

ACT 153

S.B. NO. 2143

A Bill for an Act Relating to Money Transmitters.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
MONEY TRANSMITTERS ACT**

§ -1 **Short title.** This chapter may be cited as the Money Transmitters Act.

§ -2 **Purpose.** It is the intent of the legislature to establish within the State a licensure system to ensure the safe and sound operation of money transmission businesses, to ensure that these businesses are not used for criminal purposes, to promote confidence in the State’s financial system, and to protect the public interest.

**§ -3 License required.** (a) On or after July 1, 2007, no person except those excluded pursuant to section -5, shall engage in the business of money transmission without a license as provided in this chapter.

(b) A person is engaged in providing money transmission if the person provides those services to persons in the State, even if the person providing services has no physical presence in the State.

(c) If a licensee has a physical presence in the State, the licensee may conduct its business at one or more locations, directly or indirectly owned, or through one or more authorized delegates, or both, pursuant to the single license granted to the licensee.

**§ -4 Definitions.** For purposes of this chapter:

“Applicant” means a person filing an application for a license under this chapter.

“Authorized delegate” means an entity designated by the licensee under this chapter to sell or issue payment instruments or engage in the business of transmitting money on behalf of a licensee.

“Commissioner” means the commissioner of financial institutions.

“Control” means ownership of, or the power to vote, twenty-five per cent or more of the outstanding voting securities of a licensee or controlling person. For purposes of determining the percentage of a licensee controlled by any person, there shall be aggregated with the controlling person’s interest the interest of any other person controlled by the person, or by any spouse, parent, or child of the person.

“Controlling person” means any person in control of a licensee.

“Division” means the division of financial institutions within the department of commerce and consumer affairs.

“Electronic instrument” means a card or other tangible object for the transmission or payment of money, including a stored value card or device, which contains a microprocessor chip, magnetic stripe, or other means for the storage of information, that is prefunded and for which the value is decremented upon each use, but does not include a card or other tangible object that is redeemable by the issuer in goods or services.

“Executive officer” means a president, chairperson of an executive committee, senior officer responsible for the licensee’s business, chief financial officer, or any other person who performs similar functions related to the licensee.

“Key shareholder” means any person, or group of persons acting in concert, who is the owner of twenty-five per cent or more of any voting class of an applicant’s stock.

“License” means a license under this chapter.

“Licensee” means a person licensed under this chapter.

“Material litigation” means any litigation that, according to generally accepted accounting principles, is deemed significant to an applicant’s or licensee’s financial health and would be required to be referenced in the applicant’s or licensee’s annual audited financial statements, report to shareholders, or similar documents.

“Monetary value” means a medium of exchange, whether or not redeemable in money.

“Money transmission” means to engage in the business of:

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

Money transmission does not apply to courier services.

“Outstanding payment instrument” means any payment instrument issued by the licensee that has been sold in the United States:

- (1) Directly by the licensee; or
- (2) By an authorized delegate of the licensee in the United States, which has been reported to the licensee as having been sold, and that has not yet been paid by or for the licensee.

“Payment instrument” means any electronic or written check, draft, money order, traveler’s check, or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not the instrument is negotiable. The term “payment instrument” does not include any credit card voucher, any letter of credit, or any instrument that is redeemable by the issuer in goods or services.

“Permissible investments” means:

- (1) Cash;
- (2) Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;
- (3) Bills of exchange or time drafts drawn on and accepted by a commercial bank, known as bankers’ acceptances, that are eligible for purchase by member banks of the federal reserve system;
- (4) Any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;
- (5) Investment securities that are obligations of the United States, its agencies, or its instrumentalities, obligations that are guaranteed fully as to principal and interest of the United States, or any obligations of any state, municipality, or any political subdivision thereof;
- (6) Shares in a money market mutual fund, interest-bearing bills, notes, or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, mutual funds primarily composed of these securities, or a fund composed of one or more permissible investments as set forth in this subsection;
- (7) Any demand borrowing agreement or agreements made with a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;
- (8) Receivables that are due to a licensee from its authorized delegates pursuant to a contract under section -21, that are not past due or doubtful of collection; or
- (9) Any other investments or security device approved by the commissioner.

“Person” means any individual, partnership, limited liability company, association, joint-stock association, trust, or corporation.

“Remit” means:

- (1) To make direct payment of the funds to the licensee or its representatives authorized to receive those funds; or
- (2) To deposit the funds in a bank, credit union, savings and loan association, savings bank, financial services loan company, or other similar financial institution in an account specified by the licensee.

“Stored value” means monetary value that is evidenced by an electronic record.

§ -5 Exclusions. (a) This chapter shall not apply to:

- (1) The United States or any department, agency, or instrumentality thereof;
- (2) The United States Postal Service;
- (3) The State or any political subdivisions thereof;
- (4) Banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks, financial ser-

vices loan companies, or mutual banks organized under the laws of the United States or any state, even if those entities act as authorized delegates for licensees and provided that they do not issue or sell payment instruments through authorized delegates who are not banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks, financial services loan companies, or mutual banks; and

- (5) The electronic transfer of government benefits for any federal, state, or county governmental agency as defined in Federal Reserve Board Regulation E, by a contractor for, and on behalf of the United States or any department, agency, or instrumentality thereof, or any state or any political subdivisions thereof.

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

**§ -6 License qualifications.** (a) Each licensee, at all times, shall have a net worth of not less than \$1,000, calculated in accordance with generally accepted accounting principles.

(b) Each corporate applicant, at the time of filing an application, and at all times after a license is issued, shall be in good standing in the state of its incorporation. All non-corporate applicants, at the time of filing an application for a license under this chapter, and at all times after a license is issued, shall be registered or qualified to do business in the State.

**§ -7 Bond or other security device.** (a) Each application for a license shall be accompanied by a surety bond, irrevocable letter of credit, or other similar security device acceptable to the commissioner in the amount of \$1,000. The commissioner may increase the amount of the bond or security device to a maximum of \$500,000 upon the basis of the impaired financial condition of a licensee, as evidenced by a reduction in net worth, financial losses, or other relevant criteria.

(b) The security device shall be in a form satisfactory to the commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee relating to the receipt, handling, transmission, and payment of money in connection with the sale and issuance of payment instruments or transmission of money. In the case of a bond, the aggregate liability of the surety shall not exceed the principal sum of the bond. Claimants against the licensee may bring suit directly on the security device or the commissioner may bring suit on behalf of claimants, either in one action or in successive actions.

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

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

in an aggregate amount based upon the principal amount or market value, whichever is lower, of not less than the amount of the security device or portion thereof.

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

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

- (2) Have the right, with the approval of the commissioner, to substitute other securities for those deposited; and
- (3) Be required to substitute other securities for those deposited upon a showing of good cause and written order of the commissioner.
- (e) The security device shall remain in effect until cancellation, which may occur only after thirty days written notice to the commissioner. Cancellation shall not affect any liability incurred or accrued during the period.
- (f) The security device shall remain in place for no longer than five years after the licensee ceases money transmission operations in the State. Notwithstanding this provision, the commissioner may permit the security device to be reduced or eliminated prior to that time to the extent that the amount of the licensee's payment instruments outstanding in the State are reduced. The commissioner may also permit a licensee to substitute a letter of credit or other form of security device acceptable to the commissioner for the security device in place at the time the licensee ceases money transmission operations in the State.

**§ -8 Permissible investments and statutory trust.** (a) A licensee, at all times, shall possess permissible investments having an aggregate market value, calculated in accordance with generally accepted accounting principles, of not less than the aggregate amount of all outstanding payment instruments issued or sold by the licensee in the United States. This requirement may be waived by the commissioner if the dollar volume of a licensee's outstanding payment instruments does not exceed the bond or other security devices posted by the licensee pursuant to section -7.

(b) Permissible investments, even if commingled with other assets of the licensee, shall be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of the bankruptcy of the licensee.

**§ -9 Application for license.** (a) An application for a license under this chapter shall be made in writing, and in a form prescribed by the commissioner. Each application shall contain the following:

- (1) For all applicants:
  - (A) The exact name of the applicant, any fictitious or trade name used by the applicant in the conduct of its business, the applicant's principal address, and the location of the applicant's business records;
  - (B) The history of the applicant's material litigation and criminal convictions for the five-year period prior to the date of the application;
  - (C) A description of the business activities conducted by the applicant and a history of operations;
  - (D) A description of the business activities in which the applicant seeks to engage within the State;
  - (E) A list identifying the applicant's proposed authorized delegates in the State, if any, at the time of the filing of the license application;
  - (F) A sample authorized delegate contract, if applicable;
  - (G) A sample form of payment instrument, if applicable;
  - (H) The locations where the applicant and its authorized delegates, if any, propose to conduct their licensed activities in the State; and
  - (I) The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which payment instruments will be payable;

- (2) If the applicant is a corporation, the applicant shall also provide:
  - (A) The date of the applicant's incorporation and state of incorporation;
  - (B) A certificate of good standing from the state in which the applicant was incorporated;
  - (C) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary company of the applicant, and the disclosure of whether any parent or subsidiary company is publicly traded on any stock exchange;
  - (D) The name, business and residence address, and employment history, for the past five years, of the applicant's executive officers and the officers or managers who will be in charge of the applicant's activities to be licensed under this chapter;
  - (E) The name, business and residence address, and employment history of any key shareholder of the applicant, for the period of five years before the date of the application;
  - (F) For the five-year period prior to the date of the application, the history of material litigation involving, and criminal convictions of, every executive officer or key shareholder of the applicant;
  - (G) 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 statement 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; and
  - (H) 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
- (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;
  - (B) The name, business and residence address, and employment history, for the past five years, of any other persons who will be in charge of the applicant's activities to be licensed under this chapter;
  - (C) The place and date of the applicant's registration or qualification to do business in this State;
  - (D) The history of material litigation and criminal convictions for the five-year period before the date of the application for each individual having any ownership interest in the applicant and each individual who exercises supervisory responsibility over the applicant's activities; and

(E) Copies of the applicant's audited financial statements, including balance sheets, statements of income or loss, and statements of changes in financial position for the current year and, if available, for the preceding two-year period.

(b) The commissioner, for good cause may:

- (1) Waive any requirement of this section relating to any license application; or
- (2) Permit an applicant to submit substituted information in its license application in lieu of the information required by this section.

**§ -10 Application and license fees.** (a) Each application shall be accompanied by:

- (1) A non-refundable application fee in the amount of \$1,000 plus \$100 for each additional location in the State, not to exceed a maximum fee of \$4,000; and
  - (2) A license fee of \$500 plus \$100 for each additional location in the State, not to exceed a maximum fee of \$2,000.
- (b) The license fee shall be refunded if the application is denied.

**§ -11 Issuance of license.** (a) Upon the filing of a complete application, the commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant. The commissioner may conduct an on-site investigation of the applicant, the reasonable cost of which shall be borne by the applicant.

(b) If the commissioner finds that:

- (1) The applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community;
- (2) The applicant has fulfilled the requirements imposed by this chapter; and
- (3) The applicant has paid the required license fee,

the commissioner shall issue a license to the applicant authorizing the applicant to engage in the licensed activities in the State for a term of one year. If these requirements have not been met, the commissioner shall deny the application in writing setting forth the reasons for the denial.

(c) Any applicant aggrieved by a denial issued by the commissioner under this chapter may submit a request for a contested case hearing in accordance with chapter 91.

**§ -12 Renewal of license and annual report.** (a) On or before December 31 of each year, each licensee shall pay to the commissioner an annual license fee of \$500, plus \$100 for each authorized delegate, not to exceed an aggregate fee of \$2,000.

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

- (1) A copy of the licensee's most recent audited annual financial statement, including balance sheets, statement of income or loss, statement of changes in shareholder's equity, and statement of changes in financial position or, if a licensee is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation in lieu of the licensee's audited annual financial statement;
- (2) For the most recent quarter for which data is available prior to the date of the filing of the renewal application, but in no event more than one hundred twenty days prior to the renewal date, the licensee shall

provide the number of payment instruments sold by the licensee in the State, the dollar amount of those instruments, and the dollar amounts of those instruments currently outstanding;

- (3) Any material changes to any of the information submitted by the licensee on its original application that have not previously been reported to the commissioner on any other report required to be filed under this chapter;
- (4) A list of the licensee's permissible investments; and
- (5) A list of the locations, if any, within this State where business regulated by this chapter is being conducted by either the licensee or the licensee's authorized delegates.

(c) A licensee that has not filed a renewal report or paid its annual license fee by the renewal filing deadline, and has not been granted an extension of time to do so by the commissioner, shall have its license suspended on the renewal date. The licensee has thirty days after its license is suspended to file a renewal report and pay the annual license fee, plus \$100 for each business day after suspension that the commissioner does not receive the renewal report and the annual license fee. The commissioner, for good cause, may grant an extension of the renewal date or reduce or suspend the \$100 per day late filing fee.

§ -13 **Licensee liability.** A licensee's responsibility to any person for a money transmission conducted on that person's behalf by the licensee or the licensee's authorized delegate shall be limited to the amount of money transmitted, the face amount, or the purchase amount of the payment instrument.

§ -14 **Extraordinary reporting requirements.** Within fifteen business days of the occurrence of any one of the events listed below, a licensee shall file a written report with the commissioner describing the event and its expected impact on the licensee's activities in this State. These events are:

- (1) Any material changes in information provided in a licensee's application or renewal report;
- (2) The filing for bankruptcy or reorganization by the licensee;
- (3) Revocation or suspension proceedings against the licensee by any state or governmental authority relating to the licensee's money transmission activities;
- (4) Any felony indictment of the licensee or any of its key officers or directors related to money transmission activities; or
- (5) Any felony conviction of the licensee or any of its key officers or directors related to money transmission activities.

§ -15 **Changes in control of a licensee.** (a) A licensee shall give the commissioner written notice of a proposed change of control and request approval of the proposal.

(b) After review of a request for approval under subsection (a), the commissioner may require the licensee to provide additional information concerning the persons who are to assume control of the licensee. The additional information shall be limited to similar information required of the licensee or persons in control of the licensee as part of its original license or renewal application under sections -9 and -12.

(c) The commissioner shall approve a request for change of control under subsection (a) if, after investigation, the commissioner determines that the person or group of persons requesting approval has the competence, experience, character, and general fitness to control the licensee or person in control of the licensee in a lawful



and proper manner, and that the interests of the public will not be jeopardized by the change of control.

(d) The following persons are exempt from the requirements of subsection (a), but the licensee regardless, shall notify the commissioner of a change of control:

- (1) A person who acts as a proxy for the sole purpose of voting at a designated meeting of the security holders or holders of voting interests of a licensee or person in control of a licensee;
- (2) A person who acquires control of a licensee by devise or descent;
- (3) A person who acquires control as a personal representative, custodian, guardian, conservator, trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law; or
- (4) A person who the commissioner, by rule or order, exempts in the public interest.

(e) Subsection (a) shall not apply to public offerings of securities.

(f) Before filing a request for approval for a change in control, a person may request in writing, a determination from the commissioner as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the commissioner determines that the person would not be a person in control of a licensee, the commissioner shall enter an order to that effect and the proposed person and transaction shall not be subject to the requirements of subsections (a) through (c).

**§ -16 Money laundering reports.** (a) Every licensee and its authorized delegates shall file with the commissioner all reports relating to transactions in the State, as required by federal recordkeeping and reporting requirements in Title 31 United States Code Section 5311 et seq., 31 Code of Federal Regulations Part 103, Section 125, and other federal and state laws pertaining to money laundering.

(b) The timely filing of a complete and accurate report with the appropriate federal agency shall satisfy the requirements of subsection (a), unless the commissioner notifies the licensee that reports of this type are not being regularly and comprehensively transmitted by the federal agency.

**§ -17 Examinations.** (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. When the commissioner concludes that an on site examination of a licensee is necessary, the licensee shall pay all reasonably incurred costs of the examination. 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 -12, or conduct an on site examination of any authorized delegate or location of a licensee within the State without prior notice to the authorized delegate or licensee only if the commissioner has a reasonable basis to believe that the licensee or authorized delegate is not in compliance with this chapter. When the commissioner examines an authorized delegate's operations, the authorized delegate shall pay all reasonably incurred costs of the examination. When

the commissioner examines a licensee's location within the State, the licensee shall pay all reasonably incurred costs of the examination.

**§ -18 Maintenance of records.** (a) Each licensee shall make, keep, preserve, and make available for inspection by the commissioner the following books, accounts, and other records for a period of three years:

- (1) A record or records of each payment instrument;
- (2) A general ledger containing all assets, liability, capital, income, and expense accounts that shall be posted at least monthly;
- (3) Bank statements and bank reconciliation records;
- (4) Records of outstanding payment instruments;
- (5) Records of each payment instrument paid within the three-year period;
- (6) A list of the names and addresses of all of the licensee's authorized delegates; and
- (7) Any other records the commissioner reasonably requires by rule adopted pursuant to chapter 91.

(b) Maintenance of documents in a photographic, electronic, or other similar form shall comply with this section.

(c) Records may be maintained at a location outside the State; provided that these records are made accessible to the commissioner within seven business days of receipt of a written notice issued by the commissioner.

**§ -19 Confidentiality of records.** (a) The commissioner and all employees, contractors, attorneys contracted or employed by the State, and appointees of the division of financial institutions shall not divulge or furnish any information in their possession or obtained by them in the course of their official duties to persons outside the division, except the director of commerce and consumer affairs, or unless otherwise permitted by this section or any other law regulating licensees or authorized delegates, in which case the disclosure shall not authorize or permit any further disclosure of the information. The disclosures prohibited by this section shall include, without limitation, information that is:

- (1) Privileged or exempt from disclosure under any federal or state law;
- (2) Related to an examination performed by or on behalf of the commissioner or contained in any report of examination;
- (3) Contained in any report submitted to, or for the use of the commissioner, except for the nonproprietary portions of applications;
- (4) Related to the business, personal, or financial affairs of any person and is furnished to, or for the use of, the commissioner in confidence;
- (5) Privileged or confidential and related to trade secrets and commercial or financial information obtained from a person;
- (6) Obtained pursuant to any lawful investigation for the purpose of enforcing the laws regulating licensees or authorized delegates;
- (7) Related solely to the internal personnel rules or other internal practices of the commissioner;
- (8) Contained in personnel, medical, and similar files, including financial files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or
- (9) Contained in inter-agency and intra-agency communications, whether or not contained in written memoranda, letters, tapes, or records, that would not be routinely available by law to a private party, including memoranda, reports, and other documents prepared by the staff of the commissioner.

(b) Any information identified in subsection (a) is confidential and not subject to subpoena or other legal process.

(c) The commissioner shall furnish a copy of each report of examination to the licensee or authorized delegate examined. The report and its contents shall remain the property of the commissioner and shall not be disclosed to any person who is not an officer, director, employee, authorized auditor, attorney, other consultant, or advisor of the licensee or authorized delegate. Any person who has received the report from the licensee or authorized delegate shall be bound by the confidentiality provisions of this section. The report and its contents shall not be subject to subpoena or other legal process requiring disclosure.

**§ -20 Money transmitter receipts and refunds.** (a) Each licensee who receives money or monetary value for transmission and the licensee's authorized delegates shall transmit the monetary equivalent of all money or equivalent value received from a customer for transmission, net of any fees, or issue instructions committing the money or its monetary equivalent, to the person designated by the customer within ten business days after receiving the money or equivalent value, unless otherwise ordered by the customer or unless the licensee or its authorized delegate has reason to believe that a crime has occurred, is occurring, or may occur as a result of transmitting the money.

(b) Each licensee who receives money or monetary value for transmission and the licensee's authorized delegates shall provide a receipt to the customer that clearly states the amount of money or equivalent value presented for transmission and the total of the fees charged by the licensee. If the rate of exchange for a money transmission to be paid in the currency of another country is fixed by the licensee for that transaction at the time the money transmission is initiated, the receipt provided to the customer shall disclose the rate of exchange for that transaction, and the duration, if any, for the payment to be made at that fixed rate of exchange. If the rate of exchange for a money transmission to be paid in the currency of another country is not fixed at the time the money transmission is sent, the receipt provided to the customer shall disclose that the rate of exchange for that transaction will be set at the time the recipient of the money transmission picks up the funds in the foreign country.

(c) For purposes of this section:

- (1) Money is considered to have been transmitted when it is available to the person designated by the customer, whether or not the designated person has taken possession of the money;
- (2) "Monetary equivalent", when used in connection with a money transmission in which the customer provides the licensee or its authorized delegate with the money of one government, and the designated recipient is to receive the money of another government, means the amount of money, in the currency of the government that the designated recipient is to receive, as converted at the retail exchange rate offered by the licensee or its authorized delegate to the customer in connection with the transaction; and
- (3) "Fees" do not include revenue that a licensee or its authorized delegate generates, in connection with a money transmission, in converting the money of one government into the money of another government.

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

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

- (2) Instructions have been given committing an equivalent amount of money to the person designated by the customer prior to receipt of a written request for a refund;
- (3) The licensee or its authorized delegate has reason to believe that a crime has occurred, is occurring, or may occur as a result of transmitting the money as requested by the customer or refunding the money as requested by the customer; or
- (4) The licensee is otherwise barred by law from making a refund.

§ -21 **Authorized delegate contracts.** Licensees desiring to conduct licensed activities through authorized delegates shall authorize each delegate to operate pursuant to an express written contract. These contracts shall provide the following:

- (1) That the licensee appoints the person as the licensee's delegate with authority to engage in money transmission on behalf of the licensee;
- (2) That neither a licensee nor an authorized delegate may authorize sub-delegates without the written consent of the commissioner;
- (3) That the licensee is subject to supervision and rule by the commissioner; and
- (4) That the authorized delegate certifies that it is in compliance with the recordkeeping and reporting requirements under Title 31 United States Code Section 5311 et seq., 31 Code of Federal Regulations Part 103, Section 125, and other federal and state laws pertaining to money laundering.

§ -22 **Authorized delegate; conduct.** (a) An authorized delegate of a licensee shall not make any fraudulent or false statement or misrepresentation to a licensee or to the commissioner.

(b) All money transmissions, sales, or issuances of payment instruments conducted by authorized delegates shall be in accordance with the licensee's written procedures provided to the authorized delegate.

(c) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate. The commissioner shall have the discretion to set, by rule, adopted pursuant to chapter 91, the maximum remittance time.

(d) An authorized delegate is deemed to consent to the commissioner's inspection, with or without prior notice to the licensee or authorized delegate, of the books and records of the authorized delegate when the commissioner has a reasonable basis to believe that the licensee or delegate is not in compliance with this chapter.

(e) An authorized delegate is under a duty to act only as authorized under the contract with the licensee. An authorized delegate that exceeds its authority is subject to cancellation of the delegate's contract and further disciplinary action by the commissioner.

(f) All funds, except fees, received by an authorized delegate from the sale or delivery of a payment instrument issued by a licensee or received by the delegate for transmission, from the time the funds are received by the delegate until the time when the funds or an equivalent amount are remitted by the delegate to the licensee, shall constitute trust funds owned by and belonging to the licensee. If an authorized delegate commingles any trust funds with any other funds or property owned or controlled by the delegate, all commingled funds and other property of the delegate shall be impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due to the licensee.

(g) An authorized delegate shall report to the licensee the theft or loss of payment instruments within twenty-four hours from the time the delegate knew or should have known of the theft or loss.

§ **-23 Prohibited practices.** It is a violation of this chapter for a licensee to:

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any person, including, but not limited to, bait and switch advertising or sales practices;
- (2) Directly or indirectly engage in any unfair or deceptive act or practice toward any person, including but not limited to any false or deceptive statement about fees or other terms of a money transmission or currency exchange;
- (3) Directly or indirectly obtain property by fraud or misrepresentation;
- (4) Knowingly make, publish, or disseminate any false, deceptive, or misleading information in the provision of money services;
- (5) Knowingly receive or take possession for personal use any property of any money services business, other than in payment for services rendered, and with intent to defraud, and omit to make, or cause or direct to omit to make, a full and true entry in the books and accounts of the regulated business;
- (6) Concur in making any false entry, or omit or concur in omitting any material entry in the books or accounts of the business;
- (7) Knowingly make or publish to the commissioner or commissioner's designee, or concur in making or publishing to the commissioner or commissioner's designee, any written report, exhibit, or statement of the licensee's affairs or pecuniary condition containing any material statement that is false, or omit or concur in omitting any statement required by law to be contained therein; or
- (8) Fail to make any report or statement lawfully required by the commissioner.

§ **-24 Suspension or revocation of licenses.** The commissioner may suspend or revoke a license if the commissioner finds that:

- (1) Any fact or condition exists that, if it had existed at the time when the licensee applied for its license, would have been grounds for denying the licensee's application;
- (2) The licensee's net worth becomes inadequate and the licensee, after ten days written notice from the commissioner, fails to take steps as the commissioner deems necessary to remedy a deficiency;
- (3) The licensee knowingly violates any material provision of this chapter or any rule or order validly adopted by the commissioner under authority of this chapter;
- (4) The licensee is conducting its business in an unsafe or unsound manner;
- (5) The licensee is insolvent;
- (6) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted, in writing, its inability to pay its debts as they become due;
- (7) The licensee has filed for bankruptcy, reorganization, arrangement, or other relief under any bankruptcy law;
- (8) The licensee refuses to permit the commissioner to make any examination authorized by this chapter; or

- (9) The competence, experience, character, or general fitness of the licensee indicates that it is not in the public interest to allow the licensee to have a license.

**§ -25 Suspension or revocation of authorized delegates.** (a) The commissioner may issue an order suspending or revoking the designation of an authorized delegate, if the commissioner finds that:

- (1) The authorized delegate violates this chapter or a rule adopted or an order issued under this chapter;
- (2) The authorized delegate does not cooperate with an examination or investigation by the commissioner;
- (3) The authorized delegate engages in fraud, intentional misrepresentation, or gross negligence;
- (4) The authorized delegate is convicted of a violation of a federal or state anti-money laundering statute;
- (5) The competence, experience, character, or general fitness of the authorized delegate or a person in control of the delegate indicates that it is not in the public interest to permit the delegate to provide money services; or
- (6) The authorized delegate is engaging in an unsafe or unsound practice.

(b) In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the delegate's provision of money services, the magnitude of the loss, the gravity of the violation of this chapter, and the previous conduct of the delegate.

(c) An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized delegate according to procedures prescribed by the commissioner.

**§ -26 Orders to cease and desist.** (a) If the commissioner determines a violation of this chapter or a rule adopted or an order issued under this chapter by a licensee or authorized delegate is:

- (1) Likely to cause immediate and irreparable harm to the licensee, the licensee's customers, or the public as a result of the violation; or
  - (2) Cause insolvency or significant dissipation of assets of the licensee,
- the commissioner may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The order becomes effective upon service of the order upon the licensee or authorized delegate.

(b) The commissioner may order a licensee to cease and desist from providing money transmission services through an authorized delegate that is the subject of a separate order pursuant to section -25 by the commissioner.

(c) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to chapter 91.

(d) A licensee or an authorized delegate that is served with an order to cease and desist may petition the circuit court for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding pursuant to section -31 or -32.

(e) The commissioner shall commence an administrative proceeding pursuant to chapter 91 within twenty days after issuing an order to cease and desist.

(f) The commissioner may apply to the circuit court for an appropriate order to protect the public interest.

**§ -27 Consent orders.** The commissioner may enter into a consent order at any time with a person to resolve a matter arising under this chapter. A consent order shall be signed by the person to whom the order is issued or by the person's

authorized representative, and shall indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this chapter or a rule adopted or an order issued under this chapter has been violated.

§ -28 **Civil penalties.** The commissioner may assess a fine against a person who violates this chapter or a rule adopted or an order issued under this chapter in an amount not to exceed \$500 per day for each day the violation is outstanding, plus the State's costs and expenses for the investigation and prosecution of the matter, including reasonable attorneys' fees.

§ -29 **Criminal penalties.** (a) A person who intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this chapter, who intentionally makes a false entry, or who omits a material entry in a record shall be guilty of a class C felony.

(b) An individual or person who knowingly engages in any activity for which a license is required under this chapter, without being licensed under this chapter, shall be guilty of a misdemeanor, and be subject to a fine in an amount not to exceed \$1,000, imprisonment of not more than one year, or both, and each day a violation exists shall be deemed a separate offense.

§ -30 **Unlicensed persons.** (a) If the commissioner has reason to believe that a person has violated or is violating section -3, the commissioner may issue an order to show cause why an order to cease and desist should not issue requiring that the person cease and desist from the violation of section -3.

(b) If the commissioner has reason to believe that a person has violated or is violating section -3, the commissioner may petition the circuit court for the issuance of a temporary restraining order if the public would be irreparably harmed.

(c) An order to cease and desist becomes effective upon service of the order upon the person.

(d) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to section -26.

(e) A person who is served with an order to cease and desist for violating section -3 may petition the circuit court for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order to cease and desist pending the completion of an administrative proceeding pursuant to section -26.

(f) The commissioner shall commence an administrative proceeding within twenty days after issuing an order to cease and desist.

§ -31 **Administrative procedures.** All administrative proceedings under this chapter shall be conducted in accordance with chapter 91.

§ -32 **Hearings.** Except as otherwise provided in sections -12(c) and -26, the commissioner may not suspend or revoke a license, issue an order to cease and desist, suspend or revoke the designation of an authorized delegate, or assess a civil penalty without notice and an opportunity to be heard.

§ -33 **Division functions.** (a) The division shall exercise all administrative functions of the State in relation to the regulation, supervision, and licensing of money transmitters.

(b) The division shall interpret and carry out the provisions of this chapter.

§ -34 Rules. (a)<sup>1</sup> The commissioner may adopt rules pursuant to chapter 91 to implement this chapter.’’

SECTION 2. A person who would be regulated under this Act shall not be required to comply with this Act until July 1, 2007, but may elect to do so before July 1, 2007. A person who files an application for a license pursuant to this Act before July 1, 2007, and whose application is determined to be complete by the commissioner on or before July 1, 2007, shall be deemed in compliance with the licensing provisions of chapter \_\_\_\_\_, Hawaii Revised Statutes, until such time as the license is issued or denied by the commissioner.

SECTION 3. This Act shall take effect upon approval.

(Approved May 31, 2006.)

**Note**

1. No subsection (b).