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TO THE
SENATE COMMITTEES ON
JUDICIARY AND LABOR
AND
WAYS AND MEANS

THE TWENTY-FOURTH STATE LEGISLATURE
REGULAR SESSION OF 2008

Tuesday, February 26, 2008
10:50 a.m.

TESTIMONY ON S.B. NO. 3009, S.D.1 - RELATING TO MONEY TRANSMITTERS

THE HONORABLE BRIAN T. TANIGUCHI, CHAIR,
THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEES:

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, S.D.1. With the changes
here requested, 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of money transmitters doing business in Hawaii, to address and remedy inadvertent errors or omissions in the statute as originally enacted in the 2006 Legislative Session.

S.D.1 reflects some, but not all, of the changes to this bill that have been discussed with the Money Services Round Table ("MSRT") which, we understand, has also submitted written testimony to this committee. Accordingly, the Department supports this bill with the following further amendments:

- 1) Section 489D-17, HRS, should be amended to read as follows:

"~~[†]~~ **§489D-17** ~~[‡]~~ **Examinations.** (a) The commissioner may conduct an annual on site examination of a licensee upon sixty days written notice to the licensee. The commissioner may examine a licensee without prior notice if the commissioner has a reasonable basis to believe that the licensee is not in compliance with this chapter. ~~[When the commissioner concludes that an on site examination of a licensee is necessary, the licensee shall pay all reasonably incurred costs of the examination.]~~ The on site examination may be conducted in conjunction with examinations performed by representatives of agencies of the federal government, or of another state or

states. The commissioner, in lieu of an on site examination, may accept the examination report of the federal government, an agency of another state, or an independent accounting firm. Accepted reports are considered, for all purposes, an official report of the commissioner. The licensee shall bear the cost of reasonable expenses incurred by the division, agencies of another state, or an independent licensed or certified public accountant in conducting an examination or making a report.

(b) The commissioner may request financial data from a licensee in addition to that required under section 489D-12, or conduct an on site examination of any authorized delegate or location of a licensee within the State without prior notice to the authorized delegate or licensee only if the commissioner has a reasonable basis to believe that the licensee or authorized delegate is not in compliance with this chapter. When the commissioner examines an authorized delegate's operations, the authorized delegate shall pay all reasonably incurred costs of the examination. When the commissioner examines a licensee's location within the State, the licensee shall pay all reasonably incurred costs of the examination.

(c) The commissioner shall charge an examination fee to each licensed money transmitter and authorized delegate examined or investigated by the commissioner or the commissioner's staff, based upon the cost per hour per examiner. Effective July 1, 2008, the hourly fee shall be \$60.

(d) In addition to the examination fee, the commissioner shall charge any money transmitter or authorized delegate examined or investigated by the commissioner or the commissioner's staff, additional amounts for travel, per diem, mileage, and other reasonable expenses incurred in connection with the examination."

2) The Department does not object to the MSRT's requested amendment to the proposed new HRS section on "Fees", on page 1 line 17 through page 2, line 6, of S.D.1. That section should be amended to read as follows:

"§489D- Fees. Unless otherwise provided by statute, all fees shall be deposited into the compliance resolution fund established pursuant to section 26-9(o)."

3) The Department does not object to the MSRT's requested amendment to Section 6 of S.D.1, which should be amended to read as follows:

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

- "(a) Each application shall be accompanied by:
- (1) A [~~non-refundable~~] nonrefundable application fee in the amount of [~~\$1,000~~] \$2,000 plus [~~\$100~~] \$300 for each additional location in the State, not to exceed [~~a maximum~~] an aggregate fee of [~~\$4,000;~~] \$15,000; and
 - (2) [A] An annual license fee of [~~\$500~~] \$2,000 plus [~~\$100~~] \$300 for each additional location in the State, not to exceed [~~a maximum~~] an aggregate fee of [~~\$2,000;~~] \$15,000."

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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Senator Brian T. Taniguchi, Chair
and members of the Senate Committee on Judiciary and Labor
Senator Rosalyn H. Baker, Chair
and members of the Senate Committee on Ways and Means
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: Senate Bill 3009, Senate Draft 1 (Money Transmitters)
Decision-Making Date/Time: Tuesday, February 26, 2008, 10:50 a.m.

I represent the **Money Services Round Table** ("MSRT"), an industry association composed of the leading national companies that 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 supports this Bill with **proposed amendments**.

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. Under Act 153 (2006), 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.

Senate Bill 3009, Senate Draft 1

During the 2008 legislative session, the Administration introduced Senate Bill 3009 (Money Transmitters). The MSRT had opposed the original draft of this Bill due to major substantive concerns, including: the dramatic fee increases and the removal of statutory fee caps for application, license and renewal license; disagreement with the budget for and scope of the money transmitters

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program at the Division of Financial Institutions of the Department of Commerce and Consumer Affairs; and objection to giving rulemaking authority to the Commissioner of Financial Institutions ("Commissioner") to increase fees.

The MSRT and the Commissioner were able to compromise on various issues. Most of these compromises are reflected in the amendments made in Senate Bill 3009, Senate Draft 1, by the Senate Committee on Commerce, Consumer Protection, and Affordable Housing ("CPH"). These include:

(1) Amending the fee structure to: (a) increase the application, license, and renewal license fee to \$2,000; (b) increase the fee for additional locations in the State to \$300 for the application, license, and renewal license; and (c) increase the maximum fee (i.e., fee cap) to \$15,000 for applications, licenses, and license renewals;

(2) Deleting language that allows the Commissioner to establish a greater fee for applications, licenses, or license renewals by rule; and

(3) Inserting language that clarifies that, with respect to financial institutions as authorized delegates, when computing the application and license fees, the applicant or licensee that appoints an authorized delegate shall exclude all of the locations in the State where the authorized delegate will conduct its authorized delegate activities.

Proposed additional amendments to this Bill:

The MSRT and the Commissioner agree that three additional amendments are needed to this Bill. Accordingly, the MSRT supports this Bill with the following proposed amendments:

1. In Section 1 on page 1, line 17 through page 2, line 6, the new Section on "Fees" should be amended to clarify that fees for renewals, applications, licenses, and examinations cannot be changed by the Commissioner through the rulemaking process of Chapter 91, Hawaii Revised Statutes. While the CPH Committee Report stated that the Committee was deleting language that allows the Commissioner to establish a greater fee through rulemaking, and while the Senate Draft 1 removed most of those references, the Committee apparently left in one remaining provision in Section 1 of the Bill that allows fees to be changed by rulemaking. The MSRT and the Commissioner agree that this Section should be amended to read as follows:

"§489D- Fees. Unless otherwise provided by statute, all fees shall be deposited into the compliance resolution fund established pursuant to section 26-9(o)."

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2. This Bill inconsistently refers to "*maximum* fee of \$15,000" in Section 6 of the Bill (page 12, line 20 and page 13, line 3) and "*aggregate* fee of \$15,000" in Section 8 (page 14, line 18). Those words "maximum" and "aggregate" are in the existing statute. The preferred word for both Sections is "aggregate". This change will clarify that: (a) the application fee plus the additional location fees as an aggregate cannot exceed \$15,000; and (b) the annual license fee plus the additional location fees as an aggregate cannot exceed \$15,000. The MSRT and the Commissioner agree that Section 6 of the Bill should be amended to read as follows:

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

"(a) Each application shall be accompanied by:

(1) A [~~non-refundable~~] nonrefundable application fee in the amount of [~~\$1,000~~] \$2,000 plus [~~\$100~~] \$300 for each additional location in the State, not to exceed [~~a maximum~~] an aggregate fee of [~~\$4,000~~] \$15,000; and

(2) [~~A~~] An annual license fee of [~~\$500~~] \$2,000 plus [~~\$100~~] \$300 for each additional location in the State, not to exceed [~~a maximum~~] an aggregate fee of [~~\$2,000~~] \$15,000."

3. The MSRT and the Commissioner had previously agreed that Section 489D-17, Hawaii Revised Statutes, should be amended to set the examination fee at \$60 per hour (currently it is \$40 per hour) and to make other revisions. These revisions are not in the Senate Draft 1. The MSRT and the Commissioner agree that proposed revisions to HRS Section 489D-17 should be included in this Bill as follows:

"SECTION _____. Section 489D-17, Hawaii Revised Statutes, is amended to read as follows:

"~~[+] \$489D-17 [†].~~ **Examinations.** (a) The commissioner may conduct an annual on site examination of a licensee upon sixty days written notice to the licensee. The commissioner may examine a licensee without prior notice if the commissioner has a reasonable basis to believe that the licensee is not in compliance with this chapter. [~~When the commissioner concludes that an on site examination of a licensee is necessary, the licensee shall pay all reasonably incurred costs of the examination.~~] The on site examination may be conducted in conjunction with examinations performed by representatives of agencies of the federal government, or of another state or states. The commissioner, in lieu of an on site examination, may accept the examination report of the federal government, an agency of another state, or an independent

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

(b) The commissioner may request financial data from a licensee in addition to that required under section 489D-12, or conduct an on site examination of any authorized delegate or location of a licensee within the State without prior notice to the authorized delegate or licensee only if the commissioner has a reasonable basis to believe that the licensee or authorized delegate is not in compliance with this chapter. When the commissioner examines an authorized delegate's operations, the authorized delegate shall pay all reasonably incurred costs of the examination. When the commissioner examines a licensee's location within the State, the licensee shall pay all reasonably incurred costs of the examination.

(c) The commissioner shall charge an examination fee to each licensed money transmitter and authorized delegate examined or investigated by the commissioner or the commissioner's staff, based upon the cost per hour per examiner. Effective July 1, 2008, the hourly fee shall be \$60.

(d) In addition to the examination fee, the commissioner shall charge any money transmitter or authorized delegate examined or investigated by the commissioner or the commissioner's staff, additional amounts for travel, per diem, mileage, and other reasonable expenses incurred in connection with the examination."

Thank you for considering this testimony.


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

(MSCD/af)