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TO THE
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION,
AND AFFORDABLE HOUSING

THE TWENTY-FOURTH STATE LEGISLATURE
REGULAR SESSION OF 2008

Friday, February 1, 2008
9:00 a.m.

TESTIMONY ON S.B. NO. 3009 - RELATING TO MONEY TRANSMITTERS

THE HONORABLE RUSSELL S. KOKUBUN, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Nick Griffin, Commissioner of Financial Institutions ("Commissioner"), testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). We appreciate the opportunity to testify on Senate Bill No. 3009. The Department strongly supports this Administration bill relating to money transmitters.

The purpose of the bill is to amend and update Hawaii Revised Statutes ("HRS") chapter 489D, which is Hawaii's Money Transmitters Act (the "Act") that governs the licensing and regulation of money transmitters doing business in Hawaii, to address and

remedy inadvertent errors or omissions in the statute as originally enacted in the 2006 Legislative Session.

This bill includes the following specific amendments to chapter 489D, HRS:

New provisions are added:

(1) to require an application for prior approval of the 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 state or federally-regulated 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 \$2,000 (currently \$1,000) 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 (i) to clarify that the nonproprietary portions of both applications and reports submitted to the Commissioner 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.

The Department strongly supports this bill and asks for your favorable consideration. Thank you for the opportunity to testify. I would be happy to respond to any questions you may have.

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February 1, 2008

Senator Russell S. Kokubun, Chair
and members of the Senate Committee on Commerce, Consumer Protection,
and Affordable Housing
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: Senate Bill 3009 (Money Transmitters)
Hearing Date/Time: Friday, February 1, 2008, 9:00 A.M.

I represent the **Money Services Round Table** ("MSRT"), an industry association composed of the leading national companies which sell money orders, travelers' checks, and foreign denomination drafts, and transmit funds throughout the United States as well as many overseas locations. The MSRT includes: Western Union, MoneyGram International, American Express, RIA, SIGUE, Integrated Payment Systems, and Travelex.

The MSRT **opposes** this Bill as drafted.

The purposes of this Administration Bill are: to amend 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.

Background:

Money transmitters sell payment instruments, such as money orders, or receive money for transmission to other locations within the U.S. or overseas.

During the 2004 and 2005 legislative sessions, various Administration bills advocated by the Division of Financial Institutions ("DFI") were introduced to register money transmitters. Those bills did not pass.

In late 2005, prior to the opening of the 2006 legislative session, the MSRT prepared a draft of proposed legislation to license and regulate the money transmitter industry. The proposed legislation was sent to the DFI for the review and input of the Commissioner of Financial Institutions.

Based on the suggestions made by the Commissioner, the MSRT (then known as the Non-Bank Funds Transmitters Group) requested that Senate Bill 2143 be introduced. A coalition of interested parties, including the DFI, submitted testimony in support the Senate Bill at four separate hearings. During the legislative process, the suggestions for amending the Senate Bill were incorporated into the drafts.

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The final version, Senate Bill 2143, SD 2, HD 1, CD 1, passed the 2006 legislature and was signed into law as Act 143. Under the law, money transmitters needed to be licensed and in compliance beginning on July 1, 2007 (7 months ago). Presently, there are just a little more than 40 licensed money transmitters in Hawaii.

Objections to provisions in this Bill:

The MSRT has various concerns about Sections 1, 6, and 8 of this Administration Bill.

1. Fee increases and removal of fee caps.

The licensees who are members of the MSRT have authorized delegates in Hawaii. An authorized delegate could be a supermarket (such as Safeway) or a store (such as WalMart). An authorized delegate in turn may have several supermarket or store locations in Hawaii.

Under the current law, the application fee is \$1,000 plus \$100 for each additional location in Hawaii, with a maximum fee of \$4,000. However, in the Bill in Section 6 on page 12, the application fee would double to \$2,000, and the fee for each additional location would triple to \$300. The \$4,000 fee cap in the law would be eliminated.

Additionally under the current law, the annual renewal fee is \$500 plus \$100 for each authorized delegate/additional location in Hawaii. There is a maximum fee of \$2,000. But in Section 6 on page 13 and in Section 8 on page 14 of the Bill, the application fee would double to \$2,000, and the fee for each additional location/authorized delegate would triple to \$300. The \$2,000 fee cap in the law would be removed.

The removal of the fee caps and the tripling of location renewal fees would result in fee increases of astounding proportions for licensees with multiple authorized delegates/locations. A number of existing licensees have over 140 authorized delegate locations. A licensee with 140 authorized delegates/locations currently pays \$2,000 per year (i.e. \$500 plus \$100 per location, not to exceed a maximum of fee of \$2,000). However, with the proposed fee increase and cap removal, the same licensee would pay \$42,500 per year. That's an increase of \$40,500, or a 20 fold increase!

These proposed fee increases, coupled with the removal of fee caps, could be characterized as an unacceptable, anti-business policy.

Because this new money transmitter law was enacted only 2 years ago, and because money transmitters were required to comply with the law just 7 months ago, what compelling reason exists to change the law so soon to remove the fee caps and to dramatically increase the fees?

2. Budget for the money transmitters program at the DFI.

The Bill's justification sheet states that *"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*

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intended to address the deficiency in program revenues to help ensure that this program will be self-sustaining going forward.”

We understand that there is a need to have the money transmitters program at the DFI be self-funded. The fees that are charged to applicants and licensees (application, license, renewal, and examination) are used to pay the costs of running the program ... a program with just a little over 40 licensees.

It is important to remember that there are no material consumer protection issues regarding the authorized delegates. In a typical money transfer transaction, a customer who wants to have money transmitted to another city in the U.S. or overseas will go to the location of an authorized delegate of the licensee. The customer gives the money to the authorized delegate. The customer then gets a receipt from the authorized delegate. The receipt has the licensee's name on it. The licensee is liable to the customer if the monies are not sent to the agreed to destination. If the delegate becomes insolvent 1 minute after the customer leaves the location with a licensee's receipt, the customer is protected. The customer is not at risk of losing the money. That is because the licensee is legally liable. The authorized delegate's responsibility is minimal. That's the law in Hawaii and other states.

States examine the licensees because the licensees are the key to safety and soundness. The licensees are responsible for the money transmitter activities of their authorized delegates and their locations. No state banking department in the U.S. under a state money transmission law examines delegates and their locations on a routine basis.

In Hawaii, the primary focus of the DFI's activities should be on the 40 or so licensees ... not on the delegates or their locations. The DFI should not be routinely investigating authorized delegates and their locations to try to find problems. That is unnecessary. That is a waste of resources. The Internal Revenue Service is charged with the federal Bank Secrecy Act's anti-money laundering examinations of delegates. The IRS is active in Hawaii and the staff has received enhanced training. Traditional law enforcement agencies, such as the various police departments and the FBI, are usually very capable of finding the few delegates that might be running illegal non-licensed activities. Additionally, customers of money transmitters in Hawaii will complain (as they do in other states) when they fail to receive receipts, or if the money wasn't delivered on time, or if refunds weren't given.

If the DFI needs to conduct an examination of a licensee, its authorized delegates, and its locations, the law already allows the DFI to charge the licensee the fees and costs for those examinations. Those examination fees need to be taken into account by the DFI in formulating its budget.

Why should Hawaii's regulatory approach be different from other states? How much DFI staff is reasonably and realistically needed to administer this program involving a little over 40 licensees?

3. Rulemaking authority to increase fees.

Section 1 of the Bill would give the Commissioner of Financial Institutions the rulemaking

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authority to set "reasonable fee amounts" for renewals, applications, licenses, and examinations. There are no dollar caps on that authority.

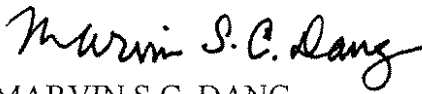
Why should the Commissioner have the authority to raise fee amounts without any legislatively imposed caps and dollar restrictions?

Defer this Bill:

Prior to and during the 2008 legislative session, the MSRT has had discussions with the Commissioner of Financial Institutions about this Bill. The Commissioner said he is willing to continue to work with the MSRT about its concerns and questions.

We ask that your Committee defer this Bill to enable to MSRT and the Commissioner to resolve their differences.

Thank you for considering this testimony.


MARVIN S.C. DANG
Attorney for the Money Services Round Table

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