

**ACT 183**

H.B. NO. 1027

A Bill for an Act Relating to Money Transmitters Modernization Act.

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

SECTION 1. Section 489D-4, Hawaii Revised Statutes, is amended as follows:

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

““Money” means a medium of exchange that is authorized or adopted by the United States or a foreign government.

“Receiving money or monetary value for transmission” or “money or monetary value in connection with money transmission” means receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.

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

2. By amending the definition of “electronic instrument” to read:

““Electronic instrument” means a card or other tangible object, or an electronic or mobile wallet, 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~~]. “Electronic instrument” does not include a card or other tangible object that is redeemable by the issuer in goods or services.”

3. By amending the definition of “money transmission” to read:

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

- (1) Selling or issuing payment instruments[~~,- or~~] in the State;
- (2) Selling or issuing stored value to a person located in the State; or
- ~~(2)~~ (3) 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.] from a person located in the State.

Money transmission does not apply to courier services.”

4. By amending the definition of “outstanding payment obligation” to read:

““Outstanding [payment] money transmission obligation” means:

- (1) Any payment instrument or stored value issued by the licensee that has been sold in the United States:
  - (A) Directly by the licensee; or
  - (B) 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; and
- (2) All other outstanding money transmission obligations of the licensee issued in the United States.”

5. By amending the definition of “payment instrument” to read:

““Payment instrument” means any electronic or written check, draft, money order, traveler’s check, or other electronic instrument 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,] stored value card, any letter of credit, or any instrument that is redeemable by the issuer in goods or services.”

6. By amending the definition of “stored value” to read:

““Stored value” means monetary value [that is evidenced by an electronic record.] that represents a claim against the issuer evidenced by an electronic or digital record and that is intended and accepted for use as a means of redemption for money or monetary value, or payment for goods or services. “Stored value” includes but is not limited to “prepaid access” as defined by title 31 Code of Federal Regulations section 1010.100, as may be amended or recodified. Notwithstanding the foregoing, “stored value” does not include a payment in-

strument or closed loop stored value, or stored value not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program.”

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

**“§489D-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; ~~and~~
- (4) The electronic transfer of government benefits for any federal, state, or county governmental agency as defined in Consumer Financial Protection Bureau 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[.];
- (5) An operator of a payment system to the extent that the operator provides processing, clearing, or settlement services between or among persons exempted by this section or licensees in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, or similar fund transfers;
- (6) A person appointed as an agent of a payee to collect and process a payment from a payor to the payee for goods or services, other than money transmission itself, provided to the payor by the payee; provided that:
  - (A) There exists a written agreement between the payee and the agent directing the agent to collect and process payments from payors on the payee’s behalf;
  - (B) The payee holds the agent out to the public as accepting payments for goods or services on the payee’s behalf; and
  - (C) Payment for the goods and services is treated as received by the payee upon receipt by the agent so that the payor’s obligation is extinguished and there is no risk of loss to the payor if the agent fails to remit the funds to the payee;
- (7) A person that acts as an intermediary by processing payments between an entity that has directly incurred an outstanding money transmission obligation to a sender, and the sender’s designated recipient; provided that the entity:
  - (A) Is properly licensed or exempt from licensing requirements under this chapter;
  - (B) Provides a receipt, electronic record, or other written confirmation to the sender identifying the entity as the provider of money transmission in the transaction; and
  - (C) Bears sole responsibility to satisfy the outstanding money transmission obligation to the sender, including the obligation to make the sender whole in connection with any failure to transmit the funds to the sender’s designated recipient;
- (8) A person expressly appointed as a third party service provider to, or agent of, an entity exempt under section 489D-9.5, solely to the extent that the service provider or agent is engaging in money transmission on behalf of, and pursuant to, a written agreement with the exempt entity that sets forth the specific functions that the service provider or agent is to perform; provided that the exempt entity shall assume all risk of loss and all legal responsibility for satisfying

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

- (9) A board of trade designated as a contract market under the federal Commodity Exchange Act, title 7 United States Code sections 1 to 25, as may be amended or recodified, or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as, or for, the board;
  - (10) A registered futures commission merchant under the federal commodities laws to the extent of its operation as a registered futures commission merchant;
  - (11) A person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as a registered securities broker-dealer;
  - (12) An individual employed by a licensee, authorized delegate, or any person exempted from the licensing requirements of this chapter when acting within the scope of employment and under the supervision of the licensee, authorized delegate, or exempted person as an employee and not as an independent contractor; and
  - (13) A person exempt by rule or order if the commissioner finds the exemption to be in the public interest and that the regulation of the person is not necessary for the purposes of this chapter.
- (b) Authorized delegates of a licensee acting within the scope of authority conferred by a written contract under section 489D-21 shall not be required to obtain a license pursuant to this chapter.
- (c) The commissioner may require any person claiming to be exempt from licensing pursuant to this section to provide information and documentation to the commissioner demonstrating that the person qualifies for any exemption claimed under this section."

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

**“[§489D-6] License qualifications[-]; tangible net worth; good standing.** (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.] A licensee shall maintain at all times a tangible net worth of the greater of:

- (1) \$100,000 or three per cent of tangible assets for the first \$100,000,000;
- (2) Two per cent of additional assets for \$100,000,000 to \$1,000,000,000; and
- (3) 0.5 per cent of additional assets for over \$1,000,000,000.

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

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

[(b)] (c) 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-] formation. 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.

(d) Notwithstanding any provision of this section to the contrary, the commissioner may, for good cause shown, exempt, in part or in whole, any applicant or licensee from the requirements of this section."

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

**"§489D-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 ~~[\$10,000]~~ \$100,000 for the initial twelve months of licensure. Thereafter, each licensee shall maintain a bond in the amount required by this subsection ~~[(g)]~~ unless otherwise required by the commissioner. 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 tangible 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 or monetary value in connection with money transmissions. 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]~~ the 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]~~ no 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.

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

SECTION 5. Section 489D-8, Hawaii Revised Statutes, is amended to read as follows:

**“§489D-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]~~ no less than the aggregate amount of all outstanding [payment] money transmission obligations. This requirement may be waived by the commissioner if the dollar volume of a licensee's outstanding ~~[payment] money transmission obligations~~ does not exceed the bond or other security devices posted by the licensee pursuant to section 489D-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] money transmission obligations~~ in the event of ~~[the bankruptcy of the licensee.] insolvency; the filing of a petition by or against the licensee under the United States Bankruptcy Code, title 11 United States Code section 101-110, as may be amended or recodified, for bankruptcy or reorganization; the filing of a petition by or against the licensee for receivership; the commencement of any other judicial or administrative proceeding for its dissolution or reorganization; or in the event of an action by a creditor against the licensee who is not a beneficiary of this statutory trust.~~ No permissible investments impressed with a trust pursuant to this section shall be subject to attachment, levy of execution, or sequestration by order of any court, except for a beneficiary of a statutory trust established pursuant to this subsection.

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

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

SECTION 6. Sections 489D-12, 489D-18, and 489D-22.5, Hawaii Revised Statutes, are amended by substituting the phrase “outstanding money

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transmission obligation”, or similar term, wherever the phrase “outstanding payment obligation”, or similar term, appears, as the context requires.

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

SECTION 8. This Act shall take effect on July 1, 2023.

(Approved July 3, 2023.)