
A BILL FOR AN ACT

RELATING TO VIRTUAL CURRENCY.

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

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

3 1. By adding five new definitions to be appropriately
4 inserted and to read as follows:

5 "Exchange", in reference to virtual currency, means to
6 assume control of virtual currency from, or on behalf of, a
7 person in the State, at least momentarily, to sell, trade, or
8 convert:

9 (1) Virtual currency for money, monetary value, or one or
10 more forms of virtual currency; or

11 (2) Money or monetary value for one or more forms of
12 virtual currency.

13 "Money" means a medium of exchange or unit of value,
14 including coin or paper money, issued by the United States or by
15 another country or a union of countries recognized by the United
16 States.



1 "Store" or "storage", in reference to virtual currency,
2 means maintaining control of virtual currency on behalf of a
3 another person.

4 "Transfer", in reference to virtual currency, means to
5 assume control of virtual currency from, or on behalf of, a
6 person in the State and to:

7 (1) Credit the virtual currency to the account of another
8 person;

9 (2) Move the virtual currency from one account of the
10 person to another account of the same person; or

11 (3) Relinquish control of the virtual currency to another
12 person.

13 "Virtual currency" means a digital representation of value
14 that:

15 (1) Is used as a medium of exchange, unit of account, or
16 store of value; and

17 (2) Is not money, whether or not denominated in money.

18 "Virtual currency" does not include:

19 (1) Units of value that are issued in affinity or rewards
20 programs that cannot be redeemed for either money or
21 virtual currencies; or



1 (2) Units of value that are used solely within online
2 gaming platforms that have no market or application
3 outside of the gaming platforms."

4 2. By amending the definitions of "control", "monetary
5 value", "money transmission", "outstanding payment obligation",
6 and "permissible investments" to read:

7 ""Control" means:

8 (1) In reference to a person, ownership of, or the power
9 to vote, twenty-five per cent or more of the
10 outstanding voting securities of a licensee or
11 controlling person. For purposes of determining the
12 percentage of a licensee controlled by any person,
13 there shall be aggregated with the controlling
14 person's interest the interest of any other person
15 controlled by the person, or by any spouse, parent, or
16 child of the person[-]; and

17 (2) In reference to a transaction or relationship
18 involving virtual currency, the power to execute
19 unilaterally or prevent indefinitely a virtual
20 currency transaction.



1 "Monetary value" means a medium of exchange, whether or not
2 redeemable in money[-], and includes virtual currency.

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

- 4 (1) Selling or issuing payment instruments; or
- 5 (2) Receiving money or monetary value for transmission,
6 transfer, exchange, or delivery to a location within
7 or outside the United States by any and all means,
8 including wire, internet, facsimile, or electronic
9 transfer.

10 Money transmission does not apply to courier services. Money
11 transmission does not include the sole provision of internet
12 connection services, telecommunications services, or network
13 access.

14 "Outstanding payment obligation" means:

- 15 (1) Any payment instrument issued by the licensee that has
16 been sold in the United States:
 - 17 (A) Directly by the licensee; or
 - 18 (B) By an authorized delegate of the licensee in the
19 United States, which has been reported to the
20 licensee as having been sold,



1 and that has not yet been paid by or for the licensee;
2 and
3 (2) All other [~~outstanding~~] money transmission obligations
4 [~~of~~] that the licensee has issued, or has agreed to
5 transmit, deliver, or instruct to be delivered, in the
6 United States[-] that have not been fully performed by
7 the licensee.

8 "Permissible investments" means:

- 9 (1) Cash;
- 10 (2) Certificates of deposit or other debt obligations of a
11 financial institution, either domestic or foreign;
- 12 (3) Bills of exchange or time drafts drawn on and accepted
13 by a commercial bank, known as bankers' acceptances,
14 that are eligible for purchase by member banks of the
15 Federal Reserve System;
- 16 (4) Any investment bearing a rating of one of the three
17 highest grades as defined by a nationally recognized
18 organization that rates securities;
- 19 (5) Investment securities that are obligations of the
20 United States, its agencies, or its instrumentalities,
21 obligations that are guaranteed fully as to principal



1 and interest by the United States, or any obligations
2 of any state, municipality, or any political
3 subdivision thereof;

4 (6) Shares in a money market mutual fund, interest-bearing
5 bills, notes, or bonds, debentures or stock traded on
6 any national securities exchange or on a national
7 over-the-counter market, mutual funds primarily
8 composed of these securities, or a fund composed of
9 one or more permissible investments as set forth in
10 paragraphs (1) to (5);

11 (7) Any demand borrowing agreement or agreements made with
12 a corporation or a subsidiary of a corporation whose
13 capital stock is listed on a national exchange;

14 (8) Receivables that are due to a licensee from its
15 authorized delegates pursuant to a contract under
16 section 489D-21, that are not past due or doubtful of
17 collection; [e]

18 (9) Virtual currency; or

19 [+9] (10) Any other investments or security device
20 approved by the commissioner."



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

3 "§489D-8 Permissible investments and statutory trust. (a)

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

12 (b) In lieu of the permissible investments required under
13 subsection (a), a licensee, in connection with the storage or
14 transfer of virtual currency, may possess like-kind virtual
15 currency of the same volume as the outstanding payment
16 obligations to be completed in virtual currency pursuant to the
17 contract with the licensee.

18 (c) A licensee transmitting both money and virtual
19 currency shall maintain applicable levels and types of
20 permissible investments as described in subsections (a) and (b).



1 (d) The commissioner, with respect to any money
2 transmitter licensee, may limit the extent to which a type of
3 investment within a class of permissible investments may be
4 considered a permissible investment, except for money, time
5 deposits, savings deposits, demand deposits, and certificates of
6 deposit issued by a federally insured financial institution.
7 The commissioner may prescribe by rule, or allow by order, other
8 types of investments that the commissioner determines to have a
9 safe and sound equivalent to other permissible investments.

10 [~~b~~] (e) Permissible investments, even if commingled with
11 other assets of the licensee, shall be held in trust for the
12 benefit of the purchasers and holders of the licensee's
13 outstanding payment obligations in the event of the bankruptcy
14 of the licensee."

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

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

20 (1) For all applicants:



- 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;



- 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



- 1 or subsidiary company of the applicant, and the
2 disclosure of whether any parent or subsidiary
3 company is publicly traded on any stock exchange;
- 4 (D) The name, business and residence address, and
5 employment history, for the past five years, of
6 the applicant's principals, and each person who
7 upon approval of the application will be a
8 principal of the licensee;
- 9 (E) For the five-year period prior to the date of the
10 application, the history of material litigation
11 involving, and criminal convictions of, each
12 principal of the applicant;
- 13 (F) A copy of the applicant's most recent audited
14 financial statement, including balance sheets,
15 statements of income or loss, statements of
16 changes in shareholder equity and statements of
17 changes in financial position, and, if available,
18 the applicant's audited financial statements for
19 the preceding two-year period or, if the
20 applicant is a wholly owned subsidiary of another
21 corporation, either the parent corporation's



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

12 (G) Copies of all filings, if any, made by the
13 applicant with the United States Securities and
14 Exchange Commission, or with a similar regulator
15 in a country other than the United States, within
16 the year preceding the date of filing of the
17 application; and

18 (H) Information necessary to conduct a criminal
19 history record check in accordance with section
20 846-2.7 of each person who upon approval of the
21 application will be a principal of the licensee,



1 accompanied by the appropriate payment of the
2 applicable fee for each record check; [and]

3 (3) If the applicant is not a corporation, the applicant
4 shall also provide:

5 (A) The name, business and residence address,
6 personal financial statement, and employment
7 history, for the past five years, of each
8 principal of the applicant;

9 (B) The name, business and residence address, and
10 employment history, for the past five years, of
11 any other persons who upon approval of the
12 application will be a principal of the licensee;

13 (C) The place and date of the applicant's
14 registration or qualification to do business in
15 this State;

16 (D) The history of material litigation and criminal
17 convictions for the five-year period before the
18 date of the application for each principal of the
19 applicant;

20 (E) Copies of the applicant's audited financial
21 statements, including balance sheets, statements



1 of income or loss, and statements of changes in
2 financial position for the current year and, if
3 available, for the preceding two-year period; and
4 (F) Information necessary to conduct a criminal
5 history record check in accordance with section
6 846-2.7 of each principal of the applicant,
7 accompanied by the appropriate payment of the
8 applicable fee for each record check[-]; and

9 (4) If the applicant's business model transfers or stores
10 virtual currency on behalf of others, the applicant
11 shall also provide a third-party security audit of all
12 electronic information and data systems acceptable to
13 the commissioner."

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

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

19 (1) A copy of the licensee's most recent audited annual
20 financial statement, including balance sheets,
21 statement of income or loss, statement of changes in



1 shareholder's equity, and statement of cash flows or,
2 if a licensee is a wholly owned subsidiary of another
3 corporation, the consolidated audited annual financial
4 statement of the parent corporation in lieu of the
5 licensee's audited annual financial statement[+]. If
6 the applicant's business model transfers or stores
7 virtual currency on behalf of others, the applicant
8 shall also provide a third-party security audit of all
9 electronic information and data systems acceptable to
10 the commissioner;

- 11 (2) For the most recent quarter for which data is
12 available prior to the date of filing the annual
13 report, but in no event more than one hundred twenty
14 days prior to the renewal date, the licensee shall
15 provide the number of money transmissions sold,
16 issued, or received for transmission, transfer,
17 exchange, or delivery by the licensee in the State,
18 and as applicable, the dollar amount and monetary
19 value of those transmissions, and the dollar amounts
20 and monetary value of outstanding payment obligations;



- 1 (3) Any material changes to any of the information
2 submitted by the licensee on its original application
3 that have not previously been reported to the
4 commissioner on any other report required to be filed
5 under this chapter;

- 6 (4) For the most recent quarter for which data is
7 available prior to the date of filing the annual
8 report, but in no event more than one hundred twenty
9 days prior to the renewal date, a list of the
10 licensee's permissible investments, including the
11 total market value of each type of permissible
12 investment, and the total [~~dollar amount~~] amounts, in
13 money and monetary value, as applicable, of all
14 outstanding payment obligations;

- 15 (5) A list of the locations, if any, within this State
16 where business regulated by this chapter is being
17 conducted by either the licensee or the licensee's
18 authorized delegates;

- 19 (6) Disclosure of any pending or final suspension,
20 revocation, or other enforcement action by any state
21 or governmental authority;



1 (7) The licensee's evidence of a valid bond or other
2 security device as required pursuant to section
3 489D-7; and

4 (8) Any other information the commissioner may require.

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

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

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

- 14 (1) A record or records of each payment instrument[+] and
15 other money transmission;
16 (2) A general ledger containing all assets, liability,
17 capital, income, and expense accounts that shall be
18 posted at least monthly;
19 (3) Bank statements and bank reconciliation records;
20 (4) Records of all outstanding payment obligations;



- 1 (5) Records of each payment instrument paid within the
- 2 three-year period;
- 3 (6) A list of the names and addresses of all of the
- 4 licensee's authorized delegates; and
- 5 (7) Any other records the commissioner reasonably requires
- 6 by rule adopted pursuant to chapter 91."

7 SECTION 6. Section 489D-20, Hawaii Revised Statutes, is
8 amended to read as follows:

9 " [†] §489D-20 [†] **Money transmitter receipts and refunds.**

10 (a) Each licensee who receives money or monetary value for
11 transmission and the licensee's authorized delegates shall
12 transmit the monetary equivalent of all money or equivalent
13 value received from a customer for transmission, net of any
14 fees, or issue instructions committing the money or its monetary
15 equivalent, to the person designated by the customer within ten
16 business days after receiving the money or equivalent value,
17 unless otherwise ordered by the customer or unless the licensee
18 or its authorized delegate has reason to believe that a crime
19 has occurred, is occurring, or may occur as a result of
20 transmitting the money.



1 (b) Each licensee who receives money or monetary value for
2 transmission and the licensee's authorized delegates shall
3 provide a receipt to the customer that clearly states the amount
4 of money or equivalent value presented for transmission and the
5 total of the fees charged by the licensee. If the rate of
6 exchange for a money transmission to be paid in the currency of
7 another country is fixed by the licensee for that transaction at
8 the time the money transmission is initiated, the receipt
9 provided to the customer shall disclose the rate of exchange for
10 that transaction, and the duration, if any, for the payment to
11 be made at that fixed rate of exchange. If the rate of exchange
12 for a money transmission to be paid in the currency of another
13 country is not fixed at the time the money transmission is sent,
14 the receipt provided to the customer shall disclose that the
15 rate of exchange for that transaction will be set at the time
16 the recipient of the money transmission picks up the funds in
17 the foreign country.

18 (c) For purposes of this section:

19 (1) Money is considered to have been transmitted when it
20 is available to the person designated by the customer,



1 whether or not the designated person has taken
2 possession of the money;

3 (2) "Monetary equivalent", when used in connection with a
4 money transmission in which the customer provides the
5 licensee or its authorized delegate with the money of
6 one government, and the designated recipient is to
7 receive the money of another government, means the
8 amount of money, in the currency of the government
9 that the designated recipient is to receive, as
10 converted at the retail exchange rate offered by the
11 licensee or its authorized delegate to the customer in
12 connection with the transaction; and

13 (3) "Fees" do not include revenue that a licensee or its
14 authorized delegate generates, in connection with a
15 money transmission, in converting the money of one
16 government into the money of another government.

17 (d) Each licensee who receives money or monetary value for
18 a money transmission and the licensee's authorized delegates
19 shall refund to a customer all moneys received for transmittal
20 within ten days of receipt of a written request for a refund
21 unless any of the following occurs:



- 1 (1) The moneys have been transmitted and delivered to the
2 person designated by the customer prior to receipt of
3 the written request for a refund;
- 4 (2) Instructions have been given committing an equivalent
5 amount of money to the person designated by the
6 customer prior to receipt of a written request for a
7 refund;
- 8 (3) The licensee or its authorized delegate has reason to
9 believe that a crime has occurred, is occurring, or
10 may occur as a result of transmitting the money as
11 requested by the customer or refunding the money as
12 requested by the customer; or
- 13 (4) The licensee is otherwise barred by law from making a
14 refund.
- 15 (e) Before entering into any agreement to perform a money
16 transmission involving virtual currency, a licensee shall obtain
17 the customer's agreement to the following notice and retain it
18 as a record pursuant to section 489D-18:
- 19 "Most virtual currencies are based upon computer
20 cryptography and derive their value solely from the



1 market's perception of their value, which can
2 experience great swings. These currencies are:
3 NOT backed by any physical commodity, such as
4 gold or silver;
5 NOT backed by the United States or any other
6 national government;
7 NOT legal tender for debts; and
8 NOT insured by the Federal Deposit Insurance
9 Corporation or any government agency.

10 You should be aware that there is a potential for you
11 as a consumer to lose all of your virtual currency.
12 Though cash can also be lost, with virtual currency
13 this loss can occur because of a computer failure;
14 malicious software attack; an attack, closure, or
15 disappearance of a virtual currency exchange company;
16 lack of security; loss of your private key; or a
17 sudden or dramatic change in value. These are just a
18 few examples. Some virtual currency users have been
19 unable to access their legitimate virtual currency
20 account because of heavy traffic by other users or a
21 prevalence of criminal activity in virtual currency



1 use. To protect yourself, become educated as to the
 2 potential risks before deciding whether you want to
 3 transact in virtual currency."

4 SECTION 7. Section 489D-22.5, Hawaii Revised Statutes, is
 5 amended by amending subsection (b) to read as follows:

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

- 9 (1) The date of surrender;
- 10 (2) The name, address, telephone number, facsimile number,
 11 and electronic address of a contact individual with
 12 knowledge and authority sufficient to communicate with
 13 the commissioner regarding all matters relating to the
 14 licensee during the period that it was licensed
 15 pursuant to this chapter;
- 16 (3) The reason or reasons for surrender;
- 17 (4) Total [~~dollar amount~~] amounts, in money and monetary
 18 value, as applicable, of the licensee's outstanding
 19 payment obligations sold in Hawaii and the individual
 20 amounts of each outstanding payment obligation, and
 21 the name, address, and contact phone number of the



1 licensee to which each outstanding payment obligation
2 was assigned;

3 (5) A list of the licensee's Hawaii authorized delegates,
4 if any, as of the date of surrender; and

5 (6) Confirmation that the licensee has notified each of
6 its Hawaii authorized delegates, if any, that they may
7 no longer conduct money transmissions on the
8 licensee's behalf.

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

14 SECTION 8. Section 489D-23, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[+]§489D-23[+] **Prohibited practices.** It is a violation
17 of this chapter for a licensee to:

18 (1) Directly or indirectly employ any scheme, device, or
19 artifice to defraud or mislead any person, including,
20 but not limited to, bait and switch advertising or
21 sales practices;



- 1 (2) Directly or indirectly engage in any unfair or
2 deceptive act or practice toward any person, including
3 but not limited to any false or deceptive statement
4 about fees or other terms of a money transmission or
5 currency exchange;
- 6 (3) Directly or indirectly obtain property by fraud or
7 misrepresentation;
- 8 (4) Knowingly make, publish, or disseminate any false,
9 deceptive, or misleading information in the provision
10 of money [~~services,~~] transmission;
- 11 (5) Knowingly receive or take possession for personal use
12 any property of any money [~~services~~] transmission
13 business, other than in payment for services rendered,
14 and with intent to defraud, and omit to make, or cause
15 or direct to omit to make, a full and true entry in
16 the books and accounts of the regulated business;
- 17 (6) Concur in making any false entry, or omit or concur in
18 omitting any material entry in the books or accounts
19 of the business;
- 20 (7) Knowingly make or publish to the commissioner or
21 commissioner's designee, or concur in making or



1 publishing to the commissioner or commissioner's
2 designee, any written report, exhibit, or statement of
3 the licensee's affairs or pecuniary condition
4 containing any material statement that is false, or
5 omit or concur in omitting any statement required by
6 law to be contained therein; or

7 (8) Fail to make any report or statement lawfully required
8 by the commissioner."

9 SECTION 9. Section 489D-25, Hawaii Revised Statutes, is
10 amended by amending subsections (a) and (b) to read as follows:

11 "(a) The commissioner may issue an order suspending or
12 revoking the designation of an authorized delegate, if the
13 commissioner finds that:

14 (1) The authorized delegate violates this chapter or a
15 rule adopted or an order issued under this chapter;

16 (2) The authorized delegate does not cooperate with an
17 examination or investigation by the commissioner;

18 (3) The authorized delegate engages in fraud, intentional
19 misrepresentation, or gross negligence;

20 (4) The authorized delegate is convicted of a violation of
21 a federal or state anti-money laundering statute;



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1 (5) The competence, experience, character, or general
 2 fitness of the authorized delegate or a person in
 3 control of the delegate indicates that it is not in
 4 the public interest to permit the delegate to provide
 5 money [~~services,~~] transmission; or

6 (6) The authorized delegate is engaging in an unsafe or
 7 unsound practice.

8 (b) In determining whether an authorized delegate is
 9 engaging in an unsafe or unsound practice, the commissioner may
 10 consider the size and condition of the delegate's provision of
 11 money [~~services,~~] transmissions, the magnitude of the loss, the
 12 gravity of the violation of this chapter, and the previous
 13 conduct of the delegate."

14 SECTION 10. This Act does not affect rights and duties
 15 that matured, penalties that were incurred, and proceedings that
 16 were begun before its effective date.

17 SECTION 11. Statutory material to be repealed is bracketed
 18 and stricken. New statutory material is underscored.

19 SECTION 12. This Act shall take effect on July 1, 2018.

20

INTRODUCED BY: *Fabrizio B. M.*
 Linda Schiyama



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Gregory T. Lynn

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JAN 22 2018



H.B. NO. 2257

Report Title:

Money Transmitters Act; Virtual Currency

Description:

Extends the money transmitters act to expressly apply to persons engaged in the transmission of virtual currency. Requires licensees dealing with virtual currency to provide a warning to consumers prior to entering into an agreement with them.

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

