

ACT 224

S.B. NO. 2849

A Bill for an Act Relating to Escrow Depositories.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 449-1, Hawaii Revised Statutes, is amended by adding four new definitions to be appropriately inserted and to read as follows:

“Control”, in the context of control of an applicant or licensee, means ownership of or the power to vote twenty-five per cent or more of the outstanding voting securities of a licensee or controlling person. For purposes of determining the percentage of a licensee controlled by any person, there shall be aggregated with the controlling person’s interest the interest of any other person controlled by the person, or by any spouse, parent, or child of the person.

“Controlling person” means any person in control of a licensee or applicant.

“NMLS” means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the state licensing and registration of state-licensed loan originators and other financial services providers, or any system provided by the Consumer Financial Protection Bureau.

“Principal” means a manager and anyone else who supervises or is in charge of the applicant or licensee.”

SECTION 2. Section 449-1.9, Hawaii Revised Statutes, is amended to read as follows:

~~“[§449-1.9]~~ **Powers of commissioner.** In addition to any other powers provided by law, the commissioner may:

- (1) Administer and enforce the provisions and requirements of this chapter;
- (2) Adopt, amend, or repeal rules or declaratory rulings pursuant to chapter 91 to effectuate the purposes of this chapter;
- (3) Issue informal nonbinding interpretations to effectuate the purposes of this chapter;
- (4) Investigate and conduct hearings regarding any violation of this chapter or any rule or order of the commissioner;
- (5) Contract with or employ qualified persons, including investigators, examiners, or auditors who shall be exempt from chapter 76 and who shall assist the commissioner in exercising the commissioner's powers and duties;
- (6) Deposit all fees, fines, and charges collected by the commissioner under this chapter into the compliance resolution fund established pursuant to section 26-9(o);
- (7) Process and investigate complaints, subpoena witnesses and documents, administer oaths, and receive affidavits and oral testimony, including through electronic means, and conduct contested case proceedings; ~~and~~
- (8) Report any violation of this chapter or violation of federal or state law to the United States Commissioner of Housing and Urban Development or any other federal agency having jurisdiction over the licensee[-]; ~~and~~
- (9) Enter into agreements or contracts with the operators of NMLS or other entities designated by NMLS to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter: provided that:
 - (A) For the purpose and the extent necessary to use NMLS, the commissioner may:
 - (i) Require all escrow depositories to register with NMLS; and
 - (ii) Waive or modify, in whole or in part, by rule or order, any or all of the requirements of this chapter and establish new requirements as reasonably necessary to participate in NMLS; and
 - (B) In addition to other uses of NMLS, the commissioner may use NMLS as an agent for:
 - (i) Requesting information from and distributing information to the United States Department of Justice or any other governmental agency; and
 - (ii) Requesting and distributing information to and from any source directed by the commissioner.”

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

§449-6 Application for license. (a) Any corporation desiring to be licensed as an escrow depository shall ~~file~~ submit an application ~~upon forms to be furnished~~ in writing and in a form prescribed by NMLS or by the commis-

sioner. The application shall be accompanied by a filing fee no part of which shall be refundable.

- (b) The application shall contain the following ~~[information]~~:
 - (1) The corporate name, amount of capital, and office address of the applicant;
 - (2) The names of the stockholders, officers, and directors of the applicant;
 - (3) Evidence of the character, financial responsibility, experience, and ability of the officers and directors; ~~[and]~~
 - (4) The names of the proposed escrow officers and their qualifications~~[-]~~;
 - (5) The history of the applicant's material litigation and criminal convictions for the five-year period prior to the date of the application;
 - (6) Information and authorizations necessary to conduct a criminal history record check in accordance with section 846-2.7 of each of the applicant's controlling persons, and each of the officers, directors, and principals who will be in charge of the escrow depository's activities upon licensure, accompanied by the appropriate payment of the applicable fee for each record check; and
 - (7) Any other information the commissioner deems necessary to participate in NMLS."

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

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

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

“§449-8.6 Sale or transfer of license or change in control. (a) No escrow depository license shall be transferred except as provided in ~~[subsection (e).]~~ this section.

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

(c) ~~[If the licensee is a corporation, any intended]~~ Any transfer of ~~[its]~~ a licensee's voting stock which may result in the acquisition of control of the licensee may be considered a transfer of license~~[-]~~. ~~Any intended transfer of the voting stock which may result in the acquisition of control]~~

and prior to the transfer shall be reported to the commissioner in writing. Upon determination by the commissioner that the intended transfer will result in the acquisition of control, the proposed purchaser or transferee of the stock shall file an application for approval [to act as an escrow depository] of a proposed change in control of the licensee, accompanied by a nonrefundable application fee in accordance with this chapter, and shall not [acquire control of] act as an escrow depository until the [transferee] application has been approved by the commissioner.

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

(d) At the time of filing an application for approval of a proposed change in control of the licensee, the proposed purchaser or transferee shall provide to the commissioner the history of its material litigation and criminal convictions for the five-year period prior to the date of the application, and any other information requested by the commissioner which may include information similar to that required of an applicant for initial licensure or license renewal under this chapter. The proposed purchaser or transferee shall also provide any authorizations necessary for the commissioner to conduct criminal history record checks of each of the purchaser or transferee's controlling persons, and each of the officers, directors, and principals who will be in charge of the licensee's activities upon approval of the proposed application for change in control. The authorizations shall be accompanied by the appropriate payment of the applicable fee for each record check.

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

(f) In granting approval, the commissioner may impose such conditions and restrictions as shall be in the public interest, including without limitation requiring the proposed purchaser or transferee to fulfill representations contained in its application for approval of a proposed change in control of the licensee, and agreements made during the application process."

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

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

- (1) For filing and investigation of an escrow depository's application for license, \$5,000;
- (2) For initial issuance of an escrow depository license, \$2,000;
- ~~(2)~~ (3) For an application for approval to establish a branch office, \$100;
- ~~(3)~~ (4) For an application for approval to relocate an existing office or branch, \$100;
- ~~(4)~~ (5) For annual renewal of an escrow depository's license, \$2,000;
- ~~(5)~~ (6) For initial issuance and annual renewal of a branch office license, \$100;

- ~~[(6)]~~ (7) For reissuance of a license for the change in the business address of its office, \$50; provided that a reissuance caused by changes to the address by the United States Postal Service shall not require payment of a fee; ~~[and]~~
- ~~(8)~~ For reissuance of a license for a change in the licensee's name, \$50;
- ~~(9)~~ For an application for a proposed change in control of the licensee, \$5,000; and
- ~~[(7)]~~ (10) For an application for approval to cease business as an escrow depository, \$0.”

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

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

- (1) The department of health or its designee on operators of adult foster homes for individuals with developmental disabilities or developmental disabilities domiciliary homes and their employees, as provided by section 321-15.2;
- (2) The department of health or its designee on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place 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 administration, law enforcement, and liquor control investigations;
- (8) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
- (9) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (10) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;
- (11) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
- (12) The department of health on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in community care foster family homes as provided by section 321-15.2;

- (13) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (14) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (15) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (16) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
- (17) The board of private detectives and guards on applicants for private detective or private guard licensure as provided by section 463-9;
- (18) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided pursuant to section 302C-1;
- (19) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (20) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
- (21) The department of health on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 321-15.2;
- (22) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult protective and community services branch, as provided by section 346-97;
- (23) The department of human services on foster grandparent program, senior companion program, and respite companion program participants as provided by section 346-97;
- (24) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under section 1915(c) of the Social Security Act, title 42 United States Code section 1396n(c), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;
- (25) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;

- (26) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
- (27) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
- (28) The department of commerce and consumer affairs on:
 - (A) Each principal of every non-corporate applicant for a money transmitter license; and
 - (B) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license, as provided by sections 489D-9 and 489D-15;
- (29) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;
- (30) The Hawaii health systems corporation on:
 - (A) Employees;
 - (B) Applicants seeking employment;
 - (C) Current or prospective members of the corporation board or regional system board; or
 - (D) Current or prospective volunteers, providers, or contractors, in any of the corporation's health facilities as provided by section 323F-5.5;
- (31) The department of commerce and consumer affairs on:
 - (A) An applicant for a mortgage loan originator license; and
 - (B) Each control person, executive officer, director, general partner, and manager of an applicant for a mortgage loan originator company license, as provided by chapter 454F;
- (32) The state public charter school commission or public charter schools on employees, teacher trainees, prospective employees, and prospective teacher trainees in any public charter school for any position that places them in close proximity to children, as provided in section 302D-33;
- (33) The counties on prospective employees who work with children, vulnerable adults, or senior citizens in community-based programs;
- (34) The counties on prospective employees for fire department positions which involve contact with children or vulnerable adults;
- (35) The counties on prospective employees for emergency medical services positions which involve contact with children or vulnerable adults;
- (36) The counties on prospective employees for emergency management positions and community volunteers whose responsibilities involve planning and executing homeland security measures including viewing, handling, and engaging in law enforcement or classified meetings and assisting vulnerable citizens during emergencies or crises;
- (37) The State and counties on employees, prospective employees, volunteers, and contractors whose position responsibilities require unescorted access to secured areas and equipment related to a traffic management center;
- (38) The State and counties on employees and prospective employees whose positions involve the handling or use of firearms for other than law enforcement purposes;

- (39) The State and counties on current and prospective systems analysts and others involved in an agency's information technology operation whose position responsibilities provide them with access to proprietary, confidential, or sensitive information;
- (40) The department of commerce and consumer affairs on applicants for real estate appraiser licensure or certification as provided by chapter 466K;
- (41) The department of health or its designee on all license applicants, licensees, employees, contractors, and prospective employees of medical marijuana dispensaries, and individuals permitted to enter and remain in medical marijuana dispensary facilities as provided under sections 329D-15(a)(4) and 329D-16(a)(3); ~~and~~
- (42) The department of commerce and consumer affairs on:
- (A) Each of the controlling persons of the applicant for licensure as an escrow depository, and each of the officers, directors, and principals who will be in charge of the escrow depository's activities upon licensure; and
- (B) Each of the controlling persons of an applicant for proposed change in control of an escrow depository licensee, and each of the officers, directors, and principals who will be in charge of the licensee's activities upon approval of such application, as provided by chapter 449; and
- ~~(42)~~ (43) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."

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

SECTION 9. This Act shall take effect upon its approval.
(Approved July 6, 2016.)