

JAN 25 2023

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 new definitions to be appropriately inserted
3 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" shall mean 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 by amending the definitions of "electronic instrument",
16 "money transmission", "outstanding payment obligation", "payment
17 instrument", and "stored value" to read as follows:

S.B. NO. 1325

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

10 (1) Selling or issuing payment instruments ~~[, or]~~ in this
11 State;

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

14 ~~[(2)]~~ (3) Receiving money or monetary value for
15 ~~transmission [to a location within or outside the~~
16 ~~United States by any and all means, including wire,~~
17 ~~facsimile, or electronic transfer.]~~ from a person
18 located in this State.

19 Money transmission does not apply to courier services.

20 "Outstanding ~~[payment]~~ money transmission obligation"

21 means:

S.B. NO. 1325

- 1 (1) Any payment instrument or stored value issued by the
2 licensee that has been sold in the United States:
3 (A) Directly by the licensee; or
4 (B) By an authorized delegate of the licensee in the
5 United States, which has been reported to the
6 licensee as having been sold,
7 and that has not yet been paid by or for the licensee;
8 and
9 (2) All other outstanding money transmission obligations
10 of the licensee issued in the United States.

11 "Payment instrument" means any electronic or written check,
12 draft, money order, traveler's check, or other electronic
13 instrument or written instrument or order for the transmission
14 or payment of money, sold or issued to one or more persons,
15 whether [~~or not~~] the instrument is negotiable. The term
16 "payment instrument" does not include any [~~credit card voucher,~~
17 stored value card, any letter of credit, or any instrument that
18 is redeemable by the issuer in goods or services.

19 "Stored value" means monetary value [~~that is evidenced by~~
20 ~~an electronic record.~~] representing a claim against the issuer
21 evidenced by an electronic or digital record, and that is
22 intended and accepted for use as a means of redemption for money

S.B. NO. 1325

1 or monetary value, or payment for goods or services. The term
2 includes, but is not limited to, "prepaid access" as defined by
3 31 C.F.R. section 1010.100, as amended or recodified from time
4 to time. Notwithstanding the foregoing, the term "stored value"
5 does not include a payment instrument or closed loop stored
6 value, or stored value not sold to the public but issued and
7 distributed as part of a loyalty, rewards, or promotional
8 program."

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

11 "§489D-5 Exclusions. (a) This chapter shall not apply
12 to:

- 13 (1) The United States or any department, agency, or
14 instrumentality thereof;
- 15 (2) The United States Postal Service;
- 16 (3) The State or any political subdivisions thereof;
- 17 [and]
- 18 (4) The electronic transfer of government benefits for any
19 federal, state, or county governmental agency as
20 defined in Consumer Financial Protection Bureau
21 Regulation E, by a contractor for, and on behalf of
22 the United States or any department, agency, or

S.B. NO. 1325

1 instrumentality thereof, or any state or any political
2 subdivisions thereof[-];

3 (5) An operator of a payment system to the extent that it
4 provides processing, clearing, or settlement services,
5 between or among persons exempted by this chapter or
6 licensees, in connection with wire transfers, credit
7 card transactions, debit card transactions, stored-
8 value transactions, automated clearing house
9 transfers, or similar funds transfers;

10 (6) A person appointed as an agent of a payee to collect
11 and process a payment from a payor to the payee for
12 goods or services, other than money transmission
13 itself, provided to the payor by the payee, provided
14 that:

15 (A) There exists a written agreement between the
16 payee and the agent directing the agent to
17 collect and process payments from payors on the
18 payee's behalf;

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

S.B. NO. 1325

1 (C) Payment for the goods and services is treated as
2 received by the payee upon receipt by the agent
3 so that the payor's obligation is extinguished
4 and there is no risk of loss to the payor if the
5 agent fails to remit the funds to the payee;

6 (7) A person that acts as an intermediary by processing
7 payments between an entity that has directly incurred
8 an outstanding money transmission obligation to a
9 sender, and the sender's designated recipient,
10 provided that the entity:

11 (A) Is properly licensed or exempt from licensing
12 requirements under this chapter;

13 (B) Provides a receipt, electronic record, or other
14 written confirmation to the sender identifying
15 the entity as the provider of money transmission
16 in the transaction; and

17 (C) Bears sole responsibility to satisfy the
18 outstanding money transmission obligation to the
19 sender, including the obligation to make the
20 sender whole in connection with any failure to
21 transmit the funds to the sender's designated
22 recipient;

S.B. NO. 1325

- 1 (8) A person expressly appointed as a third party service
2 provider to or agent of an entity exempt under section
3 489D-9.5, solely to the extent that such service
4 provider or agent is engaging in money transmission on
5 behalf of and pursuant to a written agreement with the
6 exempt entity that sets forth the specific functions
7 that the service provider or agent is to perform;
- 8 (9) The exempt entity assumes all risk of loss and all
9 legal responsibility for satisfying the outstanding
10 money transmission obligations owed to purchasers and
11 holders of the outstanding money transmission
12 obligations upon receipt of the purchaser's or
13 holder's money or monetary value by the service
14 provider or agent;
- 15 (10) A board of trade designated as a contract market under
16 the federal Commodity Exchange Act, 7 U.S.C. sections
17 1-25, as amended or recodified from time to time, or a
18 person that, in the ordinary course of business,
19 provides clearance and settlement services for a board
20 of trade to the extent of its operation as or for such
21 a board;

S.B. NO. 1325

- 1 (11) A registered futures commission merchant under the
2 federal commodities laws to the extent of its
3 operation as such a merchant;
- 4 (12) A person registered as a securities broker-dealer
5 under federal or state securities laws to the extent
6 of its operation as such a broker-dealer;
- 7 (13) An individual employed by a licensee, authorized
8 delegate, or any person exempted from the licensing
9 requirements of the Act when acting within the scope
10 of employment and under the supervision of the
11 licensee, authorized delegate, or exempted person as
12 an employee and not as an independent contractor;
- 13 (14) A person exempt by regulation or order if the
14 commissioner finds such exemption to be in the public
15 interest and that the regulation of such person is not
16 necessary for the purposes of this chapter; and
- 17 (15) The commissioner may require that any person claiming
18 to be exempt from licensing pursuant to section 489D-5
19 provide information and documentation to the
20 commissioner demonstrating that it qualifies for any
21 claimed exemption.

S.B. NO. 1325

1 (b) Authorized delegates of a licensee acting within the
2 scope of authority conferred by a written contract under section
3 489D-21 shall not be required to obtain a license pursuant to
4 this chapter."

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

7 "~~§489D-6 License qualifications. (a) [Each licensee, at~~
8 ~~all times, shall have a net worth of not less than \$1,000,~~
9 ~~calculated in accordance with generally accepted accounting~~
10 ~~principles.]~~ A licensee under this chapter shall maintain at all
11 times a tangible net worth of the greater of \$100,000 or 3 per
12 cent of tangible assets for the first \$100 million, 2 per cent
13 of additional assets for \$100 million to \$1 billion, and 0.5 per
14 cent of additional assets for over \$1 billion. Tangible net
15 worth at all times shall be calculated in accordance with
16 generally accepted accounting principles.

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

20 [~~b~~] (c) Each [~~corporate~~] applicant, at the time of
21 filing an application, and at all times after a license is
22 issued, shall be in good standing in the state of its

S.B. NO. 1325

1 ~~[incorporation.]~~ formation. All ~~[non-corporate]~~ applicants, at
2 the time of filing an application for a license under this
3 chapter, and at all times after a license is issued, shall be
4 registered or qualified to do business in the State.

5 (d) Notwithstanding the foregoing provisions of this
6 section, the commissioner shall have the authority, for good
7 cause shown, to exempt, in part or in whole, from the
8 requirements of this section any applicant or licensee."

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

11 "**§489D-7 Bond or other security device.** (a) Each
12 application for a license shall be accompanied by a surety bond,
13 irrevocable letter of credit, or other similar security device
14 acceptable to the commissioner in the amount of [~~\$10,000~~]
15 \$100,000 for the initial twelve months of licensure.
16 Thereafter, each licensee shall maintain a bond in the amount
17 required by this subsection [~~(g)~~] unless otherwise required by
18 the commissioner. The commissioner may increase the amount of
19 the bond or security device to a maximum of \$500,000 upon the
20 basis of the impaired financial condition of a licensee, as
21 evidenced by a reduction in tangible net worth, financial
22 losses, or other relevant criteria.

S.B. NO. 1325

1 (b) The security device shall be in a form satisfactory to
2 the commissioner and shall run to the State for the benefit of
3 any claimants against the licensee to secure the faithful
4 performance of the obligations of the licensee relating to the
5 receipt, handling, transmission, and payment of money or
6 monetary value in connection with money transmissions. In the
7 case of a bond, the aggregate liability of the surety shall not
8 exceed the principal sum of the bond. Claimants against the
9 licensee may bring suit directly on the security device or the
10 commissioner may bring suit on behalf of claimants, either in
11 one action or in successive actions.

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

18 (1) Of the United States or any agency or instrumentality
19 thereof;

20 (2) Guaranteed by the United States;

21 (3) Of the State, a county, or instrumentality of the
22 State; or

S.B. NO. 1325

1 (4) Guaranteed by the State,
2 in an aggregate amount based upon the principal amount or market
3 value, whichever is lower, of not less than the amount of the
4 security device or portion thereof.

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

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

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

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

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

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

S.B. NO. 1325

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 ~~maintain 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 as defined in section 489D-4, having an aggregate market value,
22 calculated in accordance with generally accepted accounting

S.B. NO. 1325

1 principles, of not less than the aggregate amount of all
2 outstanding [~~payment~~] money transmission obligations. This
3 requirement may be waived by the commissioner if the dollar
4 volume of a licensee's outstanding [~~payment~~] money transmission
5 obligations does not exceed the bond or other security devices
6 posted by the licensee pursuant to section 489D-7.

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

S.B. NO. 1325

1 sequestration by order of any court, except for a beneficiary of
2 this statutory trust.

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

20 (d) The commissioner by rule or by order may allow other
21 types of investments that the commissioner determines are of
22 sufficient liquidity and quality to be a permissible investment.

S.B. NO. 1325

1 The commissioner is authorized to participate in efforts with
2 other state regulators to determine that other types of
3 investments are of sufficient liquidity and quality to be a
4 permissible investment."

5 SECTION 7. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 8. This Act, upon its approval, shall take effect
8 on July 1, 2023.

9

10

INTRODUCED BY: 

11

BY REQUEST

S.B. NO. 1325

Report Title:

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

Description:

Continues the alignment of Hawaii's money transmitters law with the provisions of the Model Money Transmitters Modernization Act, thereby enabling Hawaii to work within a network of states to license, supervise, and examine transglobal money transmission companies as a multi-state system. 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.

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

JUSTIFICATION SHEET

SB. NO. 1325

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO MONEY TRANSMITTERS MODERNIZATION ACT.

PURPOSE: To continue the alignment of Hawaii's money transmitters law with the provisions of the Model Money Transmitters Modernization Act, thereby enabling Hawaii to work within a network of states to license, supervise, and examine transglobal money transmission companies as a multi-state system; enable timely, coordinated, and efficient regulation of money transmission companies to achieve financial stability and economic growth, while providing consumer protection; and allow the State to share resources, data, and technology tools with other states to create a stronger multi-state system of financial regulation.

MEANS: Amend sections 489D-4, 489D-5, 489D-6, 489D-7, and 489D-8, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Currently, the financial components of the money transmitters modernization act, chapter 489D, HRS, provides insufficient consumer protection. The outdated financial condition requirements do not provide adequate protection for consumers considering the evolution of money transmission companies conducting activities worldwide. The amendments incorporate definitions of key terms provided in the Conference of State Bank Supervisors Model Money Transmission Modernization Act and will provide adequate financial condition requirements for licensees.

SB. NO. 1325

Impact on the public: These amendments will help the Division of Financial Institutions license, regulate, and supervise nationally and globally operating money transmission companies without impacting money transmission businesses that operate regionally or in a single state to protect consumers.

Impact on the department and other agencies:
None.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-104.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2023.