

S.B. NO. 1068

JAN 24 2013

A BILL FOR AN ACT

RELATING TO MONEY TRANSMITTERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 489D, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§489D- Registration with NMLS. The commissioner may
5 require all licensees to register with NMLS.

6 §489D- Voluntary surrender of license. (a) A licensee
7 may voluntarily cease business and surrender its license by
8 giving written notice to the commissioner of its intent to
9 surrender its license. Prior to the surrender date of a
10 license, the licensee shall have either completed all pending
11 money transmissions or assigned each to another licensee.

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

15 (1) The date of surrender;

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- 1 (2) The name, address, telephone number, facsimile number,
2 and electronic address of a contact individual with
3 knowledge and authority sufficient to communicate with
4 the commissioner regarding all matters relating to the
5 licensee during the period that it was licensed
6 pursuant to this chapter;
- 7 (3) The reason or reasons for surrender;
- 8 (4) Total dollar amount of the licensee's outstanding
9 payment instruments sold in Hawaii and the individual
10 amounts of each outstanding instrument, and the name,
11 address, and contact phone number of the licensee to
12 which each outstanding instrument was assigned;
- 13 (5) A list of the licensee's Hawaii authorized delegates,
14 if any, as of the date of surrender; and
- 15 (6) Confirmation that the licensee has notified each of
16 its Hawaii authorized delegates, if any, that they may
17 no longer conduct money transmissions on the
18 licensee's behalf.
- 19 Voluntary surrender of a license shall be effective upon
20 the date of surrender specified on the written notice to the
21 commissioner as required by this section, provided that the

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1 licensee has met all the requirements of voluntary surrender and
2 has returned the original license issued."

3 SECTION 2. Section 489D-4, Hawaii Revised Statutes, is
4 amended by adding the definition of "NMLS" to be appropriately
5 inserted and to read as follows:

6 "NMLS", means a mortgage licensing system developed and
7 maintained by the Conference of State Bank Supervisors and the
8 American Association of Residential Mortgage Regulators for the
9 state licensing and registration of state-licensed loan
10 originators and other financial services providers, or any
11 system provided by the Consumer Financial Protection Bureau."

12 SECTION 3. Section 489D-7, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "~~489D-7~~ **Bond or other security device.** (a) Each
15 application for a license shall be accompanied by a surety bond,
16 irrevocable letter of credit, or other similar security device
17 acceptable to the commissioner in the amount of [~~\$1,000.~~]
18 \$10,000 for the initial twelve months licensure. Thereafter
19 each licensee shall maintain a bond in the amount required by
20 subsection (g) unless otherwise required by the commissioner.
21 The commissioner may increase the amount of the bond or security
22 device to a maximum of \$500,000 upon the basis of the impaired

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1 financial condition of a licensee, as evidenced by a reduction
2 in net worth, financial losses, or other relevant criteria.

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

15 (c) To meet the requirement of a security device or of any
16 portion of the principal amount thereof, the licensee may
17 deposit with the commissioner, or with such banks in this State
18 as the licensee may designate and the commissioner may approve,
19 cash, interest-bearing stocks and bonds, notes, debentures, or
20 other obligations:

21 (1) Of the United States or any agency or instrumentality
22 thereof;

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1 (2) Guaranteed by the United States;

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

4 (4) Guaranteed by the State,

5 in an aggregate amount based upon the principal amount or market
6 value, whichever is lower, of not less than the amount of the
7 security device or portion thereof.

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

11 (1) Be entitled to receive all interest and dividends
12 thereon;

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

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

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

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

12 (g) After the initial year of licensure, a licensee may
13 obtain a bond or other security device of \$5,000 if the
14 licensee's annualized money transmissions as calculated in
15 section 489D-12(a) is less than \$10,000,000. The bond or
16 security device shall be \$10,000 if the licensee's annualized
17 money transmissions as calculated in section 489D-12(a) is
18 \$10,000,000 or more. Each licensee shall perform this
19 calculation on an annual basis."

20 SECTION 4. Section 489D-9, Hawaii Revised Statutes, is
21 amended to read as follows:

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1 "~~§489D-9 [Application for license.] License and~~
2 registration; application. (a) The commissioner may enter into
3 agreements or contracts with the operators of the NMLS or other
4 entities designated by NMLS to collect and maintain records and
5 process transaction fees or other fees related to licensees or
6 other persons subject to this chapter.

7 (b) For the purpose and the extent necessary to use NMLS,
8 the commissioner may waive or modify, in whole or in part, by
9 rule or order, any or all of the requirements of this chapter
10 and establish new requirements as reasonably necessary to
11 participate in NMLS.

12 (c) In addition to other uses of the NMLS, the
13 commissioner may use NMLS as an agent for:

14 (1) Requesting information from and distributing
15 information to the United States Department of Justice
16 or any other governmental agency; and

17 (2) Requesting and distributing information to and from
18 any source directed by the commissioner.

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

22 (1) For all applicants:

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- 1 (A) The exact name of the applicant, any fictitious
2 or trade name used by the applicant in the
3 conduct of its business, the applicant's
4 principal address, and the location of the
5 applicant's business records;
- 6 (B) The history of the applicant's material
7 litigation and criminal convictions for the five-
8 year period prior to the date of the application;
- 9 (C) A description of the business activities
10 conducted by the applicant and a history of
11 operations;
- 12 (D) A description of the business activities in which
13 the applicant seeks to engage within the State;
- 14 (E) A list identifying the applicant's proposed
15 authorized delegates in the State, if any, at the
16 time of the filing of the license application;
- 17 (F) A sample authorized delegate contract, if
18 applicable;
- 19 (G) A sample form of payment instrument, if
20 applicable;

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- 1 (H) The locations where the applicant and its
- 2 authorized delegates, if any, propose to conduct
- 3 their licensed activities in the State;
- 4 (I) The name and address of the clearing bank or
- 5 banks on which the applicant's payment
- 6 instruments will be drawn or through which
- 7 payment instruments will be payable;
- 8 (J) Disclosure of any pending or final suspension,
- 9 revocation, or other enforcement action by any
- 10 state or governmental authority for the five-year
- 11 period prior to the date of the application; and
- 12 (K) Any other information the commissioner may
- 13 require;
- 14 (2) If the applicant is a corporation, the applicant shall
- 15 also provide:
- 16 (A) The date of the applicant's incorporation and
- 17 state of incorporation;
- 18 (B) A certificate of good standing from the state in
- 19 which the applicant was incorporated;
- 20 (C) A description of the corporate structure of the
- 21 applicant, including the identity of any parent
- 22 or subsidiary company of the applicant, and the

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- 1 disclosure of whether any parent or subsidiary
2 company is publicly traded on any stock exchange;
- 3 (D) The name, business and residence address, and
4 employment history, for the past five years, of
5 the applicant's executive officers and the
6 officers or managers who will be in charge of the
7 applicant's activities to be licensed under this
8 chapter;
- 9 (E) The name, business and residence address, and
10 employment history of any key shareholder of the
11 applicant, for the period of five years before
12 the date of the application;
- 13 (F) For the five-year period prior to the date of the
14 application, the history of material litigation
15 involving, and criminal convictions of, every
16 executive officer or key shareholder of the
17 applicant;
- 18 (G) A copy of the applicant's most recent audited
19 financial statement, including balance sheets,
20 statements of income or loss, statements of
21 changes in shareholder equity and statement of
22 changes in financial position, and, if available,

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1 the applicant's audited financial statements for
2 the preceding two-year period or, if the
3 applicant is a wholly owned subsidiary of another
4 corporation, either the parent corporation's
5 consolidated audited financial statements for the
6 current year and for the preceding two-year
7 period, or the parent corporation's Form 10-K
8 reports filed with the United States Securities
9 and Exchange Commission for the prior three years
10 in lieu of the applicant's financial statements,
11 or if the applicant is a wholly owned subsidiary
12 of a corporation having its principal place of
13 business outside the United States, similar
14 documentation filed with the parent corporation's
15 non-United States regulator;

16 (H) Copies of all filings, if any, made by the
17 applicant with the United States Securities and
18 Exchange Commission, or with a similar regulator
19 in a country other than the United States, within
20 the year preceding the date of filing of the
21 application; and

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- 1 (I) Information necessary to conduct a criminal
2 history record check in accordance with section
3 846-2.7 of each of the executive officers, key
4 shareholders, and managers who will be in charge
5 of the applicant's activities, accompanied by the
6 appropriate payment of the applicable fee for
7 each record check; and
- 8 (3) If the applicant is not a corporation, the applicant
9 shall also provide:
- 10 (A) The name, business and residence address,
11 personal financial statement, and employment
12 history, for the past five years, of each
13 principal of the applicant;
- 14 (B) The name, business and residence address, and
15 employment history, for the past five years, of
16 any other persons who will be in charge of the
17 applicant's activities to be licensed under this
18 chapter;
- 19 (C) The place and date of the applicant's
20 registration or qualification to do business in
21 this State;

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- 1 (D) The history of material litigation and criminal
2 convictions for the five-year period before the
3 date of the application for each individual
4 having any ownership interest in the applicant
5 and each individual who exercises supervisory
6 responsibility over the applicant's activities;
- 7 (E) Copies of the applicant's audited financial
8 statements, including balance sheets, statements
9 of income or loss, and statements of changes in
10 financial position for the current year and, if
11 available, for the preceding two-year period; and
- 12 (F) Information necessary to conduct a criminal
13 history record check in accordance with section
14 846-2.7 of each principal of the applicant,
15 accompanied by the appropriate payment of the
16 applicable fee for each record check.
- 17 [~~(b)~~] (e) The commissioner, for good cause may:
- 18 (1) Waive any requirement of this section relating to any
19 license application; or
- 20 (2) Permit an applicant to submit substituted information
21 in its license application in lieu of the information
22 required by this section."

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1 SECTION 5. Section 489D-9.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~[§]489D-9.5[§]~~ **Limited exemption for financial**
4 **institutions; financial institutions as authorized delegates.**

5 (a) Banks, bank holding companies, credit unions, ~~[building~~
6 ~~and loan associations, savings and loan associations,]~~ savings
7 banks, financial services loan companies, and mutual banks
8 organized under the laws of the United States or any state shall
9 be exempt from the licensing and examination provisions of this
10 chapter.

11 (b) An applicant or licensee may appoint an entity
12 described in subsection (a) as an authorized delegate.

13 (c) When submitting an application for a license pursuant
14 to section 489D-9, or when submitting an annual report pursuant
15 to section 489D-12, an applicant or licensee that appoints an
16 entity described in subsection (a) as an authorized delegate
17 shall include that entity's name and the locations in this State
18 where that entity will conduct its authorized delegate
19 activities.

20 ~~[(d) When computing the application and license fees~~
21 ~~required to be paid pursuant to sections 489D-10 and 489D-12, an~~
22 ~~applicant or licensee that appoints an entity described in~~

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1 ~~subsection (a) as an authorized delegate shall exclude all of~~
2 ~~the locations in this State where that entity will conduct its~~
3 ~~authorized delegate activities.] "~~

4 SECTION 6. Section 489D-10, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) Each application shall be accompanied by:

7 (1) A nonrefundable application fee in the amount of
8 ~~[\$2,000 plus \$300 for each additional location in the~~
9 ~~State, not to exceed an aggregate fee of \$15,000,]~~
10 \$5,000; and

11 (2) An initial annual license fee of ~~[\$2,000 plus \$300 for~~
12 ~~each additional location in the State, not to exceed~~
13 ~~an aggregate fee of \$15,000.]~~ \$5,000."

14 SECTION 7. Section 489D-12, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "~~§489D-12~~ **Renewal of license and annual report.** (a) On
17 or before December 31 of each year, each licensee shall pay ~~[to~~
18 ~~the commissioner an annual license fee of \$2,000, plus \$300 for~~
19 ~~each additional location in the State, not to exceed an~~
20 ~~aggregate fee of \$15,000.]~~ renewal fees based on the number of
21 annualized money transmissions as follows:

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- 1 (1) \$5,000 for licensees with fewer than 5,000 money
2 transmissions;
- 3 (2) \$6,000 for licensees with 5,000 or more but fewer than
4 50,000 money transmissions;
- 5 (3) \$8,000 for licensees with 50,000 or more but fewer
6 than 100,000 money transmissions;
- 7 (4) \$12,500 for licensees with 100,000 or more but fewer
8 than 200,000 money transmissions; and
- 9 (5) \$15,000 for licensees with 200,000 or more money
10 transmissions.

11 For purposes of this subsection, "annualized money
12 transmissions" means the number of money transmissions reported
13 for the quarter on the report required by subsection (b) (2)
14 multiplied by four.

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

- 18 (1) A copy of the licensee's most recent audited annual
19 financial statement, including balance sheets,
20 statement of income or loss, statement of changes in
21 shareholder's equity, and statement of [~~changes in~~
22 ~~financial position~~] cash flows or, if a licensee is a

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1 wholly owned subsidiary of another corporation, the
2 consolidated audited annual financial statement of the
3 parent corporation in lieu of the licensee's audited
4 annual financial statement;

5 (2) For the most recent quarter for which data is
6 available prior to the date of filing the annual
7 report, but in no event more than one hundred twenty
8 days prior to the renewal date, the licensee shall
9 provide the number of [~~payment instruments~~] money
10 transmissions sold, issued, or received for
11 transmission by the licensee in the State, the dollar
12 amount of those [~~instruments,~~] transmissions, and the
13 dollar amounts of [~~these~~] payment instruments
14 currently outstanding;

15 (3) Any material changes to any of the information
16 submitted by the licensee on its original application
17 that have not previously been reported to the
18 commissioner on any other report required to be filed
19 under this chapter;

20 (4) For the most recent quarter for which data is
21 available prior to the date of filing the annual
22 report, but in no event more than one hundred twenty

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1 days prior to the renewal date, a list of the
2 licensee's permissible investments, including the
3 total market value of each type of permissible
4 investment, and the total dollar amount of all
5 outstanding payment instruments issued or sold by the
6 licensee in the United States;

7 (5) A list of the locations, if any, within this State
8 where business regulated by this chapter is being
9 conducted by either the licensee or the licensee's
10 authorized delegates;

11 (6) Disclosure of any pending or final suspension,
12 revocation, or other enforcement action by any state
13 or governmental authority; ~~and~~

14 (7) The licensee's evidence of a valid bond or other
15 security device; and

16 ~~(7)~~ (8) Any other information the commissioner may
17 require.

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

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1 (c) A licensee that has not filed an annual report that
2 has been deemed complete by the commissioner or paid its annual
3 license fee by the renewal filing deadline, and has not been
4 granted an extension of time to do so by the commissioner, shall
5 have its license suspended on the renewal date. The licensee
6 ~~[has]~~ shall have thirty days after its license is suspended to
7 file an annual report and pay the annual license fee, plus a
8 late filing fee of ~~[\$100]~~ \$250 for each business day after
9 suspension that the commissioner does not receive the annual
10 report and the annual license fee. The commissioner, for good
11 cause, may grant an extension of the renewal date or reduce or
12 suspend the ~~[\$100]~~ \$250 per day late filing fee."

13 SECTION 8. Section 489D-12.5, Hawaii Revised Statutes, is
14 amended to read as follows:

15 " ~~[§] 489D-12.5 [§] Fees.~~ Penalties and other charges.
16 ~~[Unless otherwise provided by statute, all fees]~~ Administrative
17 penalties and other charges assessed under this chapter shall be
18 deposited into the compliance resolution fund established
19 pursuant to section 26-9(o)."

20 SECTION 9. Section 489D-14.5, Hawaii Revised Statutes, is
21 amended to read as follows:

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1 " ~~[§] §489D-14.5 [§]~~ **Name change.** To change its name, its
2 fictitious name, or its trade name, a ~~[money transmitter]~~
3 licensee shall file an application with the commissioner and pay
4 a nonrefundable fee of ~~[\$250]~~ \$1,000 or ~~[such]~~ a greater amount
5 as the commissioner shall establish by rule pursuant to chapter
6 91. The application shall be approved if the commissioner is
7 satisfied that the new name complies with all applicable laws.
8 Any change of name shall not affect a ~~[money transmitter's]~~
9 licensee's rights, liabilities, or obligations existing prior to
10 the effective date thereof, and no documents of transfer shall
11 be necessary to preserve such rights, liabilities, or
12 obligations; provided that the commissioner may require notice
13 to be given to the public and other governmental agencies."

14 SECTION 10. Section 489D-15, Hawaii Revised Statutes, is
15 amended by amending subsections (a) and (b) to read as follows:

16 "(a) A licensee shall submit to the commissioner an
17 application requesting approval of a proposed change of control
18 of the licensee, accompanied by a nonrefundable application fee
19 of ~~[\$2,000.]~~ \$2,500.

20 (b) After review of a request for approval under
21 subsection (a), the commissioner may require the licensee to
22 provide additional information concerning the persons who are to

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1 assume control of the licensee. The additional information
2 shall be limited to similar information required of the licensee
3 or persons in control of the licensee as part of its original
4 license or renewal application under sections 489D-9 and 489D-
5 12[-] and shall include the history of the applicant's material
6 litigation and criminal convictions for the five-year period
7 prior to the date of the application for change of control of
8 the licensee."

9 SECTION 11. Section 489D-16, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) Every licensee and its authorized delegates shall
12 file with the commissioner all reports relating to transactions
13 in the State, as required by federal recordkeeping and reporting
14 requirements in Title 31 United States Code section 5311 et
15 seq., 31 Code of Federal Regulations Part ~~[103,]~~ 1022, section
16 ~~[125,]~~ 210, and other federal and state laws pertaining to money
17 laundering."

18 SECTION 12. Section 489D-17, Hawaii Revised Statutes, is
19 amended by amending subsection (c) to read as follows:

20 "(c) The commissioner shall charge an examination fee to
21 each ~~[licensed money transmitter]~~ licensee and authorized
22 delegate examined or investigated by the commissioner or the

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1 commissioner's staff, based upon the cost per hour per
2 examiner. [~~Effective July 1, 2008, the~~] The hourly fee [~~shall~~
3 ~~be~~] is \$60."

4 SECTION 13. Section 489D-21, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[~~§~~489D-21[~~]~~] **Authorized delegate contracts.** Licensees
7 desiring to conduct licensed activities through authorized
8 delegates shall authorize each delegate to operate pursuant to
9 an express written contract. These contracts shall provide the
10 following:

- 11 (1) That the licensee appoints the person as the
12 licensee's delegate with authority to engage in money
13 transmission on behalf of the licensee;
- 14 (2) That neither a licensee nor an authorized delegate may
15 authorize subdelegates without the written consent of
16 the commissioner;
- 17 (3) That the licensee is subject to supervision and rule
18 by the commissioner; and
- 19 (4) That the authorized delegate certifies that it is in
20 compliance with the recordkeeping and reporting
21 requirements under Title 31 United States Code section
22 5311 et seq., 31 Code of Federal Regulations Part

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1 [~~103-7~~] 1022, section [~~125-7~~] 210, and other federal and
2 state laws pertaining to money laundering."

3 SECTION 14. Section 489D-28, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§489D-28 Civil penalties.** [~~(a)~~] The commissioner may
6 assess a fine against a person who violates this chapter or a
7 rule adopted or an order issued under this chapter in an amount
8 not to exceed [~~\$500~~] \$1,000 per day for each day the violation
9 is outstanding, plus the State's costs and expenses for the
10 investigation and prosecution of the matter, including
11 reasonable attorneys' fees.

12 [~~(b) All administrative fines collected under authority of~~
13 ~~this chapter shall be deposited into the compliance resolution~~
14 ~~fund established pursuant to section 26-9(e).~~]"

15 SECTION 15. Section 846-2.7, Hawaii Revised Statutes, is
16 amended by amending subsection (b) to read as follows:

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

18 (1) The department of health or the department's designee
19 on operators of adult foster homes or developmental
20 disabilities domiciliary homes and their employees, as
21 provided by section 333F-22;

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- 1 (2) The department of health or the department's designee
2 on prospective employees, persons seeking to serve as
3 providers, or subcontractors in positions that place
4 them in direct contact with clients when providing
5 non-witnessed direct mental health services as
6 provided by section 321-171.5;
- 7 (3) The department of health or the department's designee
8 on all applicants for licensure for, operators for,
9 prospective employees, and volunteers at one or more
10 of the following: skilled nursing facility,
11 intermediate care facility, adult residential care
12 home, expanded adult residential care home, assisted
13 living facility, home health agency, hospice, adult
14 day health center, special treatment facility,
15 therapeutic living program, intermediate care facility
16 for individuals with intellectual disabilities,
17 hospital, rural health center and rehabilitation
18 agency, and, in the case of any of the above
19 facilities operating in a private residence, on any
20 adult living in the facility other than the client as
21 provided by section 321-15.2;

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- 1 (4) The department of education on employees, prospective
2 employees, and teacher trainees in any public school
3 in positions that necessitate close proximity to
4 children as provided by section 302A-601.5;
- 5 (5) The counties on employees and prospective employees
6 who may be in positions that place them in close
7 proximity to children in recreation or child care
8 programs and services;
- 9 (6) The county liquor commissions on applicants for liquor
10 licenses as provided by section 281-53.5;
- 11 (7) The county liquor commissions on employees and
12 prospective employees involved in liquor
13 administration, law enforcement, and liquor control
14 investigations;
- 15 (8) The department of human services on operators and
16 employees of child caring institutions, child placing
17 organizations, and foster boarding homes as provided
18 by section 346-17;
- 19 (9) The department of human services on prospective
20 adoptive parents as established under section 346-
21 19.7;

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- 1 (10) The department of human services on applicants to
2 operate child care facilities, prospective employees
3 of the applicant, and new employees of the provider
4 after registration or licensure as provided by section
5 346-154;
- 6 (11) The department of health on persons exempt pursuant to
7 section 346-152 to be eligible to provide child care
8 and receive child care subsidies as provided by
9 section 321-484;
- 10 (12) The department of health on operators and employees of
11 home and community-based case management agencies and
12 operators and other adults, except for adults in care,
13 residing in foster family homes as provided by section
14 321D;
- 15 (13) The department of human services on staff members of
16 the Hawaii youth correctional facility as provided by
17 section 352-5.5;
- 18 (14) The department of human services on employees,
19 prospective employees, and volunteers of contracted
20 providers and subcontractors in positions that place
21 them in close proximity to youth when providing

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- 1 services on behalf of the office or the Hawaii youth
2 correctional facility as provided by section 352D-4.3;
- 3 (15) The judiciary on employees and applicants at detention
4 and shelter facilities as provided by section 571-34;
- 5 (16) The department of public safety on employees and
6 prospective employees who are directly involved with
7 the treatment and care of persons committed to a
8 correctional facility or who possess police powers
9 including the power of arrest as provided by section
10 353C-5;
- 11 (17) The board of private detectives and guards on
12 applicants for private detective or private guard
13 licensure as provided by section 463-9;
- 14 (18) Private schools and designated organizations on
15 employees and prospective employees who may be in
16 positions that necessitate close proximity to
17 children; provided that private schools and designated
18 organizations receive only indications of the states
19 from which the national criminal history record
20 information was provided pursuant to section 302C-1;
- 21 (19) The public library system on employees and prospective
22 employees whose positions place them in close

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- 1 proximity to children as provided by section 302A-
- 2 601.5;
- 3 (20) The State or any of its branches, political
- 4 subdivisions, or agencies on applicants and employees
- 5 holding a position that has the same type of contact
- 6 with children, vulnerable adults, or persons committed
- 7 to a correctional facility as other public employees
- 8 who hold positions that are authorized by law to
- 9 require criminal history record checks as a condition
- 10 of employment as provided by section 78-2.7;
- 11 (21) The department of health on licensed adult day care
- 12 center operators, employees, new employees,
- 13 subcontracted service providers and their employees,
- 14 and adult volunteers as provided by section 321-496;
- 15 (22) The department of human services on purchase of
- 16 service contracted and subcontracted service providers
- 17 and their employees serving clients of the adult and
- 18 community care services branch, as provided by section
- 19 346-97;
- 20 (23) The department of human services on foster grandparent
- 21 program, senior companion program, and respite

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1 companion program participants as provided by section
2 346-97;

3 (24) The department of human services on contracted and
4 subcontracted service providers and their current and
5 prospective employees that provide home and community-
6 based services under Section 1915(c) of the Social
7 Security Act, Title 42 United States Code Section
8 1396n(c), or under any other applicable section or
9 sections of the Social Security Act for the purposes
10 of providing home and community-based services, as
11 provided by section 346-97;

12 (25) The department of commerce and consumer affairs on
13 proposed directors and executive officers of a bank,
14 savings bank, savings and loan association, trust
15 company, and depository financial services loan
16 company as provided by section 412:3-201;

17 (26) The department of commerce and consumer affairs on
18 proposed directors and executive officers of a
19 nondepository financial services loan company as
20 provided by section 412:3-301;

21 (27) The department of commerce and consumer affairs on the
22 original chartering applicants and proposed executive

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1 officers of a credit union as provided by section
2 412:10-103;

3 (28) The department of commerce and consumer affairs on:

4 (A) Each principal of every non-corporate applicant
5 for a money transmitter license; and

6 (B) The executive officers, key shareholders, and
7 managers in charge of a money transmitter's
8 activities of every corporate applicant for a
9 money transmitter license,

10 as provided by [~~section~~] sections 489D-9[+] and 489D-
11 15;

12 (29) The department of commerce and consumer affairs on
13 applicants for licensure and persons licensed under
14 title 24;

15 (30) The Hawaii health systems corporation on:

16 (A) Employees;

17 (B) Applicants seeking employment;

18 (C) Current or prospective members of the corporation
19 board or regional system board; or

20 (D) Current or prospective volunteers, providers, or
21 contractors,

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1 in any of the corporation's health facilities as
2 provided by section 323F-5.5;

3 (31) The department of commerce and consumer affairs on:

4 (A) An applicant for a mortgage loan originator
5 license; and

6 (B) Each control person, executive officer, director,
7 general partner, and manager of an applicant for
8 a mortgage loan originator company license,
9 as provided by chapter 454F;

10 (32) The counties on prospective employees who work with
11 vulnerable adults or senior citizens in community-
12 based programs;

13 (33) The counties on prospective employees for fire
14 department positions which involve contact with
15 children or dependent adults;

16 (34) The counties on prospective employees for emergency
17 medical services positions which involve contact with
18 children or dependent adults;

19 (35) The counties on prospective employees for emergency
20 management positions and community volunteers whose
21 responsibilities involve planning and executing
22 homeland security measures including viewing,

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1 handling, and engaging in law enforcement or
2 classified meetings and assisting vulnerable and
3 disabled citizens during emergencies or crises; and
4 (36) Any other organization, entity, or the State, its
5 branches, political subdivisions, or agencies as may
6 be authorized by state law."

7 SECTION 16. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 17. This Act shall take effect upon its approval.

INTRODUCED BY: 

BY REQUEST

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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.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO MONEY TRANSMITTERS.

PURPOSE: The purpose of this bill is to authorize the Commissioner of Financial Institutions to require money transmitters to register with the NMLS; establish procedures for a licensed money transmitter to surrender its license; and amend the bond requirement, the fee structure for services provided by the Division of Financial Institutions for the regulation of money transmitters, and the fine for violations of money transmitter laws and rules.

Section 1 authorizes the Commissioner to require licensed money transmitters to register with NMLS. It also provides for voluntary surrender of a money transmitter license and provides procedures for the surrender to protect consumers.

Section 2 adds the definition of NMLS.

Section 3 requires that every money transmitter license application include a bond, letter or credit or similar security device of \$10,000 until the money transmitter has a twelve month history or unless otherwise required by the Commissioner. After that, the bond requirement is \$5,000 for money transmitters whose annualized money transmissions are less than \$10,000,000 and \$10,000 for money transmitters whose annualized money transmissions are \$10,000,000 or more, calculated on an annual basis.

Section 4 authorizes the Commissioner to establish relationships or contracts with NMLS to collect and maintain records and process fees related to licenses for money

transmitters and provide guidance on these relationships or contracts.

Section 5 provides conforming amendments.

Section 6 raises the application fees and establishes initial annual license fees for money transmitters.

Section 7 provides for renewal fees for money transmitters based on the number of annualized money transmissions; clarifies the content of the report required to be provided for annual licensing; and raises the fee for late filing.

Section 8 clarifies that all administrative penalties and other charges assessed money transmitters shall be deposited into the Compliance Resolution Fund.

Section 9 raises the nonrefundable fee for a name change for a money transmitter.

Section 10 raises the nonrefundable fee for an application for a proposed change of control of a licensee and requires that if the Commissioner request additional information after the review of such a request, the information must include the history of the applicant's material litigation and criminal convictions for the five-year period prior to the date of the renewal application.

Sections 11, 12, 13, and 15 provide conforming amendments.

Section 14 raises the fine for violations of the money transmission law.

MEANS:

Add two new sections to chapter 489D, Hawaii Revised Statutes (HRS), and amend sections 489D-4, 489D-7, 489D-9, 489D-9.5, 489D-10, 489D-12, 489D-12.5, 489D-14.5, 489D-15(a) and (b), 489D-16(a), 489D-17(c), 489D-21, 489D-28, and 846-2.7(b), HRS.

JUSTIFICATION:

NMLS has expanded to allow other non-depository institutions to use its system. Consequently, NMLS changed its name from the Nationwide Mortgage Licensing System to NMLS to recognize that the data base includes more licensees than the original mortgage loan originators.

When NMLS expanded its database to other industries, the fee charged to states using NMLS for these other industries increased. This bill allows appropriate fees to be collected from this new category of registrants.

This bill changes the methodology of assessing annual fees to take into account larger and more complex companies that process money transmission through the internet. The current methodology assesses companies who have local offices a higher annual fee than those companies who only process internet transmissions. This change in the methodology for assessing fees recognizes that the internet companies are mostly large, complex corporate entities, with many layers of affiliates or subsidiaries. This bill adjusts the annual fees to reflect the time and effort required for the Division of Financial Institutions to appropriately supervise and regulate based on the number of money transmissions annually.

Additionally, as companies are merging or the control of the companies change, and the transactions have become more complex, more time must be spent to review the application and determine if the merger or change in control is in the best interests of the consuming public. This bill adjusts the charges to reflect the time spent on the review of these mergers and changes in control.

A new section is added to allow licensees to voluntarily surrender their licenses and cease business in Hawaii. The section requires prior notice to the Commissioner and identification of the responsible party to receive consumer complaints. Additionally, the licensee must provide a list of the Hawaii authorized delegates, and provide evidence that all authorized delegates have been notified that they may not engage in money transmission for the company.

The bond requirement for new companies has been increased from \$1,000 to \$10,000 to reflect the risk associated with new money transmitter companies and the potential harm to consumers. The bond amount in Hawaii was the lowest in the nation. The new amount, which is consistent with other states, will provide the needed protection to consumers if the company fails or engages in violations of chapter 489D. The bond requirement may be adjusted after the first year of operation.

The bill clarifies that when a licensee changes control of its business, the Commissioner will require a history of the applicant's material litigation and criminal convictions for the previous five years, as would be the case for any new licensee. This requirement is the same as the requirement for a new licensee and will ensure that an applicant who seeks control of the license does not have a disqualifying criminal background that may harm consumers.

With these changes, the Commissioner will have the authority to appropriately supervise, regulate, and examine money transmitters and enforce the laws.

Impact on the public: Consumer protection will be increased. As DFI focuses its supervisory, regulatory, and examination efforts on these licensees, DFI 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 or friends will be improved.

Impact on the department and other agencies:
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA 104.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.