

JAN 27 2021

A BILL FOR AN ACT

RELATING TO HAWAII MONEY TRANSMITTER ACT.

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

1 SECTION 1. The money transmission industry has evolved
2 since the enactment of Hawaii's Money Transmitters Act in 2006,
3 when money transmission was conducted by mom and pop store
4 fronts and a few large companies for consumers who wished to
5 send funds to family and friends abroad. Today, the industry is
6 largely dominated by internationally based companies with global
7 reach and instant payment processing capabilities, who are
8 continually innovating their financial technology, seeking the
9 most efficient way to transmit funds with ease for the consumer.

10 Over the years, regulation of money transmitters has
11 evolved from a single state regulator licensing, supervising,
12 and examining a money transmitter, to a network of states
13 working together to license, supervise, and examine trans-global
14 money transmission companies as a multi-state system. In 2000,
15 the National Conference of Commissioners of Uniform State Laws
16 adopted a model law, known as the Uniform Money Services Act
17 (UMSA), to harmonize the varied state regulatory frameworks.



1 The goal was to have various states adopt the UMSA to create
2 uniformity with respect to the regulation of money transmitters
3 in various states. The UMSA was last amended in 2004. In 2019,
4 the Conference of State Bank Supervisors (CSBS) published a
5 draft model law for money services businesses based on the UMSA,
6 to address areas in need of standardization and alignment across
7 jurisdictions. The CSBS model law focused on protecting
8 consumers; establishing barriers to the entry of bad actors; and
9 facilitating coordination among state agencies.

10 The legislature finds that the instantaneous global money
11 transmission activity today necessitates additional oversight of
12 money transmitters to provide appropriate consumer protection.
13 Further, the fast-paced nature of money transmissions and
14 innovation of financial technology necessitates a quicker
15 response to protect consumers. Hawaii's Money Transmitters Act
16 incorporates many provisions from the UMSA, including provisions
17 for networked supervision, allowing the State some networked
18 oversight of these trans-global money transmission companies.
19 However, the legislature finds that the law in its current form
20 does not provide sufficient flexibility for the State to share



1 supervisory information with other states the allow the quick
2 response required to protect consumers.

3 The purpose of this Act is to ensure that Hawaii can
4 effectively license, regulate, and supervise nationally and
5 globally operating money transmission companies without
6 unnecessarily impacting money transmission businesses that
7 operate regionally or in a single state, by amending Hawaii's
8 Money Transmitters Act to:

- 9 (1) Incorporate definitions of key terms provided in
10 CSBS's model law;
- 11 (2) Add supporting documentation to be submitted by a
12 license applicant;
- 13 (3) Extend the period of a license applicant's litigation
14 and criminal conviction history review from five to
15 ten years prior to the date of the application, which
16 is the maximum period reported by federal agencies;
- 17 (4) Require a license applicant to submit information
18 concerning any bankruptcy or receivership proceedings
19 affecting the licensee;



1 (4) Clarify the authority of the commissioner of financial
2 institutions relating to examinations and
3 investigations of licensees; and

4 (5) Allow the commissioner of financial institutions to
5 participate in nationwide protocols for licensing
6 cooperation and coordination with other state
7 regulators.

8 SECTION 2. Section 489D-1, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[~~H~~]§489D-1[~~H~~] Short title. This chapter may be cited as
11 the Money Transmitters Modernization Act."

12 SECTION 3. Section 489D-4, Hawaii Revised Statutes, is
13 amended as follows:

14 1. By adding four new definitions to be appropriately
15 inserted and to read:

16 "Acting in concert" means persons knowingly acting
17 together with a common goal of jointly acquiring control of a
18 licensee whether or not pursuant to an express agreement.

19 "Individual" means a natural person.

20 "Key individual" means any individual ultimately
21 responsible for establishing or directing policies and



1 procedures of the licensee, such as an executive officer,
2 manager, director, or trustee.

3 "Passive Investor" means a person that:

4 (1) Does not have the power to elect a majority of key
5 individuals;

6 (2) Is not employed by and does not have any managerial
7 duties of the licensee or person in control of a
8 licensee;

9 (3) Does not have the power to exercise directly or
10 indirectly, a controlling influence over the
11 management or policies of a licensee or person in
12 control of a licensee; and

13 (4) Either:

14 (A) Attests to paragraphs (1), (2), and (3) in a form
15 prescribed by the commissioner; or

16 (B) Commits to the passivity characteristics of
17 paragraphs (1), (2), and (3) in a written
18 document."

19 2. By amending the definitions of "control", "NMLS", and
20 "principal" to read:

21 "Control" means [~~ownership~~]:



- 1 (1) Ownership of, or the power to vote, twenty-five per
2 cent or more of the outstanding voting securities or
3 voting interests of a licensee or [~~controlling~~] a
4 person[~~]~~ in control. For purposes of determining the
5 percentage of a licensee controlled by any person,
6 there shall be aggregated with the [~~controlling~~
7 ~~person's~~] person in control's interest, the interest
8 of any other person controlled by the person, [~~or by~~]
9 including any spouse, parent, [~~or~~] child [~~of the~~
10 person], siblings, and any other person who shares
11 such person's home;
- 12 (2) The power to elect or appoint a majority of key
13 individuals of a licensee; and
- 14 (3) The power to exercise directly or indirectly a
15 controlling influence over the management or policies
16 of a licensee or person in control of a licensee.

17 "Nationwide Multistate Licensing System and Registry" or
18 "NMLS" means a [~~mortgage~~] multi-state licensing system developed
19 and maintained by the Conference of State Bank Supervisors and
20 the American Association of Residential Mortgage Regulators for
21 the state licensing and registration of state-licensed [~~loan~~



1 ~~originators and other~~ financial services providers [~~, or any~~
2 ~~system provided by the Consumer Financial Protection Bureau~~].

3 "Principal" means any person, or group of persons acting in
4 concert, who exercises control over or has a twenty-five per
5 cent ownership interest or more in an applicant or licensee
6 under this chapter. [~~Principal~~] "Principal" also includes a
7 manager and [~~executive officers~~] key individual."

8 3. By deleting the definition of "controlling person".

9 [~~"Controlling person" means any person in control of a~~
10 ~~licensee."~~]

11 SECTION 4. 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
- 3 [~~five~~] ten-year period prior to the date of the
- 4 application;
- 5 (C) A description of the business activities
- 6 conducted by the applicant and a history of
- 7 operations;
- 8 (D) A description of the business activities in which
- 9 the applicant seeks to engage within the State;
- 10 (E) A list identifying the applicant's proposed
- 11 authorized delegates in the State, if any, at the
- 12 time of the filing of the license application;
- 13 (F) A sample authorized delegate contract, if
- 14 applicable;
- 15 (G) A sample form of payment instrument [~~7~~] or
- 16 instrument upon which stored value is recorded,
- 17 if applicable;
- 18 (H) The locations where the applicant and its
- 19 authorized delegates, if any, propose to conduct
- 20 their licensed activities in the State;



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- 1 (I) The name and address of the clearing bank or
- 2 banks on which the applicant's payment
- 3 instruments will be drawn or through which
- 4 payment instruments will be payable;
- 5 (J) Disclosure of any pending or final suspension,
- 6 revocation, or other enforcement action by any
- 7 state or governmental authority for the five-year
- 8 period prior to the date of the application;
- 9 [and]
- 10 (K) Information concerning any bankruptcy or
- 11 receivership proceedings affecting the licensee,
- 12 key individual, person in control of a licensee,
- 13 or person seeking to acquire control of a
- 14 licensee; and
- 15 [~~(K)~~] (L) Any other information the commissioner may
- 16 require;
- 17 (2) If the applicant is a corporation, the applicant shall
- 18 also provide:
- 19 (A) The date of the applicant's incorporation and
- 20 state of incorporation;



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- 1 (B) A certificate of good standing from the state in
2 which the applicant was incorporated;
- 3 (C) A description of the corporate structure of the
4 applicant, including the identity of any parent
5 or subsidiary company of the applicant, and the
6 disclosure of whether any parent or subsidiary
7 company is publicly traded on any stock exchange;
- 8 (D) The name, business and residence address, and
9 employment history, for the past five years, of
10 the applicant's principals, and each person who
11 upon approval of the application will be a
12 principal of the licensee;
- 13 (E) For the [~~five~~] ten-year period prior to the date
14 of the application, the history of material
15 litigation involving, and criminal convictions
16 of, each principal of the applicant;
- 17 (F) A copy of the applicant's most recent audited
18 financial statement, including balance sheets,
19 statements of income or loss, statements of
20 changes in shareholder equity and statements of
21 changes in financial position, and, if available,



1 the applicant's audited financial statements for
2 the preceding two-year period or, if the
3 applicant is a wholly owned subsidiary of another
4 corporation, either the parent corporation's
5 consolidated audited financial statements for the
6 current year and for the preceding two-year
7 period, or the parent corporation's Form 10-K
8 reports filed with the United States Securities
9 and Exchange Commission for the prior three years
10 in lieu of the applicant's financial statements,
11 or if the applicant is a wholly owned subsidiary
12 of a 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 (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 (H) Information necessary to conduct a criminal
2 history record check in accordance with section
3 846-2.7 of each person who upon approval of the
4 application will be a principal of the licensee,
5 accompanied by the appropriate payment of the
6 applicable fee for each record check; and
- 7 (3) If the applicant is not a corporation, the applicant
8 shall also provide:
- 9 (A) The name, business and residence address,
10 personal financial statement, and employment
11 history, for the past five years, of each
12 principal of the applicant;
- 13 (B) The name, business and residence address, and
14 employment history, for the past five years, of
15 any other persons who upon approval of the
16 application will be a principal of the licensee;
- 17 (C) The place and date of the applicant's
18 registration or qualification to do business in
19 this State;
- 20 (D) The history of material litigation and criminal
21 convictions for the [~~five~~] ten-year period before



1 the date of the application for each principal of
2 the applicant;

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

8 (F) Information necessary to conduct a criminal
9 history record check in accordance with section
10 846-2.7 of each principal of the applicant,
11 accompanied by the appropriate payment of the
12 applicable fee for each record check."

13 SECTION 5. Section 489D-15, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) After review of a request for approval under
16 subsection (a), the commissioner may require the licensee or
17 person or group of persons requesting approval of a proposed
18 change of control of the licensee, or both, to provide
19 additional information concerning the persons who are to assume
20 control of the licensee. The additional information shall be
21 limited to similar information required of the licensee or



1 persons in control of the licensee as part of its original
2 license or renewal application under sections 489D-9 and
3 489D-12. The information shall include the history of the
4 material litigation and criminal convictions of each person who
5 upon approval of the application for change of control will be a
6 principal of the licensee, for the [~~five~~] ten-year period prior
7 to the date of the application for change of control of the
8 licensee, and authorizations necessary to conduct criminal
9 history record checks of such persons, accompanied by the
10 appropriate payment of the applicable fee for each record
11 check."

12 SECTION 6. Section 489D-17, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§489D-17 Examinations[~~-~~] and investigation. [~~(a)~~—The
15 commissioner may conduct an annual on site examination of a
16 licensee upon sixty days written notice to the licensee. The
17 commissioner may examine a licensee without prior notice if the
18 commissioner has a reasonable basis to believe that the licensee
19 is not in compliance with this chapter. The on site examination
20 may be conducted in conjunction with examinations performed by
21 representatives of agencies of the federal government, or of



1 ~~another state or states. The commissioner, in lieu of an on~~
2 ~~site examination, may accept the examination report of the~~
3 ~~federal government, an agency of another state, or an~~
4 ~~independent accounting firm. Accepted reports are considered,~~
5 ~~for all purposes, an official report of the commissioner. The~~
6 ~~licensee shall bear the cost of reasonable expenses incurred by~~
7 ~~the division, agencies of another state, or an independent~~
8 ~~licensed or certified public accountant in conducting an~~
9 ~~examination or making a report.~~

10 ~~(b) The commissioner may request financial data from a~~
11 ~~licensee in addition to that required under section 489D-12, or~~
12 ~~conduct an on site examination of any authorized delegate or~~
13 ~~location of a licensee within the State without prior notice to~~
14 ~~the authorized delegate or licensee only if the commissioner has~~
15 ~~a reasonable basis to believe that the licensee or authorized~~
16 ~~delegate is not in compliance with this chapter. When the~~
17 ~~commissioner examines an authorized delegate's operations, the~~
18 ~~authorized delegate shall pay all reasonably incurred costs of~~
19 ~~the examination. When the commissioner examines a licensee's~~
20 ~~location within the State, the licensee shall pay all reasonably~~
21 ~~incurred costs of the examination.]~~



1 (a) The commissioner may examine or investigate a licensee
2 or authorized delegate of a licensee as reasonably necessary or
3 appropriate to administer and enforce this chapter and rules
4 adopted and orders issued under this chapter and other
5 applicable law, including but not limited to the Band Secrecy
6 Act, title 31 United States Code section 5311 et seq.; the
7 Uniting and Strengthening America by Providing Appropriate Tools
8 Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT)
9 Act of 2001, P.L. 107-56; Electronic Fund Transfer Act, title 15
10 United States Code section 1693 et seq.; and the Gramm-Leach
11 Bliley Act of 1999 (P.L. 106-102). The commissioner may:

- 12 (1) Conduct an examination or investigation as the
13 commissioner may reasonably require;
- 14 (2) Conduct an on-site or off-site examination or
15 investigation or an off-site review of records;
- 16 (3) Conduct an examination or investigation in conjunction
17 with an examination or investigation conducted by
18 representatives of agencies of another state or the
19 federal government;
- 20 (4) Accept the examination report of agencies of another
21 state or the federal government or a report prepared



1 by an independent accounting firm, in which event the
2 accepted report shall be considered for all purposes
3 as an official report of the commissioner; and

4 (5) Summon and examine under oath a key individual or
5 employee of a licensee or authorized delegate of a
6 licensee and require the person to produce records
7 regarding any matter related to the condition and
8 business of the licensee or authorized delegate.

9 (b) A licensee or authorized delegate of a licensee shall
10 provide, and the commissioner shall have full and complete
11 access to, all records the commissioner may reasonably require
12 to conduct a complete examination or investigation. The records
13 must be provided at the location and in the format specified by
14 the commissioner; provided that the commissioner may utilize
15 multistate record production standards and examination
16 procedures when such standards will reasonably achieve the
17 requirements of this section.

18 (c) Unless otherwise directed by the commissioner, a
19 licensee shall pay all costs reasonably incurred in connection
20 with an examination of the licensee's authorized delegate.

21 (d) Networked supervision.



1 (1) To efficiently and effectively administer and enforce
2 this chapter and to minimize regulatory burden, the
3 commissioner may and is encouraged to participate in
4 the multistate supervisory processes established
5 between states and coordinated through the Conference
6 of State Bank Supervisors, Money Transmitter Regulator
7 Association, and affiliates and successors for all
8 licensees that hold licenses in this and other states.

9 As a participant this multistate supervision, the
10 commissioner may:

11 (A) Cooperate, coordinate, and share information with
12 other state and federal regulators;

13 (B) Enter into a written cooperation, coordination,
14 or information-sharing contract or agreement with
15 the organizations the membership of which is made
16 up of state or federal governmental agencies; and

17 (C) Cooperate, coordinate, and share information with
18 organizations the membership of which is made up
19 of state or federal governmental agencies;
20 provided that the organizations agree in writing



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1 to maintain the confidentiality and security of
2 the shared information.

3 (2) For the purposes of paragraph (1) of this subsection,
4 the commissioner shall:

5 (A) Conduct a joint or concurrent examination or
6 other investigation or enforcement action with
7 the agency of another state or the federal
8 government;

9 (B) Accept a report of examination or investigation
10 by, or a report submitted to, the agency of
11 another state or federal government, in which
12 event the accepted report is an official report
13 of the commissioner for all purposes; and

14 (C) Take other action as the commissioner considers
15 reasonably necessary or appropriate to carry out
16 and achieve the purposes of this chapter.

17 (3) The commissioner may not waive, and nothing in this
18 section constitutes a waiver of, the commissioner's
19 authority to conduct an examination or investigation
20 or otherwise take independent action authorized by
21 this chapter or a rule adopted or order issued under



1 this chapter to enforce compliance with applicable
2 state or federal law.

3 (4) A joint examination or investigation, or acceptance of
4 an examination or investigation report, does not waive
5 an examination assessment provided for in this
6 chapter.

7 (e) Confidentiality and Privilege.

8 (1) The submission of any information to the commissioner
9 by a person subject to this chapter or shared with the
10 commissioner by another federal or state regulator of
11 a person subject to this chapter for any purpose in
12 the course of any examination or investigation or
13 otherwise shall not be construed as waiving,
14 destroying, or otherwise affecting any privilege such
15 person may claim with respect to such information
16 under federal or state law as to any person or entity
17 other than the commissioner.

18 (2) This subsection shall not be construed as implying or
19 establishing that:

20 (A) Any person waives any privilege applicable to
21 information that is submitted or transferred



1 under circumstances to which this subsection does
2 not apply; and

3 (B) Any person would waive any privilege applicable
4 to any information by submitting the information
5 to the commissioner but for this subsection.

6 ~~[(e)]~~ (f) The commissioner shall charge an examination fee
7 to each licensee and authorized delegate examined or
8 investigated by the commissioner or the commissioner's staff,
9 based upon the cost per hour per examiner. The hourly fee shall
10 be \$60.

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

17 SECTION 7. Section 489D-34, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§489D-34 Powers of the commissioner.** In addition to any
20 other powers provided by law, the commissioner may:



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- 1 (1) Adopt rules pursuant to chapter 91 to implement this
2 chapter;
- 3 (2) Administer and enforce the provisions and requirements
4 of this chapter;
- 5 (3) Issue declaratory rulings and informal nonbinding
6 interpretations;
- 7 (4) Develop requirements for licensure;
- 8 (5) Process and investigate complaints, subpoena witnesses
9 and documents, administer oaths, and receive
10 affidavits and oral testimony, including telephonic
11 communications;
- 12 (6) Investigate and conduct hearings, including contested
13 case proceedings under chapter 91, regarding any
14 violation of this chapter, or any rule or order of, or
15 agreement with, the commissioner;
- 16 (7) Create fact-finding committees that may make
17 recommendations to the commissioner for the
18 commissioner's deliberations;
- 19 (8) Require disclosure of relevant criminal history in
20 accordance with this chapter and conduct criminal
21 history record checks in accordance with chapter 846;



- 1 (9) Contract with or employ qualified persons who may be
2 exempt from chapter 76, including investigators,
3 examiners, auditors, and attorneys, to assist the
4 commissioner in exercising the commissioner's powers
5 and duties;
- 6 (10) Require that all revenues, fees, and fines collected
7 by the commissioner under this chapter be deposited
8 into the compliance resolution fund established
9 pursuant to section 26-9(o);
- 10 (11) Revoke, suspend, or otherwise limit the license of any
11 money transmitter for any violation of this chapter,
12 or any rule or order of, or agreement with, the
13 commissioner;
- 14 (12) Report any violation of this chapter or violation of
15 federal or state law to the Consumer Financial
16 Protection Bureau or other federal agency having
17 jurisdiction over the licensee; [~~and~~]
- 18 (13) Participate in nationwide protocols for licensing
19 cooperation and coordination among state regulators;
20 and



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1 [~~(13)~~] (14) Do any and all things necessary or incidental to
2 the exercise of the commissioner's power and duties."

3 SECTION 8. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 9. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 10. This Act shall take effect on July 1, 2021.

9

INTRODUCED BY: *Randy H. Etkin*



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Report Title:

Hawaii Money Transmitters Act; Modernization; New Model Law; Licensing Regulations; Definitions; Background Review; Department of Commerce and Consumer Affairs; Division of Financial Institutions; Commissioner of Financial Institutions

Description:

Amends the Money Transmitters Act. Changes the short title to Monetary Transmitters Modernization Act; incorporates definitions of key terms provided in the draft model money services business law published by the Conference of State Bank Supervisors; adds supporting documentation to be submitted by a license applicant; extends the period of a license applicant's litigation and criminal conviction history review from five to ten-years next date of the application; requires a license applicant to submit information concerning any bankruptcy or receivership proceedings; and clarifies the authority of the commissioner of financial institutions relating to examinations and investigations of licensees and to participate in nationwide protocols for licensing cooperation.

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

