of the licensee  
4 whether or not the bond is renewed, continued, reinstated,  
5 reissued, or otherwise extended, replaced, or modified,  
6 including increases or decreases in the bond amount.

7        (c) The escrow depository bond shall be for the benefit of  
8 any person entitled to a claim on the bond:

9        (1) The State, for payment of any costs incurred and  
10 charges made in connection with any escrow  
11 depository's insolvency or default, including costs  
12 and charges relating to an examination and  
13 receivership of any escrow depository; and

14        (2) Any person who has a cause of action against the  
15 principal on the bond based on any default or  
16 violation of any duty or obligation of the escrow  
17 depository; provided that the person has first  
18 attempted to resolve the claim with the escrow  
19 depository directly.

20        (d) In lieu of the bonds required by this section, a  
21 certificate of deposit issued by a financial institution  
22 authorized to conduct business in this State and made payable to



1 the commissioner may be provided to the commissioner in the same  
2 principal amount as required for the bonds. The interest on the  
3 certificate of deposit shall be payable to the escrow depository  
4 licensee. The certificate of deposit shall be maintained at all  
5 times during which the licensee is authorized to engage in  
6 business as an escrow depository under this chapter, and shall  
7 provide that it will remain in effect for at least three years  
8 following discontinuance of operations, unless released earlier  
9 by the commissioner.

10 (e) The commissioner may, in the public interest and for  
11 good cause shown, waive or modify any requirements of this  
12 section to reduce the burden on an escrow depository."

13 SECTION 5. Section 449-11, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§449-11 Fidelity bonds; deposit.** A licensed escrow  
16 depository shall at all times either:

17 (1) Maintain a fidelity bond executed by a surety insurer  
18 authorized to do business in the State in an amount  
19 not less than [~~\$25,000;~~] \$250,000; provided that any  
20 bond which is subject to a deductible thereunder in  
21 excess of [~~\$5,000~~] \$10,000 per occurrence shall  
22 require the prior approval of the commissioner, who



1           may take into consideration, among other factors, the  
2           amount of the proposed bond; or

3           (2) Deposit an equivalent amount of cash or securities  
4           under such terms and conditions as are acceptable to  
5           the commissioner,

6   upon all of its directors, officers, and employees who have  
7   access to money or negotiable securities or instruments in its  
8   possession or under its control. Notwithstanding the above  
9   provision, the escrow depository may carry bonds or deposit cash  
10   or securities above the amounts required by the commissioner."

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

13           "**§449-12 Errors and omissions insurance; deposit.** A  
14   licensed escrow depository shall at all times either:

15           (1) Maintain a policy of errors and omissions insurance  
16           executed by an insurer authorized to do business in  
17           the State in an amount not less than [~~\$100,000,~~  
18           \$250,000; provided that any policy which is subject to  
19           a deductible thereunder in excess of [~~\$10,000,~~  
20           \$ \_\_\_\_\_, per occurrence, shall require the prior  
21           approval of the commissioner, who may take into



1 consideration, among other factors, the amount of the  
2 proposed coverage; or

3 (2) Deposit an equivalent amount of cash or securities  
4 under such terms and conditions as are acceptable to  
5 the commissioner."

6 SECTION 7. Section 449-14, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "**§449-14 Fees.** (a) ~~[The following fees shall be paid by~~  
9 ~~licensed] Every escrow [depositories] depository shall pay a fee~~  
10 ~~to the commissioner [and, together with any administrative~~  
11 ~~penalty or other charge assessed under this chapter, shall be~~  
12 ~~deposited into the compliance resolution fund established~~  
13 ~~pursuant to section 26-9(e);]~~ as follows:

14 (1) ~~[For filing]~~ A nonrefundable fee of \$2,000 for review  
15 and investigation of an escrow depository's  
16 application for license[~~, \$2,000~~]. In addition, the  
17 applicant shall be charged \$60 per employee hour  
18 expended in excess of eighty employee hours for the  
19 review of the application and attendant investigations  
20 not to exceed an aggregate payment of \$10,000. The  
21 hourly fee shall be billed and shall be paid prior to  
22 preliminary approval of the license;



- 1           (2)   ~~[For]~~ \$ \_\_\_\_\_ for an application for approval to  
2           establish a branch office;
- 3           (3)   ~~[For]~~ \$ \_\_\_\_\_ for an application for approval to  
4           relocate an existing office or branch;
- 5           (4)   ~~[For]~~ \$ \_\_\_\_\_ for initial issuance [~~and annual~~  
6           ~~renewal~~] of an escrow depository's license[~~, \$100~~];
- 7           (5)   ~~[For]~~ \$ \_\_\_\_\_ for initial issuance [~~and annual~~  
8           ~~renewal~~] of a branch office license[~~, \$50~~];
- 9           (6)   ~~[For]~~ \$ \_\_\_\_\_ for reissuance of a license for the  
10          change in the business address of its office[~~, \$25~~];  
11          and
- 12          (7)   ~~[For an application for approval to cease business as~~  
13          ~~an escrow depository.]~~ \$1,000 for reinstatement of a  
14          license that has lapsed, plus \$250 for each day that  
15          the license was lapsed.
- 16          (b)   For all escrow depositories examined by the  
17          commissioner or the commissioner's staff, the commissioner:
- 18               (1)   May charge an examination fee based upon the cost per  
19               hour per examiner. The hourly fee shall be [~~\$40~~]  
20               \$60;





1 (2) May charge additional amounts for travel, per diem,  
2 mileage, and other reasonable expenses incurred in  
3 connection with the examination; and

4 (3) Shall bill the affected escrow depository for  
5 examination fees and expenses as soon as feasible  
6 after the close of the examination or investigation.  
7 The affected escrow depository shall pay the division  
8 within thirty days following the billing. [~~All~~  
9 ~~payments shall be deposited into the compliance~~  
10 ~~resolution fund established pursuant to section 26-~~  
11 ~~9(e)-.] Any dispute by the affected escrow depository  
12 relating to these billings shall be reviewed by the  
13 commissioner who may modify, waive, or suspend any  
14 billing.~~

15 (c) An escrow depository that fails to make a payment  
16 required by this section shall be subject to an administrative  
17 penalty of not more than \$200 per day for each day it is in  
18 violation of this section.

19 (d) [~~Any fee authorized by this section may be set or~~  
20 ~~modified by the commissioner by rule adopted pursuant to chapter~~  
21 ~~91-.] Every escrow depository shall pay to the commissioner a  
22 renewal fee of \$ \_\_\_\_\_."~~



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

3           SECTION 9. This Act shall take effect on January 1, 3000.



**Report Title:**

Escrow Depositories; Fees; Bonds

**Description:**

Amends the fee structure for services provided by the Division of Financial Institutions of the Department of Commerce and Consumer Affairs for escrow depository regulation; amends fines for violations of escrow depository regulations; and adjusts bond requirements for escrow depositories. Effective January 1, 3000. (HB2498 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

