



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

335 MERCHANT STREET, ROOM 310

P.O. Box 541

HONOLULU, HAWAII 96809

Phone Number: 586-2850

Fax Number: 586-2856

www.hawaii.gov/dcca

KEALI S. LOPEZ
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE
HOUSE COMMITTEE ON
ECONOMIC DEVELOPMENT AND BUSINESS

THE TWENTY-SEVENTH STATE LEGISLATURE
REGULAR SESSION OF 2013

Tuesday, March 12, 2013
10:00 a.m.

TESTIMONY ON S.B. NO. 1068, S.D. 2
RELATING TO MONEY TRANSMITTERS

THE HONORABLE CLIFT TSUJI, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda Catalani, Commissioner of Financial Institutions ("Commissioner"), testifying on behalf of the Department of Commerce and Consumer Affairs ("DCCA") in strong support of administration bill, Senate Bill No. 1068, S.D. 2.

The Money Transmitter law was passed in 2006, and licensure of money transmitters has been required since July 1, 2007. This law was enacted to protect consumers of money transmission services and to prevent money transmission from

being used to launder illegal profits and facilitate illegal activities as Hawaii was only one of five states that did not regulate money transmitters.

Today, our Money Transmitters Act is part of a national security framework that combats the illegal transfer of funds and money laundering, promotes national security, and supports the availability of legitimate financial services to consumers.¹

Having now had a number of years to work with Chapter 489D, Hawaii Revised Statutes (“HRS”), this bill seeks (1) to enable the Commissioner to more effectively enforce the law, and more appropriately supervise, regulate, and examine licensees and (2) change the methodology to impose a higher annual fee based on the risk and complexity of money transfer companies to allow companies with less transactions to pay a lesser annual fee.

The money transmitter business is important to consumers because of the rapidity at which money can be sent from one location to another. Consumers often use transmitter services to send money abroad to family or friends or to send money for an online purchase. Some customers use a money transmitter because they lack a checking account, or because a creditor is requiring them to make a payment quickly to avoid late fees. For a fee, money transmitters transmit money by wire, fax, electronic transfer or other means, and they may sell or issue money orders, traveler’s checks and

¹ Chapter 489D requires every licensee and its authorized delegates to file with the Commissioner all reports relating to transactions in the State as required by federal record keeping and reporting requirements under the federal Bank Secrecy Act (“BSA”), the Code of Federal Regulations, and other

other payment instruments. The Division regulates approximately 45 money transmitters ranging in size and complexity from small companies that may transmit a customer's money to family overseas, to large multi-state corporations. The companies delegate the money transmissions to their delegates who are many of the mom and pop stores operating in Hawaii. **The companies, not the delegates, are responsible for all the record keeping and reporting and compliance with the laws.**

Proposed changes to the law

- Authorizes the Commissioner to require money transmitters to register with the NMLS, a system for state licensing and registration of state-licensed financial services providers.
- The Division believes using NMLS will provide a cost-effective way for licensees to manage all their state money transfer licenses and will allow the Division to use the electronic method to review, oversee and license money transmitters.
- The Division must continue to ask for items outside NMLS for the state specific items required by our Hawaii law.
- The Division uses the NMLS² to manage mortgage loan originator licensees.

federal and state laws pertaining to money laundering. HRS § 489D-16. Established in 1970, the BSA has become one of the most important tools in the international fight against money laundering.

- Section 3 adjusts security device requirements for money transmitters to \$10,000 for the first year of operation. Thereafter, the requirement could be reduced to \$5,000 for money transmitters whose annualized money transmissions are less than \$10,000,000; and the requirement would remain at \$10,000 for money transmitters whose annualized money transmissions are \$10,000,000 or more. At \$1,000, Hawaii's security device level is the lowest in the nation. The new levels are appropriate to realistically reflect the risk associated with new money transmitter companies, and are consistent with other states. Consumers will be better protected in the event a money transmitter fails or engages in violations of Chapter 489D.
- Sections 6 and 7 of the bill change licensing application and renewal fee schedules. Currently, all licensees pay for each additional location in the State up to an aggregate fee of \$15,000. The new methodology is scaled based on risk and complexity of the company which results in company with more money transmissions paying more than a company with fewer money transmissions.
- Section 9, the minimum fee is adjusted for a name change application. As companies are merging or changing ownership, the Division reviews and analyzes the changes as it relates to the operations and effect on consumers.

² Formerly known as the "Nationwide Mortgage Licensing System," the system changed its name to "NMLS" as it expanded its services beyond mortgage loan originator licensing, and can be used by non-

Self-Funding Requirement Necessitates Requested Fee Changes

DCCA has been financially self-sufficient since 1999. Its operations are not funded by the Legislature’s general fund, but instead by the persons and entities who are regulated by DCCA or who receive services from the Department.

As you will see in the chart below, current projections are that at the end of FY15, the Division will have a reserve of just over \$600,000, less than two month’s operating expenses. By the end of FY16, the Division will be unable to meet payroll, and will actually be short by \$212,838:

DFI CASH FLOW PROJECTION				
Source	FY13 (estimated)	FY14 (estimated)	FY15 (estimated)	FY16 (estimated)
Beginning Cash Balance	5,043,246	4,265,971	3,450,942	2,629,452
Plus Program Generated Revenues	1,230,700	1,190,400	1,190,800	1,170,000
*Less Expenditures	4,007,975	4,005,429	4,012,290	4,012,290
Cash Balance @ June 30	2,265,971	1,450,942	629,452	(212,838)
Plus Franchise Tax (received in late July @ beginning of new FY)	2,000,000	2,000,000	2,000,000	2,000,000
Equals Ending Cash Balance	4,265,971	3,450,942	2,629,452	1,787,162

Figures are based on Report on Non-General Fund Information for Submittal to the 2013 Legislature, Program ID CCA-104, Fund Name CRF-Financial Institutions. *Expenditures are based on Appropriation Ceiling and include 34 authorized permanent staff positions and DFI share of DCCA overhead.

depository institutions.

The franchise tax³ infuses funds critically needed by the Division in late July of each year, for the **previous** fiscal year. During the fiscal year, DFI spends the franchise tax allocation on salaries and expenses, and it relies on franchise tax revenues being re-infused in July of the following fiscal year. The Division needs to have sufficient cash reserves on hand to fund its annual program costs while awaiting deposit of the franchise tax monies.

The chart above anticipates that the Division is fully staffed with the 34 permanent positions that the Legislature has authorized. The Division has been experiencing an increased workload between the greater oversight and regulatory responsibilities it has been given, changes in federal laws, and sophistication of the money transmitter industry. Since 2006, the Division has been given three new programs which do not collect adequate revenue to appropriately supervise those programs. Below is a list of how the Division has operated within its budget:

- The Division has refrained from filling its six staff vacancies.
- By FY16, personnel would need to be laid off after being trained.
- The Division has a current 120 to 180 day backlog in processing licensing work.
 - Delay in the Division's licensing and examination work is contrary to the best interests of consumers and business.

³ This is a tax paid by the financial institutions, and the mortgage loan originators and mortgage loan originator companies, deposited with the director of Finance by June 30 of each fiscal year, pursuant to HRS sec. 241-7.

- It means delays in opening of new businesses and their hiring of employees which would contribute to the State's economy.
- It means a delay in issuing license renewals rendering licensees with expired licenses unable to lawfully conduct business
- We have not been able to fully examine our licensees which handle billions of dollars of consumer financial transactions annually, and in discovery of licensees that could benefit from the Division's assistance and monitoring to help them restore their financial viability and strength.
- Delays mean questionable licensee conduct goes undiscovered in time to avert massive financial harm to the public.

The chart below shows that the money transmitter program ran deficits in FY11 and FY12. In FY12, after expenses, the program had a surplus of \$18,941, which when applied to the FYI deficit, lowered the two year shortfall to \$47,734.

MONEY TRANSMITTER PROGRAM	FY11	FY12
Program Cost to Division	\$279,648	\$287,916
Less Program Revenues	\$212,973	\$306,857
Program Net to Division	(\$66,675)	\$18,941

The Division anticipates that the money transmitter program will bring in approximately \$18,143 of additional revenue annually, with the adjusted fee schedule, and this will help sustain the program and gradually retire the deficit it has run.

Proper Staffing Levels Are Required to Maintain Appropriate Supervision

A revenue shortfall in one Division program impacts all of its other programs. The shortfall keeps the Division from hiring staff. Yet industry licensees and applicants still need to be served. The Division is the only entity that monitors the regulatory compliance, safety and soundness of money transfer companies – the federal government does not provide such oversight – and the Division carries out its duties in order to protect the rights and funds of depositors, borrowers, consumers and other members of the public. Each program needs to bring in revenue sufficient to cover the Division's costs of oversight and supervision.

We believe that with a fully staffed Division, we can provide the services requested and expected by our money transmitter licensees as well as provide the appropriate oversight for consumers. Finally, while the Division would like to have a reasonable reserve fund⁴, it is currently headed toward a fiscal cliff absent an increase in revenues. It cannot expect to receive funding in excess of what its own programs have generated, from funds generated by programs of other divisions that are held in the DCCA Compliance Trust Fund.⁵ This bill will help close the accumulated deficit that the money transmitters program has been running, and will help the Division carry out the responsibilities pertaining to money transmitters that it has been given.

Requested Technical Amendment

⁴ The Hawaii Supreme Court has recognized that it is reasonable for a regulatory division to have a reserve fund, which can be essential to the Division's regulatory function. See Hawaii Insurers Council v. Lingle, 201 P.3d 564, 580 (2008) (hereinafter "HIC v. Lingle").

⁵ See HIC v. Lingle, 201 P.2d at 580.

TESTIMONY ON SENATE BILL NO. 1068, S.D. 2
March 12, 2013, 10:00 a.m.
Page 9

It appears that the citation to H.R.S section 346-97 on p. 28, line 14 of S.D. 2, should actually be to section 321-496, as referenced in S.B. 1068. It is requested that this correction be made to the bill.

DFI strongly supports this administration bill, Senate Bill No. 1068, S.D. 2, with the amendment recommended above, and a requested “on approval” effective date

Thank you for the opportunity to testify. I would be pleased to respond to any questions you may have.