

JAN 24 2019

A BILL FOR AN ACT

RELATING TO VIRTUAL CURRENCY.

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

1 SECTION 1. Section 489D-4, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding five new definitions to be appropriately
4 inserted and to read:

5 "Exchange", in reference to virtual currency, means to
6 assume control of virtual currency from, or on behalf of, a
7 person in the State, at least momentarily, to sell, trade, or
8 convert:

9 (1) Virtual currency for money, monetary value, or one or
10 more forms of virtual currency; or

11 (2) Money or monetary value for one or more forms of
12 virtual currency.

13 "Money" means a medium of exchange or unit of value,
14 including coin or paper money, issued by the United States or by
15 another country or a union of countries recognized by the United
16 States.



1 "Store" or "storage", in reference to virtual currency,
2 means maintaining control of virtual currency on behalf of
3 another person.

4 "Transfer", in reference to virtual currency, means to
5 assume control of virtual currency from, or on behalf of, a
6 person in the State and to:

7 (1) Credit the virtual currency to the account of another
8 person;

9 (2) Move the virtual currency from one account of the
10 person to another account of the same person; or

11 (3) Relinquish control of the virtual currency to another
12 person.

13 "Virtual currency" means a digital representation of value
14 that:

15 (1) Is used as a medium of exchange, unit of account, or
16 store of value; and

17 (2) Is not money, whether or not denominated in money.

18 "Virtual currency" does not include:

19 (1) A gift certificate; store gift card; general-use
20 prepaid card; or loyalty, award, or promotional gift
21 card, as these terms are defined in federal



1 Regulation E, title 12 Code of Federal Regulations
2 section 1005.20(a), without giving effect to any
3 exception as specified in title 12 Code of Federal
4 Regulations section 1005.20(b);

5 (2) Any card, code or device, or other device that can add
6 funds to the products specified in paragraph (1); or

7 (3) Units of value that are used solely within online
8 gaming platforms that have no market or application
9 outside of the gaming platforms."

10 2. By amending the definition of "control" to read:

11 "Control" means:

12 (1) In reference to a person, ownership of, or the power
13 to vote, twenty-five per cent or more of the
14 outstanding voting securities of a licensee or
15 controlling person. For purposes of determining the
16 percentage of a licensee controlled by any person,
17 there shall be aggregated with the controlling
18 person's interest the interest of any other person
19 controlled by the person, or by any spouse, parent, or
20 child of the person[-]; and



1 (2) In reference to a transaction or relationship
2 involving virtual currency, the power to execute
3 unilaterally or prevent indefinitely a virtual
4 currency transaction."

5 3. By amending the definitions of "monetary value" and
6 "money transmission" to read:

7 "Monetary value" means a medium of exchange, whether or
8 not redeemable in money[-], and includes virtual currency.

9 "Money transmission" means to engage in the business of:

- 10 (1) Selling or issuing payment instruments; or
11 (2) Receiving money or monetary value for transmission,
12 transfer, exchange, or delivery to a location within
13 or outside the United States by any and all means,
14 including wire, internet, facsimile, or electronic
15 transfer.

16 Money transmission does not apply to courier services. Money
17 transmission does not include the sole provision of internet
18 connection services, telecommunications services, or network
19 access."

20 4. By amending the definition of "outstanding payment
21 obligation" to read:



1 "Outstanding payment obligation" means:

2 (1) Any payment instrument issued by the licensee that has
3 been sold in the United States:

4 (A) Directly by the licensee; or

5 (B) By an authorized delegate of the licensee in the
6 United States, which has been reported to the
7 licensee as having been sold,

8 and that has not yet been paid by or for the licensee;

9 and

10 (2) All other [~~outstanding~~] money transmission obligations
11 ~~[of]~~ that the licensee has issued, or has agreed to
12 transmit, deliver, or instruct to be delivered, in the
13 United States~~[-]~~ that have not been fully performed by
14 the licensee."

15 5. By amending the definition of "permissible investments"
16 to read:

17 "Permissible investments" means:

18 (1) Cash;

19 (2) Certificates of deposit or other debt obligations of a
20 financial institution, either domestic or foreign;



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



- 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) Virtual currency; or
- 9 [~~(9)~~] (10) Any other investments or security device
- 10 approved by the commissioner."

11 SECTION 2. Section 489D-8, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§489D-8 Permissible investments and statutory trust.** (a)
14 A licensee, at all times, shall possess permissible investments
15 having an aggregate market value, calculated in accordance with
16 generally accepted accounting principles, of not less than the
17 aggregate amount of all outstanding payment obligations. This
18 requirement may be waived by the commissioner if the dollar
19 volume of a licensee's outstanding payment obligations does not
20 exceed the bond or other security devices posted by the licensee
21 pursuant to section 489D-7.



1 (b) In lieu of the permissible investments required under
2 subsection (a), a licensee, in connection with the storage or
3 transfer of virtual currency, may possess like-kind virtual
4 currency of the same volume as the outstanding payment
5 obligations to be completed in virtual currency pursuant to the
6 contract with the licensee.

7 (c) A licensee transmitting money and virtual currency
8 shall maintain applicable levels and types of permissible
9 investments as described in subsections (a) and (b).

10 (d) The commissioner, with respect to any money
11 transmitter licensee, may limit the extent to which a type of
12 investment within a class of permissible investments may be
13 considered a permissible investment, except for money, time
14 deposits, savings deposits, demand deposits, and certificates of
15 deposit issued by a federally insured financial institution.
16 The commissioner may prescribe by rule, or allow by order, other
17 types of investments that the commissioner determines to have a
18 safe and sound equivalent to other permissible investments.

19 ~~(b)~~ (e) Permissible investments, even if commingled with
20 other assets of the licensee, shall be held in trust for the
21 benefit of the purchasers and holders of the licensee's



1 outstanding payment obligations in the event of the bankruptcy
2 of the licensee."

3 SECTION 3. Section 489D-9, Hawaii Revised Statutes, is
4 amended by amending subsection (d) to read as follows:

5 "(d) An application for a license under this chapter shall
6 be made in writing, and in a form prescribed by NMLS or by the
7 commissioner. Each application shall contain the following:

8 (1) For all applicants:

9 (A) The exact name of the applicant, any fictitious
10 or trade name used by the applicant in the
11 conduct of its business, the applicant's
12 principal address, and the location of the
13 applicant's business records;

14 (B) The history of the applicant's material
15 litigation and criminal convictions for the five-
16 year period prior to the date of the application;

17 (C) A description of the business activities
18 conducted by the applicant and a history of
19 operations;

20 (D) A description of the business activities in which
21 the applicant seeks to engage within the State;



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



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



- 1 (G) Copies of all filings, if any, made by the
2 applicant with the United States Securities and
3 Exchange Commission, or with a similar regulator
4 in a country other than the United States, within
5 the year preceding the date of filing of the
6 application; and
- 7 (H) Information necessary to conduct a criminal
8 history record check in accordance with section
9 846-2.7 of each person who upon approval of the
10 application will be a principal of the licensee,
11 accompanied by the appropriate payment of the
12 applicable fee for each record check; ~~and~~
- 13 (3) If the applicant is not a corporation, the applicant
14 shall also provide:
- 15 (A) The name, business and residence address,
16 personal financial statement, and employment
17 history, for the past five years, of each
18 principal of the applicant;
- 19 (B) The name, business and residence address, and
20 employment history, for the past five years, of



- 1 any other persons who upon approval of the
2 application will be a principal of the licensee;
- 3 (C) The place and date of the applicant's
4 registration or qualification to do business in
5 this State;
- 6 (D) The history of material litigation and criminal
7 convictions for the five-year period before the
8 date of the application for each principal of the
9 applicant;
- 10 (E) Copies of the applicant's audited financial
11 statements, including balance sheets, statements
12 of income or loss, and statements of changes in
13 financial position for the current year and, if
14 available, for the preceding two-year period; and
- 15 (F) Information necessary to conduct a criminal
16 history record check in accordance with section
17 846-2.7 of each principal of the applicant,
18 accompanied by the appropriate payment of the
19 applicable fee for each record check[-]; and
- 20 (4) If the applicant's business model transfers or stores
21 virtual currency on behalf of others, the applicant



1 shall also provide a third-party security audit of all
2 electronic information and data systems acceptable to
3 the commissioner."

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

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

9 (1) A copy of the licensee's most recent audited annual
10 financial statement, including balance sheets,
11 statement of income or loss, statement of changes in
12 shareholder's equity, and statement of cash flows or,
13 if a licensee is a wholly owned subsidiary of another
14 corporation, the consolidated audited annual financial
15 statement of the parent corporation in lieu of the
16 licensee's audited annual financial statement[+]. If
17 the applicant's business model transfers or stores
18 virtual currency on behalf of others, the applicant
19 shall also provide a third-party security audit of all
20 electronic information and data systems acceptable to
21 the commissioner;



- 1 (2) For the most recent quarter for which data is
2 available prior to the date of filing the annual
3 report, but in no event more than one hundred twenty
4 days prior to the renewal date, the licensee shall
5 provide the number of money transmissions sold,
6 issued, or received for transmission, transfer,
7 exchange, or delivery by the licensee in the State,
8 and as applicable, the dollar amount and monetary
9 value of those transmissions, and the dollar amounts
10 and monetary value of outstanding payment obligations;
- 11 (3) Any material changes to any of the information
12 submitted by the licensee on its original application
13 that have not previously been reported to the
14 commissioner on any other report required to be filed
15 under this chapter;
- 16 (4) For the most recent quarter for which data is
17 available prior to the date of filing the annual
18 report, but in no event more than one hundred twenty
19 days prior to the renewal date, a list of the
20 licensee's permissible investments, including the
21 total market value of each type of permissible



1 investment, and the total [~~dollar amount~~] amounts, in
2 money and monetary value, as applicable, of all
3 outstanding payment obligations;

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

8 (6) Disclosure of any pending or final suspension,
9 revocation, or other enforcement action by any state
10 or governmental authority;

11 (7) The licensee's evidence of a valid bond or other
12 security device as required pursuant to section
13 489D-7; and

14 (8) Any other information the commissioner may require.

15 A license may be renewed by filing a renewal statement on a
16 form prescribed by NMLS or by the commissioner and paying a
17 renewal fee at least four weeks prior to the renewal date for
18 licensure for the following year."

19 SECTION 5. Section 489D-18, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:



1 "(a) Each licensee shall make, keep, preserve, and make
2 available for inspection by the commissioner the following
3 books, accounts, and other records for a period of three years:

4 (1) A record or records of each payment instrument~~[7]~~ and
5 other money transmission;

6 (2) A general ledger containing all assets, liability,
7 capital, income, and expense accounts that shall be
8 posted at least monthly;

9 (3) Bank statements and bank reconciliation records;

10 (4) Records of all outstanding payment obligations;

11 (5) Records of each payment instrument paid within the
12 three-year period;

13 (6) A list of the names and addresses of all of the
14 licensee's authorized delegates; and

15 (7) Any other records the commissioner reasonably requires
16 by rule adopted pursuant to chapter 91."

17 SECTION 6. Section 489D-20, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "~~[f]~~§489D-20~~[7]~~ Money transmitter receipts and refunds.

20 (a) Each licensee who receives money or monetary value for
21 transmission and the licensee's authorized delegates shall



1 transmit the monetary equivalent of all money or equivalent
2 value received from a customer for transmission, net of any
3 fees, or issue instructions committing the money or its monetary
4 equivalent, to the person designated by the customer within ten
5 business days after receiving the money or equivalent value,
6 unless otherwise ordered by the customer or unless the licensee
7 or its authorized delegate has reason to believe that a crime
8 has occurred, is occurring, or may occur as a result of
9 transmitting the money[-] or monetary value.

10 (b) Each licensee who receives money or monetary value for
11 transmission and the licensee's authorized delegates shall
12 provide a receipt to the customer that clearly states the amount
13 of money or equivalent value presented for transmission and the
14 total of the fees charged by the licensee. If the rate of
15 exchange for a money transmission to be paid in the currency of
16 another country is fixed by the licensee for that transaction at
17 the time the money transmission is initiated, the receipt
18 provided to the customer shall disclose the rate of exchange for
19 that transaction, and the duration, if any, for the payment to
20 be made at that fixed rate of exchange. If the rate of exchange
21 for a money transmission to be paid in the currency of another



1 country is not fixed at the time the money transmission is sent,
2 the receipt provided to the customer shall disclose that the
3 rate of exchange for that transaction will be set at the time
4 the recipient of the money transmission picks up the funds in
5 the foreign country.

6 (c) For purposes of this section:

- 7 (1) Money is considered to have been transmitted when it
8 is available to the person designated by the customer,
9 whether or not the designated person has taken
10 possession of the money;
- 11 (2) "Monetary equivalent", when used in connection with a
12 money transmission in which the customer provides the
13 licensee or its authorized delegate with the money of
14 one government, and the designated recipient is to
15 receive the money of another government, means the
16 amount of money, in the currency of the government
17 that the designated recipient is to receive, as
18 converted at the retail exchange rate offered by the
19 licensee or its authorized delegate to the customer in
20 connection with the transaction; and



1 (3) "Fees" do not include revenue that a licensee or its
2 authorized delegate generates, in connection with a
3 money transmission, in converting the money of one
4 government into the money of another government.

5 (d) Each licensee who receives money or monetary value for
6 a money transmission and the licensee's authorized delegates
7 shall refund to a customer all moneys received for transmittal
8 within ten days of receipt of a written request for a refund
9 unless any of the following occurs:

10 (1) The moneys have been transmitted and delivered to the
11 person designated by the customer prior to receipt of
12 the written request for a refund;

13 (2) Instructions have been given committing an equivalent
14 amount of money to the person designated by the
15 customer prior to receipt of a written request for a
16 refund;

17 (3) The licensee or its authorized delegate has reason to
18 believe that a crime has occurred, is occurring, or
19 may occur as a result of transmitting the money as
20 requested by the customer or refunding the money as
21 requested by the customer; or



1 (4) The licensee is otherwise barred by law from making a
2 refund.

3 (e) Before entering into any agreement to perform a money
4 transmission involving virtual currency, a licensee shall obtain
5 the customer's agreement to the following notice and retain it
6 as a record pursuant to section 489D-18:

7 "Most virtual currencies are based upon computer
8 cryptography and derive their value solely from the
9 market's perception of their value, which can
10 experience great swings. These currencies are:

11 NOT backed by any physical commodity, such as
12 gold or silver;

13 NOT backed by the United States or any other
14 national government;

15 NOT legal tender for debts; and

16 NOT insured by the Federal Deposit Insurance
17 Corporation or any government agency.

18 You should be aware that there is a potential for you
19 as a consumer to lose all of your virtual currency.

20 Though cash can also be lost, with virtual currency
21 this loss can occur because of a computer failure;



1 malicious software attack; an attack, closure, or
2 disappearance of a virtual currency exchange company;
3 lack of security; loss of your private key; or a
4 sudden or dramatic change in value. These are just a
5 few examples. Some virtual currency users have been
6 unable to access their legitimate virtual currency
7 account because of heavy traffic by other users or a
8 prevalence of criminal activity in virtual currency
9 use. To protect yourself, become educated as to the
10 potential risks before deciding whether you want to
11 transact in virtual currency."

12 SECTION 7. Section 489D-22.5, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

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

- 17 (1) The date of surrender;
- 18 (2) The name, address, telephone number, facsimile number,
19 and electronic address of a contact individual with
20 knowledge and authority sufficient to communicate with
21 the commissioner regarding all matters relating to the



- 1 licensee during the period that it was licensed
2 pursuant to this chapter;
- 3 (3) The reason or reasons for surrender;
- 4 (4) Total [~~dollar amount~~] amounts, in money and monetary
5 value, as applicable, of the licensee's outstanding
6 payment obligations sold in Hawaii and the individual
7 amounts of each outstanding payment obligation, and
8 the name, address, and contact phone number of the
9 licensee to which each outstanding payment obligation
10 was assigned;
- 11 (5) A list of the licensee's Hawaii authorized delegates,
12 if any, as of the date of surrender; and
- 13 (6) Confirmation that the licensee has notified each of
14 its Hawaii authorized delegates, if any, that they may
15 no longer conduct money transmissions on the
16 licensee's behalf.
- 17 Voluntary surrender of a license shall be effective upon
18 the date of surrender specified on the written notice to the
19 commissioner as required by this section; provided that the
20 licensee has met all the requirements of voluntary surrender and
21 has returned the original license issued."



1 SECTION 8. Sections 489D-23 and 489D-25(a), Hawaii Revised
2 Statutes, are amended by substituting the term "money
3 transmission" wherever the term "money services" appears, as the
4 context requires.

5 SECTION 9. Section 489D-25, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) In determining whether an authorized delegate is
8 engaging in an unsafe or unsound practice, the commissioner may
9 consider the size and condition of the delegate's provision of
10 money [~~services,~~] transmissions, the magnitude of the loss, the
11 gravity of the violation of this chapter, and the previous
12 conduct of the delegate."

13 SECTION 10. This Act does not affect rights and duties
14 that matured, penalties that were incurred, and proceedings that
15 were begun before its effective date.

16 SECTION 11. If any provision of this Act, or the
17 application thereof to any person or circumstance, is held
18 invalid, the invalidity does not affect other provisions or
19 applications of the Act that can be given effect without the
20 invalid provision or application, and to this end the provisions
21 of this Act are severable.



1 SECTION 12. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 13. This Act shall take effect on July 1, 2019.

4

INTRODUCED BY: _____

A handwritten signature in black ink, appearing to be "J. A. ...", is written over a horizontal line.

S.B. NO. 1364

Report Title:

Division of Financial Institutions; Money Transmitters Act;
Virtual Currency

Description:

Extends the money transmitters act to expressly apply to persons engaged in the transmission of virtual currency. Requires licensees dealing with virtual currency to provide a warning to customers prior to entering into an agreement with the customers.

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

