
A BILL FOR AN ACT

RELATING TO MONEY TRANSMITTERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

"CHAPTER

MONEY TRANSMITTERS ACT

6 § -1 **Short title.** This chapter may be cited as the
7 money transmitters act.

8 § -2 **Purpose.** It is the intent of the legislature to
9 establish within the State a licensure system to ensure the safe
10 and sound operation of money transmission businesses, to ensure
11 that these businesses are not used for criminal purposes, to
12 promote confidence in the State's financial system, and to
13 protect the public interest.

14 § -3 **License required.** (a) On or after
15 December 31, 2006, no person except those excluded pursuant to
16 section -5, shall engage in the business of money
17 transmission without a license as provided in this chapter.



1 (b) A person is engaged in providing money transmission if
2 the person provides those services to persons in the State, even
3 if the person providing services has no physical presence in the
4 State.

5 (c) If a licensee has a physical presence in the State,
6 the licensee may conduct its business at one or more locations,
7 directly or indirectly owned, or through one or more authorized
8 delegates, or both, pursuant to the single license granted to
9 the licensee.

10 § -4 **Definitions.** For purposes of this chapter:

11 "Applicant" means a person filing an application for a
12 license under this chapter.

13 "Authorized delegate" means an entity designated by the
14 licensee under this chapter to sell or issue payment instruments
15 or engage in the business of transmitting money on behalf of a
16 licensee.

17 "Commissioner" means the commissioner of financial
18 institutions.

19 "Control" means ownership of, or the power to vote,
20 twenty-five per cent or more of the outstanding voting
21 securities of a licensee or controlling person. For purposes of
22 determining the percentage of a licensee controlled by any

1 person, there shall be aggregated with the controlling person's
2 interest the interest of any other person controlled by the
3 person, or by any spouse, parent, or child of the person.

4 "Controlling person" means any person in control of a
5 licensee.

6 "Division" means the division of financial institutions
7 within the department of commerce and consumer affairs.

8 "Electronic instrument" means a card or other tangible
9 object for the transmission or payment of money, including a
10 stored value card or device, which contains a microprocessor
11 chip, magnetic stripe, or other means for the storage of
12 information, that is prefunded and for which the value is
13 decremented upon each use, but does not include a card or other
14 tangible object that is redeemable by the issuer in goods or
15 services.

16 "Executive officer" means the licensee's president,
17 chairman of the executive committee, senior officer responsible
18 for the licensee's business, chief financial officer, or any
19 other person who performs similar functions.

20 "Key shareholder" means any person, or group of persons
21 acting in concert, who is the owner of twenty-five per cent or
22 more of any voting class of an applicant's stock.

1 "License" means a license under this chapter.

2 "Licensee" means a person licensed under this chapter.

3 "Material litigation" means any litigation that, according
4 to generally accepted accounting principles, is deemed
5 significant to an applicant's or licensee's financial health and
6 would be required to be referenced in the applicant's or
7 licensee's annual audited financial statements, report to
8 shareholders, or similar documents.

9 "Monetary value" means a medium of exchange, whether or not
10 redeemable in money.

11 "Money transmission" means to engage in the business of
12 selling or issuing payment instruments or of receiving money or
13 monetary value for transmission to a location within or outside
14 the United States by any and all means, including wire,
15 facsimile, or electronic transfer.

16 "Outstanding payment instrument" means any payment
17 instrument issued by the licensee that has been sold in the
18 United States:

19 (1) Directly by the licensee; or

20 (2) By an authorized delegate of the licensee in the

21 United States, which has been reported to the licensee

1 as having been sold, and which has not yet been paid
2 by or for the licensee.

3 "Payment instrument" means any electronic or written check,
4 draft, money order, traveler's check, or other electronic or
5 written instrument or order for the transmission or payment of
6 money, sold or issued to one or more persons, whether or not
7 such instrument is negotiable. The term "payment instrument"
8 does not include any credit card voucher, any letter of credit,
9 or any instrument that is redeemable by the issuer in goods or
10 services.

11 "Permissible investments" means:

- 12 (1) Cash;
- 13 (2) Certificates of deposit or other debt obligations of a
14 financial institution, either domestic or foreign;
- 15 (3) Bills of exchange or time drafts drawn on and accepted
16 by a commercial bank, known as bankers' acceptances,
17 that are eligible for purchase by member banks of the
18 Federal Reserve system;
- 19 (4) Any investment bearing a rating of one of the three
20 highest grades as defined by a nationally recognized
21 organization that rates such securities;

- 1 (5) Investment securities that are obligations of the
2 United States, its agencies, or its instrumentalities;
3 obligations that are guaranteed fully as to principal
4 and interest of the United States; or any obligations
5 of any state, municipality, or any political
6 subdivision thereof;
- 7 (6) Shares in a money market mutual fund; interest-bearing
8 bills, notes, or bonds; debentures or stock traded on
9 any national securities exchange or on a national
10 over-the-counter market; mutual funds primarily
11 composed of these securities; or a fund composed of
12 one or more permissible investments as set forth in
13 this subsection;
- 14 (7) Any demand borrowing agreement or agreements made with
15 a corporation or a subsidiary of a corporation whose
16 capital stock is listed on a national exchange;
- 17 (8) Receivables which are due to a licensee from its
18 authorized delegates pursuant to a contract under
19 section -21, that are not past due or doubtful of
20 collection; or
- 21 (9) Any other investments or security device approved by
22 the commissioner.

1 "Person" means any individual, partnership, limited
2 liability company, association, joint-stock association, trust,
3 or corporation.

4 "Remit" means:

5 (1) To make direct payment of the funds to the licensee or
6 its representatives authorized to receive those funds;
7 or

8 (2) To deposit the funds in a bank, credit union, savings
9 and loan association, savings bank, financial services
10 loan company, or other similar financial institution
11 in an account specified by the licensee.

12 "Stored value" means monetary value that is evidenced by an
13 electronic record.

14 § -5 Exclusions. (a) This chapter shall not apply to:

- 15 (1) The United States or any department, agency, or
16 instrumentality thereof;
- 17 (2) The United States Post Office;
- 18 (3) The State or any political subdivisions thereof;
- 19 (4) Banks, bank holding companies, credit unions, building
20 and loan associations, savings and loan associations,
21 savings banks, financial services loan companies, or
22 mutual banks organized under the laws of the United

1 States or any state, provided that they do not issue
2 or sell payment instruments through authorized
3 delegates who are not banks, bank holding companies,
4 credit unions, building and loan associations, savings
5 and loan associations, savings banks, financial
6 services loan companies, or mutual banks; and

7 (5) The electronic transfer of government benefits for any
8 federal, state, or county governmental agency as
9 defined in Federal Reserve Board Regulation E, by a
10 contractor for and on behalf of the United States or
11 any department, agency, or instrumentality thereof, or
12 any state or any political subdivisions thereof.

13 (b) Authorized delegates of a licensee acting within the
14 scope of authority conferred by a written contract under
15 section -21 shall not be required to obtain a license
16 pursuant to this chapter.

17 § -6 **License qualifications.** (a) Each licensee shall
18 at all times have a net worth of not less than \$100,000,
19 calculated in accordance with generally accepted accounting
20 principles.

21 (b) Each corporate applicant, at the time of filing an
22 application and at all times after a license is issued, shall be

1 in good standing in the state of its incorporation. All
 2 non-corporate applicants, at the time of filing an application
 3 for a license under this chapter and at all times after a
 4 license is issued, shall be registered or qualified to do
 5 business in the State.

6 **§ -7 Bond or other security device.** (a) Each
 7 application for a license shall be accompanied by a surety bond,
 8 irrevocable letter of credit, or other similar security device
 9 acceptable to the commissioner in the amount of \$100,000. The
 10 commissioner may increase the amount of the bond or security
 11 device to a maximum of \$500,000 upon the basis of the impaired
 12 financial condition of a licensee, as evidenced by a reduction
 13 in net worth, financial losses, or other relevant criteria.

14 (b) The security device shall be in a form satisfactory to
 15 the commissioner and shall run to the State for the benefit of
 16 any claimants against the licensee to secure the faithful
 17 performance of the obligations of the licensee relating to the
 18 receipt, handling, transmission, and payment of money in
 19 connection with the sale and issuance of payment instruments or
 20 transmission of money. In the case of a bond, the aggregate
 21 liability of the surety shall not exceed the principal sum of
 22 the bond. Claimants against the licensee may bring suit

1 directly on the security device or the commissioner may bring
2 suit on behalf of such claimants, either in one action or in
3 successive actions.

4 (c) In lieu of these security devices or of any portion of
5 the principal amount thereof, as required by this section, the
6 licensee may deposit with the commissioner, or with such banks
7 in this State as the licensee may designate and the commissioner
8 may approve, cash, interest-bearing stocks and bonds, notes,
9 debentures, or other obligations:

10 (1) Of the United States or any agency or instrumentality
11 thereof;

12 (2) Guaranteed by the United States;

13 (3) Of the State, a county, or instrumentality of the
14 State; or

15 (4) Guaranteed by the State

16 in an aggregate amount based upon the principal amount or market
17 value, whichever is lower, of not less than the amount of the
18 security device or portion thereof.

19 (d) The securities or cash deposited pursuant to
20 subsection (c) shall secure the same obligations as would the
21 security device, but the depositor shall:

1 (1) Be entitled to receive all interest and dividends
2 thereon;

3 (2) Have the right, with the approval of the commissioner,
4 to substitute other securities for those deposited;
5 and

6 (3) Be required to substitute other securities for those
7 deposited upon a showing of good cause and written
8 order of the commissioner.

9 (e) The security device shall remain in effect until
10 cancellation, which may occur only after thirty days' written
11 notice to the commissioner. Cancellation shall not affect any
12 liability incurred or accrued during the period.

13 (f) The security device shall remain in place for no
14 longer than five years after the licensee ceases money
15 transmission operations in the State. Notwithstanding this
16 provision, the commissioner may permit the security device to be
17 reduced or eliminated prior to that time to the extent that the
18 amount of the licensee's payment instruments outstanding in the
19 State are reduced. The commissioner may also permit a licensee
20 to substitute a letter of credit or other form of security
21 device acceptable to the commissioner for the security device in

1 place at the time the licensee ceases money transmission
2 operations in the State.

3 **§ -8 Permissible investments and statutory trust.** (a)

4 A licensee shall at all times possess permissible investments
5 having an aggregate market value, calculated in accordance with
6 generally accepted accounting principles, of not less than the
7 aggregate amount of all outstanding payment instruments issued
8 or sold by the licensee in the United States. This requirement
9 may be waived by the commissioner if the dollar volume of a
10 licensee's outstanding payment instruments does not exceed the
11 bond or other security devices posted by the licensee pursuant
12 to section -7.

13 (b) Permissible investments, even if commingled with other
14 assets of the licensee, shall be held in trust for the benefit
15 of the purchasers and holders of the licensee's outstanding
16 payment instruments in the event of the bankruptcy of the
17 licensee.

18 **§ -9 Application for license.** (a) An application for a
19 license under this chapter shall be made in writing, and in a
20 form prescribed by the commissioner. Each application shall
21 contain the following:

22 (1) For all applicants:

- 1 (A) The exact name of the applicant, any fictitious
2 or trade name used by the applicant in the
3 conduct of its business, the applicant's
4 principal address, and the location of the
5 applicant's business records;
- 6 (B) The history of the applicant's material
7 litigation and criminal convictions for the
8 five-year period prior to the date of the
9 application;
- 10 (C) A description of the activities conducted by the
11 applicant and a history of operations;
- 12 (D) A description of the business activities in which
13 the applicant seeks to engage within the State;
- 14 (E) A list identifying the applicant's proposed
15 authorized delegates in the State, if any, at the
16 time of the filing of the license application;
- 17 (F) A sample authorized delegate contract, if
18 applicable;
- 19 (G) A sample form of payment instrument, if
20 applicable;

1 (H) The locations where the applicant and its
2 authorized delegates, if any, propose to conduct
3 their licensed activities in the State; and

4 (I) The name and address of the clearing bank or
5 banks on which the applicant's payment
6 instruments will be drawn or through which such
7 payment instruments will be payable;

8 (2) If the applicant is a corporation, the applicant shall
9 also provide:

10 (A) The date of the applicant's incorporation and
11 state of incorporation;

12 (B) A certificate of good standing from the state in
13 which the applicant was incorporated;

14 (C) A description of the corporate structure of the
15 applicant, including the identity of any parent
16 or subsidiary of the applicant, and the
17 disclosure of whether any parent or subsidiary is
18 publicly traded on any stock exchange;

19 (D) The name, business and residence address, and
20 employment history, for the past five years, of
21 the applicant's executive officers and the
22 officers or managers who will be in charge of the

1 applicant's activities to be licensed under this
2 chapter;

3 (E) The name, business and residence address, and
4 employment history of any key shareholder of the
5 applicant, for the period of five years before
6 the date of the application;

7 (F) For the five-year period prior to the date of the
8 application, the history of material litigation
9 involving and criminal convictions of every
10 executive officer or key shareholder of the
11 applicant;

12 (G) A copy of the applicant's most recent audited
13 financial statement, including balance sheets,
14 statements of income or loss, statements of
15 changes in shareholder equity and statement of
16 changes in financial position, and, if available,
17 the applicant's audited financial statements for
18 the preceding two-year period; or, if the
19 applicant is a wholly owned subsidiary of another
20 corporation, either the parent corporation's
21 consolidated audited financial statements for the
22 current year and for the preceding two-year

1 period, or the parent corporation's Form 10K
2 reports filed with the United States Securities
3 and Exchange Commission for the prior three years
4 in lieu of the applicant's financial statements;
5 or if the applicant is a wholly owned subsidiary
6 of a corporation having its principal place of
7 business outside the United States, similar
8 documentation filed with the parent corporation's
9 non-United States regulator; and

10 (H) Copies of all filings, if any, made by the
11 applicant with the United States Securities and
12 Exchange Commission, or with a similar regulator
13 in a country other than the United States, within
14 the year preceding the date of filing of the
15 application; and

16 (3) If the applicant is not a corporation, the applicant
17 shall also provide:

18 (A) The name, business and residence address,
19 personal financial statement, and employment
20 history, for the past five years, of each
21 principal of the applicant;

1 (B) The name, business and residence address, and
2 employment history, for the past five years, of
3 any other persons who will be in charge of the
4 applicant's activities to be licensed under this
5 chapter;

6 (C) The place and date of the applicant's
7 registration or qualification to do business in
8 this State;

9 (D) The history of material litigation and criminal
10 convictions for the five-year period before the
11 date of the application for each individual
12 having any ownership interest in the applicant
13 and each individual who exercises supervisory
14 responsibility over the applicant's activities;
15 and

16 (E) Copies of the applicant's audited financial
17 statements, including balance sheets, statements
18 of income or loss, and statements of changes in
19 financial position for the current year and, if
20 available, for the preceding two-year period.

21 (b) The commissioner is authorized, for good cause shown,
22 to:

1 (1) Waive any requirement of this section relating to any
2 license application; or

3 (2) Permit an applicant to submit substituted information
4 in its license application in lieu of the information
5 required by this section.

6 § -10 **Application and license fees.** (a) Each
7 application shall be accompanied by:

8 (1) A non-refundable application fee in the amount of
9 \$1,000 plus \$100 for each additional location in the
10 State, not to exceed a maximum fee of \$4,000; and

11 (2) A license fee of \$500 plus \$100 for each additional
12 location in the State, not to exceed a maximum fee of
13 \$2,000.

14 (b) The license fee shall be refunded if the application
15 is denied.

16 § -11 **Issuance of license.** (a) Upon the filing of a
17 complete application, the commissioner shall investigate the
18 financial condition and responsibility, financial and business
19 experience, character, and general fitness of the applicant.
20 The commissioner may conduct an on-site investigation of the
21 applicant, the reasonable cost of which shall be borne by the
22 applicant.

1 (b) If the commissioner finds that:

2 (1) The applicant's business will be conducted honestly,
3 fairly, and in a manner commanding the confidence and
4 trust of the community;

5 (2) The applicant has fulfilled the requirements imposed
6 by this chapter; and

7 (3) The applicant has paid the required license fee,
8 the commissioner shall issue a license to the applicant
9 authorizing the applicant to engage in the licensed activities
10 in the State for a term of one year. If these requirements have
11 not been met, the commissioner shall deny the application in
12 writing setting forth the reasons for the denial.

13 (c) Any applicant aggrieved by a denial issued by the
14 commissioner under this chapter may submit a request for a
15 contested case hearing in accordance with chapter 91.

16 **§ -12 Renewal of license and annual report.** (a) On or
17 before December 31 of each year, each licensee shall pay to the
18 commissioner an annual license fee of \$500 plus \$100 for each
19 authorized delegate, not to exceed an aggregate fee of \$2,000.

20 (b) The annual license fee shall be accompanied by a
21 report, in a form prescribed by the commissioner, which shall
22 include:

- 1 (1) A copy of the licensee's most recent audited annual
2 financial statement, including balance sheets,
3 statement of income or loss, statement of changes in
4 shareholder's equity, and statement of changes in
5 financial position; or, if a licensee is a wholly
6 owned subsidiary of another corporation, the
7 consolidated audited annual financial statement of the
8 parent corporation in lieu of the licensee's audited
9 annual financial statement;
- 10 (2) For the most recent quarter for which data is
11 available prior to the date of the filing of the
12 renewal application, but in no event more than one
13 hundred twenty days prior to the renewal date, the
14 licensee must provide the number of payment
15 instruments sold by the licensee in the State, the
16 dollar amount of those instruments, and the dollar
17 amounts of those instruments currently outstanding;
- 18 (3) Any material changes to any of the information
19 submitted by the licensee on its original application
20 which have not previously been reported to the
21 commissioner on any other report required to be filed
22 under this chapter;

1 (4) A list of the licensee's permissible investments; and

2 (5) A list of the locations, if any, within this State
3 where business regulated by this chapter is being
4 conducted by either the licensee or the licensee's
5 authorized delegates.

6 (c) A licensee that has not filed a renewal report or paid
7 its annual license fee by the renewal filing deadline, and has
8 not been granted an extension of time to do so by the
9 commissioner, shall have its license suspended on the renewal
10 date. The licensee has thirty days after its license is
11 suspended to file a renewal report and pay the annual license
12 fee plus \$100 for each business day after suspension that the
13 commissioner does not receive the renewal report and the annual
14 license fee. The commissioner, for good cause, may grant an
15 extension of the renewal date or reduce or suspend the \$100 per
16 day late filing fee.

17 § -13 **Licensee liability.** A licensee's responsibility
18 to any person for a money transmission conducted on that
19 person's behalf by the licensee or the licensee's authorized
20 delegate shall be limited to the amount of money transmitted,
21 the face amount, or the purchase amount of the payment
22 instrument.

1 **§ -14 Extraordinary reporting requirements.** Within
2 fifteen business days of the occurrence of any one of the events
3 listed below, a licensee shall file a written report with the
4 commissioner describing the event and its expected impact on the
5 licensee's activities in this State. These events are:

- 6 (1) Any material changes in information provided in a
7 licensee's application or renewal report;
- 8 (2) The filing for bankruptcy or reorganization by the
9 licensee;
- 10 (3) The institution of revocation or suspension
11 proceedings against the licensee by any state or
12 governmental authority relating to the licensees'
13 money transmission activities;
- 14 (4) Any felony indictment of the licensee or any of its
15 key officers or directors related to money
16 transmission activities; or
- 17 (5) Any felony conviction of the licensee or any of its
18 key officers or directors related to money
19 transmission activities.

20 **§ -15 Changes in control of a licensee.** (a) A licensee
21 shall give the commissioner written notice of a proposed change
22 of control and request approval of the proposal.

1 (b) After review of a request for approval under
2 subsection (a), the commissioner may require the licensee to
3 provide additional information concerning the persons proposed
4 to assume control of the licensee. The additional information
5 must be limited to similar information required of the licensee
6 or persons in control of the licensee as part of its original
7 license or renewal application under sections -9 and -12.

8 (c) The commissioner shall approve a request for change of
9 control under subsection (a) if, after investigation, the
10 commissioner determines that the person or group of persons
11 requesting approval has the competence, experience, character,
12 and general fitness to operate the licensee or person in control
13 of the licensee in a lawful and proper manner, and that the
14 interests of the public will not be jeopardized by the change of
15 control.

16 (d) The following persons are exempt from the requirements
17 of subsection (a), but the licensee shall notify the
18 commissioner of a change of control:

- 19 (1) A person who acts as a proxy for the sole purpose of
20 voting at a designated meeting of the security holders
21 or holders of voting interests of a licensee or person
22 in control of a licensee;

1 (2) A person who acquires control of a licensee by devise
2 or descent;

3 (3) A person who acquires control as a personal
4 representative, custodian, guardian, conservator,
5 trustee, or as an officer appointed by a court of
6 competent jurisdiction or by operation of law; or

7 (4) A person who the commissioner by rule or order exempts
8 in the public interest.

9 (e) Subsection (a) does not apply to public offerings of
10 securities.

11 (f) Before filing a request for approval for a change in
12 control, a person may request in writing a determination from
13 the commissioner whether the person would be considered a person
14 in control of a licensee upon consummation of a proposed
15 transaction. If the commissioner determines that the person
16 would not be a person in control of a licensee, the commissioner
17 shall enter an order to that effect and the proposed person and
18 transaction is not subject to the requirements of subsections
19 (a) through (c).

20 § -16 Money laundering reports. (a) Every licensee and
21 its authorized delegates shall file with the commissioner all
22 reports relating to transactions in the State, as required by

1 federal recordkeeping and reporting requirements in Title 31
2 United States Code Section 5311, 31 Code of Federal Regulations
3 Part 103, and other federal and state laws pertaining to money
4 laundering.

5 (b) The timely filing of a complete and accurate report
6 with the appropriate federal agency satisfies subsection (a),
7 unless the commissioner notifies the licensee that reports of
8 this type are not being regularly and comprehensively
9 transmitted by the federal agency.

10 § -17 **Examinations.** (a) The commissioner may conduct
11 an annual on-site examination of a licensee upon sixty days
12 written notice to the licensee. The commissioner may examine a
13 licensee without prior notice if the commissioner has a
14 reasonable basis to believe that the licensee is not in
15 compliance with this chapter. When the commissioner concludes
16 that an on-site examination of a licensee is necessary, the
17 licensee shall pay all reasonably incurred costs of the
18 examination. The on-site examination may be conducted in
19 conjunction with examinations performed by representatives of
20 agencies of the federal government, or of another state or
21 states. The commissioner, in lieu of an on-site examination,
22 may accept the examination report of the federal government, an

1 agency of another state, or an independent accounting firm.
2 Accepted reports are considered, for all purposes, an official
3 report of the commissioner. The licensee shall bear the
4 reasonable expenses incurred by the division, agencies of
5 another state, or an independent licensed or certified public
6 accountant in conducting an examination or making a report.

7 (b) The commissioner may request financial data from a
8 licensee in addition to that required under section -12, or
9 conduct an on-site examination of any authorized delegate or
10 location of a licensee within the State without prior notice to
11 the authorized delegate or licensee only if the commissioner has
12 a reasonable basis to believe that the licensee or authorized
13 delegate is not in compliance with this chapter. When the
14 commissioner examines an authorized delegate's operations, the
15 authorized delegate shall pay all reasonably incurred costs of
16 such examination. When the commissioner examines a licensee's
17 location within the State, the licensee shall pay all reasonably
18 incurred costs of such examination.

19 § -18 **Maintenance of records.** (a) Each licensee shall
20 make, keep, preserve, and make available for inspection by the
21 commissioner the following books, accounts, and other records
22 for a period of three years:

- 1 (1) A record or records of each payment instrument;
- 2 (2) A general ledger containing all assets, liability,
3 capital, income, and expense accounts that shall be
4 posted at least monthly;
- 5 (3) Bank statements and bank reconciliation records;
- 6 (4) Records of outstanding payment instruments;
- 7 (5) Records of each payment instrument paid within the
8 three-year period;
- 9 (6) A list of the names and addresses of all of the
10 licensee's authorized delegates; and
- 11 (7) Any other records the commissioner reasonably requires
12 by rule.

13 (b) Maintenance of documents in a photographic,
14 electronic, or other similar form shall comply with this
15 section.

16 (c) Records may be maintained at a location outside the
17 State, providing these records are made accessible to the
18 commissioner on seven business days' written notice.

19 **§ -19 Confidentiality of records.** (a) The commissioner
20 and all employees, contractors, attorneys contracted or employed
21 by the State, and appointees of the division of financial
22 institutions shall not divulge or furnish any information in

1 their possession or obtained by them in the course of their
2 official duties to persons outside the division of financial
3 institutions, except the director of commerce and consumer
4 affairs, or unless otherwise permitted by this section or any
5 other law regulating licensees or authorized delegates, in which
6 case the disclosure shall not authorize or permit any further
7 disclosure of the information. The disclosures prohibited by
8 this section shall include, without limitation, information that
9 is:

- 10 (1) Privileged or exempt from disclosure under any federal
11 or state law;
- 12 (2) Related to an examination performed by or on behalf of
13 the commissioner or contained in any report of
14 examination;
- 15 (3) Contained in any report submitted to or for the use of
16 the commissioner, except for the nonproprietary
17 portions of applications;
- 18 (4) Related to the business, personal, or financial
19 affairs of any person and is furnished to or for the
20 use of the commissioner in confidence;

- 1 (5) Privileged or confidential and related to trade
2 secrets and commercial or financial information
3 obtained from a person;
- 4 (6) Obtained pursuant to any lawful investigation for the
5 purpose of enforcing the laws regulating licensees or
6 authorized delegates;
- 7 (7) Related solely to the internal personnel rules or
8 other internal practices of the commissioner;
- 9 (8) Contained in personnel, medical, and similar files,
10 including financial files, the disclosure of which
11 would constitute a clearly unwarranted invasion of
12 personal privacy; or
- 13 (9) Contained in inter-agency and intra-agency
14 communications, whether or not contained in written
15 memoranda, letters, tapes, or records, that would not
16 be routinely available by law to a private party,
17 including memoranda, reports, and other documents
18 prepared by the staff of the commissioner.
- 19 (b) Any information identified in subsection (a) is
20 confidential and not subject to subpoena or other legal process.
- 21 (c) The commissioner shall furnish a copy of each report
22 of examination to the licensee or authorized delegate examined.

1 The report and its contents shall remain the property of the
2 commissioner and shall not be disclosed to any person who is not
3 an officer, director, employee, authorized auditor, attorney,
4 other consultant, or advisor of the licensee or authorized
5 delegate. Any person who has received the report from the
6 licensee or authorized delegate shall be bound by the
7 confidentiality provisions of this section. The report and its
8 contents shall not be subject to subpoena or other legal process
9 requiring disclosure.

10 § -20 **Money transmitter receipts and refunds.** (a) Each
11 licensee who receives money or monetary value for transmission
12 and the licensee's authorized delegates shall transmit the
13 monetary equivalent of all money or equivalent value received
14 from a customer for transmission, net of any fees, or issue
15 instructions committing the money or its monetary equivalent, to
16 the person designated by the customer within ten business days
17 after receiving the money or equivalent value, unless otherwise
18 ordered by the customer or unless the licensee or its authorized
19 delegate has reason to believe that a crime has occurred, is
20 occurring, or may occur as a result of transmitting the money.

21 (b) Each licensee who receives money or monetary value for
22 transmission and the licensee's authorized delegates shall

1 provide a receipt to the customer that clearly states the amount
2 of money or equivalent value presented for transmission and the
3 total of the fees charged by the licensee. If the rate of
4 exchange for a money transmission to be paid in the currency of
5 another country is fixed by the licensee for that transaction at
6 the time the money transmission is initiated, the receipt
7 provided to the customer shall disclose the rate of exchange for
8 that transaction, and the duration, if any, for the payment to
9 be made at that fixed rate of exchange. If the rate of exchange
10 for a money transmission to be paid in the currency of another
11 country is not fixed at the time the money transmission is sent,
12 the receipt provided to the customer shall disclose that the
13 rate of exchange for that transaction will be set at the time
14 the recipient of the money transmission picks up the funds in
15 the foreign country.

16 (c) For purposes of this section:

17 (1) Money is considered to have been transmitted when it
18 is available to the person designated by the customer,
19 whether or not the designated person has taken
20 possession of the money;

21 (2) "Monetary equivalent," when used in connection with a
22 money transmission in which the customer provides the

1 licensee or its authorized delegate with the money of
2 one government, and the designated recipient is to
3 receive the money of another government, means the
4 amount of money, in the currency of the government
5 that the designated recipient is to receive, as
6 converted at the retail exchange rate offered by the
7 licensee or its authorized delegate to the customer in
8 connection with the transaction; and

9 (3) "Fees" do not include revenue that a licensee or its
10 authorized delegate generates, in connection with a
11 money transmission, in converting the money of one
12 government into the money of another government.

13 (d) Each licensee who receives money or monetary value for
14 transmission and the licensee's authorized delegates shall
15 refund to the customer all moneys received for transmittal
16 within ten days of receipt of a written request for a refund
17 unless any of the following occurs:

18 (1) The moneys have been transmitted and delivered to the
19 person designated by the customer prior to receipt of
20 the written request for a refund;

21 (2) Instructions have been given committing an equivalent
22 amount of money to the person designated by the

1 customer prior to receipt of a written request for a
2 refund;

3 (3) The licensee or its authorized delegate has reason to
4 believe that a crime has occurred, is occurring, or
5 may occur as a result of transmitting the money as
6 requested by the customer or refunding the money as
7 requested by the customer; or

8 (4) The licensee is otherwise barred by law from making a
9 refund.

10 § -21 **Authorized delegate contracts.** Licensees desiring
11 to conduct licensed activities through authorized delegates
12 shall authorize each delegate to operate pursuant to an express
13 written contract. These contracts shall provide the following:

14 (1) That the licensee appoints the person as the
15 licensee's delegate with authority to engage in money
16 transmission on behalf of the licensee;

17 (2) That neither a licensee nor an authorized delegate may
18 authorize sub-delegates without the written consent of
19 the commissioner; and

20 (3) That the licensee is subject to supervision and rule
21 by the commissioner.

1 § -22 **Authorized delegate conduct.** (a) An authorized
2 delegate of a licensee shall not make any fraudulent or false
3 statement or misrepresentation to a licensee or to the
4 commissioner.

5 (b) All money transmissions, sales, or issuances of
6 payment instruments conducted by authorized delegates shall be
7 in accordance with the licensee's written procedures provided to
8 the authorized delegate.

9 (c) An authorized delegate shall remit all money owing to
10 the licensee in accordance with the terms of the contract
11 between the licensee and the authorized delegate. The
12 commissioner shall have the discretion to set, by rule, the
13 maximum remittance time.

14 (d) An authorized delegate is deemed to consent to the
15 commissioner's inspection, with or without prior notice to the
16 licensee or authorized delegate, of the books and records of the
17 authorized delegate when the commissioner has a reasonable basis
18 to believe that the licensee or delegate is not in compliance
19 with this chapter.

20 (e) An authorized delegate is under a duty to act only as
21 authorized under the contract with the licensee. An authorized
22 delegate which exceeds its authority is subject to cancellation

1 of its contract and further disciplinary action by the
2 commissioner.

3 (f) All funds, except fees, received by an authorized
4 delegate from the sale or delivery of a payment instrument
5 issued by a licensee or received by the delegate for
6 transmission shall, from the time the funds are received by the
7 delegate until the time when the funds or an equivalent amount
8 are remitted by the delegate to the licensee, constitute trust
9 funds owned by and belonging to the licensee. If an authorized
10 delegate commingles any trust funds with any other funds or
11 property owned or controlled by the delegate, all commingled
12 proceeds and other property of the delegate shall be impressed
13 with a trust in favor of the licensee in an amount equal to the
14 amount of the proceeds due to the licensee.

15 (g) An authorized delegate shall report to the licensee
16 the theft or loss of payment instruments within twenty-four
17 hours from the time the delegate knew or should have known of
18 the theft or loss.

19 § -23 **Prohibited practices.** It is a violation of this
20 chapter for a licensee to:

21 (1) Directly or indirectly employ any scheme, device, or
22 artifice to defraud or mislead any person, including,

- 1 but not limited to, bait and switch advertising or
2 sales practices;
- 3 (2) Directly or indirectly engage in any unfair or
4 deceptive act or practice toward any person, including
5 but not limited to any false or deceptive statement
6 about fees or other terms of a money transmission or
7 currency exchange;
- 8 (3) Directly or indirectly obtain property by fraud or
9 misrepresentation;
- 10 (4) Knowingly make, publish, or disseminate any false,
11 deceptive, or misleading information in the provision
12 of money services;
- 13 (5) Knowingly receive or take possession for personal use
14 any property of any money services business, other
15 than in payment for services rendered, and with intent
16 to defraud, and omit to make, or cause or direct to
17 omit to make, a full and true entry in the books and
18 accounts of the regulated business;
- 19 (6) Concur in making any false entry, or omit or concur in
20 omitting any material entry in the books or accounts
21 of the business;

1 (7) Knowingly make or publish to the commissioner or
2 commissioner's designee, or concur in making or
3 publishing to the commissioner or commissioner's
4 designee, any written report, exhibit, or statement of
5 the licensee's affairs or pecuniary condition
6 containing any material statement which is false, or
7 omit or concur in omitting any statement required by
8 law to be contained therein; or

9 (8) Fail to make any report or statement lawfully required
10 by the commissioner.

11 § -24 **Suspension or revocation of licenses.** (a) The
12 commissioner may suspend or revoke a license if the commissioner
13 finds that:

14 (1) Any fact or condition exists that, if it had existed
15 at the time when the licensee applied for its license,
16 would have been grounds for denying the licensee's
17 application;

18 (2) The licensee's net worth becomes inadequate and the
19 licensee, after ten days' written notice from the
20 commissioner, fails to take steps as the commissioner
21 deems necessary to remedy such deficiency;

- 1 (3) The licensee knowingly violates any material provision
- 2 of this chapter or any rule or order validly adopted
- 3 by the commissioner under authority of this chapter;
- 4 (4) The licensee is conducting its business in an unsafe
- 5 or unsound manner;
- 6 (5) The licensee is insolvent;
- 7 (6) The licensee has suspended payment of its obligations,
- 8 has made an assignment for the benefit of its
- 9 creditors, or has admitted, in writing, its inability
- 10 to pay its debts as they become due;
- 11 (7) The licensee has filed for bankruptcy, reorganization,
- 12 arrangement, or other relief under any bankruptcy law;
- 13 (8) The licensee refuses to permit the commissioner to
- 14 make any examination authorized by this chapter; or
- 15 (9) The competence, experience, character, or general
- 16 fitness of the licensee indicates that it is not in
- 17 the public interest to allow the licensee to have a
- 18 license.

19 **§ -25 Suspension or revocation of authorized delegates.**

20 (a) The commissioner may issue an order suspending or revoking

21 the designation of an authorized delegate, if the commissioner

22 finds that:

- 1 (1) The authorized delegate violates this chapter or a
2 rule adopted or an order issued under this chapter;
- 3 (2) The authorized delegate does not cooperate with an
4 examination or investigation by the commissioner;
- 5 (3) The authorized delegate engages in fraud, intentional
6 misrepresentation, or gross negligence;
- 7 (4) The authorized delegate is convicted of a violation of
8 a federal or state anti-money laundering statute;
- 9 (5) The competence, experience, character, or general
10 fitness of the authorized delegate or a person in
11 control of the delegate indicates that it is not in
12 the public interest to permit the delegate to provide
13 money services; or
- 14 (6) The authorized delegate is engaging in an unsafe or
15 unsound practice.
- 16 (b) In determining whether an authorized delegate is
17 engaging in an unsafe or unsound practice, the commissioner may
18 consider the size and condition of the delegate's provision of
19 money services, the magnitude of the loss, the gravity of the
20 violation of this chapter, and the previous conduct of the
21 delegate.

1 (c) An authorized delegate may apply for relief from a
2 suspension or revocation of designation as an authorized
3 delegate according to procedures prescribed by the commissioner.

4 § -26 Orders to cease and desist. (a) If the
5 commissioner determines a violation of this chapter or a rule
6 adopted or an order issued under this chapter by a licensee or
7 authorized delegate is:

8 (1) Likely to cause immediate and irreparable harm to the
9 licensee, the licensee's customers, or the public as a
10 result of the violation; or

11 (2) Cause insolvency or significant dissipation of assets
12 of the licensee,
13 the commissioner may issue an order requiring the licensee or
14 authorized delegate to cease and desist from the violation. The
15 order becomes effective upon service of the order upon the
16 licensee or authorized delegate.

17 (b) The commissioner may order a licensee to cease and
18 desist from providing money transmission services through an
19 authorized delegate that is the subject of a separate order
20 pursuant to section -25 by the commissioner.

1 (c) An order to cease and desist remains effective and
2 enforceable pending the completion of an administrative
3 proceeding pursuant to chapter 91.

4 (d) A licensee or an authorized delegate that is served
5 with an order to cease and desist may petition the circuit court
6 for a judicial order setting aside, limiting, or suspending the
7 enforcement, operation, or effectiveness of the order pending
8 the completion of an administrative proceeding pursuant to
9 sections -31 or -32.

10 (e) The commissioner shall commence an administrative
11 proceeding pursuant to chapter 91 within twenty days after
12 issuing an order to cease and desist.

13 (f) The commissioner may apply to the circuit court for an
14 appropriate order to protect the public interest.

15 § -27 **Consent orders.** The commissioner may enter into a
16 consent order at any time with a person to resolve a matter
17 arising under this chapter. A consent order must be signed by
18 the person to whom the order is issued or by the person's
19 authorized representative, and must indicate agreement with the
20 terms contained in the order. A consent order may provide that
21 it does not constitute an admission by a person that this

1 chapter or a rule adopted or an order issued under this chapter
2 has been violated.

3 **§ -28 Civil penalties.** The commissioner may assess a
4 fine against a person who violates this chapter or a rule
5 adopted or an order issued under this chapter in an amount not
6 to exceed \$500 per day for each day the violation is
7 outstanding, plus the state's costs and expenses for the
8 investigation and prosecution of the matter, including
9 reasonable attorneys' fees.

10 **§ -29 Criminal penalties.** (a) A person who
11 intentionally makes a false statement, misrepresentation, or
12 false certification in a record filed or required to be
13 maintained under this chapter, who intentionally makes a false
14 entry, or who omits a material entry in such a record shall be
15 guilty of a class C felony.

16 (b) An individual who knowingly engages in any activity
17 for which a license is required under this chapter, without
18 being licensed under this chapter, shall be guilty of a
19 misdemeanor, and be subject to a fine in an amount not to exceed
20 \$1,000, imprisonment of not more than one year, or both, and
21 each day's violation shall be deemed a separate offense.

1 § -30 **Unlicensed persons.** (a) If the commissioner has
2 reason to believe that a person has violated or is violating
3 section -3, the commissioner may issue an order to show cause
4 why an order to cease and desist should not issue requiring that
5 the person cease and desist from the violation of section -3.

6 (b) If the commissioner has reason to believe that a
7 person has violated or is violating section -3, the
8 commissioner may petition the circuit court for the issuance of
9 a temporary restraining order if the public would be irreparably
10 harmed.

11 (c) An order to cease and desist becomes effective upon
12 service of the order upon the person.

13 (d) An order to cease and desist remains effective and
14 enforceable pending the completion of an administrative
15 proceeding pursuant to section -26.

16 (e) A person who is served with an order to cease and
17 desist for violating section -3 may petition the circuit
18 court for a judicial order setting aside, limiting, or
19 suspending the enforcement, operation, or effectiveness of the
20 order to cease and desist pending the completion of an
21 administrative proceeding pursuant to section -26.

1 (f) The commissioner shall commence an administrative
2 proceeding within twenty days after issuing an order to cease
3 and desist.

4 § -31 **Administrative procedures.** All administrative
5 proceedings under this chapter shall be conducted in accordance
6 with chapter 91.

7 § -32 **Hearings.** Except as otherwise provided in
8 sections -12(c) and -26, the commissioner may not suspend
9 or revoke a license, issue an order to cease and desist, suspend
10 or revoke the designation of an authorized delegate, or assess a
11 civil penalty without notice and an opportunity to be heard.

12 § -33 **Division functions.** (a) The division shall
13 exercise all administrative functions of the State in relation
14 to the regulation, supervision, and licensing of money
15 transmitters.

16 (b) The division may interpret and carry out the
17 provisions of this chapter."

18 SECTION 2. A person who would be regulated under this Act
19 shall not be required to comply with its provisions until
20 December 31, 2006, but may elect to do so before
21 December 31, 2006. A person who files an application for a
22 license pursuant to this Act before December 31, 2006, and whose

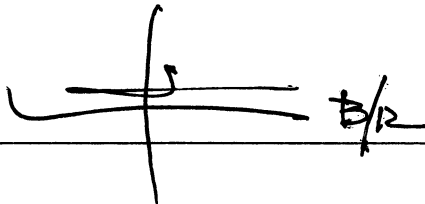
S.B. NO. 2143

1 application is determined to be complete by the commissioner on
2 or before December 31, 2006, shall be deemed in compliance with
3 the licensing provisions of this chapter until such time as the
4 license is issued or denied by the commissioner.

5 SECTION 3. This Act shall take effect on approval.

6

INTRODUCED BY:

 B/R

Clarence K. Jeschke

SB 2143

Report Title:

Money Transmitters

Description:

Regulates money transmitters.

