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# 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.

7 "Receiving money for transmission" or "money received for  
8 transmission" means receiving money or monetary value in the  
9 United States for transmission within or outside the United  
10 States by electronic or other means.

11 "Tangible net worth" shall mean the aggregate assets of a  
12 licensee excluding all intangible assets, less liabilities, as  
13 determined in accordance with United States generally accepted  
14 accounting principles."

15 2. By amending the definition of "electronic instrument"  
16 to read:



1            "Electronic instrument" means a card or other tangible  
 2 object, or an electronic or mobile wallet, for the transmission  
 3 or payment of money, including a stored value card or device,  
 4 which contains a microprocessor chip, magnetic stripe, or other  
 5 means for the storage of information, that is prefunded and for  
 6 which the value is decremented upon each use, but does not  
 7 include a card or other tangible object that is redeemable by  
 8 the issuer in goods or services."

9            3. By amending the definition of "money transmission" to  
 10 read:

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

12            (1) Selling or issuing payment instruments ~~[, or]~~ in the  
 13            State;

14            (2) Selling or issuing stored value to a person located in  
 15            the State; or

16            ~~[(2)]~~ (3) Receiving money or monetary value for  
 17            transmission ~~[to a location within or outside the~~  
 18            ~~United States by any and all means, including wire,~~  
 19            ~~facsimile, or electronic transfer.]~~ from a person  
 20            located in the State.

21 Money transmission does not apply to courier services."



1           4. By amending the definition of "outstanding payment  
2 obligation" to read:

3            "Outstanding [payment] money transmission obligation"  
4 means:

5           (1) Any payment instrument or stored value issued by the  
6 licensee that has been sold in the United States:

7            (A) Directly by the licensee; or

8            (B) By an authorized delegate of the licensee in the  
9 United States, which has been reported to the  
10 licensee as having been sold,

11 and that has not yet been paid by or for the licensee;  
12 and

13           (2) All other outstanding money transmission obligations  
14 of the licensee issued in the United States."

15           5. By amending the definition of "payment instrument" to  
16 read:

17            "Payment instrument" means any electronic or written  
18 check, draft, money order, traveler's check, or other electronic  
19 instrument or written instrument or order for the transmission  
20 or payment of money, sold or issued to one or more persons,  
21 whether [~~or not~~] the instrument is negotiable. The term



1 "payment instrument" does not include any [~~credit card voucher,~~  
2 stored value card, any letter of credit, or any instrument that  
3 is redeemable by the issuer in goods or services."

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

5 "Stored value" means monetary value [that is evidenced by  
6 an electronic record.] representing a claim against the issuer  
7 evidenced by an electronic or digital record, and that is  
8 intended and accepted for use as a means of redemption for money  
9 or monetary value, or payment for goods or services. The term  
10 includes, but is not limited to, "prepaid access" as defined by  
11 title 31 Code of Federal Regulations section 1010.100, as  
12 amended or recodified from time to time. Notwithstanding the  
13 foregoing, the term "stored value" does not include a payment  
14 instrument or closed loop stored value, or stored value not sold  
15 to the public but issued and distributed as part of a loyalty,  
16 rewards, or promotional program."

17 SECTION 2. Section 489D-5, Hawaii Revised Statutes, is  
18 amended by amending subsection (a) to read as follows:

19 "(a) This chapter shall not apply to:

- 20 (1) The United States or any department, agency, or  
21 instrumentality thereof;



- 1           (2) The United States Postal Service;
- 2           (3) The State or any political subdivisions thereof; [~~and~~]
- 3           (4) The electronic transfer of government benefits for any
- 4                 federal, state, or county governmental agency as
- 5                 defined in Consumer Financial Protection Bureau
- 6                 Regulation E, by a contractor for, and on behalf of
- 7                 the United States or any department, agency, or
- 8                 instrumentality thereof, or any state or any political
- 9                 subdivisions thereof[+];
- 10          (5) An operator of a payment system to the extent that it
- 11                 provides processing, clearing, or settlement services,
- 12                 between or among persons exempted by this chapter or
- 13                 licensees, in connection with wire transfers, credit
- 14                 card transactions, debit card transactions, stored-
- 15                 value transactions, automated clearing house
- 16                 transfers, or similar funds transfers;
- 17          (6) A person appointed as an agent of a payee to collect
- 18                 and process a payment from a payor to the payee for
- 19                 goods or services, other than money transmission
- 20                 itself, provided to the payor by the payee, provided
- 21                 that:



- 1           (A) There exists a written agreement between the  
2           payee and the agent directing the agent to  
3           collect and process payments from payors on the  
4           payee's behalf;
- 5           (B) The payee holds the agent out to the public as  
6           accepting payments for goods or services on the  
7           payee's behalf; and
- 8           (C) Payment for the goods and services is treated as  
9           received by the payee upon receipt by the agent  
10           so that the payor's obligation is extinguished  
11           and there is no risk of loss to the payor if the  
12           agent fails to remit the funds to the payee;
- 13          (7) A person that acts as an intermediary by processing  
14          payments between an entity that has directly incurred  
15          an outstanding money transmission obligation to a  
16          sender, and the sender's designated recipient,  
17          provided that the entity:
  - 18           (A) Is properly licensed or exempt from licensing  
19           requirements under this chapter;
  - 20           (B) Provides a receipt, electronic record, or other  
21           written confirmation to the sender identifying



- 1           the entity as the provider of money transmission  
2           in the transaction; and
- 3           (C) Bears sole responsibility to satisfy the  
4           outstanding money transmission obligation to the  
5           sender, including the obligation to make the  
6           sender whole in connection with any failure to  
7           transmit the funds to the sender's designated  
8           recipient;
- 9           (8) A person expressly appointed as a third-party service  
10           provider to or agent of an entity exempt under section  
11           489D-9.5, solely to the extent that:
- 12           (A) The service provider or agent is engaging in  
13           money transmission on behalf of and pursuant to a  
14           written agreement with the exempt entity that  
15           sets forth the specific functions that the  
16           service provider or agent is to perform; and
- 17           (B) The exempt entity assumes all risk of loss and  
18           all legal responsibility for satisfying the  
19           outstanding money transmission obligations owed  
20           to purchasers and holders of the outstanding  
21           money transmission obligations upon receipt of



- 1                   the purchaser's or holder's money or monetary  
2                   value by the service provider or agent;
- 3       (9) A board of trade designated as a contract market under  
4           the federal Commodity Exchange Act, title 7 United  
5           States Code sections 1-25, as amended or recodified  
6           from time to time, or a person that, in the ordinary  
7           course of business, provides clearance and settlement  
8           services for a board of trade to the extent of its  
9           operation as or for such a board;
- 10       (10) A registered futures commission merchant under the  
11           federal commodities laws to the extent of its  
12           operation as a merchant;
- 13       (11) A person registered as a securities broker-dealer  
14           under federal or state securities laws to the extent  
15           of its operation as such a broker-dealer;
- 16       (12) An individual employed by a licensee, authorized  
17           delegate, or any person exempted from the licensing  
18           requirements of this chapter when acting within the  
19           scope of employment and under the supervision of the  
20           licensee, authorized delegate, or exempted person as  
21           an employee and not as an independent contractor; and



1        (13) A person exempt by regulation or order if the  
 2                    commissioner finds the exemption to be in the public  
 3                    interest and that the regulation of the person is not  
 4                    necessary for the purposes of this chapter.

5            The commissioner may require that any person claiming to be  
 6 exempt from licensing pursuant to this section provide  
 7 information and documentation to the commissioner demonstrating  
 8 that it qualifies for any claimed exemption."

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

11            "~~{}~~ §489D-6 ~~{}~~ License qualifications. (a) ~~[Each~~  
 12 ~~licensee, at all times, shall have a net worth of not less than~~  
 13 ~~\$1,000, calculated in accordance with generally accepted~~  
 14 ~~accounting principles.~~

15            ~~(b)]~~ A licensee under this chapter shall maintain at all  
 16 times a tangible net worth of the greater of \$100,000 or three  
 17 per cent of tangible assets for the first \$100,000,000, two per  
 18 cent of additional assets for \$100,000,000 to \$1,000,000,000,  
 19 and 0.5 per cent of additional assets for over \$1,000,000,000.  
 20 Tangible net worth at all times shall be calculated in  
 21 accordance with generally accepted accounting principles.



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

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

12        (d) Notwithstanding the foregoing provisions of this  
13 section, the commissioner shall have the authority, for good  
14 cause shown, to exempt, in part or in whole, from the  
15 requirements of this section any applicant or licensee."

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

18        "§489D-7 Bond or other security device. (a) Each  
19 application for a license shall be accompanied by a surety bond,  
20 irrevocable letter of credit, or other similar security device  
21 acceptable to the commissioner in the amount of [\$10,000]



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

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

20 (c) To meet the requirement of a security device or of any  
21 portion of the principal amount thereof, the licensee may



1 deposit with the commissioner, or with [~~such~~] banks in [~~this~~]  
2 the State as the licensee may designate and the commissioner may  
3 approve, cash, interest-bearing stocks and bonds, notes,  
4 debentures, or other obligations:

5 (1) Of the United States or any agency or instrumentality  
6 thereof;

7 (2) Guaranteed by the United States;

8 (3) Of the State, a county, or instrumentality of the  
9 State; or

10 (4) Guaranteed by the State,  
11 in an aggregate amount based upon the principal amount or market  
12 value, whichever is lower, of not less than the amount of the  
13 security device or portion thereof.

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

17 (1) Be entitled to receive all interest and dividends  
18 thereon;

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



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

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

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

19          ~~[(g) After the initial year of licensure, a licensee shall~~  
20          ~~maintain a bond or other security device of \$5,000 if the~~  
21          ~~licensee's annualized money transmissions as calculated in~~



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

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

8 **"§489D-8 Permissible investments and statutory trust. (a)**

9 A licensee, at all times, shall possess permissible investments,  
10 as defined in section 489D-4, having an aggregate market value,  
11 calculated in accordance with generally accepted accounting  
12 principles, of not less than the aggregate amount of all  
13 outstanding ~~[payment]~~ money transmission obligations. This  
14 requirement may be waived by the commissioner if the dollar  
15 volume of a licensee's outstanding ~~[payment]~~ money transmission  
16 obligations does not exceed the bond or other security devices  
17 posted by the licensee pursuant to section 489D-7.

18 (b) Permissible investments, even if commingled with other  
19 assets of the licensee, shall be held in trust for the benefit  
20 of the purchasers and holders of the licensee's outstanding  
21 ~~[payment]~~ money transmission obligations in the event of ~~[the~~



1 ~~bankruptcy of the licensee.]~~ insolvency; the filing of a  
2 petition by or against the licensee under the United States  
3 Bankruptcy Code, title 11 United States Code section 101-110, as  
4 amended or recodified from time to time, for bankruptcy or  
5 reorganization; the filing of a petition by or against the  
6 licensee for receivership; the commencement of any other  
7 judicial or administrative proceeding for its dissolution or  
8 reorganization; or in the event of an action by a creditor  
9 against the licensee who is not a beneficiary of this statutory  
10 trust. No permissible investments impressed with a trust  
11 pursuant to this section shall be subject to attachment, levy of  
12 execution, or sequestration by order of any court, except for a  
13 beneficiary of this statutory trust.

14 (c) Upon the establishment of a statutory trust in  
15 accordance with section 489D-8(b) or when any funds are drawn on  
16 a letter of credit pursuant to section 489D-7(a), the licensee  
17 or applicant shall notify the commissioner of the establishment  
18 of the trust or the funds drawn on the letter of credit, as  
19 applicable. Notice shall be deemed satisfied if performed  
20 pursuant to a multistate agreement or through NMLS. Funds drawn  
21 on a letter of credit, and any other permissible investments



1 held in trust for the benefit of the purchasers and holders of  
 2 the licensee's outstanding money transmission obligations, are  
 3 deemed held in trust for the benefit of the purchasers and  
 4 holders on a pro rata and equitable basis in accordance with  
 5 statutes pursuant to which permissible investments are required  
 6 to be held in the State, and other states, as applicable. Any  
 7 statutory trust established hereunder shall be terminated upon  
 8 extinguishment of all of the licensee's outstanding money  
 9 transmission obligations.

10 (d) The commissioner by rule or by order may allow other  
 11 types of investments that the commissioner determines are of  
 12 sufficient liquidity and quality to be a permissible investment.  
 13 The commissioner shall be authorized to participate in efforts  
 14 with other state regulators to determine that other types of  
 15 investments are of sufficient liquidity and quality to be a  
 16 permissible investment."

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

19 SECTION 7. This Act shall take effect on July 1, 2050.



**Report Title:**

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

**Description:**

Aligns Hawaii's money transmitters law with the provisions of the Model Money Transmitters Modernization Act, thereby enabling Hawaii to work within a network of states to license, supervise, and examine transglobal money transmission companies as a multi-state system. 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 7/1/2050.  
(SD1)

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