

## ACT 108

S.B. NO. 973

A Bill for an Act Relating to Hawaii Money Transmitter Act.

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

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

Over the years, regulation of money transmitters has evolved from a single state regulator licensing, supervising, and examining a money transmitter to a network of states working together to license, supervise, and examine trans-global money transmission companies as a multi-state system. In 2000, the National Conference of Commissioners of Uniform State Laws adopted a model law, known as the Uniform Money Services Act, to harmonize the varied state regulatory frameworks. The goal was to have various states adopt the Uniform Money Services Act to create uniformity with respect to the regulation of money transmitters in various states. The Uniform Money Services Act was last amended in 2004. In 2019, the Conference of State Bank Supervisors published a draft model law for money services businesses based on the Uniform Money Services Act to address areas in need of standardization and alignment across jurisdictions. The Conference of State Bank Supervisors model law focused on protecting consumers, establishing barriers to the entry of bad actors, and facilitating coordination among state agencies.

The legislature further finds that the instantaneous global money transmission activity today necessitates additional oversight of money transmitters to provide appropriate consumer protection. Furthermore, the fast-paced nature of money transmissions and innovation of financial technology necessitates a quicker response to protect consumers. Hawaii's Money Transmitters Act incorporates many provisions from the Uniform Money Services Act, including provisions for networked supervision, allowing the State some networked oversight of these trans-global money transmission companies. However, the legislature also finds that the law in its current form does not provide sufficient flexibility for the State to share supervisory information with other states to allow the quick response required to protect consumers.

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

- (1) Incorporate definitions of key terms provided in the Conference of State Bank Supervisors' model law;
- (2) Add supporting documentation required to be submitted by an applicant for licensure;
- (3) Extend the period of an applicant's litigation and criminal conviction history review from five to ten years prior to the date of the application, which is the maximum period reported by federal agencies;
- (4) Require an applicant to submit information concerning any bankruptcy or receivership proceedings affecting the licensee;

- (5) Clarify the authority of the commissioner of financial institutions to examine and investigate licensees; and
- (6) Allow the commissioner of financial institutions to participate in nationwide protocols for licensing cooperation and coordination with other state regulators.

SECTION 2. Chapter 489D, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“CHAPTER 489D  
MONEY TRANSMITTERS MODERNIZATION ACT”**

SECTION 3. Section 489D-1, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~~~§~~~~489D-1~~~~]]~~ **Short title.** This chapter may be cited as the Money Transmitters Modernization Act.”

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

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

““Acting in concert” means individuals knowingly acting together with a common goal of jointly acquiring control of a licensee whether or not pursuant to an express agreement.

“Individual” means a natural person.

“Key individual” means any individual ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee.

“Passive investor” means a person who:

- (1) Does not have the power to elect a majority of key individuals;
- (2) Is not employed by and does not have any managerial duties of the licensee or person in control of a licensee;
- (3) Does not have the power to exercise directly or indirectly a controlling influence over the management or policies of a licensee or person in control of a licensee; and
- (4) Either:
  - (A) Attests to paragraphs (1), (2), and (3) in a form prescribed by the commissioner; or
  - (B) Commits to the passivity characteristics of paragraphs (1), (2), and (3) in a written document.”

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

““Control” means [ownership]:

- (1) Ownership of, or the power to vote, twenty-five per cent or more of the outstanding voting securities or voting interests of a licensee or [controlling] person[-] in control. For purposes of determining the percentage of a licensee controlled by any person, there shall be aggregated with the [controlling person’s] person in control’s interest, the interest of any other person controlled by the person, [or by] including any spouse, parent, [or] child [of the person-], sibling, and any other person who shares the person’s home;
- (2) The power to elect or appoint a majority of key individuals of a licensee; and
- (3) The power to exercise directly or indirectly a controlling influence over the management or policies of a licensee or person in control of a licensee.”

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

““NMLS” means a [~~mortgage~~] multi-state licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the state licensing and registration of state-licensed [~~loan originators and other~~] financial services providers[~~, or any system provided by the Consumer Financial Protection Bureau.~~”

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~~] “Principal” also includes a manager and [~~executive officers;~~] key individual.”

5. By deleting the definition of “controlling person”.

[~~““Controlling person” means any person in control of a licensee.”~~]

SECTION 5. 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~~] ten-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[~~;~~] or instrument upon which stored value is recorded, 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~~) Information concerning any bankruptcy or receivership proceedings affecting the licensee, key individual, person in control of a licensee, or person seeking to acquire control of a licensee; and

[~~(K)~~] (L) 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 principals, and each person who, upon approval of the application, will be a principal of the licensee;
  - (E) For the ~~five-year~~ ten-year period prior to the date of the application, the history of material litigation involving, and criminal convictions of, each principal of the applicant;
  - (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;
  - (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) Information necessary to conduct a criminal history record check in accordance with section 846-2.7 of each 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 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~~ ten-year period before the date of the application for each principal of the applicant;
  - (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 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 convictions of each person who upon approval of the application for change of control will be a principal of the licensee, for the [five-year] ten-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, accompanied by the appropriate payment of the applicable fee for each record check.”

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

**§489D-17 Examinations[-] and investigations.** ~~[(a) The commissioner may conduct an annual on-site examination of a licensee upon sixty days written notice to the licensee. The commissioner may examine a licensee without prior notice if the commissioner has a reasonable basis to believe that the licensee is not in compliance with this chapter. The on-site examination may be conducted in conjunction with examinations performed by representatives of agencies of the federal government, or of another state or states. The commissioner, in lieu of an on-site examination, may accept the examination report of the federal government, an agency of another state, or an independent accounting firm. Accepted reports are considered, for all purposes, an official report of the commissioner. The licensee shall bear the cost of reasonable expenses incurred by the division, agencies of another state, or an independent licensed or certified public accountant in conducting an examination or making a report.~~

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

(a) The commissioner may examine or investigate a licensee or authorized delegate of a licensee as reasonably necessary or appropriate to administer and enforce this chapter, rules adopted or orders issued under this chapter, and other applicable law including but not limited to the Bank Secrecy Act, title 31 United States Code section 5311 et seq.; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, P.L. 107-56; Electronic Fund Transfer Act,

Title 15 United States Code section 1693 et seq.; and Gramm-Leach Bliley Act of 1999, P.L. 106-102.

(b) The commissioner may:

- (1) Conduct an examination or investigation as the commissioner may reasonably require;
- (2) Conduct an on-site or off-site examination or investigation or an off-site review of records;
- (3) Conduct an examination or investigation in conjunction with an examination or investigation conducted by representatives of agencies of another state or the federal government;
- (4) Accept the examination report of agencies of another state or the federal government or a report prepared by an independent accounting firm, in which event the accepted report shall be considered for all purposes as an official report of the commissioner; and
- (5)<sup>1</sup> Summon and examine under oath a key individual or employee of a licensee or authorized delegate of a licensee and require the person to produce records regarding any matter related to the condition and business of the licensee or authorized delegate.

(c) A licensee or authorized delegate of a licensee shall provide, and the commissioner shall have full and complete access to, all records the commissioner may reasonably require to conduct a complete examination or investigation. The records shall be provided at the location and in the format specified by the commissioner; provided that the commissioner may utilize multi-state record production standards and examination procedures when the standards will reasonably achieve the requirements of this section.

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

(e) To efficiently and effectively administer and enforce this chapter and to minimize regulatory burden, the commissioner may participate in the multi-state, networked supervisory processes established between states and coordinated through the Conference of State Bank Supervisors, Money Transmitter Regulator Association, and affiliates and successors for all licensees that hold licenses in this State and other states; provided that:

- (1) As a participant in this multi-state supervision, the commissioner may:
  - (A) Cooperate, coordinate, and share information with other state and federal regulators;
  - (B) Enter into a written cooperation, coordination, or information-sharing contract or agreement with the organizations, the membership of which is made up of state or federal governmental agencies; and
  - (C) Cooperate, coordinate, and share information with organizations, the membership of which is made up of state or federal governmental agencies; provided further that the organizations agree in writing to maintain the confidentiality and security of the shared information;
- (2) For the purposes of paragraph (1), the commissioner shall:
  - (A) Conduct a joint or concurrent examination or other investigation or enforcement action with the agency of another state or the federal government;
  - (B) Accept a report of examination or investigation by, or a report submitted to, the agency of another state or federal govern-

- ment, in which event the accepted report shall serve as an official report of the commissioner for all purposes; and
- (C) Take other action as the commissioner considers reasonably necessary or appropriate to carry out and achieve the purposes of this chapter;
- (3) The commissioner shall not waive, and nothing in this section shall constitute a waiver of, the commissioner's authority to conduct an examination or investigation or otherwise take independent action authorized by this chapter, or a rule adopted or order issued under this chapter, to enforce compliance with applicable state or federal law; and
- (4) A joint examination or investigation, or acceptance of an examination or investigation report, shall not waive an examination assessment authorized by this chapter.
- (f) The submission of any information to the commissioner by a person subject to this chapter or shared with the commissioner by another federal or state regulator of a person subject to this chapter, for any purpose in the course of any examination or investigation or otherwise, shall not be construed as waiving, destroying, or otherwise affecting any privilege the person may claim with respect to the information under federal or state law as to any person or entity other than the commissioner; provided that this subsection shall not be construed as implying or establishing that:
- (1) Any person waives any privilege applicable to information that is submitted or transferred under circumstances to which this subsection does not apply; and
- (2) Any person would waive any privilege applicable to any information by submitting the information to the commissioner but for this subsection.
- ~~(e)~~ (g) The commissioner shall charge an examination fee to each licensee and authorized delegate examined or investigated by the commissioner or the commissioner's staff, based upon the cost per hour per examiner. The hourly fee shall be \$60.
- ~~(d)~~ (h) In addition to the examination fee, the commissioner shall charge any money transmitter or authorized delegate examined or investigated by the commissioner or the commissioner's staff, additional amounts for travel, per diem, mileage, and other reasonable expenses incurred in connection with the examination."

SECTION 8. Section 489D-34, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) Adopt rules pursuant to chapter 91 to implement this chapter;
- (2) Administer and enforce the provisions and requirements of this chapter;
- (3) Issue declaratory rulings and informal nonbinding interpretations;
- (4) Develop requirements for licensure;
- (5) Process and investigate complaints, subpoena witnesses and documents, administer oaths, and receive affidavits and oral testimony, including telephonic communications;
- (6) Investigate and conduct hearings, including contested case proceedings under chapter 91, regarding any violation of this chapter, or any rule or order of, or agreement with, the commissioner;

- (7) Create fact-finding committees that may make recommendations to the commissioner for the commissioner's deliberations;
- (8) Require disclosure of relevant criminal history in accordance with this chapter and conduct criminal history record checks in accordance with chapter 846;
- (9) Contract with or employ qualified persons who may be exempt from chapter 76, including investigators, examiners, auditors, and attorneys, to assist the commissioner in exercising the commissioner's powers and duties;
- (10) Require that all revenues, fees, and fines collected by the commissioner under this chapter be deposited into the compliance resolution fund established pursuant to section 26-9(o);
- (11) Revoke, suspend, or otherwise limit the license of any money transmitter for any violation of this chapter, or any rule or order of, or agreement with, the commissioner;
- (12) Report any violation of this chapter or violation of federal or state law to the Consumer Financial Protection Bureau or other federal agency having jurisdiction over the licensee; ~~and~~
- (13) Participate in nationwide protocols for licensing cooperation and coordination among state regulators; and
- ~~(13)~~ (14) Do any and all things necessary or incidental to the exercise of the commissioner's power and duties."

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 11. This Act shall take effect on July 1, 2021.

(Approved June 28, 2021.)

**Note**

- 1. So in original.