

A Bill for an Act Relating to Money Transmitters.

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

SECTION 1. Chapter 489D, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

“§489D- Name change. To change its name, its fictitious name, or its trade name, a money transmitter shall file an application with the commissioner and pay a nonrefundable fee of \$250 or such greater amount as the commissioner shall establish by rule pursuant to chapter 91. The application shall be approved if the commissioner is satisfied that the new name complies with all applicable laws. Any change of name shall not affect a money transmitter’s rights, liabilities, or obligations existing prior to the effective date thereof, and no documents of transfer shall be necessary to preserve such rights, liabilities, or obligations; provided that the commissioner may require notice to be given to the public and other governmental agencies.

§489D- Fees. Unless otherwise provided by statute, all fees shall be deposited into the compliance resolution fund established pursuant to section 26-9(o).

§489D- Limited exemption for financial institutions; financial institutions as authorized delegates. (a) Banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks, financial services loan companies, and mutual banks organized under the laws of the United States or any state shall be exempt from the licensing and examination provisions of this chapter.

(b) An applicant or licensee may appoint an entity described in subsection (a) as an authorized delegate.

(c) When submitting an application for a license pursuant to section 489D-9, or when submitting an annual report pursuant to section 489D-12, an applicant or licensee that appoints an entity described in subsection (a) as an authorized delegate shall include that entity’s name and the locations in this state where that entity will conduct its authorized delegate activities.

(d) When computing the application and license fees required to be paid pursuant to sections 489D-10 and 489D-12, an applicant or licensee that appoints an entity described in subsection (a) as an authorized delegate shall exclude all of the locations in this state where that entity will conduct its authorized delegate activities.”

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

““Principal” means any person, or group of persons acting in concert, who exercises control over or has a twenty-five per cent ownership interest in an applicant or licensee under this chapter. Principal also includes a manager and anyone else who supervises or is in charge of the applicant or licensee.”

SECTION 3. Section 489D-4, Hawaii Revised Statutes, is amended by amending the definition of “permissible investments” to read as follows:

““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 [ef] by 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 489D-21, that are not past due or doubtful of collection; or
- (9) Any other investments or security device approved by the commissioner."

SECTION 4. Section 489D-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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 services 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)]~~ (4) 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."

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

"(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;] state;
 - (E) A list identifying the applicant's proposed authorized delegates in the [State;] 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] state;
 - (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;
 - (J) Disclosure of any pending or final suspension, revocation, or other enforcement action by any state or governmental authority for the five-year period prior to the date of the application; and
 - (K) Any other information the commissioner may require;
- (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
 - (I) Information necessary to conduct a criminal history record check in accordance with section 846-2.7 of each of the executive officers, key shareholders, and managers who will be in charge of the applicant's activities, accompanied by the appropriate payment of the applicable fee for each record check;
- ~~and~~
- (3) If the applicant is not a corporation, the applicant shall also provide:
 - (A) The name, business and residence address, personal financial statement, and employment history, for the past five years, of each principal of the applicant;
 - (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;]~~ 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~~[-];~~ and
 - (F) Information necessary to conduct a criminal history record check in accordance with section 846-2.7 of each principal of the applicant, accompanied by the appropriate payment of the applicable fee for each record check."

SECTION 6. Section 489D-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each application shall be accompanied by:

- (1) A ~~[non-refundable]~~ nonrefundable application fee in the amount of ~~[\$1,000]~~ \$2,000 plus ~~[\$100]~~ \$300 for each additional location in the ~~[State;]~~ state, not to exceed ~~[a maximum]~~ an aggregate fee of ~~[\$4,000;]~~ \$15,000; and
- (2) ~~[A]~~ An annual license fee of ~~[\$500]~~ \$2,000 plus ~~[\$100]~~ \$300 for each additional location in the ~~[State;]~~ state, not to exceed ~~[a maximum]~~ an aggregate fee of ~~[\$2,000-]~~ \$15,000."

SECTION 7. Section 489D-11, Hawaii Revised Statutes, is amended to read as follows:

"[H]§489D-11[H] Issuance of license[-]; grounds for denial. (a) Upon the filing of a complete application, the commissioner shall investigate the financial con-

dition 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] 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.]~~ expiring on December 31 of the calendar year in which the license is issued.

(c) If the commissioner is not satisfied that the applicant meets all the criteria set forth for approval, the commissioner shall issue a written decision denying the application.

~~[(e)]~~ (d) 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."

SECTION 8. Section 489D-12, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~489D-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;~~] \$2,000, plus [~~\$100;~~] \$300 for each [~~authorized delegate;~~] additional location in the state, not to exceed an aggregate fee of [~~\$2,000;~~] \$15,000.

(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;]~~ annual report, 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;~~] 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]~~ For the most recent quarter for which data is available prior to the date of filing the annual report, but in no event more than one hundred twenty days prior to the renewal date, a list of the licensee's permissible investments, including the total market value of each type of permissible investment, and the total dollar amount of all outstanding payment instruments issued or sold by the licensee in the United States;

- (5) A list of the locations, if any, within this ~~[State]~~ state where business regulated by this chapter is being conducted by either the licensee or the licensee's authorized delegates[-];
- (6) Disclosure of any pending or final suspension, revocation, or other enforcement action by any state or governmental authority; and
- (7) Any other information the commissioner may require.
- (c) A licensee that has not filed ~~[a renewal]~~ an annual report that has been deemed complete by the commissioner 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]~~ an annual report and pay the annual license fee, plus a late filing fee of \$100 for each business day after suspension that the commissioner does not receive the [renewal] annual 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."

SECTION 9. Section 489D-14, Hawaii Revised Statutes, is amended to read as follows:

"[H]§489D-14[H] 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-]~~ state. These events are:

- (1) Any material ~~[changes]~~ change in information provided in a licensee's application or ~~[renewal]~~ annual report;
- (2) The filing for bankruptcy or reorganization by the licensee;
- (3) ~~[Revocation or suspension proceedings]~~ Pending or final revocation, suspension, or other enforcement action 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 shareholders, principals, executive officers [or directors], or officers or managers in charge of the licensee's activities, related to money transmission activities; ~~[or] and~~
- (5) Any felony conviction of the licensee or any of its key shareholders, principals, executive officers [or directors], or officers or managers in charge of the licensee's activities, related to money transmission activities."

SECTION 10. Section 489D-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A licensee shall ~~[give]~~ submit to the commissioner ~~[written notice] an application requesting approval of a proposed change of control [and request approval of the proposal.]~~ of the licensee, accompanied by a nonrefundable application fee of \$2,000."

SECTION 11. Section 489D-17, Hawaii Revised Statutes, is amended to read as follows:

"[H]§489D-17[H] 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 489D-12, or conduct an on site examination of any authorized delegate or location of a licensee within the [State] 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,] state, the licensee shall pay all reasonably incurred costs of the examination.

(c) The commissioner shall charge an examination fee to each licensed money transmitter and authorized delegate examined or investigated by the commissioner or the commissioner's staff, based upon the cost per hour per examiner. Effective July 1, 2008, the hourly fee shall be \$60.

(d) In addition to the examination fee, the commissioner shall charge any money transmitter or authorized delegate examined or investigated by the commissioner or the commissioner's staff, additional amounts for travel, per diem, mileage, and other reasonable expenses incurred in connection with the examination."

SECTION 12. Section 489D-19, Hawaii Revised Statutes, is amended to read as follows:

~~[[§489D-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 to 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 or application submitted to, or for the use of the commissioner, except for the nonproprietary portions of reports and applications[;], as determined by the commissioner pursuant to rule;
- (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] and to any 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.

(d) The commissioner may furnish reports of examination and other information relating to the examination of a licensee or authorized delegate to:

- (1) The governor, the attorney general, and heads of other state governmental agencies with regulatory authority over the licensee or authorized delegate;
- (2) Federal, state, or foreign regulatory agencies if the requesting agency agrees to use the information only for functions directly related to the exercise of its appropriate supervisory authority; and
- (3) Other agencies of the United States or a state for use where necessary to investigate regulatory, civil, or criminal charges in connection with the affairs of any licensee or authorized delegate under the supervision of the commissioner."

SECTION 13. Section 489D-22, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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[-] and shall comply with all applicable federal and state laws, rules, and regulations."

SECTION 14. Section 489D-28, Hawaii Revised Statutes, is amended to read as follows:

"[H§489D-28] Civil penalties. (a) 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.

(b) All administrative fines collected under authority of this chapter shall be deposited into the compliance resolution fund established pursuant to section 26-9(o)."

SECTION 15. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Criminal history record checks may be conducted by:

- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
- (2) The department of health on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;
- (3) The department of health on all applicants for licensure for, operators for, and prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care homes, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for the mentally retarded, hospital, rural health center and rehabilitation agency, and, in the case of any of the above-related facilities operating in a private residence, on any adult living in the facility other than the client as provided by section 321-15.2;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
- (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (7) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
- (8) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (9) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;
- (10) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
- (11) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-335;
- (12) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (13) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (14) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (15) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;

- (16) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- (17) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided as provided by section 302C-1;
- (18) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (19) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, dependent adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
- (20) The department of human services on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 346-97;
- (21) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;
- (22) The department of human services on foster grandparent program, senior companion program, and respite companion program participants as provided by section 346-97;
- (23) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under Section 1915(c) of the Social Security Act [(42 U.S.C. §1396n(c))] (Title 42 United States Codes Section 1396n(c)), as provided by section 346-97; [and]
- (24) The department of commerce and consumer affairs on:
 - (A) Each principal of every non-corporate applicant for a money transmitter license; and
 - (B) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license,¹
as provided by section 489D-9; and
- [(24)] (25) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.”

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 17. This Act shall take effect on January 1, 2009.

(Approved June 19, 2008.)

Notes

1. Should be underscored.

2. Edited pursuant to HRS §23G-16.5.