
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 as follows:

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

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

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

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

16 2. 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~~].

7 "Electronic instrument" does not include a card or other
 8 tangible object that is redeemable by the issuer in goods or
 9 services."

10 3. By amending the definition of "money transmission" to
 11 read:

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

13 (1) Selling or issuing payment instruments [~~,-or~~] in the
 14 State;

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

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



1 Money transmission does not apply to courier services."

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

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

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

8 (A) Directly by the licensee; or

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

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

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

16 5. By amending the definition of "payment instrument" to
17 read:

18 "Payment instrument" means any electronic or written
19 check, draft, money order, traveler's check, or other electronic
20 instrument or written instrument or order for the transmission
21 or payment of money, sold or issued to one or more persons,



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

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

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

18 SECTION 2. Section 489D-5, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§489D-5 Exclusions.** (a) This chapter shall not apply
21 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; [and]
- 5 (4) The electronic transfer of government benefits for any
- 6 federal, state, or county governmental agency as
- 7 defined in Consumer Financial Protection Bureau
- 8 Regulation E, by a contractor for, and on behalf of
- 9 the United States or any department, agency, or
- 10 instrumentality thereof, or any state or any political
- 11 subdivisions thereof[-];
- 12 (5) An operator of a payment system to the extent that the
- 13 operator provides processing, clearing, or settlement
- 14 services between or among persons exempted by this
- 15 section or licensees in connection with wire
- 16 transfers, credit card transactions, debit card
- 17 transactions, stored-value transactions, automated
- 18 clearing house transfers, or similar fund transfers;
- 19 (6) A person appointed as an agent of a payee to collect
- 20 and process a payment from a payor to the payee for
- 21 goods or services, other than money transmission



1 itself, provided to the payor by the payee; provided
2 that:

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

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

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

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

20 (A) Is properly licensed or exempt from licensing
21 requirements under this chapter;



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



1 outstanding money transmission obligations upon
2 receipt of the purchaser's or holder's money or
3 monetary value by the service provider or agent;

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

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

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

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



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

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

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

16 SECTION 3. Section 489D-6, Hawaii Revised Statutes, is
 17 amended to read as follows:

18 "~~{}~~§489D-6~~}~~ License qualifications~~{-}~~; tangible net
 19 worth; good standing. (a) ~~[Each licensee, at all times, shall~~
 20 ~~have a net worth of not less than \$1,000, calculated in~~
 21 ~~accordance with generally accepted accounting principles.]~~ A



1 licensee shall maintain at all times a tangible net worth of the
2 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 may, for good cause shown, exempt, in
3 part or in whole, any applicant or licensee from the
4 requirements of this section."

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

7 "**§489D-7 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~~]
12 the State as the licensee may designate and the commissioner may
13 approve, cash, interest-bearing stocks and bonds, notes,
14 debentures, or 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 5. 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 held in trust for the benefit
10 of the purchasers and holders of the licensee's outstanding
11 [~~payment~~] money transmission obligations in the event of [~~the~~
12 ~~bankruptcy of the licensee.~~] insolvency; the filing of a
13 petition by or against the licensee under the United States
14 Bankruptcy Code, title 11 United States Code section 101-110, as
15 may be amended or recodified, for bankruptcy or reorganization;
16 the filing of a petition by or against the licensee for
17 receivership; the commencement of any other judicial or
18 administrative proceeding for its dissolution or reorganization;
19 or in the event of an action by a creditor against the licensee
20 who is not a beneficiary of this statutory trust. No
21 permissible investments impressed with a trust pursuant to this



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

4 (c) Upon the establishment of a statutory trust in
5 accordance with subsection (b) or when any funds are drawn on a
6 letter of credit pursuant to section 489D-7(a), the licensee or
7 applicant shall notify the commissioner of the establishment of
8 the trust or the funds drawn on the letter of credit, as
9 applicable. Notice shall be deemed satisfied if performed
10 pursuant to a multistate agreement or through NMLS. Funds drawn
11 on a letter of credit, and any other permissible investments
12 held in trust for the benefit of the purchasers and holders of
13 the licensee's outstanding money transmission obligations, shall
14 be deemed held in trust for the benefit of the purchasers and
15 holders on a pro rata and equitable basis in accordance with
16 statutes pursuant to which permissible investments are required
17 to be held in the State, and other states, as applicable. Any
18 statutory trust established pursuant to this subsection shall be
19 terminated upon extinguishment of all of the licensee's
20 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 6. Sections 489D-12, 489D-18, and 489D-22.5,
9 Hawaii Revised Statutes, are amended by substituting the phrase
10 "outstanding money transmission obligation", or similar term,
11 wherever the phrase "outstanding payment obligation", or similar
12 term, appears, as the context requires.

13 SECTION 7. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 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. (SD1)

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