
A BILL FOR AN ACT

RELATING TO MONEY TRANSMITTERS MODERNIZATION ACT.

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 adding three new definitions to be appropriately
4 inserted and to read:

5 "Money" means a medium of exchange that is authorized or
6 adopted by the United States or a foreign government. "Money"
7 includes a monetary unit of account established by an
8 intergovernmental organization or by agreement between two or
9 more governments.

10 "Receiving money or monetary value for transmission" or
11 "money or monetary value received for transmission" means
12 receiving money or monetary value in the United States for
13 transmission within or outside the United States by electronic
14 or other means.

15 "Tangible net worth" means the aggregate assets of a
16 licensee excluding all intangible assets, less liabilities, as



1 determined in accordance with United States generally accepted
2 accounting principles."

3 2. By amending the definition of "electronic instrument"
4 to read:

5 ""Electronic instrument" means a card or other tangible
6 object, or an electronic or mobile wallet, for the transmission
7 or payment of money, including a stored value card or device,
8 which contains a microprocessor chip, magnetic stripe, or other
9 means for the storage of information, that is prefunded and for
10 which the value is decremented upon each use[~~,-but~~].

11 "Electronic instrument" does not include a card or other
12 tangible object that is redeemable by the issuer in goods or
13 services."

14 3. By amending the definition of "money transmission" to
15 read:

16 ""Money transmission" means to engage in the business of:

17 (1) Selling or issuing payment instruments[~~,-or~~] to a
18 person located in this State;

19 (2) Selling or issuing stored value to a person located in
20 this State; or



1 ~~[-(2)]~~ (3) Receiving money or monetary value for
2 transmission ~~[to a location within or outside the~~
3 United States by any and all means, including wire,
4 ~~facsimile, or electronic transfer.]~~ from a person
5 located in this State.

6 ~~[Money transmission does not apply to courier services.]~~ "Money
7 transmission" includes payroll processing services. "Money
8 transmission" does not include the provision solely of online or
9 telecommunications services or network access."

10 4. By amending the definition of "outstanding payment
11 obligation" to read:

12 "Outstanding [payment] money transmission obligation"
13 means:

14 (1) Any payment instrument or stored value issued or sold
15 by the licensee ~~[that has been]~~ to a person located in
16 the United States or reported as sold ~~[in the United~~
17 States:

18 ~~(A) Directly by the licensee; or~~

19 ~~(B) By]~~ by an authorized delegate of the licensee to
20 a person that is located in the United States[



1 ~~which has been reported to the licensee as having~~
2 ~~been sold,~~

3 ~~and]~~ that has not yet been paid or refunded by or for
4 the licensee~~[-and]~~, or escheated in accordance with
5 applicable abandoned property laws; or

6 (2) ~~[All other outstanding]~~ Any money or monetary value
7 received for transmission ~~[obligations of the licensee~~
8 ~~issued]~~ by the licensee or an authorized delegate in
9 the United States~~[-]~~ from a person located in the
10 United States that has not been received by the payee
11 or refunded to the sender, or escheated in accordance
12 with applicable abandoned property laws.

13 For purposes of this definition, "in the United States"
14 includes, to the extent applicable, a person in any state,
15 territory, or possession of the United States; the District of
16 Columbia; the Commonwealth of Puerto Rico; or a United States
17 military installation that is located in a foreign country."

18 5. By amending the definition of "payment instrument" to
19 read:

20 ""Payment instrument" means any electronic or written
21 check, draft, money order, traveler's check, or other electronic



1 instrument or written instrument or order for the transmission
2 or payment of money, sold or issued to one or more persons,
3 whether [~~or not~~] the instrument is negotiable. [~~The term~~
4 "~~payment~~] "Payment instrument" does not include [~~any credit card~~
5 ~~voucher, any letter of credit,~~] stored value or any instrument
6 that [~~is~~]:

- 7 (1) Is redeemable by the issuer [~~is~~] for only goods or
8 services[-] provided by the issuer or its affiliate or
9 franchises of the issuer or its affiliate, except to
10 the extent required by applicable law to be redeemable
11 in cash for its cash value; or
- 12 (2) Is not sold to the public but issued and distributed
13 as part of a loyalty, rewards, or promotional
14 program."

15 6. By amending the definition of "stored value" to read:

16 "Stored value" means monetary value [~~that is evidenced by~~
17 ~~an electronic record.~~] that represents a claim against the
18 issuer evidenced by an electronic or digital record and that is
19 intended and accepted for use as a means of redemption for money
20 or monetary value, or payment for goods or services. "Stored
21 value" includes but is not limited to "prepaid access" as



1 defined by title 31 Code of Federal Regulations section
2 1010.100, as may be amended or recodified. Notwithstanding the
3 foregoing, "stored value" does not include a payment instrument
4 or closed loop stored value, or stored value not sold to the
5 public but issued and distributed as part of a loyalty, rewards,
6 or promotional program."

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

9 "**§489D-5 Exclusions.** (a) This chapter shall not apply
10 to:

- 11 (1) The United States or any department, agency, or
12 instrumentality thereof;
- 13 (2) The United States Postal Service;
- 14 (3) The State or any political subdivisions thereof;
- 15 [and]
- 16 (4) The electronic transfer of government benefits for any
17 federal, state, or county governmental agency as
18 defined in Consumer Financial Protection Bureau
19 Regulation E, by a contractor for, and on behalf of
20 the United States or any department, agency, or



1 instrumentality thereof, or any state or any political
2 subdivisions thereof[-];

3 (5) An operator of a payment system to the extent that the
4 operator provides processing, clearing, or settlement
5 services between or among persons exempted by this
6 section or licensees in connection with wire
7 transfers, credit card transactions, debit card
8 transactions, stored-value transactions, automated
9 clearing house transfers, or similar fund transfers;

10 (6) A person appointed as an agent of a payee to collect
11 and process a payment from a payor to the payee for
12 goods or services, other than money transmission
13 itself, provided to the payor by the payee; provided
14 that:

15 (A) There exists a written agreement between the
16 payee and the agent directing the agent to
17 collect and process payments from payors on the
18 payee's behalf;

19 (B) The payee holds the agent out to the public as
20 accepting payments for goods or services on the
21 payee's behalf; and



- 1 (C) Payment for the goods and services is treated as
2 received by the payee upon receipt by the agent
3 so that the payor's obligation is extinguished
4 and there is no risk of loss to the payor if the
5 agent fails to remit the funds to the payee;
- 6 (7) A person that acts as an intermediary by processing
7 payments between an entity that has directly incurred
8 an outstanding money transmission obligation to a
9 sender, and the sender's designated recipient;
10 provided that the entity:
- 11 (A) Is properly licensed or exempt from licensing
12 requirements under this chapter;
- 13 (B) Provides a receipt, electronic record, or other
14 written confirmation to the sender identifying
15 the entity as the provider of money transmission
16 in the transaction; and
- 17 (C) Bears sole responsibility to satisfy the
18 outstanding money transmission obligation to the
19 sender, including the obligation to make the
20 sender whole in connection with any failure to



1 transmit the funds to the sender's designated
2 recipient;

3 (8) A person expressly appointed as a third party service
4 provider to or agent of an entity exempt under section
5 489D-9.5, solely to the extent that the service
6 provider or agent is engaging in money transmission on
7 behalf of and pursuant to a written agreement with the
8 exempt entity that sets forth the specific functions
9 that the service provider or agent is to perform;
10 provided that the exempt entity assumes all risk of
11 loss and all legal responsibility for satisfying the
12 outstanding money transmission obligations owed to
13 purchasers and holders of the outstanding money
14 transmission obligations upon receipt of the
15 purchaser's or holder's money or monetary value by the
16 service provider or agent;

17 (9) A board of trade designated as a contract market under
18 the federal Commodity Exchange Act, title 7 United
19 States Code sections 1-25, as may be amended or
20 recodified, or a person that, in the ordinary course
21 of business, provides clearance and settlement



1 services for a board of trade to the extent of its
2 operation as or for the board;

3 (10) A registered futures commission merchant under the
4 federal commodities laws to the extent of its
5 operation as such a merchant;

6 (11) A person registered as a securities broker-dealer
7 under federal or state securities laws to the extent
8 of its operation as such a broker-dealer;

9 (12) An individual employed by a licensee, authorized
10 delegate, or any person exempted from the licensing
11 requirements of this chapter when acting within the
12 scope of employment and under the supervision of the
13 licensee, authorized delegate, or exempted person as
14 an employee and not as an independent contractor; and

15 (13) A person exempt by rule or order if the commissioner
16 finds such exemption to be in the public interest and
17 that the regulation of such person is not necessary
18 for the purposes of this chapter.

19 (b) Authorized delegates of a licensee acting within the
20 scope of authority conferred by a written contract under section



1 489D-21 shall not be required to obtain a license pursuant to
2 this chapter.

3 (c) The commissioner may require any person claiming to be
4 exempt from licensing pursuant to this section to provide
5 information and documentation to the commissioner demonstrating
6 that the person qualifies for any exemption claimed under this
7 section."

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

10 "~~[+]§489D-6[+]~~ **License qualifications[-]; tangible net**
11 **worth; good standing.** (a) ~~[Each licensee, at all times, shall~~
12 ~~have a net worth of not less than \$1,000, calculated in~~
13 ~~accordance with generally accepted accounting principles.] A~~
14 licensee shall maintain at all times a tangible net worth of the
15 greater of:

16 (1) \$100,000 or three per cent of tangible assets for the
17 first \$100,000,000;

18 (2) Two per cent of additional assets for \$100,000,000 to
19 \$1,000,000,000; and

20 (3) 0.5 per cent of additional assets for over
21 \$1,000,000,000.



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

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

6 ~~[(b)]~~ (c) Each ~~[corporate]~~ applicant, at the time of
7 filing an application, and at all times after a license is
8 issued, shall be in good standing in the state of its
9 ~~[incorporation.]~~ formation. All ~~[non-corporate]~~ applicants, at
10 the time of filing an application for a license under this
11 chapter, and at all times after a license is issued, shall be
12 registered or qualified to do business in the State.

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

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

19 "**§489D-7 Bond or other security device.** (a) Each
20 application for a license shall be accompanied by a surety bond,
21 irrevocable letter of credit, or other similar security device



1 acceptable to the commissioner in the amount of [~~\$10,000~~]
2 \$100,000 for the initial twelve months of licensure.
3 Thereafter, each licensee shall maintain a bond in the amount
4 required by this subsection [~~of~~] unless otherwise required by
5 the commissioner. The commissioner may increase the amount of
6 the bond or security device to a maximum of \$500,000 upon the
7 basis of the impaired financial condition of a licensee, as
8 evidenced by a reduction in tangible net worth, financial
9 losses, or other relevant criteria.

10 (b) The security device shall be in a form satisfactory to
11 the commissioner and shall run to the State for the benefit of
12 any claimants against the licensee to secure the faithful
13 performance of the obligations of the licensee relating to the
14 receipt, handling, transmission, and payment of money or
15 monetary value in connection with money transmissions. In the
16 case of a bond, the aggregate liability of the surety shall not
17 exceed the principal sum of the bond. Claimants against the
18 licensee may bring suit directly on the security device or the
19 commissioner may bring suit on behalf of claimants, either in
20 one action or in successive actions.



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

7 (1) Of the United States or any agency or instrumentality
8 thereof;

9 (2) Guaranteed by the United States;

10 (3) Of the State, a county, or instrumentality of the
11 State; or

12 (4) Guaranteed by the State,
13 in an aggregate amount based upon the principal amount or market
14 value, whichever is lower, of [~~net~~] no less than the amount of
15 the security device or portion thereof.

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

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



1 (2) Have the right, with the approval of the commissioner,
2 to substitute other securities for those deposited;
3 and

4 (3) Be required to substitute other securities for those
5 deposited upon a showing of good cause and written
6 order of the commissioner.

7 (e) The security device shall remain in effect until
8 cancellation, which may occur only after thirty days written
9 notice to the commissioner. Cancellation shall not affect any
10 liability incurred or accrued during the period.

11 (f) The security device shall remain in place for no
12 longer than five years after the licensee ceases money
13 transmission operations in the State. Notwithstanding this
14 provision, the commissioner may permit the security device to be
15 reduced or eliminated prior to that time to the extent that the
16 amount of the licensee's payment instruments outstanding in the
17 State are reduced. The commissioner may also permit a licensee
18 to substitute a letter of credit or other form of security
19 device acceptable to the commissioner for the security device in
20 place at the time the licensee ceases money transmission
21 operations in the State.



1 [~~(g) After the initial year of licensure, a licensee shall~~
2 ~~obtain a bond or other security device of \$5,000 if the~~
3 ~~licensee's annualized money transmissions as calculated in~~
4 ~~section 489D-12(a) are less than \$10,000,000. The bond or~~
5 ~~security device shall be \$10,000 if the licensee's annualized~~
6 ~~money transmissions as calculated in section 489D-12(a) are~~
7 ~~\$10,000,000 or more. Each licensee shall perform this~~
8 ~~calculation on an annual basis.] "~~

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

11 "**§489D-8 Permissible investments and statutory trust.** (a)
12 A licensee, at all times, shall possess permissible investments
13 having an aggregate market value, calculated in accordance with
14 generally accepted accounting principles, of [~~not~~] no less than
15 the aggregate amount of all outstanding [~~payment~~] money
16 transmission obligations. This requirement may be waived by the
17 commissioner if the dollar volume of a licensee's outstanding
18 [~~payment~~] money transmission obligations does not exceed the
19 bond or other security devices posted by the licensee pursuant
20 to section 489D-7.



1 (b) Permissible investments, even if commingled with other
2 assets of the licensee, [~~shall be~~] are held in trust for the
3 benefit of the purchasers and holders of the licensee's
4 outstanding [~~payment~~] money transmission obligations in the
5 event of [~~the bankruptcy of the licensee.~~] insolvency; the
6 filing of a petition by or against the licensee under the United
7 States Bankruptcy Code, title 11 United States Code section 101-
8 110, as may be amended or recodified, for bankruptcy or
9 reorganization; the filing of a petition by or against the
10 licensee for receivership; the commencement of any other
11 judicial or administrative proceeding for its dissolution or
12 reorganization; or in the event of an action by a creditor
13 against the licensee who is not a beneficiary of this statutory
14 trust. No permissible investments impressed with a trust
15 pursuant to this section shall be subject to attachment, levy of
16 execution, or sequestration by order of any court, except for a
17 beneficiary of a statutory trust established pursuant to this
18 subsection.

19 (c) Upon the establishment of a statutory trust in
20 accordance with subsection (b) or when any funds are drawn on a
21 letter of credit pursuant to section 489D-7(a), the licensee or



1 applicant shall notify the commissioner of the establishment of
2 the trust or the funds drawn on the letter of credit, as
3 applicable. Notice shall be deemed satisfied if performed
4 pursuant to a multistate agreement or through NMLS. Funds drawn
5 on a letter of credit, and any other permissible investments
6 held in trust for the benefit of the purchasers and holders of
7 the licensee's outstanding money transmission obligations, are
8 deemed held in trust for the benefit of such purchasers and
9 holders on a pro rata and equitable basis in accordance with
10 statutes pursuant to which permissible investments are required
11 to be held in this State, and other states, as applicable. Any
12 statutory trust established pursuant to this subsection shall be
13 terminated upon extinguishment of all of the licensee's
14 outstanding money transmission obligations.

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



1 SECTION 6. Sections 489D-12, 489D-18, and 489D-22.5,
2 Hawaii Revised Statutes, are amended by substituting the phrase
3 "outstanding money transmission obligation", or similar term,
4 wherever the phrase "outstanding payment obligation", or similar
5 term, appears, as the context requires.

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

8 SECTION 8. This Act shall take effect on June 30, 3000.



Report Title:

Money Transmitter; Money Transmission; Permissible Investments;
Tangible Net Worth; Division of Financial Institutions

Description:

Enables timely, coordinated, and efficient regulation of money transmission companies to achieve financial stability and economic growth, while providing consumer protection. Allows the State to share resources, data, and technology tools with other states to create a stronger multi-state system of financial regulation. Effective 6/30/3000. (HD2)

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