OVERVIEW

Sunrise Analysis: Money Transmitters

Report No. 04-10, October 2004

Summary

We analyzed whether money transmitters should be regulated as proposed in House Bill No. 2428 (H.B. No. 2428) introduced in the 2004 legislative session. The Legislature specifically requested this analysis in House Concurrent Resolution No. 90, House Draft 1 (H.C.R. No. 90) of the 2004 legislative session.

Money transmitters are non-bank entities that transmit funds from one individual or institution to another, inside or outside the United States, by any means including wire, facsimile, or electronic transfer.

H.B. No. 2428 would amend the Hawaii Revised Statutes by adding a chapter known as the "Money Transmitters Registration Act." The proposal would establish within the Department of Commerce and Consumer Affairs, Division of Financial Institutions, a registration program for money transmitters. H.B.No. 2428 and H.C.R. No. 90 suggest two potential threats to the public from unregulated money transmitters: (1) consumers of money transmission services may be harmed if their transmitted funds are never received or if a delay in the transmission of funds adversely affects the recipient and (2) the public, in general, may be harmed if the use of money transmitters facilitates crimes.

The Hawaii Regulatory Licensing Reform Act, Chapter 26H, HRS, states that professions and vocations should be regulated only when reasonably necessary to protect the health, safety, and welfare of consumers. We found that regulation of money transmitters is not warranted.

We found little *evidence* of harm to consumers or the public. Hawaii state agencies have few records of complaints against money transmitters, allegations of harm to consumers in Hawaii are largely anecdotal, and other states also lack evidence of harm to consumers.

Furthermore, we found little evidence of harm to the public from the use of money transmitters to further crimes. We did not find sufficient evidence indicating that use of money transmitters to facilitate crimes is a dangerous problem or of paramount concern to law enforcement officials. We also found that potential illegal activities involving a money transmitter are interstate or international, under federal jurisdiction and investigated by federal authorities. State law enforcement efforts coordinated with federal authorities would be more effective than additional state regulation.

We found that alternatives to state regulation, already in place, provide sufficient protections to the public and consumers. The federal government recently

expanded regulatory oversight of money transmitters. State and federal money laundering laws deter illegal use of money transmitters, and consumers are protected through market constraints.

Lastly, the proposed regulation provides few added benefits to consumers while costs to taxpayers and consumers are uncertain.

Recommendation and Response

We recommend that House Bill No. 2428 not be enacted.

The Department of Commerce and Consumer Affairs responded that our report was thorough and wide ranging, covering not only issues related to the direct consumers of money transmitter services, but also to the indirect impact of money transmitter activities on the public at large. However, the department disagrees with our conclusion and continues to believe that the interests of Hawaii's consumers and the public at large would be well served by the enactment of legislation to regulate the activities of money transmitters operating in Hawaii. Although not a formal participant of the review, the Department of the Attorney General opted to submit a response to the report, which echoed the Department of Commerce and Consumer Affairs' desire for regulation of money transmitters.

Marion M. Higa
State Auditor
State of Hawaii

Office of the Auditor
465 South King Street, Room 500
Honolulu, Hawaii 96813
(808) 587-0800
FAX (808) 587-0830