

JAN 22 2008

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A BILL FOR AN ACT

RELATING TO MONEY TRANSMITTERS.

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

1 SECTION 1. Chapter 489D, Hawaii Revised Statutes, is
2 amended by adding three new sections to be appropriately
3 designated and to read as follows:
4 "§489D- Name change. To change its name, its fictitious
5 name, or its trade name, a money transmitter shall file an
6 application with the commissioner and pay a nonrefundable fee of
7 \$250 or such greater amount as the commissioner shall establish
8 by rule pursuant to chapter 91. The application shall be
9 approved if the commissioner is satisfied that the new name
10 complies with all applicable laws. Any change of name shall not
11 affect a money transmitter's rights, liabilities, or obligations
12 existing prior to the effective date thereof, and no documents
13 of transfer shall be necessary to preserve such rights,
14 liabilities, or obligations; provided that the commissioner may
15 require notice to be given to the public and other governmental
16 agencies.

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1 **§489D- Fees.** The commissioner, by rules adopted in
2 accordance with chapter 91, may set reasonable fee amounts to be
3 collected by the division in connection with its regulatory
4 functions, including, without limitation, any fees for renewals,
5 applications, licenses, and examinations. Unless otherwise
6 provided by statute, all such fees shall be deposited into the
7 compliance resolution fund established pursuant to section 26-
8 9(o).

9 **§489D- Limited exemption for financial institutions;**
10 **financial institutions as authorized delegates.** (a) Banks,
11 bank holding companies, credit unions, building and loan
12 associations, savings and loan associations, savings banks,
13 financial services loan companies, and mutual banks organized
14 under the laws of the United States or any state shall be exempt
15 from the licensing and examination provisions of this chapter.

16 (b) An applicant or licensee may appoint an entity
17 described in subsection (a) as an authorized delegate.

18 (c) When submitting an application for a license pursuant
19 to section 489D-9, or when submitting an annual report pursuant
20 to section 489D-12, an applicant or licensee that appoints an
21 entity described in subsection (a) as an authorized delegate
22 shall include that entity's name and the locations in this State

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1 where that entity will conduct its authorized delegate
2 activities.

3 (d) When computing the application and license fees
4 required to be paid pursuant to sections 489D-10 and 489D-12, an
5 applicant or licensee that appoints an entity described in
6 subsection (a) as an authorized delegate shall include all of
7 the locations in this State where that entity will conduct its
8 authorized delegate activities."

9 SECTION 2. Section 489D-4, Hawaii Revised Statutes, is
10 amended by adding a new definition to be appropriately inserted
11 and to read as follows:

12 "Principal" means any person, or group of persons acting
13 in concert, who exercises control over or has a twenty-five per
14 cent ownership interest in an applicant or licensee under this
15 chapter. Principal also includes a manager and anyone else who
16 supervises or is in charge of the applicant or licensee."

17 SECTION 3. Section 489D-4, Hawaii Revised Statutes, is
18 amended by amending the definition of "permissible investments"
19 to read as follows:

20 "Permissible investments" means:

21 (1) Cash;

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- 1 (2) Certificates of deposit or other debt obligations of a
2 financial institution, either domestic or foreign;
- 3 (3) Bills of exchange or time drafts drawn on and accepted
4 by a commercial bank, known as bankers' acceptances,
5 that are eligible for purchase by member banks of the
6 federal reserve system;
- 7 (4) Any investment bearing a rating of one of the three
8 highest grades as defined by a nationally recognized
9 organization that rates securities;
- 10 (5) Investment securities that are obligations of the
11 United States, its agencies, or its instrumentalities,
12 obligations that are guaranteed fully as to principal
13 and interest [ef] by the United States, or any
14 obligations of any state, municipality, or any
15 political subdivision thereof;
- 16 (6) Shares in a money market mutual fund, interest-bearing
17 bills, notes, or bonds, debentures or stock traded on
18 any national securities exchange or on a national
19 over-the-counter market, mutual funds primarily
20 composed of these securities, or a fund composed of
21 one or more permissible investments as set forth in
22 this subsection;

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- 1 (7) Any demand borrowing agreement or agreements made with
2 a corporation or a subsidiary of a corporation whose
3 capital stock is listed on a national exchange;
- 4 (8) Receivables that are due to a licensee from its
5 authorized delegates pursuant to a contract under
6 section 489D-21, that are not past due or doubtful of
7 collection; or
- 8 (9) Any other investments or security device approved by
9 the commissioner."

10 SECTION 4. Section 489D-5, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

- 12 "(a) This chapter shall not apply to:
- 13 (1) The United States or any department, agency, or
14 instrumentality thereof;
- 15 (2) The United States Postal Service;
- 16 (3) The State or any political subdivisions thereof;
- 17 ~~[(4) Banks, bank holding companies, credit unions,~~
18 ~~building and loan associations, savings and loan~~
19 ~~associations, savings banks, financial services loan~~
20 ~~companies, or mutual banks organized under the laws of~~
21 ~~the United States or any state, even if those entities~~
22 ~~act as authorized delegates for licensees and provided~~

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

7 [~~5~~] (4) The electronic transfer of government benefits
8 for any federal, state, or county governmental agency
9 as 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 SECTION 5. Section 489D-9, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) An application for a license under this chapter shall
16 be made in writing, and in a form prescribed by the
17 commissioner. Each application shall contain the following:

18 (1) For all applicants:

19 (A) The exact name of the applicant, any fictitious
20 or trade name used by the applicant in the
21 conduct of its business, the applicant's

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

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- 1 instruments will be drawn or through which
2 payment instruments will be payable;
- 3 (J) Disclosure of any pending or final suspension,
4 revocation, or other enforcement action by any
5 state or governmental authority for the five-year
6 period prior to the date of the application; and
- 7 (K) Any other information the commissioner may
8 require;
- 9 (2) If the applicant is a corporation, the applicant shall
10 also provide:
- 11 (A) The date of the applicant's incorporation and
12 state of incorporation;
- 13 (B) A certificate of good standing from the state in
14 which the applicant was incorporated;
- 15 (C) A description of the corporate structure of the
16 applicant, including the identity of any parent
17 or subsidiary company of the applicant, and the
18 disclosure of whether any parent or subsidiary
19 company is publicly traded on any stock exchange;
- 20 (D) The name, business and residence address, and
21 employment history, for the past five years, of
22 the applicant's executive officers and the

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1 officers or managers who will be in charge of the
2 applicant's activities to be licensed under this
3 chapter;

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

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

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

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

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

17 (I) Information necessary to conduct a criminal
18 history record check in accordance with section
19 846-2.7 about each of the executive officers, key
20 shareholders, and managers who will be in charge
21 of the applicant's activities, accompanied by the

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1 appropriate payment of the applicable fee for
2 each record check; and

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

5 (A) The name, business and residence address,
6 personal financial statement, and employment
7 history, for the past five years, of each
8 principal of the applicant;

9 (B) The name, business and residence address, and
10 employment history, for the past five years, of
11 any other persons who will be in charge of the
12 applicant's activities to be licensed under this
13 chapter;

14 (C) The place and date of the applicant's
15 registration or qualification to do business in
16 this State;

17 (D) The history of material litigation and criminal
18 convictions for the five-year period before the
19 date of the application for each individual
20 having any ownership interest in the applicant
21 and each individual who exercises supervisory

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- 1 responsibility over the applicant's activities;
2 [and]
3 (E) Copies of the applicant's audited financial
4 statements, including balance sheets, statements
5 of income or loss, and statements of changes in
6 financial position for the current year and, if
7 available, for the preceding two-year period[-];
8 and
9 (F) Information necessary to conduct a criminal
10 history record check in accordance with section
11 846-2.7 about each principal of the applicant,
12 accompanied by the appropriate payment of the
13 applicable fee for each record check."

14 SECTION 6. Section 489D-10, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

- 16 "(a) Each application shall be accompanied by:
17 (1) A [~~non-refundable~~] nonrefundable application fee in
18 the amount of [~~\$1,000~~] \$2,000 plus [~~\$100~~] \$300 for
19 each additional location in the State, [~~not to exceed~~
20 ~~a maximum fee of \$4,000,~~] or such greater amount as
21 the commissioner shall establish by rule pursuant to
22 chapter 91; and

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1 (2) [A] An annual license fee of \$500 plus [~~\$100~~] \$300
2 for each additional location in the State, [~~not to~~
3 ~~exceed a maximum fee of \$2,000.~~] or such greater
4 amount as the commissioner shall establish by rule
5 pursuant to chapter 91."

6 SECTION 7. Section 489D-11, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "~~[§]~~**\$489D-11**~~[§]~~ **Issuance of license**~~[§]~~; **grounds for**
9 **denial.** (a) Upon the filing of a complete application, the
10 commissioner shall investigate the financial condition and
11 responsibility, financial and business experience, character,
12 and general fitness of the applicant. The commissioner may
13 conduct an on-site investigation of the applicant, the
14 reasonable cost of which shall be borne by the applicant.

15 (b) If the commissioner finds that:

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

19 (2) The applicant has fulfilled the requirements imposed
20 by this chapter; and

21 (3) The applicant has paid the required license fee,

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1 the commissioner shall issue a license to the applicant
2 authorizing the applicant to engage in the licensed activities
3 in the State for a term [~~of one year. If these requirements~~
4 ~~have not been met, the commissioner shall deny the application~~
5 ~~in writing setting forth the reasons for the denial.~~] expiring
6 on December 31 of the calendar year in which the license is
7 issued.

8 (c) If the commissioner is not satisfied that the
9 applicant meets all the criteria set forth for approval, the
10 commissioner shall issue a written decision denying the
11 application.

12 [~~e~~] (d) Any applicant aggrieved by a denial issued by
13 the commissioner under this chapter may submit a request for a
14 contested case hearing in accordance with chapter 91."

15 SECTION 8. Section 489D-12, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[~~+~~]**\$489D-12**[~~+~~] **Renewal of license and annual report.** (a)
18 On or before December 31 of each year, each licensee shall pay
19 to the commissioner an annual license fee of \$500, plus [~~\$100~~
20 \$300 for each [~~authorized delegate, not to exceed an aggregate~~
21 ~~fee of \$2,000.~~] additional location in the State, or such

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1 greater amount as the commissioner shall establish by rule
2 pursuant to chapter 91.

3 (b) The annual license fee shall be accompanied by a
4 report, in a form prescribed by the commissioner, which shall
5 include:

6 (1) A copy of the licensee's most recent audited annual
7 financial statement, including balance sheets,
8 statement of income or loss, statement of changes in
9 shareholder's equity, and statement of changes in
10 financial position or, if a licensee is a wholly owned
11 subsidiary of another corporation, the consolidated
12 audited annual financial statement of the parent
13 corporation in lieu of the licensee's audited annual
14 financial statement;

15 (2) For the most recent quarter for which data is
16 available prior to the date of [~~the~~] filing [~~of~~] the
17 [~~renewal application,~~] annual report, but in no event
18 more than one hundred twenty days prior to the renewal
19 date, the licensee shall provide the number of payment
20 instruments sold by the licensee in the State, the
21 dollar amount of those instruments, and the dollar
22 amounts of those instruments currently outstanding;

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- 1 (3) Any material changes to any of the information
2 submitted by the licensee on its original application
3 that have not previously been reported to the
4 commissioner on any other report required to be filed
5 under this chapter;
- 6 (4) [~~A list of the licensee's permissible investments,~~
7 and] For the most recent quarter for which data is
8 available prior to the date of filing the annual
9 report, but in no event more than one hundred twenty
10 days prior to the renewal date, a list of the
11 licensee's permissible investments, including the
12 total market value of each type of permissible
13 investment, and the total dollar amount of all
14 outstanding payment instruments issued or sold by the
15 licensee in the United States;
- 16 (5) A list of the locations, if any, within this State
17 where business regulated by this chapter is being
18 conducted by either the licensee or the licensee's
19 authorized delegates[-];
- 20 (6) Disclosure of any pending or final suspension,
21 revocation, or other enforcement action by any state
22 or governmental authority; and

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1 (7) Any other information the commissioner may require.

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

15 SECTION 9. Section 489D-14, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[~~+~~]**§489D-14**[~~-~~] **Extraordinary reporting requirements.**

18 Within fifteen business days of the occurrence of any one of the
19 events listed below, a licensee shall file a written report with
20 the commissioner describing the event and its expected impact on
21 the licensee's activities in this State. These events are:

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- 1 (1) Any material [~~changes~~] change in information provided
2 in a licensee's application or [~~renewal~~] annual
3 report;
- 4 (2) The filing for bankruptcy or reorganization by the
5 licensee;
- 6 (3) [~~Revocation or suspension proceedings~~] Pending or
7 final revocation, suspension, or other enforcement
8 action against the licensee by any state or
9 governmental authority relating to the licensee's
10 money transmission activities;
- 11 (4) Any felony indictment of the licensee or any of its
12 key shareholders, principals, executive officers [~~or~~
13 directors], or officers or managers in charge of the
14 licensee's activities, related to money transmission
15 activities; [~~or~~] and
- 16 (5) Any felony conviction of the licensee or any of its
17 key shareholders, principals, executive officers [~~or~~
18 directors], or officers or managers in charge of the
19 licensee's activities, related to money transmission
20 activities."

21 SECTION 10. Section 489D-15, Hawaii Revised Statutes, is
22 amended by amending subsection (a) to read as follows:

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1 "(a) A licensee shall [~~give~~] submit to the commissioner
2 [~~written notice~~] an application requesting approval of a
3 proposed change of control [and request approval of the
4 proposal.] of the licensee, accompanied by a nonrefundable
5 application fee of \$2,000, or such greater amount as the
6 commissioner shall establish by rule pursuant to chapter 91."

7 SECTION 11. Section 489D-19, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "~~[+]§489D-19[+]~~ **Confidentiality of records.** (a) The
10 commissioner and all employees, contractors, attorneys
11 contracted or employed by the State, and appointees of the
12 division of financial institutions shall not divulge or furnish
13 any information in their possession or obtained by them in the
14 course of their official duties to persons outside the division,
15 except to the director of commerce and consumer affairs, or
16 unless otherwise permitted by this section or any other law
17 regulating licensees or authorized delegates, in which case the
18 disclosure shall not authorize or permit any further disclosure
19 of the information. The disclosures prohibited by this section
20 shall include, without limitation, information that is:

21 (1) Privileged or exempt from disclosure under any federal
22 or state law;

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- 1 (2) Related to an examination performed by or on behalf of
2 the commissioner or contained in any report of
3 examination;
- 4 (3) Contained in any report or application submitted to,
5 or for the use of the commissioner, except for the
6 nonproprietary portions of reports and applications[+]
7 , as determined by the commissioner pursuant to rule;
- 8 (4) Related to the business, personal, or financial
9 affairs of any person and is furnished to, or for the
10 use of, the commissioner in confidence;
- 11 (5) Privileged or confidential and related to trade
12 secrets and commercial or financial information
13 obtained from a person;
- 14 (6) Obtained pursuant to any lawful investigation for the
15 purpose of enforcing the laws regulating licensees or
16 authorized delegates;
- 17 (7) Related solely to the internal personnel rules or
18 other internal practices of the commissioner;
- 19 (8) Contained in personnel, medical, and similar files,
20 including financial files, the disclosure of which
21 would constitute a clearly unwarranted invasion of
22 personal privacy; or

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1 (9) Contained in inter-agency and intra-agency
2 communications, whether or not contained in written
3 memoranda, letters, tapes, or records, that would not
4 be routinely available by law to a private party,
5 including memoranda, reports, and other documents
6 prepared by the staff of the commissioner.

7 (b) Any information identified in subsection (a) is
8 confidential and not subject to subpoena or other legal process.

9 (c) The commissioner shall furnish a copy of each report
10 of examination to the licensee [~~or~~] and to any authorized
11 delegate examined. The report and its contents shall remain the
12 property of the commissioner and shall not be disclosed to any
13 person who is not an officer, director, employee, authorized
14 auditor, attorney, other consultant, or advisor of the licensee
15 or authorized delegate. Any person who has received the report
16 from the licensee or authorized delegate shall be bound by the
17 confidentiality provisions of this section. The report and its
18 contents shall not be subject to subpoena or other legal process
19 requiring disclosure.

20 (d) The commissioner may furnish reports of examination
21 and other information relating to the examination of a licensee
22 or authorized delegate to:

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- 1 (1) The governor, the attorney general, and heads of other
2 state governmental agencies having regulatory
3 authority over the licensee or authorized delegate;
4 (2) Federal, state, or foreign regulatory agencies if the
5 requesting agency agrees to use the information only
6 for functions directly related to the exercise of its
7 appropriate supervisory authority; and
8 (3) Other agencies of the United States or a state for use
9 where necessary to investigate regulatory, civil, or
10 criminal charges in connection with the affairs of any
11 licensee or authorized delegate under the supervision
12 of the commissioner."

13 SECTION 12. Section 489D-22, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) All money transmissions, sales, or issuances of
16 payment instruments conducted by authorized delegates shall be
17 in accordance with the licensee's written procedures provided to
18 the authorized delegate[-] and shall comply with all applicable
19 federal and state laws, rules, and regulations."

20 SECTION 13. Section 489D-28, Hawaii Revised Statutes, is
21 amended to read as follows:

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1 "~~[f]~~§489D-28~~[f]~~ **Civil penalties.** (a) The commissioner
2 may assess a fine against a person who violates this chapter or
3 a rule adopted or an order issued under this chapter in an
4 amount not to exceed \$500 per day for each day the violation is
5 outstanding, plus the State's costs and expenses for the
6 investigation and prosecution of the matter, including
7 reasonable attorneys' fees.

8 (b) All administrative fines collected under authority of
9 this chapter shall be deposited in the compliance resolution
10 fund established pursuant to section 26-9(o)."

11 SECTION 14. Section 846-2.7, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

- 13 "(b) Criminal history record checks may be conducted by:
- 14 (1) The department of health on operators of adult foster
15 homes or developmental disabilities domiciliary homes
16 and their employees, as provided by section 333F-22;
 - 17 (2) The department of health on prospective employees,
18 persons seeking to serve as providers, or
19 subcontractors in positions that place them in direct
20 contact with clients when providing non-witnessed
21 direct mental health services as provided by section
22 321-171.5;

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- 1 (3) The department of health on all applicants for
2 licensure for, operators for, and prospective
3 employees, and volunteers at one or more of the
4 following: skilled nursing facility, intermediate
5 care facility, adult residential care home, expanded
6 adult residential care homes, assisted living
7 facility, home health agency, hospice, adult day
8 health center, special treatment facility, therapeutic
9 living program, intermediate care facility for the
10 mentally retarded, hospital, rural health center and
11 rehabilitation agency, and, in the case of any of the
12 above-related facilities operating in a private
13 residence, on any adult living in the facility other
14 than the client as provided by section 321-15.2;
- 15 (4) The department of education on employees, prospective
16 employees, and teacher trainees in any public school
17 in positions that necessitate close proximity to
18 children as provided by section 302A-601.5;
- 19 (5) The counties on employees and prospective employees
20 who may be in positions that place them in close
21 proximity to children in recreation or child care
22 programs and services;

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- 1 (6) The county liquor commissions on applicants for liquor
2 licenses as provided by section 281-53.5;
- 3 (7) The department of human services on operators and
4 employees of child caring institutions, child placing
5 organizations, and foster boarding homes as provided
6 by section 346-17;
- 7 (8) The department of human services on prospective
8 adoptive parents as established under section 346-
9 19.7;
- 10 (9) The department of human services on applicants to
11 operate child care facilities, prospective employees
12 of the applicant, and new employees of the provider
13 after registration or licensure as provided by section
14 346-154;
- 15 (10) The department of human services on persons exempt
16 pursuant to section 346-152 to be eligible to provide
17 child care and receive child care subsidies as
18 provided by section 346-152.5;
- 19 (11) The department of human services on operators and
20 employees of home and community-based case management
21 agencies and operators and other adults, except for

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- 1 adults in care, residing in foster family homes as
2 provided by section 346-335;
- 3 (12) The department of human services on staff members of
4 the Hawaii youth correctional facility as provided by
5 section 352-5.5;
- 6 (13) The department of human services on employees,
7 prospective employees, and volunteers of contracted
8 providers and subcontractors in positions that place
9 them in close proximity to youth when providing
10 services on behalf of the office or the Hawaii youth
11 correctional facility as provided by section 352D-4.3;
- 12 (14) The judiciary on employees and applicants at detention
13 and shelter facilities as provided by section 571-34;
- 14 (15) The department of public safety on employees and
15 prospective employees who are directly involved with
16 the treatment and care of persons committed to a
17 correctional facility or who possess police powers
18 including the power of arrest as provided by section
19 353C-5;
- 20 (16) The department of commerce and consumer affairs on
21 applicants for private detective or private guard
22 licensure as provided by section 463-9;

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1 (17) Private schools and designated organizations on
2 employees and prospective employees who may be in
3 positions that necessitate close proximity to
4 children; provided that private schools and designated
5 organizations receive only indications of the states
6 from which the national criminal history record
7 information was provided as provided by section 302C-
8 1;

9 (18) The public library system on employees and prospective
10 employees whose positions place them in close
11 proximity to children as provided by section 302A-
12 601.5;

13 (19) The State or any of its branches, political
14 subdivisions, or agencies on applicants and employees
15 holding a position that has the same type of contact
16 with children, dependent adults, or persons committed
17 to a correctional facility as other public employees
18 who hold positions that are authorized by law to
19 require criminal history record checks as a condition
20 of employment as provided by section 78-2.7;

21 (20) The department of human services on licensed adult day
22 care center operators, employees, new employees,

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- 1 subcontracted service providers and their employees,
2 and adult volunteers as provided by section 346-97;
- 3 (21) The department of human services on purchase of service
4 contracted and subcontracted service providers and
5 their employees serving clients of the adult and
6 community care services branch, as provided by section
7 346-97;
- 8 (22) The department of human services on foster grandparent
9 program, senior companion program, and respite
10 companion program participants as provided by section
11 346-97;
- 12 (23) The department of human services on contracted and
13 subcontracted service providers and their current and
14 prospective employees that provide home and community-
15 based services under Section 1915(c) of the Social
16 Security Act (42 U.S.C. §1396n(c)), as provided by
17 section 346-97; [~~and~~]
- 18 (24) The department of commerce and consumer affairs on
19 each principal of the applicant if it is a non-
20 corporate applicant for a money transmitter license;
21 and on the applicant's executive officers, key
22 shareholders, and managers who will be in charge of a

Report Title:

Money Transmitters

Description:

Amends the Money Transmitters Act, Chapter 489D, Hawaii Revised Statutes, to amend the fee structure, enhance consumer protection, make necessary clarifications, and correct errors and omissions, to effectively regulate the industry.

JUSTIFICATION SHEET

SB. NO. 3009

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO MONEY TRANSMITTERS.

PURPOSE: The purpose of this bill is to amend the Money Transmitters Act (the "Act"), chapter 489D, Hawaii Revised Statutes (HRS), to amend the fee structure, to enhance consumer protection, to make necessary clarifications, and to remedy inadvertent errors or omissions in the statute as originally enacted.

MEANS: Add three new sections to chapter 489D, HRS, and amend sections 489D-4, 489D-5(a), 489D-9(a), 489D-10(a), 489D-11, 489D-12, 489D-14, 489D-15(a), 489D-19, 489D-22(b), 489D-28, and 846-2.7, HRS.

JUSTIFICATION: New provisions are added: (1) to require an application for prior approval of the Commissioner of Financial Institutions ("Commissioner") to change a money transmitter's name or trade name, and to provide for a nonrefundable application fee of \$250 for such a request; (2) to provide that the Commissioner may set reasonable fee amounts under the Act by rule; (3) to specify that all fees and administrative fines under the Act are to be deposited to the Department's Compliance Resolution Fund; (4) to clarify that state or federally regulated financial institutions are exempt from the licensing and examination requirements of the Act; and (5) to require that when a licensee under the Act appoints any such financial institutions as its authorized delegate, it must list the name and the address of every in-State location of the financial institution when submitting a license application and annual reports, and shall include those locations when

computing the application and annual license fees required to be paid under the Act.

A definition of "principal" is added since the term is used, but not presently defined, in the Act. The definition of "permissible investments" is amended to make a minor grammatical correction in regard to obligations that are guaranteed fully as to principal and interest "by", rather than "of", the United States.

In view of the proposed new section that will clarify that state and federally-regulated financial institutions are exempt only from the licensing and examination requirements of the Act, an amendment is being made to delete the provision that currently excludes those entities from the application of the entire Act, subject to a proviso that those entities do not issue or sell payment instruments through authorized delegates that are not, themselves, financial institutions.

An amendment expands the required information in an application for a license to include disclosure of any pending or final enforcement action by state or federal regulators in the five years prior to the application, as well as any other information that the Commissioner may require. A similar amendment provides that upon renewal of an existing license, the licensee's annual report must disclose any pending or final enforcement actions by other state or federal regulators during the past year, along with any other information that the Commissioner may require.

Amendments are proposed to authorize, and to require the necessary information to obtain, criminal history background checks of certain individuals connected with an applicant for a license under the Act.

To ensure that state supervision of the money transmitter industry will be a self-sustaining regulatory program, amendments are proposed (i) to increase the nonrefundable application fee to \$2000 (currently \$1000) plus \$300 (currently \$100) for each additional in-State location, while removing the \$4,000 maximum cap on the application fee; and (ii) to increase the initial and annual license fees to \$500 plus \$300 (currently \$100) for each additional location in the State, while removing the \$2,000 maximum cap on the annual license fee. A clarification is made to explain that the initial license expires on December 31 of the year in which the license is issued.

A proposed amendment clarifies that the annual report required to renew a license must include the total market value of each type of permissible investment held by a licensee and the total dollar amount of all outstanding payment instruments issued or sold by the licensee in the United States as of a date specified by the Act, and states that the Commissioner may suspend a license if an annual report is not filed or is deemed by the Commissioner to be incomplete by the license renewal filing deadline.

The extraordinary reporting requirements are amended to require that a licensee report any pending or final enforcement actions by any agency that regulates the licensee's money transmitter activities, and to identify those individuals whose felony indictment or conviction would trigger an extraordinary reporting requirement.

The provision of the Act dealing with a change of control is amended to require the filing of an application for prior approval of such change, rather than mere notification, along with a nonrefundable application fee of \$2,000.

The records confidentiality provision of the Act is amended to (i) clarify that, consistent with rules adopted by the Commissioner, the nonproprietary portions of both applications and reports are excluded from the information the disclosure of which is prohibited by statute; and (ii) to authorize the Commissioner to furnish reports of examination and other information relating to the examination of money transmitters to the Governor, the Attorney General, other Hawaii state agencies, and federal, state, or foreign bank regulatory agencies that have regulatory authority over a money transmitter; the Commissioner may also furnish such information to other agencies of the United States or any state for use in investigating civil or criminal charges against a money transmitter. These amendments are required to conduct joint examinations and to provide for delegation of examination authority by and between the State of Hawaii and regulators of licensed money transmitters in other jurisdictions.

Authority to share such information with other interested regulatory agencies is consistent with the current authority of the Division of Financial Institutions ("DFI") to share similar information regarding the various financial institutions that DFI regulates, and reflects the fact that money transmitters frequently conduct business in more than one state and are thus subject to licensing and supervision in more than one jurisdiction. It is therefore important that the states be able to share exam-related information with each other in regulating this industry. In addition, the federal government has adopted laws to deter terrorists, and to curtail and prosecute financial crimes including, but not limited to money laundering; those laws rely in part on information obtained from state

regulatory agencies that license the money transmitter industry.

An amendment is proposed to expressly state that authorized delegates must comply with all applicable federal and state laws, rules, and regulations.

Amendments of a technical, nonsubstantive nature have also been made.

Impact on the public: The amendments will enhance and strengthen the safe and sound operation of the money transmitter industry, by helping to ensure that these businesses are not used for criminal purposes, while promoting confidence in the State's financial system and protecting the public interest. Small and medium-sized money transmitters are less likely to be affected by proposed fee increases, which are linked to the size of a licensee's in-State operations, while the larger, multi-state licensees are anticipated to have the resources to more readily absorb increased regulatory costs.

Impact on the department and other agencies: The amendments that provide for new or increased application and license fees will help ensure that an adequate level of fees is collected to operate this regulatory program on a self-sustaining basis without ongoing requests for legislative appropriations. There is no immediate impact foreseen for other agencies.

GENERAL FUND: None.

OTHER FUNDS: None. Provisions of this bill will not increase DFI costs associated with operating this regulatory program. Implementation of the Act by DFI in 2006 resulted in higher than anticipated program costs, which could not accurately be estimated prior to the implementation of the statute. The

additional fee revenues proposed by the present measure are intended to address the deficiency in program revenues to help ensure that this program will be self-sustaining going forward.

PPBS PROGRAM
DESIGNATION:

CCA-104.

OTHER AFFECTED
AGENCIES:

Department of the Attorney General, Hawaii
Criminal Justice Data Center, all state and
federal law enforcement agencies, U.S.
Department of the Treasury Financial Crimes
Enforcement Network (FinCEN).

EFFECTIVE DATE:

Upon approval.