

ACT 45

S.B. NO. 949

A Bill for an Act Relating to Money Transmitters.

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

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

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

““Outstanding payment [~~instrument~~] obligation” means ~~any~~:

(1) Any payment instrument issued by the licensee that has been sold in the United States:

~~(1)~~ (A) Directly by the licensee; or

~~(2)~~ (B) By an authorized delegate of the licensee in the United States, which has been reported to the licensee as having been sold, and that has not yet been paid by or for the licensee~~;~~ and

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

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

“Payment instrument” means any electronic or written check, draft, money order, traveler’s check, or other electronic instrument or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not the instrument is negotiable. The term “payment instrument” does not include any credit card voucher, any letter of credit, or any instrument that is redeemable by the issuer in goods or services.”

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

“Person” means any individual, partnership, limited liability company, association, joint-stock association, trust, [ø] corporation[-], or other entity, however organized.”

4. By amending the definition of “principal” to read:

“Principal” means any person, or group of persons acting in concert, who exercises control over or has a twenty-five per cent ownership interest or more in an applicant or licensee under this chapter. Principal also includes a manager ~~[and anyone else who supervises or is in charge of the applicant or licensee.]~~ and executive officers.”

5. By repealing the definition of “key shareholder”.

~~[“Key shareholder” means any person, or group of persons acting in concert, who is the owner of twenty-five per cent or more of any voting class of an applicant’s stock.”]~~

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

~~“[§489D-8]~~ **Permissible investments and statutory trust.** (a) A licensee, at all times, shall possess permissible investments having an aggregate market value, calculated in accordance with generally accepted accounting principles, of not less than the aggregate amount of all outstanding payment ~~[instruments issued or sold by the licensee in the United States.]~~ obligations. This requirement may be waived by the commissioner if the dollar volume of a licensee’s outstanding payment ~~[instruments]~~ obligations does not exceed the bond or other security devices posted by the licensee pursuant to section 489D-7.

(b) Permissible investments, even if commingled with other assets of the licensee, shall be held in trust for the benefit of the purchasers and holders of the licensee’s outstanding payment ~~[instruments]~~ obligations in the event of the bankruptcy of the licensee.”

SECTION 3. Section 489D-9, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) An application for a license under this chapter shall be made in writing, and in a form prescribed by NMLS or by the commissioner. Each application shall contain the following:

(1) For all applicants:

- (A) The exact name of the applicant, any fictitious or trade name used by the applicant in the conduct of its business, the applicant’s principal address, and the location of the applicant’s business records;
- (B) The history of the applicant’s material litigation and criminal convictions for the five-year period prior to the date of the application;
- (C) A description of the business activities conducted by the applicant and a history of operations;
- (D) A description of the business activities in which the applicant seeks to engage within the State;

- (E) A list identifying the applicant's proposed authorized delegates in the State, if any, at the time of the filing of the license application;
 - (F) A sample authorized delegate contract, if applicable;
 - (G) A sample form of payment instrument, if applicable;
 - (H) The locations where the applicant and its authorized delegates, if any, propose to conduct their licensed activities in the State;
 - (I) The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which payment instruments will be payable;
 - (J) Disclosure of any pending or final suspension, revocation, or other enforcement action by any state or governmental authority for the five-year period prior to the date of the application; and
 - (K) Any other information the commissioner may require;
- (2) If the applicant is a corporation, the applicant shall also provide:
- (A) The date of the applicant's incorporation and state of incorporation;
 - (B) A certificate of good standing from the state in which the applicant was incorporated;
 - (C) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary company of the applicant, and the disclosure of whether any parent or subsidiary company is publicly traded on any stock exchange;
 - (D) The name, business and residence address, and employment history, for the past five years, of the applicant's ~~executive officers, and the officers or managers who will be in charge of the applicant's activities to be licensed under this chapter;~~ principals, and each person who upon approval of the application will be a principal of the licensee;
 - ~~(E)~~ ~~The name, business and residence address, and employment history of any key shareholder of the applicant, for the period of five years before the date of the application;~~
 - ~~(F)~~ ~~(E)~~ For the five-year period prior to the date of the application, the history of material litigation involving, and criminal convictions of, ~~every executive officer or key shareholder~~ each principal of the applicant;
 - ~~(G)~~ ~~(F)~~ A copy of the applicant's most recent audited financial statement, including balance sheets, statements of income or loss, statements of changes in shareholder equity and statements of changes in financial position, and, if available, the applicant's audited financial statements for the preceding two-year period or, if the applicant is a wholly owned subsidiary of another corporation, either the parent corporation's consolidated audited financial statements for the current year and for the preceding two-year period, or the parent corporation's Form 10-K reports filed with the United States Securities and Exchange Commission for the prior three years in lieu of the applicant's financial statements, or if the applicant is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's non-United States regulator;
 - ~~(H)~~ ~~(G)~~ Copies of all filings, if any, made by the applicant with the United States Securities and Exchange Commission, or

with a similar regulator in a country other than the United States, within the year preceding the date of filing of the application; and

~~[(H)]~~ (H) Information necessary to conduct a criminal history record check in accordance with section 846-2.7 of each ~~[of the executive officers, key shareholders, and managers who will be in charge of the applicant's activities;]~~ person who upon approval of the application will be a principal of the licensee, accompanied by the appropriate payment of the applicable fee for each record check; and

- (3) If the applicant is not a corporation, the applicant shall also provide:
- (A) The name, business and residence address, personal financial statement, and employment history, for the past five years, of each principal of the applicant;
 - (B) The name, business and residence address, and employment history, for the past five years, of any other persons who upon approval of the application will be ~~[in charge of the applicant's activities to be licensed under this chapter;]~~ a principal of the licensee;
 - (C) The place and date of the applicant's registration or qualification to do business in this State;
 - (D) The history of material litigation and criminal convictions for the five-year period before the date of the application for each ~~[individual having any ownership interest in]~~ principal of the applicant ~~[and each individual who exercises supervisory responsibility over the applicant's activities];~~
 - (E) Copies of the applicant's audited financial statements, including balance sheets, statements of income or loss, and statements of changes in financial position for the current year and, if available, for the preceding two-year period; and
 - (F) Information necessary to conduct a criminal history record check in accordance with section 846-2.7 of each principal of the applicant, accompanied by the appropriate payment of the applicable fee for each record check."

SECTION 4. Section 489D-12, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The annual license fee shall be accompanied by a report, in a form prescribed by the commissioner, which shall include:

- (1) A copy of the licensee's most recent audited annual financial statement, including balance sheets, statement of income or loss, statement of changes in shareholder's equity, and statement of cash flows or, if a licensee is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation in lieu of the licensee's audited annual financial statement;
- (2) For the most recent quarter for which data is available prior to the date of filing the annual report, but in no event more than one hundred twenty days prior to the renewal date, the licensee shall provide the number of money transmissions sold, issued, or received for transmission by the licensee in the State, the dollar amount of those transmissions, and the dollar amounts of outstanding payment ~~[instruments currently outstanding;]~~ obligations;

- (3) Any material changes to any of the information submitted by the licensee on its original application that have not previously been reported to the commissioner on any other report required to be filed under this chapter;
- (4) For the most recent quarter for which data is available prior to the date of filing the annual report, but in no event more than one hundred twenty days prior to the renewal date, a list of the licensee's permissible investments, including the total market value of each type of permissible investment, and the total dollar amount of all outstanding payment ~~[instruments issued or sold by the licensee in the United States;]~~ obligations;
- (5) A list of the locations, if any, within this State where business regulated by this chapter is being conducted by either the licensee or the licensee's authorized delegates;
- (6) Disclosure of any pending or final suspension, revocation, or other enforcement action by any state or governmental authority;
- (7) The licensee's evidence of a valid bond or other security device as required pursuant to section 489D-7; and
- (8) Any other information the commissioner may require.

A license may be renewed by filing a renewal statement on a form prescribed by NMLS or by the commissioner and paying a renewal fee at least four weeks prior to the renewal date for licensure for the following year."

SECTION 5. Section 489D-14, Hawaii Revised Statutes, is amended to read as follows:

"§489D-14 Extraordinary reporting requirements. Within fifteen business days of the occurrence of any one of the events listed below, a licensee shall file a written report with the commissioner describing the event and its expected impact on the licensee's activities in this State. These events are:

- (1) Any material change in information provided in a licensee's application or annual report;
- (2) The filing for bankruptcy or reorganization by the licensee;
- (3) Pending or final revocation, suspension, or other enforcement action against the licensee by any state or governmental authority relating to the licensee's money transmission activities;
- (4) Any felony indictment of the licensee or any of its ~~[key shareholders,] principals[, executive officers, or officers or managers in charge of the licensee's activities,]~~ related to money transmission activities; and
- (5) Any felony conviction of the licensee or any of its ~~[key shareholders,] principals[, executive officers, or officers or managers in charge of the licensee's activities,]~~ related to money transmission activities."

SECTION 6. Section 489D-15, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) After review of a request for approval under subsection (a), the commissioner may require the licensee or person or group of persons requesting approval of a proposed change of control of the licensee, or both, to provide additional information concerning the persons who are to assume control of the licensee. The additional information shall be limited to similar information required of the licensee or persons in control of the licensee as part of its original license or renewal application under sections 489D-9 and 489D-12. The information shall include the history of the material litigation and criminal conviction

tions of ~~[the persons who are to assume control]~~ each person who upon approval of the application for change of control will be a principal of the licensee, for the five-year period prior to the date of the application for change of control of the licensee, and authorizations necessary to conduct criminal history record checks of such persons ~~[who are to assume control of the licensee]~~, accompanied by the appropriate payment of the applicable fee for each record check.”

SECTION 7. Section 489D-18, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each licensee shall make, keep, preserve, and make available for inspection by the commissioner the following books, accounts, and other records for a period of three years:

- (1) A record or records of each payment instrument;
- (2) A general ledger containing all assets, liability, capital, income, and expense accounts that shall be posted at least monthly;
- (3) Bank statements and bank reconciliation records;
- (4) Records of all outstanding payment ~~[instruments;]~~ obligations;
- (5) Records of each payment instrument paid within the three-year period;
- (6) A list of the names and addresses of all of the licensee’s authorized delegates; and
- (7) Any other records the commissioner reasonably requires by rule adopted pursuant to chapter 91.”

SECTION 8. Section 489D-22.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notice pursuant to this section shall be provided at least thirty days before the surrender of the license and shall include:

- (1) The date of surrender;
- (2) The name, address, telephone number, facsimile number, and electronic address of a contact individual with knowledge and authority sufficient to communicate with the commissioner regarding all matters relating to the licensee during the period that it was licensed pursuant to this chapter;
- (3) The reason or reasons for surrender;
- (4) Total dollar amount of the licensee’s outstanding payment ~~[instruments]~~ obligations sold in Hawaii and the individual amounts of each outstanding ~~[instrument,]~~ payment obligation, and the name, address, and contact phone number of the licensee to which each outstanding ~~[instrument]~~ payment obligation was assigned;
- (5) A list of the licensee’s Hawaii authorized delegates, if any, as of the date of surrender; and
- (6) Confirmation that the licensee has notified each of its Hawaii authorized delegates, if any, that they may no longer conduct money transmissions on the licensee’s behalf.

Voluntary surrender of a license shall be effective upon the date of surrender specified on the written notice to the commissioner as required by this section; provided that the licensee has met all the requirements of voluntary surrender and has returned the original license issued.”

SECTION 9. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Criminal history record checks may be conducted by:

- (1) The department of health or its designee on operators of adult foster homes for individuals with developmental disabilities or developmental disabilities domiciliary homes and their employees, as provided by section 321-15.2;
- (2) The department of health or its designee on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health or health care services as provided by section 321-171.5;
- (3) The department of health or its designee on all applicants for licensure or certification for, operators for, prospective employees, adult volunteers, and all adults, except adults in care, at healthcare facilities as defined in section 321-15.2;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
- (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (7) The county liquor commissions on employees and prospective employees involved in liquor administration, law enforcement, and liquor control investigations;
- (8) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
- (9) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (10) The department of human services or its designee on applicants to operate child care facilities, household members of the applicant, prospective employees of the applicant, and new employees and household members of the provider after registration or licensure as provided by section 346-154, and persons subject to section 346-152.5;
- (11) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
- (12) The department of health on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in community care foster family homes as provided by section 321-15.2;
- (13) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (14) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (15) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (16) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of

- persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
- (17) The board of private detectives and guards on applicants for private detective or private guard licensure as provided by section 463-9;
 - (18) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided pursuant to section 302C-1;
 - (19) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
 - (20) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
 - (21) The department of health on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 321-15.2;
 - (22) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult protective and community services branch, as provided by section 346-97;
 - (23) The department of human services on foster grandparent program, senior companion program, and respite companion program participants as provided by section 346-97;
 - (24) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under section 1915(c) of the Social Security Act, title 42 United States Code section 1396n(c), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;
 - (25) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;
 - (26) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
 - (27) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
 - (28) The department of commerce and consumer affairs on:
 - (A) Each principal of every non-corporate applicant for a money transmitter license;
 - (B) ~~[The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every]~~ Each person who upon approval of an application by a corporate appli-

- cant for a money transmitter license[; and] will be a principal of the licensee; and
- (C) ~~[The persons who are to assume control of a money transmitter licensee in connection with]~~ Each person who upon approval of an application requesting approval of a proposed change in control of licensee[;] will be a principal of the licensee.
- as provided by sections 489D-9 and 489D-15;
- (29) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;
- (30) The Hawaii health systems corporation on:
- (A) Employees;
- (B) Applicants seeking employment;
- (C) Current or prospective members of the corporation board or regional system board; or
- (D) Current or prospective volunteers, providers, or contractors, in any of the corporation's health facilities as provided by section 323F-5.5;
- (31) The department of commerce and consumer affairs on:
- (A) An applicant for a mortgage loan originator license; and
- (B) Each control person, executive officer, director, general partner, and manager of an applicant for a mortgage loan originator company license,
- as provided by chapter 454F;
- (32) The state public charter school commission or public charter schools on employees, teacher trainees, prospective employees, and prospective teacher trainees in any public charter school for any position that places them in close proximity to children, as provided in section 302D-33;
- (33) The counties on prospective employees who work with children, vulnerable adults, or senior citizens in community-based programs;
- (34) The counties on prospective employees for fire department positions which involve contact with children or vulnerable adults;
- (35) The counties on prospective employees for emergency medical services positions which involve contact with children or vulnerable adults;
- (36) The counties on prospective employees for emergency management positions and community volunteers whose responsibilities involve planning and executing homeland security measures including viewing, handling, and engaging in law enforcement or classified meetings and assisting vulnerable citizens during emergencies or crises;
- (37) The State and counties on employees, prospective employees, volunteers, and contractors whose position responsibilities require unescorted access to secured areas and equipment related to a traffic management center;
- (38) The State and counties on employees and prospective employees whose positions involve the handling or use of firearms for other than law enforcement purposes;
- (39) The State and counties on current and prospective systems analysts and others involved in an agency's information technology operation whose position responsibilities provide them with access to proprietary, confidential, or sensitive information;
- (40) The department of commerce and consumer affairs on applicants for real estate appraiser licensure or certification as provided by chapter 466K;

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- (41) The department of health or its designee on all license applicants, licensees, employees, contractors, and prospective employees of medical marijuana dispensaries, and individuals permitted to enter and remain in medical marijuana dispensary facilities as provided under sections 329D-15(a)(4) and 329D-16(a)(3);
- (42) The department of commerce and consumer affairs on applicants for nurse licensure or license renewal, reactivation, or restoration as provided by sections 457-7, 457-8, 457-8.5, and 457-9;
- ~~[(43)]~~ The county police departments on applicants for permits to acquire firearms pursuant to section 134-2 and on individuals registering their firearms pursuant to section 134-3;
- ~~[(44)]~~ The department of commerce and consumer affairs on:
 - (A) Each of the controlling persons of the applicant for licensure as an escrow depository, and each of the officers, directors, and principals who will be in charge of the escrow depository's activities upon licensure; and
 - (B) Each of the controlling persons of an applicant for proposed change in control of an escrow depository licensee, and each of the officers, directors, and principals who will be in charge of the licensee's activities upon approval of such application, as provided by chapter 449; and
- ~~[(45)]~~ Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect on September 1, 2017; provided that section 4 shall take effect on November 1, 2017, for all licensees that are licensed under chapter 489D, Hawaii Revised Statutes, as of July 1, 2017.

(Approved June 20, 2017.)