
A BILL FOR AN ACT

RELATING TO MONEY TRANSMITTERS MODERNIZATION ACT.

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

1 SECTION 1. Section 489D-4, Hawaii Revised Statutes, is
2 amended by adding three new definitions to be appropriately
3 inserted and to read as follows:

4 "Money" means a medium of exchange that is authorized or
5 adopted by the United States or a foreign government.

6 "Receiving money for transmission" or "money received for
7 transmission" means receiving money or monetary value in the
8 United States for transmission within or outside the United
9 States by electronic or other means.

10 "Tangible net worth" means the aggregate assets of a
11 licensee excluding all intangible assets, less liabilities, as
12 determined in accordance with United States generally accepted
13 accounting principles."

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

16 1. By amending the definition of "electronic instrument"
17 to read:



1 "Electronic instrument" means a card or other tangible
2 object, or an electronic or mobile wallet, for the transmission
3 or payment of money, including a stored value card or device,
4 which contains a microprocessor chip, magnetic stripe, or other
5 means for the storage of information, that is prefunded and for
6 which the value is decremented upon each use, but does not
7 include a card or other tangible object that is redeemable by
8 the issuer in goods or services."

9 2. By amending the definition of "money transmission" to
10 read:

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

12 (1) Selling or issuing payment instruments[~~+~~~~or~~] in this
13 State;

14 (2) Selling or issuing stored value to a person located in
15 this State; or

16 [~~(2)~~] (3) Receiving money or monetary value for
17 transmission [~~to a location within or outside the~~
18 ~~United States by any and all means, including wire,~~
19 ~~facsimile, or electronic transfer.~~] from a person
20 located in this State.

21 Money transmission does not apply to courier services."



1 3. By amending the definition of "outstanding payment
2 obligation" to read:

3 ""Outstanding [~~payment~~] money transmission obligation"
4 means:

5 (1) Any payment instrument or stored value issued by the
6 licensee that has been sold in the United States:

7 (A) Directly by the licensee; or

8 (B) By an authorized delegate of the licensee in the
9 United States, which has been reported to the
10 licensee as having been sold,

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

12 and

13 (2) All other outstanding money transmission obligations
14 of the licensee issued in the United States."

15 4. By amending the definition of "payment instrument" to
16 read:

17 ""Payment instrument" means any electronic or written
18 check, draft, money order, traveler's check, or other electronic
19 instrument or written instrument or order for the transmission
20 or payment of money, sold or issued to one or more persons,
21 whether [~~or not~~] the instrument is negotiable. The term



1 "payment instrument" does not include any [~~credit card voucher,~~
2 stored value card, any letter of credit, or any instrument that
3 is redeemable by the issuer in goods or services."

4 5. By amending the definition of "stored value" to read:

5 ""Stored value" means monetary value [~~that is evidenced by~~
6 ~~an electronic record.~~] that represents a claim against the
7 issuer evidenced by an electronic or digital record and that is
8 intended and accepted for use as a means of redemption for money
9 or monetary value, or payment for goods or services. "Monetary
10 value" includes but is not limited to "prepaid access" as
11 defined by title 31 Code of Federal Regulations section
12 1010.100, as may be amended or recodified. Notwithstanding the
13 foregoing, "stored value" does not include a payment instrument
14 or closed loop stored value, or stored value not sold to the
15 public but issued and distributed as part of a loyalty, rewards,
16 or promotional program."

17 SECTION 3. Section 489D-5, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§489D-5 Exclusions.** (a) This chapter shall not apply
20 to:



- 1 (1) The United States or any department, agency, or
2 instrumentality thereof;
- 3 (2) The United States Postal Service;
- 4 (3) The State or any political subdivisions thereof;
5 [and]
- 6 (4) The electronic transfer of government benefits for any
7 federal, state, or county governmental agency as
8 defined in Consumer Financial Protection Bureau
9 Regulation E, by a contractor for, and on behalf of
10 the United States or any department, agency, or
11 instrumentality thereof, or any state or any political
12 subdivisions thereof[-];
- 13 (5) An operator of a payment system to the extent that the
14 operator provides processing, clearing, or settlement
15 services between or among persons exempted by this
16 chapter or licensees in connection with wire
17 transfers, credit card transactions, debit card
18 transactions, stored-value transactions, automated
19 clearing house transfers, or similar fund transfers;
- 20 (6) A person appointed as an agent of a payee to collect
21 and process a payment from a payor to the payee for



1 goods or services, other than money transmission
2 itself, provided to the payor by the payee; provided
3 that:

4 (A) There exists a written agreement between the
5 payee and the agent directing the agent to
6 collect and process payments from payors on the
7 payee's behalf;

8 (B) The payee holds the agent out to the public as
9 accepting payments for goods or services on the
10 payee's behalf; and

11 (C) Payment for the goods and services is treated as
12 received by the payee upon receipt by the agent
13 so that the payor's obligation is extinguished
14 and there is no risk of loss to the payor if the
15 agent fails to remit the funds to the payee;

16 (7) A person that acts as an intermediary by processing
17 payments between an entity that has directly incurred
18 an outstanding money transmission obligation to a
19 sender, and the sender's designated recipient;
20 provided that the entity:



- 1 (A) Is properly licensed or exempt from licensing
- 2 requirements under this chapter;
- 3 (B) Provides a receipt, electronic record, or other
- 4 written confirmation to the sender identifying
- 5 the entity as the provider of money transmission
- 6 in the transaction; and
- 7 (C) Bears sole responsibility to satisfy the
- 8 outstanding money transmission obligation to the
- 9 sender, including the obligation to make the
- 10 sender whole in connection with any failure to
- 11 transmit the funds to the sender's designated
- 12 recipient;
- 13 (8) A person expressly appointed as a third party service
- 14 provider to or agent of an entity exempt under section
- 15 489D-9.5, solely to the extent that the service
- 16 provider or agent is engaging in money transmission on
- 17 behalf of and pursuant to a written agreement with the
- 18 exempt entity that sets forth the specific functions
- 19 that the service provider or agent is to perform;
- 20 provided that the exempt entity assumes all risk of
- 21 loss and all legal responsibility for satisfying the



1 outstanding money transmission obligations owed to
2 purchasers and holders of the outstanding money
3 transmission obligations upon receipt of the
4 purchaser's or holder's money or monetary value by the
5 service provider or agent;

6 (9) A board of trade designated as a contract market under
7 the federal Commodity Exchange Act, title 7 United
8 States Code sections 1-25, as may be amended or
9 recodified, or a person that, in the ordinary course
10 of business, provides clearance and settlement
11 services for a board of trade to the extent of its
12 operation as or for the board;

13 (10) A registered futures commission merchant under the
14 federal commodities laws to the extent of its
15 operation as such a merchant;

16 (11) A person registered as a securities broker-dealer
17 under federal or state securities laws to the extent
18 of its operation as such a broker-dealer;

19 (12) An individual employed by a licensee, authorized
20 delegate, or any person exempted from the licensing
21 requirements of this chapter when acting within the



1 scope of employment and under the supervision of the
 2 licensee, authorized delegate, or exempted person as
 3 an employee and not as an independent contractor; and
 4 (13) A person exempt by regulation or order if the
 5 commissioner finds such exemption to be in the public
 6 interest and that the regulation of such person is not
 7 necessary for the purposes of this chapter.

8 (b) Authorized delegates of a licensee acting within the
 9 scope of authority conferred by a written contract under section
 10 489D-21 shall not be required to obtain a license pursuant to
 11 this chapter.

12 (c) The commissioner may require any person claiming to be
 13 exempt from licensing pursuant to this section to provide
 14 information and documentation to the commissioner demonstrating
 15 that the person qualifies for any exemption claimed under this
 16 section."

17 SECTION 4. Section 489D-6, Hawaii Revised Statutes, is
 18 amended to read as follows:

19 "[~~§~~489D-6] **License qualifications.** (a) [~~Each~~
 20 ~~licensee, at all times, shall have a net worth of not less than~~
 21 ~~\$1,000, calculated in accordance with generally accepted~~



1 ~~accounting principles.]~~ A licensee shall maintain at all times a
2 tangible net worth of the greater of:

3 (1) \$100,000 or three per cent of tangible assets for the
4 first \$100,000,000;

5 (2) Two per cent of additional assets for \$100,000,000 to
6 \$1,000,000,000; and

7 (3) 0.5 per cent of additional assets for over
8 \$1,000,000,000.

9 Tangible net worth at all times shall be calculated in
10 accordance with generally accepted accounting principles.

11 (b) Tangible net worth shall be demonstrated at initial
12 application by the applicant's most recent audited financial
13 statements pursuant to section 489D-9(d)(2)(F) and (3)(E).

14 ~~[(b)]~~ (c) Each ~~[corporate]~~ applicant, at the time of
15 filing an application, and at all times after a license is
16 issued, shall be in good standing in the state of its
17 ~~[incorporation.]~~ formation. All ~~[non-corporate]~~ applicants, at
18 the time of filing an application for a license under this
19 chapter, and at all times after a license is issued, shall be
20 registered or qualified to do business in the State.



1 (d) Notwithstanding any provision of this section to the
2 contrary, the commissioner shall have the authority, for good
3 cause shown, to exempt, in part or in whole, any applicant or
4 licensee from the requirements of this section."

5 SECTION 5. Section 489D-7, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[~~f~~]**\$489D-7**[~~g~~] **Bond or other security device.** (a) Each
8 application for a license shall be accompanied by a surety bond,
9 irrevocable letter of credit, or other similar security device
10 acceptable to the commissioner in the amount of [~~\$10,000~~]
11 \$100,000 for the initial twelve months of licensure.

12 Thereafter, each licensee shall maintain a bond in the amount
13 required by this subsection [~~(g)~~] unless otherwise required by
14 the commissioner. The commissioner may increase the amount of
15 the bond or security device to a maximum of \$500,000 upon the
16 basis of the impaired financial condition of a licensee, as
17 evidenced by a reduction in tangible net worth, financial
18 losses, or other relevant criteria.

19 (b) The security device shall be in a form satisfactory to
20 the commissioner and shall run to the State for the benefit of
21 any claimants against the licensee to secure the faithful



1 performance of the obligations of the licensee relating to the
 2 receipt, handling, transmission, and payment of money or
 3 monetary value in connection with money transmissions. In the
 4 case of a bond, the aggregate liability of the surety shall not
 5 exceed the principal sum of the bond. Claimants against the
 6 licensee may bring suit directly on the security device or the
 7 commissioner may bring suit on behalf of claimants, either in
 8 one action or in successive actions.

9 (c) To meet the requirement of a security device or of any
 10 portion of the principal amount thereof, the licensee may
 11 deposit with the commissioner, or with such banks in this State
 12 as the licensee may designate and the commissioner may approve,
 13 cash, interest-bearing stocks and bonds, notes, debentures, or
 14 other obligations:

- 15 (1) Of the United States or any agency or instrumentality
- 16 thereof;
- 17 (2) Guaranteed by the United States;
- 18 (3) Of the State, a county, or instrumentality of the
- 19 State; or
- 20 (4) Guaranteed by the State,



1 in an aggregate amount based upon the principal amount or market
2 value, whichever is lower, of [~~not~~] no less than the amount of
3 the security device or portion thereof.

4 (d) The securities or cash deposited pursuant to
5 subsection (c) shall secure the same obligations as would the
6 security device, but the depositor shall:

7 (1) Be entitled to receive all interest and dividends
8 thereon;

9 (2) Have the right, with the approval of the commissioner,
10 to substitute other securities for those deposited;
11 and

12 (3) Be required to substitute other securities for those
13 deposited upon a showing of good cause and written
14 order of the commissioner.

15 (e) The security device shall remain in effect until
16 cancellation, which may occur only after thirty days written
17 notice to the commissioner. Cancellation shall not affect any
18 liability incurred or accrued during the period.

19 (f) The security device shall remain in place for no
20 longer than five years after the licensee ceases money
21 transmission operations in the State. Notwithstanding this



1 provision, the commissioner may permit the security device to be
2 reduced or eliminated prior to that time to the extent that the
3 amount of the licensee's payment instruments outstanding in the
4 State are reduced. The commissioner may also permit a licensee
5 to substitute a letter of credit or other form of security
6 device acceptable to the commissioner for the security device in
7 place at the time the licensee ceases money transmission
8 operations in the State.

9 ~~[(g) After the initial year of licensure, a licensee shall~~
10 ~~obtain a bond or other security device of \$5,000 if the~~
11 ~~licensee's annualized money transmissions as calculated in~~
12 ~~section 489D-12(a) are less than \$10,000,000. The bond or~~
13 ~~security device shall be \$10,000 if the licensee's annualized~~
14 ~~money transmissions as calculated in section 489D-12(a) are~~
15 ~~\$10,000,000 or more. Each licensee shall perform this~~
16 ~~calculation on an annual basis.]"~~

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

19 **"§489D-8 Permissible investments and statutory trust. (a)**
20 A licensee, at all times, shall possess permissible investments
21 having an aggregate market value, calculated in accordance with



1 generally accepted accounting principles, of [~~not~~] no less than
2 the aggregate amount of all outstanding [~~payment~~] money
3 transmission obligations. This requirement may be waived by the
4 commissioner if the dollar volume of a licensee's outstanding
5 [~~payment~~] money transmission obligations does not exceed the
6 bond or other security devices posted by the licensee pursuant
7 to section 489D-7.

8 (b) Permissible investments, even if commingled with other
9 assets of the licensee, [~~shall be~~] are held in trust for the
10 benefit of the purchasers and holders of the licensee's
11 outstanding [~~payment~~] money transmission obligations in the
12 event of [~~the bankruptcy of the licensee.~~] insolvency; the
13 filing of a petition by or against the licensee under the United
14 States Bankruptcy Code, title 11 United States Code section 101-
15 110, as may be amended or recodified, for bankruptcy or
16 reorganization; the filing of a petition by or against the
17 licensee for receivership; the commencement of any other
18 judicial or administrative proceeding for its dissolution or
19 reorganization; or in the event of an action by a creditor
20 against the licensee who is not a beneficiary of this statutory
21 trust. No permissible investments impressed with a trust



1 pursuant to this section shall be subject to attachment, levy of
2 execution, or sequestration by order of any court, except for a
3 beneficiary of a statutory trust established pursuant to this
4 subsection.

5 (c) Upon the establishment of a statutory trust in
6 accordance with subsection (b) or when any funds are drawn on a
7 letter of credit pursuant to section 489D-7(a), the licensee or
8 applicant shall notify the commissioner of the establishment of
9 the trust or the funds drawn on the letter of credit, as
10 applicable. Notice shall be deemed satisfied if performed
11 pursuant to a multistate agreement or through NMLS. Funds drawn
12 on a letter of credit, and any other permissible investments
13 held in trust for the benefit of the purchasers and holders of
14 the licensee's outstanding money transmission obligations, are
15 deemed held in trust for the benefit of such purchasers and
16 holders on a pro rata and equitable basis in accordance with
17 statutes pursuant to which permissible investments are required
18 to be held in this State, and other states, as applicable. Any
19 statutory trust established pursuant to this subsection shall be
20 terminated upon extinguishment of all of the licensee's
21 outstanding money transmission obligations.



1 (d) The commissioner, by rule or by order, may allow other
2 types of investments that the commissioner determines are of
3 sufficient liquidity and quality to be a permissible investment.
4 The commissioner may participate in efforts with other state
5 regulators to determine that other types of investments are of
6 sufficient liquidity and quality to be a permissible
7 investment."

8 SECTION 7. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 8. This Act shall take effect on June 30, 3000.



Report Title:

Money Transmitter; Money Transmission; Permissible Investments;
Tangible Net Worth; Division of Financial Institutions

Description:

Enables timely, coordinated, and efficient regulation of money transmission companies to achieve financial stability and economic growth, while providing consumer protection. Allows the State to share resources, data, and technology tools with other states to create a stronger multi-state system of financial regulation. Effective 6/30/3000. (HD1)

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