



GOV. MSG. NO. 1210

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 28, 2021

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 28, 2021, the following bill was signed into law:

SB973 SD1 HD2 CD1

RELATING TO HAWAII MONEY TRANSMITTER
ACT
ACT 108 (21)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor

on JUN 28 2021

THE SENATE
THIRTY-FIRST LEGISLATURE, 2021
STATE OF HAWAII

ACT 108

S.B. NO.

973
S.D. 1
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO HAWAII MONEY TRANSMITTER ACT.

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

1 SECTION 1. The legislature finds that the money
2 transmission industry has evolved since the enactment of
3 Hawaii's Money Transmitters Act in 2006, when money transmission
4 was conducted by mom and pop store fronts and a few large
5 companies for consumers who wished to send funds to family and
6 friends abroad. Today, the industry is largely dominated by
7 internationally based companies with global reach and instant
8 payment processing capabilities, who are continually innovating
9 their financial technology and seeking the most efficient way to
10 transmit funds with ease for the consumer.

11 Over the years, regulation of money transmitters has
12 evolved from a single state regulator licensing, supervising,
13 and examining a money transmitter to a network of states working
14 together to license, supervise, and examine trans-global money
15 transmission companies as a multi-state system. In 2000, the
16 National Conference of Commissioners of Uniform State Laws
17 adopted a model law, known as the Uniform Money Services Act, to
18 harmonize the varied state regulatory frameworks. The goal was

1 to have various states adopt the Uniform Money Services Act to
2 create uniformity with respect to the regulation of money
3 transmitters in various states. The Uniform Money Services Act
4 was last amended in 2004. In 2019, the Conference of State Bank
5 Supervisors published a draft model law for money services
6 businesses based on the Uniform Money Services Act to address
7 areas in need of standardization and alignment across
8 jurisdictions. The Conference of State Bank Supervisors model
9 law focused on protecting consumers, establishing barriers to
10 the entry of bad actors, and facilitating coordination among
11 state agencies.

12 The legislature further finds that the instantaneous global
13 money transmission activity today necessitates additional
14 oversight of money transmitters to provide appropriate consumer
15 protection. Furthermore, the fast-paced nature of money
16 transmissions and innovation of financial technology
17 necessitates a quicker response to protect consumers. Hawaii's
18 Money Transmitters Act incorporates many provisions from the
19 Uniform Money Services Act, including provisions for networked
20 supervision, allowing the State some networked oversight of
21 these trans-global money transmission companies. However, the

1 legislature also finds that the law in its current form does not
2 provide sufficient flexibility for the State to share
3 supervisory information with other states to allow the quick
4 response required to protect consumers.

5 The purpose of this Act is to ensure that Hawaii can
6 effectively license, regulate, and supervise nationally and
7 globally operating money transmission companies without
8 unnecessarily impacting money transmission businesses that
9 operate regionally or in a single state by amending Hawaii's
10 Money Transmitters Act to:

- 11 (1) Incorporate definitions of key terms provided in the
12 Conference of State Bank Supervisors' model law;
- 13 (2) Add supporting documentation required to be submitted
14 by an applicant for licensure;
- 15 (3) Extend the period of an applicant's litigation and
16 criminal conviction history review from five to ten
17 years prior to the date of the application, which is
18 the maximum period reported by federal agencies;
- 19 (4) Require an applicant to submit information concerning
20 any bankruptcy or receivership proceedings affecting
21 the licensee;

(5) Clarify the authority of the commissioner of financial institutions to examine and investigate licensees; and

(6) Allow the commissioner of financial institutions to participate in nationwide protocols for licensing cooperation and coordination with other state regulators.

SECTION 2. Chapter 489D, Hawaii Revised Statutes, is amended by amending its title to read as follows:

"CHAPTER 489D

MONEY TRANSMITTERS MODERNIZATION ACT"

SECTION 3. Section 489D-1, Hawaii Revised Statutes, is amended to read as follows:

"[+] §489D-1 [-] Short title. This chapter may be cited as the Money Transmitters Modernization Act."

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

1. By adding four new definitions to be appropriately inserted and to read:

"Acting in concert" means individuals knowingly acting together with a common goal of jointly acquiring control of a licensee whether or not pursuant to an express agreement.

1 "Individual" means a natural person.

2 "Key individual" means any individual ultimately
3 responsible for establishing or directing policies and
4 procedures of the licensee, such as an executive officer,
5 manager, director, or trustee.

6 "Passive investor" means a person who:

7 (1) Does not have the power to elect a majority of key
8 individuals;

9 (2) Is not employed by and does not have any managerial
10 duties of the licensee or person in control of a
11 licensee;

12 (3) Does not have the power to exercise directly or
13 indirectly a controlling influence over the management
14 or policies of a licensee or person in control of a
15 licensee; and

16 (4) Either:

17 (A) Attests to paragraphs (1), (2), and (3) in a form
18 prescribed by the commissioner; or

19 (B) Commits to the passivity characteristics of
20 paragraphs (1), (2), and (3) in a written
21 document."

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

"Control" means ~~[ownership]~~:

(1) Ownership of, or the power to vote, twenty-five per cent or more of the outstanding voting securities or voting interests of a licensee or ~~[controlling]~~ person~~[-]~~ in control. For purposes of determining the percentage of a licensee controlled by any person, there shall be aggregated with the ~~[controlling person's]~~ person in control's interest, the interest of any other person controlled by the person, ~~[or by]~~ including any spouse, parent, ~~[or]~~ child ~~[of the person-]~~, sibling, and any other person who shares the person's home;

(2) The power to elect or appoint a majority of key individuals of a licensee; and

(3) The power to exercise directly or indirectly a controlling influence over the management or policies of a licensee or person in control of a licensee."

3. By amending the definition of "NMLS" to read:

"NMLS" means a ~~[mortgage]~~ multi-state licensing system

developed and maintained by the Conference of State Bank

1 Supervisors and the American Association of Residential Mortgage
2 Regulators for the state licensing and registration of state-
3 licensed [~~loan originators and other~~] financial services
4 providers[, ~~or any system provided by the Consumer Financial~~
5 ~~Protection Bureau~~]."

6 4. By amending the definition of "principal" to read:

7 "Principal" means any person, or group of persons acting
8 in concert, who exercises control over or has a
9 twenty-five per cent ownership interest or more in an applicant
10 or licensee under this chapter. [~~Principal~~] "Principal" also
11 includes a manager and [~~executive officers.~~] key individual."

12 5. By deleting the definition of "controlling person".

13 [~~"Controlling person" means any person in control of a~~
14 ~~licensee."~~]

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

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

20 (1) For all applicants:

- 1 (A) The exact name of the applicant, any fictitious
2 or trade name used by the applicant in the
3 conduct of its business, the applicant's
4 principal address, and the location of the
5 applicant's business records;
- 6 (B) The history of the applicant's material
7 litigation and criminal convictions for the
8 ~~[five-year]~~ ten-year period prior to the date of
9 the application;
- 10 (C) A description of the business activities
11 conducted by the applicant and a history of
12 operations;
- 13 (D) A description of the business activities in which
14 the applicant seeks to engage within the State;
- 15 (E) A list identifying the applicant's proposed
16 authorized delegates in the State, if any, at the
17 time of the filing of the license application;
- 18 (F) A sample authorized delegate contract, if
19 applicable;

- 1 (G) A sample form of payment instrument [7] or
2 instrument upon which stored value is recorded,
3 if applicable;
- 4 (H) The locations where the applicant and its
5 authorized delegates, if any, propose to conduct
6 their licensed activities in the State;
- 7 (I) The name and address of the clearing bank or
8 banks on which the applicant's payment
9 instruments will be drawn or through which
10 payment instruments will be payable;
- 11 (J) Disclosure of any pending or final suspension,
12 revocation, or other enforcement action by any
13 state or governmental authority for the five-year
14 period prior to the date of the application;
15 [and]
- 16 (K) Information concerning any bankruptcy or
17 receivership proceedings affecting the licensee,
18 key individual, person in control of a licensee,
19 or person seeking to acquire control of a
20 licensee; and

1 ~~[(K)]~~ (L) Any other information the commissioner may
2 require;

3 (2) If the applicant is a corporation, the applicant shall
4 also provide:

5 (A) The date of the applicant's incorporation and
6 state of incorporation;

7 (B) A certificate of good standing from the state in
8 which the applicant was incorporated;

9 (C) A description of the corporate structure of the
10 applicant, including the identity of any parent
11 or subsidiary company of the applicant, and the
12 disclosure of whether any parent or subsidiary
13 company is publicly traded on any stock exchange;

14 (D) The name, business and residence address, and
15 employment history, for the past five years, of
16 the applicant's principals, and each person who,
17 upon approval of the application, will be a
18 principal of the licensee;

19 (E) For the ~~[five-year]~~ ten-year period prior to the
20 date of the application, the history of material

litigation involving, and criminal convictions
of, each principal of the applicant;

(F) A copy of the applicant's most recent audited
financial statement, including balance sheets,
statements of income or loss, statements of
changes in shareholder equity and statements of
changes in financial position, and, if available,
the applicant's audited financial statements for
the preceding two-year period or, if the
applicant is a wholly owned subsidiary of another
corporation, either the parent corporation's
consolidated audited financial statements for the
current year and for the preceding two-year
period, or the parent corporation's Form 10-K
reports filed with the United States Securities
and Exchange Commission for the prior three years
in lieu of the applicant's financial statements,
or if the applicant is a wholly owned subsidiary
of a corporation having its principal place of
business outside the United States, similar

documentation filed with the parent corporation's
non-United States regulator;

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

(H) Information necessary to conduct a criminal
history record check in accordance with
section 846-2.7 of each person who, upon approval
of the application, will be a principal of the
licensee, accompanied by the appropriate payment
of the applicable fee for each record check; and

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

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

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

1 SECTION 6. Section 489D-15, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) After review of a request for approval under
4 subsection (a), the commissioner may require the licensee or
5 person or group of persons requesting approval of a proposed
6 change of control of the licensee, or both, to provide
7 additional information concerning the persons who are to assume
8 control of the licensee. The additional information shall be
9 limited to similar information required of the licensee or
10 persons in control of the licensee as part of its original
11 license or renewal application under sections 489D-9
12 and 489D-12. The information shall include the history of the
13 material litigation and criminal convictions of each person who
14 upon approval of the application for change of control will be a
15 principal of the licensee, for the [~~five-year~~] ten-year period
16 prior to the date of the application for change of control of
17 the licensee, and authorizations necessary to conduct criminal
18 history record checks of such persons, accompanied by the
19 appropriate payment of the applicable fee for each record
20 check."

SECTION 7. Section 489D-17, Hawaii Revised Statutes, is amended to read as follows:

"§489D-17 Examinations ~~[-]~~ and investigations. ~~[(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. 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

~~1 conduct an on site examination of any authorized delegate or~~
~~2 location of a licensee within the State without prior notice to~~
~~3 the authorized delegate or licensee only if the commissioner has~~
~~4 a reasonable basis to believe that the licensee or authorized~~
~~5 delegate is not in compliance with this chapter. When the~~
~~6 commissioner examines an authorized delegate's operations, the~~
~~7 authorized delegate shall pay all reasonably incurred costs of~~
~~8 the examination. When the commissioner examines a licensee's~~
~~9 location within the State, the licensee shall pay all reasonably~~
~~10 incurred costs of the examination.]~~

11 (a) The commissioner may examine or investigate a licensee
12 or authorized delegate of a licensee as reasonably necessary or
13 appropriate to administer and enforce this chapter, rules
14 adopted or orders issued under this chapter, and other
15 applicable law including but not limited to the Bank Secrecy
16 Act, title 31 United States Code section 5311 et seq.; Uniting
17 and Strengthening America by Providing Appropriate Tools
18 Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT)
19 Act of 2001, P.L. 107-56; Electronic Fund Transfer Act, Title 15
20 United States Code section 1693 et seq.; and Gramm-Leach Bliley
21 Act of 1999, P.L. 106-102.

(b) The commissioner may:

(1) Conduct an examination or investigation as the commissioner may reasonably require;

(2) Conduct an on-site or off-site examination or investigation or an off-site review of records;

(3) Conduct an examination or investigation in conjunction with an examination or investigation conducted by representatives of agencies of another state or the federal government;

(4) Accept the examination report of agencies of another state or the federal government or a report prepared by an independent accounting firm, in which event the accepted report shall be considered for all purposes as an official report of the commissioner; and

(5) Summon and examine under oath a key individual or employee of a licensee or authorized delegate of a licensee and require the person to produce records regarding any matter related to the condition and business of the licensee or authorized delegate.

(c) A licensee or authorized delegate of a licensee shall provide, and the commissioner shall have full and complete

1 access to, all records the commissioner may reasonably require
2 to conduct a complete examination or investigation. The records
3 shall be provided at the location and in the format specified by
4 the commissioner; provided that the commissioner may utilize
5 multi-state record production standards and examination
6 procedures when the standards will reasonably achieve the
7 requirements of this section.

8 (d) Unless otherwise directed by the commissioner, a
9 licensee shall pay all costs reasonably incurred in connection
10 with an examination of the licensee's authorized delegate.

11 (e) To efficiently and effectively administer and enforce
12 this chapter and to minimize regulatory burden, the commissioner
13 may participate in the multi-state, networked supervisory
14 processes established between states and coordinated through the
15 Conference of State Bank Supervisors, Money Transmitter
16 Regulator Association, and affiliates and successors for all
17 licensees that hold licenses in this State and other states;
18 provided that:

19 (1) As a participant in this multi-state supervision, the
20 commissioner may:

- 1 (A) Cooperate, coordinate, and share information with
2 other state and federal regulators;
- 3 (B) Enter into a written cooperation, coordination,
4 or information-sharing contract or agreement with
5 the organizations, the membership of which is
6 made up of state or federal governmental
7 agencies; and
- 8 (C) Cooperate, coordinate, and share information with
9 organizations, the membership of which is made up
10 of state or federal governmental agencies;
11 provided further that the organizations agree in
12 writing to maintain the confidentiality and
13 security of the shared information;
- 14 (2) For the purposes of paragraph (1), the commissioner
15 shall:
- 16 (A) Conduct a joint or concurrent examination or
17 other investigation or enforcement action with
18 the agency of another state or the federal
19 government;
- 20 (B) Accept a report of examination or investigation
21 by, or a report submitted to, the agency of

1 another state or federal government, in which
2 event the accepted report shall serve as an
3 official report of the commissioner for all
4 purposes; and

5 (C) Take other action as the commissioner considers
6 reasonably necessary or appropriate to carry out
7 and achieve the purposes of this chapter;

8 (3) The commissioner shall not waive, and nothing in this
9 section shall constitute a waiver of, the
10 commissioner's authority to conduct an examination or
11 investigation or otherwise take independent action
12 authorized by this chapter, or a rule adopted or order
13 issued under this chapter, to enforce compliance with
14 applicable state or federal law; and

15 (4) A joint examination or investigation, or acceptance of
16 an examination or investigation report, shall not
17 wave an examination assessment authorized by this
18 chapter.

19 (f) The submission of any information to the commissioner
20 by a person subject to this chapter or shared with the
21 commissioner by another federal or state regulator of a person

1 subject to this chapter, for any purpose in the course of any
2 examination or investigation or otherwise, shall not be
3 construed as waiving, destroying, or otherwise affecting any
4 privilege the person may claim with respect to the information
5 under federal or state law as to any person or entity other than
6 the commissioner; provided that this subsection shall not be
7 construed as implying or establishing that:

8 (1) Any person waives any privilege applicable to
9 information that is submitted or transferred under
10 circumstances to which this subsection does not apply;
11 and

12 (2) Any person would waive any privilege applicable to any
13 information by submitting the information to the
14 commissioner but for this subsection.

15 ~~[-(e)]~~ (g) The commissioner shall charge an examination fee
16 to each licensee and authorized delegate examined or
17 investigated by the commissioner or the commissioner's staff,
18 based upon the cost per hour per examiner. The hourly fee shall
19 be \$60.

20 ~~[-(d)]~~ (h) In addition to the examination fee, the
21 commissioner shall charge any money transmitter or authorized

1 delegate examined or investigated by the commissioner or the
2 commissioner's staff, additional amounts for travel, per diem,
3 mileage, and other reasonable expenses incurred in connection
4 with the examination."

5 SECTION 8. Section 489D-34, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§489D-34 Powers of the commissioner. In addition to any
8 other powers provided by law, the commissioner may:

- 9 (1) Adopt rules pursuant to chapter 91 to implement this
10 chapter;
- 11 (2) Administer and enforce the provisions and requirements
12 of this chapter;
- 13 (3) Issue declaratory rulings and informal nonbinding
14 interpretations;
- 15 (4) Develop requirements for licensure;
- 16 (5) Process and investigate complaints, subpoena witnesses
17 and documents, administer oaths, and receive
18 affidavits and oral testimony, including telephonic
19 communications;
- 20 (6) Investigate and conduct hearings, including contested
21 case proceedings under chapter 91, regarding any

- 1 violation of this chapter, or any rule or order of, or
- 2 agreement with, the commissioner;
- 3 (7) Create fact-finding committees that may make
- 4 recommendations to the commissioner for the
- 5 commissioner's deliberations;
- 6 (8) Require disclosure of relevant criminal history in
- 7 accordance with this chapter and conduct criminal
- 8 history record checks in accordance with chapter 846;
- 9 (9) Contract with or employ qualified persons who may be
- 10 exempt from chapter 76, including investigators,
- 11 examiners, auditors, and attorneys, to assist the
- 12 commissioner in exercising the commissioner's powers
- 13 and duties;
- 14 (10) Require that all revenues, fees, and fines collected
- 15 by the commissioner under this chapter be deposited
- 16 into the compliance resolution fund established
- 17 pursuant to section 26-9(o);
- 18 (11) Revoke, suspend, or otherwise limit the license of any
- 19 money transmitter for any violation of this chapter,
- 20 or any rule or order of, or agreement with, the
- 21 commissioner;

(12) Report any violation of this chapter or violation of federal or state law to the Consumer Financial Protection Bureau or other federal agency having jurisdiction over the licensee; ~~[and]~~

(13) Participate in nationwide protocols for licensing cooperation and coordination among state regulators; and

~~[(13)]~~ (14) Do any and all things necessary or incidental to the exercise of the commissioner's power and duties."

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect on July 1, 2021.

APPROVED this 28 day of JUN, 2021




GOVERNOR OF THE STATE OF HAWAII


S.B. No. 973, S.D. 1, H.D. 2, C.D. 1

THE SENATE OF THE STATE OF HAWAI‘I

Date: April 27, 2021
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate
of the Thirty-First Legislature of the State of Hawai‘i, Regular Session of 2021.


President of the Senate


Clerk of the Senate

SB No. 973, SD 1, HD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 27, 2021
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2021.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives