

SB 1068

Measure Title: RELATING TO MONEY TRANSMITTERS.

Report Title: Money Transmitters; Fees; Bond

Description: Authorizes the Commissioner of Financial Institutions to require money transmitters to register with NMLS; establishes procedures for a licensed money transmitter to surrender its license; and amends the bond requirement, the fee structure for services provided by the Division of Financial Institutions of the Department of Commerce and Consumer Affairs for the regulation of money transmitters, and the fine for violations of money transmitter regulations.

Companion: [HB837](#)

Package: Gov

Current Referral: CPN/JDL, WAM

Introducer(s): KIM (Introduced by request of another party)

<u>Sort by Date</u>		Status Text
1/24/2013	S	Introduced.
1/24/2013	S	Passed First Reading.
1/24/2013	S	Referred to CPN/JDL, WAM.
2/1/2013	S	The committee(s) on CPN/JDL has scheduled a public hearing on 02-12-13 9:30AM in conference room 229.
2/11/2013	S	The committee(s) on CPN/JDL has rescheduled its public hearing to 02-12-13 9:30AM in conference room 016.



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TO THE
SENATE COMMITTEES ON

COMMERCE AND CONSUMER PROTECTION
AND
JUDICIARY AND LABOR

THE TWENTY-SEVENTH STATE LEGISLATURE
REGULAR SESSION OF 2013

Tuesday, February 12, 2013
9:30 a.m.

TESTIMONY ON S.B. NO. 1068
RELATING TO MONEY TRANSMITTERS

THE HONORABLE ROSALYN H. BAKER, CHAIR,
THE HONORABLE CLAYTON HEE, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Iris Ikeda Catalani, Commissioner of Financial Institutions ("Commissioner"), testifying on behalf of the Department of Commerce and Consumer Affairs in strong support of this administration bill, Senate Bill No. 1068.

The Money Transmitter law was passed in 2006, and licensure of money transmitters has been required since July 1, 2007. This law was enacted to protect consumers of money transmission services and to prevent money transmission from

being used to launder illegal profits and facilitate illegal activities as Hawaii was only one of five states that did not regulate money transmitters. Having now had a number of years to work with Chapter 489D, Hawaii Revised Statutes ("HRS"), this bill seeks to enable the Commissioner to more effectively enforce the law, and more appropriately supervise, regulate, and examine licensees. This bill will also change the methodology to impose a higher annual fee based on the risk and complexity of money transfer companies. As the Department is self-funded, the Commissioner seeks to have fees for money transmitters set at a level that covers the true costs of running the program and providing the public the protection it needs and that the Legislature intended.

The money transmitter business is important to consumers because of the rapidity at which money can be sent from one location to another. Consumers often use transmitter services to send money abroad to family or friends or to send money for an online purchase. Some customers use a money transmitter because they lack a checking account, or because a creditor is requiring them to make a payment quickly to avoid late fees. For a fee, money transmitters transmit money by wire, fax, electronic transfer or other means, and they may sell or issue money orders, traveler's checks and other payment instruments. The Division regulates some 42 money transmitters ranging in size and complexity from small "mom and pop" stores that may transmit a customer's money to family overseas, to large multi-state corporations.

Registration with NMLS System

This bill authorizes the Commissioner to require money transmitters to register with the NMLS, a system for state licensing and registration of state-licensed financial services providers. The bill allows the Commissioner to contract with NMLS to collect and maintain records, and process fees related to money transmitter licenses. The Division believes using NMLS will provide a cost-effective way for licensees to manage all their state money transfer licenses and will allow the Division to use the electronic method to review, oversee and license money transmitters. Note that the Division must continue to ask for items outside NMLS for the state specific items required by our Hawaii law. The Division is already using the NMLS to manage mortgage loan originator licensees. (Hawaii law refers to the system by its former name, the "Nationwide Mortgage Licensing System." The system changed its name to "NMLS" as it expanded its services beyond mortgage loan originator licensing, and it is now set up for use by non-depository institutions.) The bill adds a definition of NMLS in Section 2, and other substantive provisions are in Section 4.

Security Device Requirement

Section 3 of the bill changes security device requirements for money transmitters, such as surety bonds. Money transmitters in Hawaii post an initial surety bond, letter of credit or similar "security device" in the amount of \$1,000. Hawaii's security device level is the lowest in the nation.

This bill would increase the required security device to \$10,000 for the first 12 months of licensure. Thereafter, the requirement would be reduced to \$5,000 for money transmitters whose annualized money transmissions are less than \$10,000,000; and the requirement would remain at \$10,000 for money transmitters whose annualized money transmissions are \$10,000,000 or more.

The new levels are appropriate in that they more realistically reflect the risk associated with new money transmitter companies, and are consistent with other states. Consumers will be better protected in the event a money transmitter fails or engages in violations of Chapter 489D.

Licensing Application and Renewal Fees

Sections 6 and 7 of the bill change licensing application and renewal fee schedules. Currently, all applicants for a money transmitter license pay an application fee of \$2,000, plus \$300 for each additional location in the State up to an aggregate fee of \$15,000. The same schedule applies to the licensee's license fee for the first year, and for each subsequent renewal year. Under this fee schedule, money transmitters with multiple locations in the State pay a higher annual fee than those that only process internet transmissions.

To more appropriately reflect the time and effort and regulatory oversight to license any new company, the bill sets the application fee as well as the initial annual license fee at \$5,000 each. Thereafter, the annual license renewal fee is scaled, based

on risk and complexity of the company. This results in more active licensees paying higher fees than less active licensees. This is appropriate as Division resources required to regulate and supervise money transmitters tend to correlate with a licensee's activity level.

In Section 7, the annual report late filing fee is changed from \$100 to \$250 per business day, after a licensee has been suspended for noncompliance with renewal requirements. Annual report content is clarified.

In Section 9, the minimum fee is raised for a name change application.

Self-Funding Requirement Necessitates Requested Fee Changes

To provide context for the fee changes proposed by this bill, the Commissioner submits the following. The Division is responsible for the licensure, examination and supervision of state-chartered and licensed banks, trust companies, savings and loan associations, financial services loan companies, credit unions, escrow depositories, money transmitters, mortgage servicers, mortgage loan originators and mortgage loan originator companies. It is the only entity that monitors the regulatory compliance, safety and soundness of these industries – the federal government does not provide such oversight – and the Division carries out its duties in order to protect the rights and funds of depositors, borrowers, consumers and other members of the public.

Overall, the Division's revenues are inadequate to fully fund its operations, including the filling of all authorized positions and covering the Division's share of the

departmental overhead. Notwithstanding the extraordinary efforts of Division staff, the Division is currently backlogged between 120 and 180 days in its licensing work due to understaffing. The Division appreciates having previously been allocated 34 staff positions to carry out its responsibilities. However, the current HRS fee structure generates revenue that is sufficient to fill only 28 positions. Consequently, six allocated positions, all of which are "permanent," are vacant. So while there is a clear need for additional staff to appropriately carry out the Division's mandates and to protect the public, the Division is not in a position to cover the ongoing cost of these permanent positions until its revenue streams are changed and made sustainable.

Division's staff vacancies adversely affect the State's economy and the public's security in a number of ways. Businesses that are otherwise ready to open may have to wait months to obtain approval on their initial license applications, despite best efforts of the Division and its staff. They must postpone hiring employees and generating revenue that would increase the State's tax base. Licensees who do not apply for license renewals well before the end of the year may end up in a similar predicament, unable to lawfully conduct business after their license expires, and in limbo until the Division can confirm satisfaction of license renewal requirements and issue a license renewal. For the public, the Division's personnel shortage means potentially months of delay in its examination of licensees which handle billions of dollars of consumer financial transactions annually. It also potentially means months of delay in the

Division's discovery of licensees that could use benefit from the Division's assistance and monitoring to help them restore their financial viability and strength. In an extreme case, a staff shortage could mean that the Division cannot discover and investigate questionable licensee conduct and circumstances in time to avert massive financial harm to the public.

The Division needs more funds to appropriately carry out its mission. In determining the best way to generate the funds, a guiding principle is that the revenues from each of program must be sufficient to cover the Division's cost of operating that program. Revenues schedules for program fees and rates are predetermined for the Division, as they are set out in the Hawaii Revised Statutes.

With specific regard to the money transmitter program which is now it in its sixth year, the program ran a large deficit in FY11. To provide the minimum oversight, it cost the Division \$279,648 to operate the program, while it generated revenue for the Division of \$212,973, leaving the Division to cover the \$66,675 shortfall. In FY12, after expenses, the program had a surplus of \$18,941, which when applied to the FY1 deficit, lowered the two year shortfall to \$47,734. The most recent results are as follows:

Money Transmitters Program	FY11	FY12
Program Cost to Division	\$279,648	\$287,916
Less Program Revenues	\$212,973	\$306,857
Program Net to Division	(\$66,675)	\$18,941

Under the fee schedule set by Chapter 489D, HRS, the money transmitters program is fiscally unsustainable for the Division. The minimum oversight includes review of the safety and soundness of the company and examination of a company on a 3-4 year cycle, however, the Division has not examined all of the money transmitters we licensed because of the staff resources. The Division would like enhance its program to: (1) provide additional oversight throughout the year to companies who may have compliance issues; (2) provide additional training to the Division's examiners to learn about the risks associated with the new technology; and (3) participate in an examination cycle of 18 months to 24 months as the industry is using more mobile applications on cellular telephones and internet devices to transmit money the risk of compliance violations may increase. This increased level of oversight is appropriate and in the best interests of protecting consumers, however it cannot be implemented unless there is a change in the current statutory fee schedule.

The Commissioner submits that the fees changes for the money transferor program set out in this bill should enable the Division to continue to carry out its legislatively mandated duties. After having run an aggregate deficit on the program in just the past two years of over \$47,000, the Commissioner respectfully submits that requested changes in fees are both necessary and appropriate.

History Check on Change of Control

Requirements for obtaining a proposed change of control of a licensee are tightened in Section 10. A change of control request requires that the Commissioner determine after an investigation that the requestor has the competence, experience, character, and general fitness to lawfully control the licensee within the interests of the public. This analysis involves a considerable amount of time, particularly when a complex merger transaction is involved. The bill adjusts fees for a change of control application to better reflect the Division's review time.

Section 10 of the bill also authorizes the Commissioner to obtain a five-year history of the change of control applicant's material litigation and criminal convictions. This is the same history requirement as applicants provide for a new license. This information will help the Commissioner approve qualified change of control applicants, which will in turn protect the public.

Change in Penalty for Violations

In Section 14, the maximum penalty for violation of the money transmitter law is changed from \$500 to \$1,000 per day. This serves as a greater deterrent against violations to better protect consumers.

Voluntary Surrender of License

This bill adds, in Section 1, an orderly process for a licensee to voluntarily surrender its money transmitter license and cease business in Hawaii. The licensee

must give prior notice to the Commissioner, and identify the responsible party to receive consumer complaints. Additionally, the licensee must provide evidence that all of its Hawaii offices have been notified that they may not engage in money transmission for the company.

Conforming Amendments

Conforming amendments are set out in Sections 5, 11, 12, 13, and 15 of the bill.

Better Protection for Consumers

With these changes, the Commissioner will be better able to supervise, regulate, and examine money transmitters and enforce the law, and to generate sufficient funds to oversee the industry. As the Division focuses its supervisory, regulatory, and examination efforts on these licensees, it expects the industry to be more responsive and compliant with state and federal laws. Through more appropriate oversight and supervision, protections for consumers who use money transmitters to transmit money to family, friends and creditors will be improved. This is in accord with the passage of the Money Transmitters Act in 2006, wherein the Legislature declared the Act's purpose as "to establish within the State a licensure system to ensure the safe and sound operation of money transmission businesses, to ensure that these businesses are not used for criminal purposes, to promote confidence in the State's financial system, and to protect the public interest." Sec. 489D-2, HRS.

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For these reasons, DFI strongly supports this administration bill, Senate Bill No. 1068, and respectfully asks that the measure be passed.

Thank you for the opportunity to testify. I would be pleased to respond to any questions you may have.