

JAN 25 2012

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 two new sections to be appropriately
3 designated and to read as follows:

4 "§489D- Registration with Nationwide Mortgage Licensing
5 System. The commissioner may require all money transmitters to
6 register with the Nationwide Mortgage Licensing System.

7 §489D- Voluntary surrender of license. (a) A money
8 transmitter may voluntarily cease business and surrender its
9 license by giving written notice to the commissioner of its
10 intent to surrender its money transmitter license. Prior to the
11 surrender date of a money transmitter's license, the money
12 transmitter shall have either completed all money transmissions
13 or assigned each to another licensed money transmitter.

14 (b) Notice pursuant to this subsection shall be provided
15 at least thirty days before the surrender of the license and
16 shall include:

17 (1) The date of surrender;

S.B. NO. 2762

1 (2) The name, address, telephone number, facsimile number,
2 and electronic address of a contact individual with
3 knowledge and authority sufficient to communicate with
4 the commissioner regarding all matters relating to the
5 licensee during the period that it was licensed
6 pursuant to this chapter;

7 (3) The reason or reasons for surrender;

8 (4) Total dollar amount of the outstanding money
9 transmitter's payment instruments sold in Hawaii and
10 the individual amounts of each outstanding instrument,
11 and the name, address, and contact phone number of the
12 licensed money transmitter to which each outstanding
13 instrument was assigned;

14 (5) A list of the money transmitter's Hawaii authorized
15 delegates, if any, as of the date of surrender; and

16 (6) Confirmation that the money transmitter has notified
17 each of its Hawaii authorized delegates, if any, that
18 they may no longer conduct money transmission
19 activities on the money transmitter's behalf.

20 Voluntary surrender of a license shall be effective upon
21 the date of surrender specified on the written notice to the
22 commissioner as required by this subsection, provided that the

S.B. NO. 2762

1 licensee has met all the requirements of voluntary surrender and
2 has returned the original license issued."

3 SECTION 2. Section 489D-9, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~S489D-9 [Application for license.]~~ License and
6 registration; application. (a) To fulfill the purposes of this
7 chapter, the commissioner may establish relationships or
8 contracts with the Nationwide Mortgage Licensing System or other
9 entities designated by the Nationwide Mortgage Licensing System
10 to collect and maintain records and process transaction fees or
11 other fees related to licensees or other persons subject to this
12 chapter.

13 (b) For the purpose and the extent necessary to
14 participate in the Nationwide Mortgage Licensing System, the
15 commissioner may waive or modify, in whole or in part, by rule
16 or order, any or all of the requirements of this chapter and
17 establish new requirements as reasonably necessary to
18 participate in the Nationwide Mortgage Licensing System.

19 (c) The commissioner may use the Nationwide Mortgage
20 Licensing System as an agent for:

S.B. NO. 2762

- 1 (1) Requesting information from and distributing
2 information to the United States Department of Justice
3 or any governmental agency; and
4 (2) Requesting and distributing information to and from
5 any source directed by the commissioner.

6 ~~(a)~~ (d) An application for a license under this chapter
7 shall be made in writing, and in a form prescribed by the
8 Nationwide Mortgage Licensing System or by the commissioner.

9 Each application shall contain the following:

- 10 (1) For all applicants:
- 11 (A) The exact name of the applicant, any fictitious
12 or trade name used by the applicant in the
13 conduct of its business, the applicant's
14 principal address, and the location of the
15 applicant's business records;
- 16 (B) The history of the applicant's material
17 litigation and criminal convictions for the five-
18 year period prior to the date of the application;
- 19 (C) A description of the business activities
20 conducted by the applicant and a history of
21 operations;

S.B. NO. 2762

- 1 (D) A description of the business activities in which
2 the applicant seeks to engage within the State;
- 3 (E) A list identifying the applicant's proposed
4 authorized delegates in the State, if any, at the
5 time of the filing of the license application;
- 6 (F) A sample authorized delegate contract, if
7 applicable;
- 8 (G) A sample form of payment instrument, if
9 applicable;
- 10 (H) The locations where the applicant and its
11 authorized delegates, if any, propose to conduct
12 their licensed activities in the State;
- 13 (I) The name and address of the clearing bank or
14 banks on which the applicant's payment
15 instruments will be drawn or through which
16 payment instruments will be payable;
- 17 (J) Disclosure of any pending or final suspension,
18 revocation, or other enforcement action by any
19 state or governmental authority for the five-year
20 period prior to the date of the application; and
- 21 (K) Any other information the commissioner may
22 require;

- 1 (2) If the applicant is a corporation, the applicant shall
2 also provide:
- 3 (A) The date of the applicant's incorporation and
4 state of incorporation;
- 5 (B) A certificate of good standing from the state in
6 which the applicant was incorporated;
- 7 (C) A description of the corporate structure of the
8 applicant, including the identity of any parent
9 or subsidiary company of the applicant, and the
10 disclosure of whether any parent or subsidiary
11 company is publicly traded on any stock exchange;
- 12 (D) The name, business and residence address, and
13 employment history, for the past five years, of
14 the applicant's executive officers and the
15 officers or managers who will be in charge of the
16 applicant's activities to be licensed under this
17 chapter;
- 18 (E) The name, business and residence address, and
19 employment history of any key shareholder of the
20 applicant, for the period of five years before
21 the date of the application;

S.B. NO. 2762

1 (F) For the five-year period prior to the date of the
2 application, the history of material litigation
3 involving, and criminal convictions of, every
4 executive officer or key shareholder of the
5 applicant;

6 (G) A copy of the applicant's most recent audited
7 financial statement, including balance sheets,
8 statements of income or loss, statements of
9 changes in shareholder equity and statement of
10 changes in financial position, and, if available,
11 the applicant's audited financial statements for
12 the preceding two-year period or, if the
13 applicant is a wholly owned subsidiary of another
14 corporation, either the parent corporation's
15 consolidated audited financial statements for the
16 current year and for the preceding two-year
17 period, or the parent corporation's Form 10-K
18 reports filed with the United States Securities
19 and Exchange Commission for the prior three years
20 in lieu of the applicant's financial statements,
21 or if the applicant is a wholly owned subsidiary
22 of a corporation having its principal place of

S.B. NO. 2762

1 business outside the United States, similar
2 documentation filed with the parent corporation's
3 non-United States regulator;

4 (H) Copies of all filings, if any, made by the
5 applicant with the United States Securities and
6 Exchange Commission, or with a similar regulator
7 in a country other than the United States, within
8 the year preceding the date of filing of the
9 application; and

10 (I) Information necessary to conduct a criminal
11 history record check in accordance with section
12 846-2.7 of each of the executive officers, key
13 shareholders, and managers who will be in charge
14 of the applicant's activities, accompanied by the
15 appropriate payment of the applicable fee for
16 each record check; and

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

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

S.B. NO. 2762

- 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 (E) Copies of the applicant's audited financial
16 statements, including balance sheets, statements
17 of income or loss, and statements of changes in
18 financial position for the current year and, if
19 available, for the preceding two-year period; and
- 20 (F) Information necessary to conduct a criminal
21 history record check in accordance with section
22 846-2.7 of each principal of the applicant,

S.B. NO. 2762

1 accompanied by the appropriate payment of the
2 applicable fee for each record check.

3 ~~(b)~~ (e) The commissioner, for good cause may:

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

6 (2) Permit an applicant to submit substituted information
7 in its license application in lieu of the information
8 required by this section."

9 SECTION 3. Section 489D-9.5, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "[+]§489D-9.5[+] **Limited exemption for financial**
12 **institutions; financial institutions as authorized delegates.**

13 (a) Banks, bank holding companies, credit unions, building and
14 loan associations, savings and loan associations, savings banks,
15 financial services loan companies, and mutual banks organized
16 under the laws of the United States or any state shall be exempt
17 from the licensing and examination provisions of this chapter.

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

20 (c) When submitting an application for a license pursuant
21 to section 489D-9, or when submitting an annual report pursuant
22 to section 489D-12, an applicant or licensee that appoints an

S.B. NO. 2762

1 entity described in subsection (a) as an authorized delegate
2 shall include that entity's name and the locations in this State
3 where that entity will conduct its authorized delegate
4 activities.

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

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

13 "(a) Each application shall be accompanied by:

14 (1) A nonrefundable application fee in the amount of
15 ~~[\$2,000 plus \$300 for each additional location in the~~
16 ~~State,] \$5,000; provided that the applicant shall be~~
17 ~~charged \$60 per employee hour in excess of eighty~~
18 ~~employee hours for the review of the application and~~
19 ~~attendant investigations not to exceed an aggregate~~
20 ~~fee of [\$15,000,] \$25,000. The hourly fee will be~~
21 ~~billed and shall be paid prior to preliminary approval~~
22 ~~of the license; and~~

S.B. NO. 2762

1 (2) An initial annual license fee of [~~\$2,000 plus \$300 for~~
2 each additional location in the State, not to exceed
3 ~~an aggregate fee of \$15,000.~~] \$5,000."

4 SECTION 5. Section 489D-12, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§489D-12 Renewal of license and annual report.** (a) On
7 or before December 31 of each year, [~~each licensee shall pay to~~
8 ~~the commissioner an annual license fee of \$2,000, plus \$300 for~~
9 ~~each additional location in the State, not to exceed an~~
10 ~~aggregate fee of \$15,000.] each money transmitter shall pay the
11 following renewal fees based on the number of annualized money
12 transmissions as follows:~~

13 (1) \$5,000 for money transmitters with fewer than 5,000
14 money transmissions;

15 (2) \$6,000 for money transmitters with 5,000 or more but
16 fewer than 50,000 money transmissions;

17 (3) \$8,000 for money transmitters with 50,000 or more but
18 fewer than 100,000 money transmissions;

19 (4) \$12,500 for money transmitters with 100,000 or more
20 but fewer than 200,000 money transmissions; and

21 (5) \$15,000 for money transmitters with 200,000 or more
22 money transmissions.

1 For purposes of this subsection, "annualized money
2 transmissions" is the number of money transmissions reported for
3 the quarter on the report required by subsection (b) (2)
4 multiplied by four.

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

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

17 (2) For the most recent quarter for which data is
18 available prior to the date of filing the annual
19 report, but in no event more than one hundred twenty
20 days prior to the renewal date, the licensee shall
21 provide the number of [~~payment instruments~~] money
22 transmissions sold, issued, or received for

S.B. NO. 2762

1 transmission by the licensee in the State, the dollar
2 amount of those [~~instruments,~~] transmissions, and the
3 dollar amounts of [~~these~~] payment instruments
4 currently outstanding;

5 (3) Any material changes to any of the information
6 submitted by the licensee on its original application
7 that have not previously been reported to the
8 commissioner on any other report required to be filed
9 under this chapter;

10 (4) For the most recent quarter for which data is
11 available prior to the date of filing the annual
12 report, but in no event more than one hundred twenty
13 days prior to the renewal date, a list of the
14 licensee's permissible investments, including the
15 total market value of each type of permissible
16 investment, and the total dollar amount of all
17 outstanding payment instruments issued or sold by the
18 licensee in the United States;

19 (5) A list of the locations, if any, within this State
20 where business regulated by this chapter is being
21 conducted by either the licensee or the licensee's
22 authorized delegates;

S.B. NO. 2762

1 (6) Disclosure of any pending or final suspension,
2 revocation, or other enforcement action by any state
3 or governmental authority; and

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

5 (c) A licensee that has not filed an annual report that
6 has been deemed complete by the commissioner or paid its annual
7 license fee by the renewal filing deadline, and has not been
8 granted an extension of time to do so by the commissioner, shall
9 have its license suspended on the renewal date. The licensee
10 has thirty days after its license is suspended to file an annual
11 report and pay the annual license fee, plus a late filing fee of
12 [~~\$100~~] \$250 for each business day after suspension that the
13 commissioner does not receive the annual 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~~]
16 \$250 per day late filing fee."

17 SECTION 6. Section 489D-12.5, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[~~†~~]\$489D-12.5[~~†~~] **Fees.** Unless otherwise provided by
20 statute, all fees, administrative penalties, and other charges
21 assessed under this chapter shall be deposited into the

S.B. NO. 2762

1 compliance resolution fund established pursuant to section 26-
2 9(o)."

3 SECTION 7. Section 489D-14.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~f~~]**\$489D-14.5**[~~f~~] **Name change.** To change its name, its
6 fictitious name, or its trade name, a money transmitter shall
7 file an application with the commissioner and pay a
8 nonrefundable fee of [~~\$250~~] \$1,000 or such greater amount as the
9 commissioner shall establish by rule pursuant to chapter 91.
10 The application shall be approved if the commissioner is
11 satisfied that the new name complies with all applicable laws.
12 Any change of name shall not affect a money transmitter's
13 rights, liabilities, or obligations existing prior to the
14 effective date thereof, and no documents of transfer shall be
15 necessary to preserve such rights, liabilities, or obligations;
16 provided that the commissioner may require notice to be given to
17 the public and other governmental agencies."

18 SECTION 8. Section 489D-15, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) A licensee shall submit to the commissioner an
21 application requesting approval of a proposed change of control
22 of the licensee, accompanied by a nonrefundable application fee

S.B. NO. 2762

1 of [~~\$2,000.~~] \$2,500; provided that the applicant shall be
2 charged \$60 per employee hour expended in excess of forty
3 employee hours for the review of the proposed change in control
4 and attendant investigations not to exceed an aggregate fee of
5 \$10,000. The hourly fee will be billed and shall be paid prior
6 to approval of the change in control."

7 SECTION 9. Section 489D-17, Hawaii Revised Statutes, is
8 amended by amending subsection (c) to read as follows:

9 "(c) The commissioner shall charge an examination fee to
10 each licensed money transmitter and authorized delegate examined
11 or investigated by the commissioner or the commissioner's staff,
12 based upon the cost per hour per examiner. [~~Effective July 1,~~
13 ~~2008, the]~~ The hourly fee [~~shall be]~~ is \$60."

14 SECTION 10. Section 489D-28, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§489D-28 Civil penalties.** [~~(a)~~] The commissioner may
17 assess a fine against a person who violates this chapter or a
18 rule adopted or an order issued under this chapter in an amount
19 not to exceed [~~\$500~~] \$1,000 per day for each day the violation
20 is outstanding, plus the State's costs and expenses for the
21 investigation and prosecution of the matter, including
22 reasonable attorneys' fees.

S.B. NO. 2762

1 ~~[(b) All administrative fines collected under authority of~~
2 ~~this chapter shall be deposited into the compliance resolution~~
3 ~~fund established pursuant to section 26-9(o).]~~"

4 SECTION 11. Section 489D-34, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[†]§489D-34[†] Rules. (a) The commissioner may adopt
7 such rules pursuant to chapter 91 ~~[to implement this chapter.]~~
8 as the commissioner deems necessary for the administration and
9 enforcement of this chapter.

10 (b) Notwithstanding the fees provided in this chapter, the
11 commissioner may raise or lower any fee by rule, and may
12 establish new fees by rule."

13 SECTION 12. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 13. This Act shall take effect upon its approval.

16

17

INTRODUCED BY: 

18

BY REQUEST

S.B. NO. 2762

Report Title:

Money Transmitters; Fees

Description:

Amends the fee structure for services provided by the Division of Financial Institutions for the regulation of money transmitters; amends the fine for violations of money transmitter regulations.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent

JUSTIFICATION SHEET

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 fees and payments for money transmitters and make technical changes to the licensing provisions.

MEANS: Add a new section to chapter 489D, Hawaii Revised Statutes (HRS), and amend sections 489D-9, 489D-9.5, 489D-10(a), 489D-12, 489D-12.5, 489D-14.5, 489D-15(a), 489D-17(c), 489D-28, and 489D-34, HRS.

JUSTIFICATION: A "money transmitter" is a person that engages as a business in the transfer of funds through a financial institution. Generally, acceptance and transmission of funds is an integral part of the execution and settlement of a transaction other than the funds transmission. The transmission is to any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.

Consumer protection in this area is needed as consumers use money transmitters to:

- (1) Send money domestically and internationally; and
- (2) Pay a fee for the use of the money transmission service.

Consumers may be scammed by money transmitters who do not transmit the money to the destination designated by the consumers. In addition, some money transmitters do not understand the rules of money transmission and may be laundering money unknowingly.

SB. NO. 2762

As a result of the increased annual review of money transmitter licenses of increasingly larger companies, this bill adjusts the fees to reflect the time and effort required for the Division of Financial Institutions to review the annual licenses based on asset size.

Additionally, as companies are merging or the control of the companies change, and the transactions have become more complex, more time must be spent to review the application and determine if the merger or change in control is in the best interests of the consuming public. This bill adjusts the charges to reflect the time spent on the review of these mergers and changes in control.

Impact on the public: Would provide additional protections for consumers who use money transmitters to transmit money to family or friends.

Impact on the department and other agencies:
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-104.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.