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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 \$10,000 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.~~] \$100,000. A corporation, in  
9 lieu of the net capital requirement, may alternatively file a  
10 bond for [~~\$50,000~~] \$100,000, 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,~~] \$100,000, or the bond, or a combination of both net  
14 capital or bond totalling [~~\$50,000~~] \$100,000 shall be maintained  
15 at all times by the licensee.

16 [~~Licenseses~~] Every licensee in operation on [~~May 24, 1973,~~]  
17 July 1, 2012, pursuant to this chapter with a net capital of  
18 less than [~~\$50,000~~] \$100,000 shall increase its net capital to  
19 [~~\$50,000~~] \$100,000, [~~or~~] file a bond for [~~\$50,000,~~] \$100,000, or  
20 take action so that a combination of its net capital and bond  
21 totals [~~\$50,000,~~] \$100,000, before [~~May 24, 1978.~~] July 1,  
22 2016."



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 sum  
6 of not less than \$100,000 executed by a surety insurer  
7 authorized in this State, conditioned:

- 8 (1) That the escrow depository will honestly, faithfully,  
9 and [~~with diligence~~] diligently 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~~] that may be recovered against it  
16 in any action or proceeding brought under this  
17 chapter.

18 The aggregate liability of the surety for all breaches of  
19 the conditions of the bond shall, in no event, exceed the [~~penal~~  
20 ~~sum~~] amount of the bond. In lieu of the bond, an escrow  
21 depository may deposit cash, a letter of credit, or securities



1 under terms and conditions as are acceptable to the  
2 commissioner.

3 (b) In lieu of the bond required by this section, a  
4 certificate of deposit issued by a financial institution  
5 authorized to conduct business in this State and made payable to  
6 the commissioner may be provided to the commissioner in the same  
7 principal amount as required for the bond. The interest on the  
8 certificate of deposit shall be payable to the escrow depository  
9 licensee. The certificate of deposit shall be maintained at all  
10 times during which the licensee is authorized to engage in  
11 business as an escrow depository under this chapter and shall  
12 provide that it will remain in effect for at least three years  
13 following discontinuance of operations, unless released earlier  
14 by the commissioner.

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

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

20 "**§449-11 Fidelity bonds; deposit.** A licensed escrow  
21 depository shall at all times either:



1 (1) Maintain a fidelity bond executed by a surety insurer  
2 authorized to do business in the State in an amount  
3 not less than [~~\$25,000,~~] \$200,000; provided that any  
4 bond [~~which~~] that is subject to a deductible  
5 thereunder in excess of [~~\$5,000~~] \$25,000 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 bond; or

9 (2) Deposit an equivalent amount of cash or securities  
10 under such terms and conditions as are acceptable to  
11 the commissioner,

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

19 "**§449-12 Errors and omissions insurance; deposit.** A  
20 licensed escrow depository shall at all times either:

21 (1) Maintain a policy of errors and omissions insurance  
22 executed by an insurer authorized to do business in



1 the State in an amount not less than [~~\$100,000,~~  
2 \$250,000; provided that any policy [~~which~~] that is  
3 subject to a deductible thereunder in excess of  
4 [~~\$10,000,~~] \$100,000, per occurrence, shall require the  
5 prior approval of the commissioner, who may take into  
6 consideration, among other factors, the amount of the  
7 proposed coverage; or

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

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

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

19 (1) [~~For filing~~] A nonrefundable fee of \$2,000 for review  
20 and investigation of an escrow depository's  
21 application for license[~~, \$2,000,~~]. In addition, the  
22 applicant shall be charged \$60 per employee hour



1 expended in excess of eighty employee hours for the  
2 review of the application and attendant investigations,  
3 not to exceed an aggregate payment of \$10,000. The  
4 hourly fee shall be billed and shall be paid prior to  
5 preliminary approval of the license;

6 (2) [~~For~~] \$100 for an application for approval to  
7 establish a branch office;

8 (3) [~~For~~] \$100 for an application for approval to relocate  
9 an existing office or branch;

10 (4) [~~For~~] \$500 for initial issuance [~~and annual renewal~~]  
11 of an escrow depository's license[~~, \$100~~];

12 (5) [~~For~~] \$100 for initial issuance [~~and annual renewal~~]  
13 of a branch office license[~~, \$50~~];

14 (6) [~~For~~] \$100 for reissuance of a license for the change  
15 in the business address of its office[~~, \$25~~]; [~~and~~]

16 (7) [~~For an application for approval to cease business as~~  
17 ~~an escrow depository.~~] \$1,000 for reinstatement of a  
18 license that has lapsed, plus \$250 for each day that  
19 the license was lapsed, until the renewal application  
20 is received; and



1           (8) \$2,000 for the annual renewal of an escrow depository  
2           license and \$100 for the annual renewal of each branch  
3           office.

4           (b) For all escrow depositories examined by the  
5 commissioner or the commissioner's staff, the commissioner:

6           (1) May charge an examination fee based upon the cost per  
7           hour per examiner. The hourly fee shall be [~~\$40~~]  
8           \$60;

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

12           (3) Shall bill the affected escrow depository for  
13           examination fees and expenses as soon as feasible  
14           after the close of the examination or investigation.  
15           The affected escrow depository shall pay the division  
16           within thirty days following the billing. [~~All~~  
17           ~~payments shall be deposited into the compliance~~  
18           ~~resolution fund established pursuant to section 26-~~  
19           ~~9(e).~~] Any dispute by the affected escrow depository  
20           relating to these billings shall be reviewed by the  
21           commissioner who may modify, waive, or suspend any  
22           billing.





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

5 ~~[(d) Any fee authorized by this section may be set or~~  
6 ~~modified by the commissioner by rule adopted pursuant to chapter~~  
7 ~~91.]"~~

8 SECTION 8. If any provision of this Act, or the  
9 application thereof to any person or circumstance, is held  
10 invalid, the invalidity does not affect other provisions or  
11 applications of the Act that can be given effect without the  
12 invalid provision or application, and to this end the provisions  
13 of this Act are severable.

14 SECTION 9. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 10. 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. (SB2760 HD1)

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

