A BILL FOR AN ACT

RELATING TO MONEY TRANSMITTERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1	SECTION 1. Section 489D-4, Hawaii Revised Statutes, is
2	amended as follows:
3	(1) By amending the definitions of "outstanding payment
4	instrument", "person", and "principal" to read:
5	""Outstanding payment [instrument"] obligation" means
6	[any] <u>:</u>
7	(1) Any payment instrument issued by the licensee that has
8	been sold in the United States:
9	[(1)] <u>(A)</u> Directly by the licensee; or
10	$\left[\begin{array}{cc} (2) \end{array}\right]$ By an authorized delegate of the licensee in the
11	United States, which has been reported to the
12	licensee as having been sold,
13	and that has not yet been paid by or for the
14	licensee[-]; and
15	(2) All other outstanding money transmission obligations
16	of the licensee issued in the United States.

1 "Person" means any individual, partnership, limited 2 liability company, association, joint-stock association, trust, 3 [ex] corporation[-], or other entity, however organized. 4 "Principal" means any person, or group of persons acting in 5 concert, who exercises control over or has a twenty-five per 6 cent ownership interest or more in an applicant or licensee 7 under this chapter. Principal also includes a manager [and 8 anyone else who supervises or is in charge of the applicant or 9 licensee.] and executive officers." 10 (2) By repealing the definition of "key shareholder". 11 [""Key shareholder" means any person, or group of persons acting in concert, who is the owner of twenty-five per-cent or 12 13 more of any voting class of an applicant's stock."] SECTION 2. Section 489D-8, Hawaii Revised Statutes, is 14 15 amended to read as follows: **16** "[+] §489D-8[+] Permissible investments and statutory **17** trust. (a) A licensee, at all times, shall possess permissible 18 investments having an aggregate market value, calculated in 19 accordance with generally accepted accounting principles, of not 20 less than the aggregate amount of all outstanding payment 21 [instruments issued or sold by the licensee in the United

1	States. obligations. This requirement may be waived by the
2	commissioner if the dollar volume of a licensee's outstanding
3	payment [instruments] obligations does not exceed the bond or
4	other security devices posted by the licensee pursuant to
5	section 489D-7.
6	(b) Permissible investments, even if commingled with other
7	assets of the licensee, shall be held in trust for the benefit
8	of the purchasers and holders of the licensee's outstanding
9	payment [instruments] obligations in the event of the bankruptcy
10	of the licensee."
11	SECTION 3. Section 489D-9, Hawaii Revised Statutes, is
12	amended by amending subsection (d) to read as follows:
13	"(d) An application for a license under this chapter shall
14	be made in writing, and in a form prescribed by NMLS or by the
15	commissioner. Each application shall contain the following:
16	(1) For all applicants:
17	(A) The exact name of the applicant, any fictitious
18	or trade name used by the applicant in the
19	conduct of its business, the applicant's
20	principal address, and the location of the
21	applicant's business records;

1	(B)	The history of the applicant's material
2		litigation and criminal convictions for the five-
3		year period prior to the date of the application;
4	(C)	A description of the business activities
5		conducted by the applicant and a history of
6		operations;
7	(D)	A description of the business activities in which
8		the applicant seeks to engage within the State;
9	(E)	A list identifying the applicant's proposed
10		authorized delegates in the State, if any, at the
11		time of the filing of the license application;
12	(F)	A sample authorized delegate contract, if
13		applicable;
14	(G)	A sample form of payment instrument, if
15		applicable;
16	(H)	The locations where the applicant and its
17		authorized delegates, if any, propose to conduct
18		their licensed activities in the State;
19	(I)	The name and address of the clearing bank or
20		banks on which the applicant's payment

1			instruments will be drawn or through which
2			payment instruments will be payable;
3		(J)	Disclosure of any pending or final suspension,
4			revocation, or other enforcement action by any
5			state or governmental authority for the five-year
6			period prior to the date of the application; and
7		(K)	Any other information the commissioner may
8			require;
9	(2)	If t	he applicant is a corporation, the applicant shall
10		also	provide:
11		(A)	The date of the applicant's incorporation and
12			state of incorporation;
13		(B)	A certificate of good standing from the state in
14			which the applicant was incorporated;
15		(C)	A description of the corporate structure of the
16			applicant, including the identity of any parent
17			or subsidiary company of the applicant, and the
18			disclosure of whether any parent or subsidiary
19			company is publicly traded on any stock exchange;
20		(D)	The name, business and residence address, and
21			employment history for the past five years of

1		the applicant's [executive officers, and the
2		officers or managers who will be in charge of the
3		applicant's activities to be licensed under this
4		chapter; principals, and each person who upon
5		approval of the application will be a principal
6		of the licensee;
7	[(E)	The name, business and residence address, and
8		employment history of any key shareholder of the
9		applicant, for the period of five years before
10		the date of the application;
11	(F)]	(E) For the five-year period prior to the date
12		of the application, the history of material
13		litigation involving, and criminal convictions
14		of, [every executive officer or key shareholder]
15		each principal of the applicant;
16	[-(G) -]	(F) A copy of the applicant's most recent
17		audited financial statement, including balance
18		sheets, statements of income or loss, statements
19		of changes in shareholder equity and statements
20		of changes in financial position, and, if
21		available, the applicant's audited financial

1		statements for the preceding two-year period or,
2		if the applicant is a wholly owned subsidiary of
3		another corporation, either the parent
4		corporation's consolidated audited financial
5		statements for the current year and for the
6		preceding two-year period, or the parent
7		corporation's Form 10-K reports filed with the
8		United States Securities and Exchange Commission
9		for the prior three years in lieu of the
10		applicant's financial statements, or if the
11		applicant is a wholly owned subsidiary of a
12		corporation having its principal place of
13		business outside the United States, similar
14		documentation filed with the parent corporation's
15		non-United States regulator;
16	[(H)]	(G) Copies of all filings, if any, made by the
17		applicant with the United States Securities and
18		Exchange Commission, or with a similar regulator
19		in a country other than the United States, within
20		the year preceding the date of filing of the
21		application; and

1	[(I)]	(H) Information necessary to conduct a criminal
2		history record check in accordance with section
3		846-2.7 of each [of the executive officers, key
4		shareholders, and managers who will be in charge
5		of the applicant's activities, person who upon
6		approval of the application will be a principal
7		of the licensee, accompanied by the appropriate
8		payment of the applicable fee for each record
9		check; and
10	(3) If t	he applicant is not a corporation, the applicant
11	shal	l also provide:
12	(A)	The name, business and residence address,
13		personal financial statement, and employment
14		history, for the past five years, of each
15		principal of the applicant;
16	(B)	The name, business and residence address, and
17		employment history, for the past five years, of
18		any other persons who upon approval of the
19		application will be [in charge of the applicant's
20		activities to be licensed under this chapter;] a
21		principal of the licensee;

1	(C)	The place and date of the applicant's
2		registration or qualification to do business in
3		this State;
4	(D)	The history of material litigation and criminal
5		convictions for the five-year period before the
6		date of the application for each [individual
7		having any ownership interest in principal of
8		the applicant [and each individual who exercises
9		supervisory responsibility over the applicant's
10		activities];
11	(E)	Copies of the applicant's audited financial
12		statements, including balance sheets, statements
13		of income or loss, and statements of changes in
14		financial position for the current year and, if
15		available, for the preceding two-year period; and
16	(F)	Information necessary to conduct a criminal
17		history record check in accordance with section
18		846-2.7 of each principal of the applicant,
19		accompanied by the appropriate payment of the
20		applicable fee for each record check."

1	SECT	ION 4. Section 489D-12, Hawaii Revised Statutes, is
2	amended by	y amending subsection (b) to read as follows:
3	"(b)	The annual license fee shall be accompanied by a
4	report, i	n a form prescribed by the commissioner, which shall
5	include:	
6	(1)	A copy of the licensee's most recent audited annual
7		financial statement, including balance sheets,
8		statement of income or loss, statement of changes in
9		shareholder's equity, and statement of cash flows or,
10		if a licensee is a wholly owned subsidiary of another
11		corporation, the consolidated audited annual financial
12		statement of the parent corporation in lieu of the
13		licensee's audited annual financial statement;
14	(2)	For the most recent quarter for which data is
15		available prior to the date of filing the annual
16		report, but in no event more than one hundred twenty
17		days prior to the renewal date, the licensee shall
18		provide the number of money transmissions sold,
19		issued, or received for transmission by the licensee
20		in the State, the dollar amount of those
21		transmissions, and the dollar amounts of outstanding

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1		payment [instruments currently outstanding;]
2		obligations;
3	(3)	Any material changes to any of the information
4		submitted by the licensee on its original application
5		that have not previously been reported to the
6		commissioner on any other report required to be filed
7		under this chapter;
8	(4)	For the most recent quarter for which data is
9		available prior to the date of filing the annual
10		report, but in no event more than one hundred twenty
11		days prior to the renewal date, a list of the
12		licensee's permissible investments, including the
13		total market value of each type of permissible
14		investment, and the total dollar amount of all
15		outstanding payment [instruments issued or sold by the
16		licensee in the United States; obligations;
17	(5)	A list of the locations, if any, within this State
18		where business regulated by this chapter is being
19		conducted by either the licensee or the licensee's
20		authorized delegates;

1	(6)	Disclosure of any pending or final suspension,
2		revocation, or other enforcement action by any state
3		or governmental authority;
4	(7)	The licensee's evidence of a valid bond or other
5		security device as required pursuant to section
6		489D-7; and
7	(8)	Any other information the commissioner may require.
8	A li	cense may be renewed by filing a renewal statement on a
9	form pres	cribed by NMLS or by the commissioner and paying a
10	renewal f	ee at least four weeks prior to the renewal date for
11	licensure	for the following year."
12	SECT	ION 5. Section 489D-14, Hawaii Revised Statutes, is
13	amended t	o read as follows:
14	"§48	9D-14 Extraordinary reporting requirements. Within
15	fifteen b	usiness days of the occurrence of any one of the events
16	listed be	low, a licensee shall file a written report with the
17	commissio	ner describing the event and its expected impact on the
18	licensee'	s activities in this State. These events are:
19	(1)	Any material change in information provided in a
20		licensee's application or annual report;

T	(2)	The fiffing for bankruptcy of reorganization by the
2		licensee;
3	(3)	Pending or final revocation, suspension, or other
4		enforcement action against the licensee by any state
5		or governmental authority relating to the licensee's
6		money transmission activities;
7	(4)	Any felony indictment of the licensee or any of its
8		[key shareholders,] principals[, executive officers,
9		or officers or managers in charge of the licensee's
10		activities, related to money transmission activities
11		and
12	(5)	Any felony conviction of the licensee or any of its
13		[key shareholders,] principals[, executive officers,
14		or officers or managers in charge of the licensee's
15		activities, related to money transmission
16		activities."
17	SECT	ION 6. Section 489D-15, Hawaii Revised Statutes, is
18	amended b	y amending subsection (b) to read as follows:
19	"(b)	After review of a request for approval under
20	subsection	n (a), the commissioner may require the licensee or
21	person or	group of persons requesting approval of a proposed

- 1 change of control of the licensee, or both, to provide
- 2 additional information concerning the persons who are to assume
- 3 control of the licensee. The additional information shall be
- 4 limited to similar information required of the licensee or
- 5 persons in control of the licensee as part of its original
- 6 license or renewal application under sections 489D-9 and 489D-
- 7 12. The information shall include the history of the material
- 8 litigation and criminal convictions of [the persons who are to
- 9 assume control] each person who upon approval of the application
- 10 for change of control will be a principal of the licensee, for
- 11 the five-year period prior to the date of the application for
- 12 change of control of the licensee, and authorizations necessary
- 13 to conduct criminal history record checks of such persons [who
- 14 are to assume control of the licensee], accompanied by the
- 15 appropriate payment of the applicable fee for each record
- 16 check."
- 17 SECTION 7. Section 489D-18, Hawaii Revised Statutes, is
- 18 amended by amending subsection (a) to read as follows:
- "(a) Each licensee shall make, keep, preserve, and make
- 20 available for inspection by the commissioner the following
- 21 books, accounts, and other records for a period of three years:



1	(1)	A record or records of each payment instrument;
2	(2)	A general ledger containing all assets, liability,
3		capital, income, and expense accounts that shall be
4		posted at least monthly;
5	(3)	Bank statements and bank reconciliation records;
6	(4)	Records of all outstanding payment [instruments;]
7		obligations;
8	(5)	Records of each payment instrument paid within the
9		three-year period;
10	(6)	A list of the names and addresses of all of the
11		licensee's authorized delegates; and
12	(7)	Any other records the commissioner reasonably requires
13		by rule adopted pursuant to chapter 91."
14	SECT	ION 8. Section 489D-22.5, Hawaii Revised Statutes, is
15	amended b	y amending subsection (b) to read as follows:
16	"(b)	Notice pursuant to this section shall be provided at
17	least thi	rty days before the surrender of the license and shall
18	include:	
19	(1)	The date of surrender;
20	(2)	The name, address, telephone number, facsimile number,
21		and electronic address of a contact individual with

1		knowledge and authority sufficient to communicate with
2		the commissioner regarding all matters relating to the
3		licensee during the period that it was licensed
4		pursuant to this chapter;
5	(3)	The reason or reasons for surrender;
6	(4)	Total dollar amount of the licensee's outstanding
7		payment [instruments] obligations sold in Hawaii and
8		the individual amounts of each outstanding
9		[instrument,] payment obligation, and the name,
10		address, and contact phone number of the licensee to
11		which each outstanding [instrument] payment obligation
12		was assigned;
13	(5)	A list of the licensee's Hawaii authorized delegates,
14		if any, as of the date of surrender; and
15	(6)	Confirmation that the licensee has notified each of
16		its Hawaii authorized delegates, if any, that they may
17		no longer conduct money transmissions on the
18		licensee's behalf.
19	Volu	ntary surrender of a license shall be effective upon
20	the date	of surrender specified on the written notice to the
21	commissio	ner as required by this section; provided that the

1	licensee 1	has met all the requirements of voluntary surrender and
2	has retur	ned the original license issued."
3	SECT	ION 9. Section 846-2.7, Hawaii Revised Statutes, is
4	amended by	y amending subsection (b) to read as follows:
5	"(b)	Criminal history record checks may be conducted by:
6	(1)	The department of health or its designee on operators
7		of adult foster homes for individuals with
8		developmental disabilities or developmental
9		disabilities domiciliary homes and their employees, as
10		provided by section 321-15.2;
11	(2)	The department of health or its designee on
12		prospective employees, persons seeking to serve as
13		providers, or subcontractors in positions that place
14		them in direct contact with clients when providing
15		non-witnessed direct mental health or health care
16		services as provided by section 321-171.5;
17	(3)	The department of health or its designee on all
18		applicants for licensure or certification for,
19		operators for, prospective employees, adult
20		volunteers, and all adults, except adults in care, at
21		healthcare facilities as defined in section 321-15.2;

1	(4)	The department of education on employees, prospective
2		employees, and teacher trainees in any public school
3		in positions that necessitate close proximity to
4		children as provided by section 302A-601.5;
5	(5)	The counties on employees and prospective employees
6		who may be in positions that place them in close
7		proximity to children in recreation or child care
8		programs and services;
9	(6)	The county liquor commissions on applicants for liquor
10	,	licenses as provided by section 281-53.5;
11	(7)	The county liquor commissions on employees and
12		prospective employees involved in liquor
13		administration, law enforcement, and liquor control
14		investigations;
15	(8)	The department of human services on operators and
16		employees of child caring institutions, child placing
17		organizations, and foster boarding homes as provided
18		by section 346-17;
19	(9)	The department of human services on prospective
20		adoptive parents as established under section
21		346-19.7;

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1	(10)	The department of human services or its designee on
2		applicants to operate child care facilities, household
3		members of the applicant, prospective employees of the
4		applicant, and new employees and household members of
5		the provider after registration or licensure as
6		provided by section 346-154, and persons subject to
7		section 346-152.5;
8	(11)	The department of human services on persons exempt
9		pursuant to section 346-152 to be eligible to provide
10		child care and receive child care subsidies as
11		provided by section 346-152.5;
12	(12)	The department of health on operators and employees of
13		home and community-based case management agencies and
14		operators and other adults, except for adults in care,
15		residing in community care foster family homes as
16		provided by section 321-15.2;
17	(13)	The department of human services on staff members of
18		the Hawaii youth correctional facility as provided by
19		section 352-5.5;
20	(14)	The department of human services on employees,
21		prospective employees, and volunteers of contracted

1		providers and subcontractors in positions that place
2		them in close proximity to youth when providing
3		services on behalf of the office or the Hawaii youth
4		correctional facility as provided by section 352D-4.3;
5	(15)	The judiciary on employees and applicants at detention
6		and shelter facilities as provided by section 571-34;
7	(16)	The department of public safety on employees and
8		prospective employees who are directly involved with
9		the treatment and care of persons committed to a
10		correctional facility or who possess police powers
11		including the power of arrest as provided by section
12		353C-5;
13	(17)	The board of private detectives and guards on
14		applicants for private detective or private guard
15		licensure as provided by section 463-9;
16	(18)	Private schools and designated organizations on
17		employees and prospective employees who may be in
18		positions that necessitate close proximity to
19		children; provided that private schools and designated
20		organizations receive only indications of the states

1		from which the national criminal history record
2		information was provided pursuant to section 302C-1;
3	(19)	The public library system on employees and prospective
4		employees whose positions place them in close
5		proximity to children as provided by section
6		302A-601.5;
7	(20)	The State or any of its branches, political
8		subdivisions, or agencies on applicants and employees
9		holding a position that has the same type of contact
10		with children, vulnerable adults, or persons committed
11		to a correctional facility as other public employees
12		who hold positions that are authorized by law to
13		require criminal history record checks as a condition
14		of employment as provided by section 78-2.7;
15	(21)	The department of health on licensed adult day care
16		center operators, employees, new employees,
17		subcontracted service providers and their employees,
18		and adult volunteers as provided by section 321-15.2;
19	(22)	The department of human services on purchase of
20		service contracted and subcontracted service providers
21		and their employees serving clients of the adult

1	,	protective and community services branch, as provided
2		by section 346-97;
3	(23)	The department of human services on foster grandparent
4		program, senior companion program, and respite
5		companion program participants as provided by section
6		346-97;
7	(24)	The department of human services on contracted and
8		subcontracted service providers and their current and
9		prospective employees that provide home and community-
10		based services under section 1915(c) of the Social
11		Security Act, title 42 United States Code section
12		1396n(c), or under any other applicable section or
13		sections of the Social Security Act for the purposes
14		of providing home and community-based services, as
15		provided by section 346-97;
16	(25)	The department of commerce and consumer affairs on
17		proposed directors and executive officers of a bank,
18		savings bank, savings and loan association, trust
19		company, and depository financial services loan
20		company as provided by section 412:3-201;

1	(26)	The department of commerce and consumer affairs on
2		proposed directors and executive officers of a
3		nondepository financial services loan company as
4		provided by section 412:3-301;
5	(27)	The department of commerce and consumer affairs on the
6		original chartering applicants and proposed executive
7		officers of a credit union as provided by section
8		412:10-103;
9	(28)	The department of commerce and consumer affairs on:
10		(A) Each principal of every non-corporate applicant
11		for a money transmitter license;
12		(B) [The executive officers, key shareholders, and
13		managers in charge of a money transmitter's
14		activities of every] Each person who will be a
15		principal of the licensee upon approval of an
16		application by a corporate applicant for a money
17		transmitter license; and
18		(C) [The persons who are to assume control of a money
19		transmitter-licensee in connection with] Each
20		person who upon approval of an application
21		requesting approval of a proposed change in

1		control of licensee $[\tau]$ will be a principal of the
2		licensee,
3		as provided by sections 489D-9 and 489D-15;
4	(29)	The department of commerce and consumer affairs on
5		applicants for licensure and persons licensed under
6		title 24;
7	(30)	The Hawaii health systems corporation on:
8		(A) Employees;
9		(B) Applicants seeking employment;
10		(C) Current or prospective members of the corporation
11		board or regional system board; or
12		(D) Current or prospective volunteers, providers, or
13		contractors,
14		in any of the corporation's health facilities as
15		provided by section 323F-5.5;
16	(31)	The department of commerce and consumer affairs on:
17		(A) An applicant for a mortgage loan originator
18		license; and
19		(B) Each control person, executive officer, director,
20		general partner, and manager of an applicant for
21		a mortgage loan originator company license,

1		as provided by chapter 454F;
2	(32)	The state public charter school commission or public
3		charter schools on employees, teacher trainees,
4		prospective employees, and prospective teacher
5		trainees in any public charter school for any position
6		that places them in close proximity to children, as
7		provided in section 302D-33;
8	(33)	The counties on prospective employees who work with
9		children, vulnerable adults, or senior citizens in
10		community-based programs;
11	(34)	The counties on prospective employees for fire
12		department positions which involve contact with
13		children or vulnerable adults;
14	(35)	The counties on prospective employees for emergency
15		medical services positions which involve contact with
16		children or vulnerable adults;
17	(36)	The counties on prospective employees for emergency
18		management positions and community volunteers whose
19		responsibilities involve planning and executing
20		homeland security measures including viewing,
21		handling, and engaging in law enforcement or

1		classified meetings and assisting vulnerable citizens
2		during emergencies or crises;
3	(37)	The State and counties on employees, prospective
4		employees, volunteers, and contractors whose position
5		responsibilities require unescorted access to secured
6		areas and equipment related to a traffic management
7		center;
8	(38)	The State and counties on employees and prospective
9		employees whose positions involve the handling or use
10		of firearms for other than law enforcement purposes;
11	(39)	The State and counties on current and prospective
12		systems analysts and others involved in an agency's
13		information technology operation whose position
14		responsibilities provide them with access to
15		proprietary, confidential, or sensitive information;
16	(40)	The department of commerce and consumer affairs on
17		applicants for real estate appraiser licensure or
18		certification as provided by chapter 466K;
19	(41)	The department of health or its designee on all
20		license applicants, licensees, employees, contractors,
21		and prospective employees of medical marijuana

1		disp	ensaries, and individuals permitted to enter and	
2		rema	in in medical marijuana dispensary facilities as	
3		prov	ided under sections 329D-15(a)(4) and	
4		329D	-16(a)(3);	
5	(42)	The	department of commerce and consumer affairs on	
6		appl	icants for nurse licensure or license renewal,	
7		reac	tivation, or restoration as provided by sections	
8		457-	7, 457-8, 457-8.5, and 457-9;	
9	[+] (43) [+]]	The county police departments on applicants for	
10		perm	its to acquire firearms pursuant to section 134-2	
11		and on individuals registering their firearms pursuant		
12		to section 134-3;		
13	[+] (44) [+]	The department of commerce and consumer affairs	
14		on:		
15		(A)	Each of the controlling persons of the applicant	
16			for licensure as an escrow depository, and each	
17			of the officers, directors, and principals who	
18			will be in charge of the escrow depository's	
19			activities upon licensure; and	
20		(B)	Each of the controlling persons of an applicant	
21			for proposed change in control of an escrow	

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1	depository licensee, and each of the officers,
2	directors, and principals who will be in charge
3	of the licensee's activities upon approval of
4	such application,
5	as provided by chapter 449; and
6	[+](45)[+] Any other organization, entity, or the State, its
7	branches, political subdivisions, or agencies as may
8	be authorized by state law."
9	SECTION 10. Statutory material to be repealed is bracketed
10	and stricken. New statutory material is underscored.
11	SECTION 11. This Act shall take effect on July 1, 2112;
12	provided that for all licensees that are licensed under chapter
13	489D, Hawaii Revised Statutes, as of July 1, 2017, section 4
14	shall take effect on November 1, 2017.

Report Title:

Money Transmitters; Change in Control; Division of Financial Institutions; Criminal History Record Check; Background Check; Outstanding Payment Instruments

Description:

Clarifies chapter 489D, Hawaii Revised Statutes, including requirements for money transmitter license and change in control applications, criminal background checks, security devices, permissible investments, records, and voluntary surrender of license. Amends definitions of "outstanding payment instrument", "person" and "principal". Repeals definition of "key shareholder". (HB1083 HD1)

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