

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 24

MONEY TRANSMITTERS

Subchapter 1 General Provisions

- §16-24-1 Objectives
- §16-24-2 Definitions
- §16-24-3 Public review of money transmission applications and records;
exceptions
- §16-24-4 Confidential portion of application or records

Subchapter 2 Application Forms and Fees

- §16-24-8 General procedures
- §16-24-9 Application forms; fees

Subchapter 3 Standards of Review; Decisions

- §16-24-13 Scope
- §16-24-14 Rights of applicants; obligations of commissioner
- §16-24-15 Criteria for proposed money transmitters
- §16-24-16 Presumptive disqualification criteria
- §16-24-17 Action on application; denial of application
- §16-24-18 Decision denying application subject to administrative hearing;
final decision and order

Subchapter 4 Bonds

- §16-24-22 Amount of bond or security device
- §16-24-23 Procedures for suit on bond or security device

Subchapter 5 Examination Procedures

§16-24-27 Examination fees and expenses

Subchapter 6 Records

§16-24-31 Records that must be made available for inspection

Subchapter 7 Authorized Delegates

§16-24-35 Disciplinary action against delegates

§16-24-36 Prohibited practices of authorized delegates

Subchapter 8 Enforcement Action

§16-24-40 Suspension or revocation of money transmitter license

§16-24-11 Suspension or revocation of authorized delegate designation

§16-24-42 Relief from suspension or revocation of designation of authorized delegate

§16-24-43 Cease and desist orders

Subchapter 9 Requests for Opinions and Interpretations of Statute or Rule

§16-24-47 Inquiries from the public

§16-24-48 Inquiries from a money transmitter or industry trade association

§16-24-49 Requests for interpretation or opinion

§16-24-50 Interpretations and opinions by commissioner

§16-24-51 Construction

Subchapter 10 Complaints

§16-24-55 Complaints against money transmitters

SUBCHAPTER 1

GENERAL PROVISIONS

§16-24-1 Objectives. The objectives of this chapter are to implement the requirements of chapter 489D, HRS, and set forth procedures regarding money transmission services. [Eff 7/23/07] (Auth: HRS §§489D-33, 489D-34) (Imp: HRS §§489D-2, 489D-34)

§16-24-2 Definitions. As used in this chapter:

"Commissioner" means the commissioner of financial institutions.

"Division" means the division of financial institutions within the department of commerce and consumer affairs.

"Insolvency" means that a money transmitter is unable to pay its debts in the usual course of trade and business. [Eff 7/23/07] (Auth: HRS §§489D-33, 489D-34) (Imp: HRS §§489D-4, 489D-24, 489D-26)

§16-24-3 Public review of money transmission applications and records; exceptions. (a) Subject to other provisions of this chapter, all applications and supporting documents that are filed by a proposed money transmitter shall be available for public review as provided by law following receipt of a request to review the records.

(b) Subject to other provisions of this chapter, all applications, supporting documents, and records filed by a money transmitter, including audited statements and records relating to bonding and insurance, shall be available for public review as provided by law following receipt of a request to review the records.

(c) Information claimed by an applicant or money transmitter to be confidential shall be submitted on separate pages which can be detached from the rest of the application or filing and shall be identified by the words "Submitted as Confidential" printed on the top of each page. Information submitted as confidential shall be accompanied by a separate statement requesting confidential treatment and providing reasons and authority for maintaining confidentiality. [Eff 7/23/07] (Auth: HRS §§489D-33, 489D-34) (Imp: HRS §§92F-12, 489D-7, 489D-9, 489-15, 489-19)

§16-24-4 Confidential portion of application or records. No material contained in any application or record shall be made available to the public if it is determined by the commissioner to be confidential. Information that may be considered confidential includes, but is not limited to, the following:

- (1) Commercial or financial information, the disclosure of which would, or would be likely to, result in substantial competitive harm to the applicant or money transmitter;
- (2) Information, the disclosure of which could seriously affect the financial condition of the applicant or money transmitter;
- (3) Personal information, the release of which would, or would be likely to, constitute an unwarranted invasion of privacy; or
- (4) Other information, the disclosure of which is prohibited by section 489D-19, HRS. [Eff 7/23/07] (Auth: HRS §§92F-13, 489D-33, 489D-34) (Imp: HRS §§92 F-13, 489D-19)

SUBCHAPTER 2

APPLICATION FORMS AND FEES

§16-24-8 General procedures. Any person desiring to obtain the approval of the commissioner for any application required by chapter 489D, HRS, shall:

- (1) File an application in the form prescribed by this chapter; and
- (2) File the appropriate application fee. [Eff 7/23/07] (Auth: HRS §§489D-33, 489D-34) (Imp: HRS §§489D-2, 489D-9, 489D-10, 489D-15, 489D-25)

§16-24-9 Application forms; fees. (a) Each application required by chapter 489D, HRS, shall be made by completing and submitting to the commissioner, in duplicate:

- (1) The application form prescribed by the commissioner, copies of which may be obtained by request from the division; or
- (2) The application in letter form, if no application form has been prescribed by the commissioner. The application in letter form shall state in detail the nature and scope of the requested consent

or approval and all information reasonably required for the commissioner's review and consideration of the application.

(b) An application fee shall be paid by check made payable to the "Department of Commerce and Consumer Affairs, State of Hawaii", concurrently with the filing of the application. [Eff 7/23/07] (Auth: HRS §§489D-9, 489D-10, 489D-33, 489D-34) (Imp: HRS §§489D-9, 489D-10, 489D-15, 489D-25)

SUBCHAPTER 3

STANDARDS OF REVIEW; DECISIONS

§16-24-13 Scope. This subchapter applies to any application required by chapter 489D, HRS. [Eff 7/23/07] (Auth: HRS §§489D-33, 489D-34) (Imp: HRS §§489D-2, 489D-9, 489D-15, 489D-25)

§16-24-14 Rights of applicants; obligations of commissioner. An applicant has a right to file an application and to obtain full consideration of the application by the commissioner in light of all relevant facts and without prejudice. If all of the relevant criteria are resolved favorably, the applicant is entitled to receive the requested authorization. In the event an application is disapproved, an applicant has a right to be informed by the commissioner of the reasons for disapproval. [Eff 7/23/07] (Auth: HRS §§489D-33, 489D-34) (Imp: HRS §§489D-2, 489D-9, 489D-11, 489D-15, 489D-25)

§16-24-15 Criteria for proposed money transmitters. Criteria applied by the commissioner in investigating an applicant for a money transmitter's license may include, but are not limited to:

- (1) General character of management. This may include an evaluation of management's current and past business experience; financial resources and interests; and the allocation of proposed duties and responsibilities in relation to prior business experience and capabilities.
- (2) Financial history and condition. This may include a review, if requested, of pro forma statements, a schedule and appraisal of assets, and an evaluation of the applicant's net worth relative to

its volume of business. [Eff 7/23/07] (Auth: HRS §§489D-33, 489D-34) (Imp: HRS §§489D-2, 489D-9, 489D-11)

§16-24-16 Presumptive disqualification criteria. (a) Managerial resource test. The following factors shall give rise to a rebuttable presumption that the criterion regarding the general character of management has not been met, if the applicant or any individual member of management has:

- (1) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;
- (2) Consented to or suffered a judgment in any civil or administrative action based upon conduct involving an act of fraud or dishonesty;
- (3) Consented to or suffered any indictment, formal investigation, examination, or civil or administrative proceedings that resulted in any agreement, undertaking, consent, or order issued by any federal or state court, any department, agency, or commission of the United States government, any state or municipality, any self-regulatory trade or professional organization, or any foreign government or governmental entity, which involves an act of fraud or dishonesty;
- (4) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;
- (5) Knowingly made or caused to be made in any application or report filed with the commissioner or in any proceeding before the commissioner, any written or oral statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to material fact, or has omitted to state in any application or report any material fact which was required to be stated;
- (6) Committed any violation of, or aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of state law or rule relating to the business of money transmission;
- (7) Been involved in the denial of or the withdrawal by the applicant or its affiliates, after receipt of formal or informal notice of an intent to deny, of:

- (A) Any application relating to the organization of a money transmitter,
 - (B) An application to acquire any money transmitter or subsidiary or holding company thereof; or
 - (C) A notice relating to a change in control of any money transmitter, or subsidiary or holding company thereof;
- (8) Been placed in receivership or conservatorship during the preceding ten years;
- (9) Was a management official or director of a money transmitter which entered into receivership or conservatorship, was placed in a management consignment program, or was liquidated during his or her tenure or within two years thereafter.

(b) Financial history and condition test. Liability for amounts of debt which, in the opinion of the commissioner, create excessive risks of default and pressure on the money transmitter shall give rise to a rebuttable presumption that the applicant has not satisfied the financial history and condition criterion.

(c) Subsections (a) and (b) shall not be deemed an exclusive list of the grounds upon which the commissioner may find that the relevant criteria have not been met. [Eff 7/23/07] (Auth: HRS §§489D-33, 489D-34) (Imp: HRS §§489D-2, 489D-9, 489D-11)

§16-24-17 Action on application; denial of application. (a) Any complete application which is not approved or denied by the commissioner within a period of one year after the application is filed with the commissioner, shall be deemed approved by the commissioner as of the first day after the period of one year. For purposes of this section, an application is deemed to be filed with the commissioner at the time when the complete application, including any amendments or supplements, containing all of the information in the form required by the commissioner, is received and accepted by the commissioner.

(b) If the commissioner is satisfied that the applicant meets the relevant criteria, the commissioner shall issue a written final decision and order approving the application.

(c) If the commissioner is not satisfied that the applicant meets the statutory criteria, the commissioner shall issue a written decision denying the application, which shall include a statement of the reasons for the denial. [Eff 7/23/07] (Auth: HRS §§489D-33, 489D-34) (Imp: HRS §§91-13.5, 489D-9, 489D-11)

§16-24-18 Decision denying application subject to administrative hearing; final decision and order. (a) Within fifteen days following receipt of a decision denying the application, the applicant may petition the commissioner for an administrative hearing which shall be held in accordance with chapter 91, HRS, and chapter 16-201.

(b) If a petition for an administrative hearing is not filed within the time specified, the commissioner's decision denying the application shall become a final decision and order denying the application.

(c) Upon the filing of a petition for an administrative hearing, and as expeditiously as possible, the commissioner shall assign the petition to a hearings officer for further proceedings pursuant to chapter 16-201. The commissioner shall issue a written final decision and order as expeditiously as possible, following the hearings officer's transmittal of the entire record together with the recommended decision, any timely filed exceptions, and any timely filed statements in support of the recommended decision. [Eff 7/23/07] (Auth: HRS §§489D-33, 489D-34) (Imp: HRS §§91-13.1, 489D-11)

SUBCHAPTER 4

BONDS

§16-24-22 Amount of bond or security device. (a) Subject to subsection (b), each application shall be accompanied by a surety bond, irrevocable letter of credit, or other similar security device acceptable to the commissioner in an amount no less than \$1,000.

(b) The commissioner may increase the amount of the bond or security device required, to a maximum of \$500,000, on the basis of criteria determined by the commissioner to be relevant, including but not limited to:

- (1) The amount by which the daily average of outstanding instruments of an applicant exceeds the amount of its permissible investments, if any;
- (2) The applicant's net worth; and
- (3) The applicant's volume of transactions expressed as a dollar amount. [Eff 7/23/07] (Auth: HRS §§489D-7, 489D-33, 489D-34) (Imp: HRS §§489D-2, 489D-7, 489D-8, 489D-11)

§16-24-23 Procedures for suit on bond or security device. (a) The commissioner or claimants against the surety device may bring suit upon the bond or security device in the court in which jurisdiction over the licensee may be obtained. In the event that valid claims against a bond exceed the amount of the bond at any one time, each claimant shall only be entitled to a pro rata amount, based on the amount of the claim.

(b) In the event that claims against the bond or security device reduce the principal amount of the bond or security device, the licensee shall immediately replenish the principal amount of the bond or security device to meet or exceed the amount required by statute. If the licensee fails to replenish the principal within thirty days from the date the reduction occurs, the commissioner may suspend the licensee's license.

(c) Claims on the bonds or security device are nonexclusive and do not affect any other remedy available at law. [Eff 7/23/07] (Auth: HRS §§489D-7, 489D-33, 489D-34) (Imp: HRS §489D -7)

SUBCHAPTER 5

EXAMINATIONS

§ 16-24-27 Examination fees and expenses. (a) The commissioner may charge an examination fee to each licensed money transmitter and authorized delegate examined or investigated by the commissioner or the commissioner's staff, based upon the cost per hour per examiner. Effective July 1, 2007, the hourly fee shall be \$40. After July 1, 2008, the commissioner may establish, increase, decrease, or repeal the hourly fee when necessary, pursuant to rules adopted in accordance with chapter 91, HRS.

(b) In addition to the examination fee, the commissioner may charge any money transmitter or authorized delegate examined or investigated by the commissioner or the commissioner's staff, additional amounts for travel, per diem, mileage, and other reasonable expenses incurred in connection with the examination.

(c) The commissioner shall bill the affected money transmitter or authorized delegate for examination fees and expenses as soon as feasible after the close of the examination or investigation. The affected money transmitter or authorized delegate shall pay the division of money transmitter or authorized delegate within thirty days following the billing. All such payments shall be deposited to the compliance resolution fund established pursuant to section

26-9(o), HRS. All disputes relating to these billings between the affected money transmitter or authorized delegate and the commissioner shall be resolved in accordance with the procedures for contested cases under chapter 91, HRS.

(d) A money transmitter or authorized delegate that fails to make a payment required by this section shall be subject to a fine as provided under the statutory provisions relating to civil penalties, which fine, together with the amount due under this section, may be recovered by action in circuit court, in which case the commissioner may request the court to award reasonable attorney's fees and costs. All of the additional fines, fees, and costs recovered by the commissioner under this section shall be deposited into the compliance resolution fund established pursuant to section 26-9(o), HRS. [Eff 7/23/07] (Auth: HRS §§489D-17, 489D-33, 489D-34) (Imp: HRS §489D-17)

SUBCHAPTER 6

RECORDS

§16-24-31 Records that must be made available for inspection. (a) In addition to those records listed by statute that the licensee shall make, keep, preserve, and make available for inspection by the commissioner, the following shall also be made, kept, preserved, and made available for inspection by the commissioner:

- (1) Written procedures created and provided by licensees to their authorized delegates;
- (2) Records of transmissions made;
- (3) Evidence, in a form satisfactory to the commissioner, of compliance with the requirements of section 489D-20(b), HRS;
- (4) Records of refund requests received and of refunds made; and
- (5) Records of theft or loss of payment instruments, including reports made by authorized delegates to the licensee, of theft or loss of payment instruments.

(b) The books, accounts, and records that are required to be maintained by a licensee shall be made available for examination in a form that is legible and may be easily read and examined. If any requested books, accounts, or records are maintained in a language other than English, an accurate English translation of the requested books, accounts or records shall be

made available for examination purposes. [Eff 7/23/07] (Auth: HRS §§489D-18, 489D-33, 489D-34) (Imp: HRS §489D-18)

SUBCHAPTER 7

AUTHORIZED DELEGATES

§16-24-35 Disciplinary action against delegates. An authorized delegate is subject to the same disciplinary action as a licensee. [Eff 7/23/07] (Auth: HRS §§489D-21, 489D-22, 489D-31, 489D-32, 489D-33, 489D-34) (Imp: HRS §§489D-21, 489D-22, 489D-23, 489D-25, 489D-26, 489D-27, 489D-28, 489D-29, 489D-31, 489D-32)

§16-24-36 Prohibited practices of authorized delegates. An authorized delegate is prohibited from engaging in those practices set forth in section 489D-23, HRS. [Eff 7/23/07] (Auth: HRS §§489D-21, 489D-22, 489D-33, 489D-34) (Imp: HRS §§489D-22, 489D-23, 489D-24)

SUBCHAPTER 8

ENFORCEMENT ACTION

§16-24-40 Suspension or revocation of money transmitter license. (a) The commissioner may suspend or revoke the license of a money transmitter, based on any of the grounds set forth in section 489D-23, HRS.

(b) The commissioner shall give the money transmitter notice and an opportunity for a hearing in conformity with chapter 91, HRS. The notice shall be given in writing at least twenty days before the hearing, by registered or certified mail with return receipt requested. [Eff 7/23/07] (Auth: HRS §§489D-2, 489D-31, 489D-32, 489D-33, 489D-34) (Imp: HRS §§489D-23, 489D-24, 489D-31, 489D-32)

§16-24-41 Suspension or revocation of authorized delegate designation. (a) The commissioner may suspend or revoke the authorized delegate designation, based on any of the grounds set forth in section 489D-23, HRS.

(b) The commissioner shall give the authorized delegate notice and an opportunity for a hearing in conformity with chapter 91, HRS. The notice shall be given in writing at least twenty days before the hearing, by registered or certified mail with return receipt requested. [Eff 7/23/07] (Auth: HRS §§489D-2, 489D-31, 489D-32, 489D-33, 489D-34) (Imp: HRS §§489D-22, 489D-23, 489D-25, 489D-31, 489D-32)

§16-24-42 Relief from suspension or revocation of designation of authorized delegate. To the extent authorized by law, an authorized delegate may apply with the commissioner for relief from suspension or revocation of the designation of an authorized delegate. Relief shall be granted only upon complete compliance with any terms or conditions imposed by the order of suspension or revocation. The commissioner has the discretion to impose additional terms and conditions upon the authorized delegate prior to reinstatement. The application for relief shall be accompanied by a reinstatement fee of \$1000. [Eff 7/23/07] (Auth: HRS §§489D-25, 489D-31, 489D-32, 489D-33, 489D-34) (Imp: HRS §§489D-22, 489D-25, 489D-31, 489D-32)

§16-24-43 Cease and desist orders. The commissioner may issue a cease and desist order, based on the grounds set forth in section 489D-26, HRS. To determine immediate and irreparable harm, insolvency, or significant dissipation of assets of the licensee, the commissioner may use any records required by law to be made, kept, or preserved by the licensee regardless of whether they have previously been made available to the commissioner. [Eff 7/23/07] (Auth: HRS §§489D -26, 448D-33, 489D-34) (Imp: HRS §§489D-26, 489D-31, 489D-32)

SUBCHAPTER 9

REQUESTS FOR OPINIONS AND INTERPRETATIONS OF STATUTE OR RULE

§16-24-47 Inquiries from the public. Any opinion, interpretation, or advice rendered by the division shall be in keeping with the division's regulatory purpose. The division shall not render opinions or interpretations to private

individuals, so as to determine an individual's rights against a licensed money transmitter. [Eff 7/23/07] (Auth: HRS §§91-2, 91-8, 489D-2, 489D-33, 489D-34) (Imp: HRS §§91-2, 91-8, 489D-2, 489D-33)

§16-24-48 Inquiries from a money transmitter or industry trade association. The division's response to an inquiry from a money transmitter or industry trade association shall not determine private rights and obligations. The commissioner may decide to respond to a money transmitter's or industry trade association's inquiry regarding an interpretation of statute or rule that is consistent with the division's regulatory purpose. A money transmitter or industry trade association has a right to know whether the division will find a particular action to be within the bounds of the law. [Eff 7/23/07] (Auth: HRS §§91-2, 91-8, 489D-33, 489D-34) (Imp: §§91-2, 91-8, 489D-33)

§16-24-49 Requests for interpretation or opinion. (a) An inquirer who requests an interpretation of statute or rule shall state in writing:

- (1) The facts giving rise to the inquiry;
- (2) The specific questions being presented;
- (3) The inquirer's position on the questions; and
- (4) Any authority, legal or otherwise, for that position.

(b) If a request is made through counsel, counsel's client shall be identified by name. [Eff 7/23/07] (Auth: HRS §§91-2, 91-8, 489D-33, 489D-34) (Imp: HRS §§91-2, 91-8, 489D-33)

§16-24-50 Interpretations and opinions by commissioner. (a) The commissioner shall issue in writing any statement made for the purpose of interpreting a statute or rule, rendering an opinion, or defining a policy.

(b) The commissioner's interpretation or opinion shall have particular applicability to the inquirer, and shall not apply to other money transmitters or persons, unless so stated. [Eff 7/23/07] (Auth: HRS §§91-2, 91-8, 489D-33, 489D-34) (Imp: HRS §§91-2, 91-8, 489D-33)

§16-24-51 Construction. Whenever this chapter is silent on a matter, the commissioner may refer to chapter 16-201 for guidance.

§16-24-51

[Eff 7/23/07] (Auth: HRS §§91-2, 489D-33, 489D-34) (Imp: HRS §§91-2, 489D-33)

SUBCHAPTER 10

COMPLAINTS

§16-24-55 Complaints against money transmitters. The division may investigate and act upon complaints against money transmitters licensed under chapter 489D, HRS. Complaints shall be filed in writing with the division. [Eff 7/23/07] (Auth: §§91-2, 91-8, 489D-33, 489D-34) (Imp: §§91-2, 91-8, 489D-2, 489D-33)

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Chapter 16-24, Hawaii Administrative Rules, on the Summary page dated June 18, 2007, was adopted on June 18, 2007, following a public hearing held on the same date, after public notice was given in the The Maui News, The Garden Island, West Hawaii Today, the Hawaii Tribune-Herald, and The Honolulu Star-Bulletin on May 18, 2007.

The adoption of chapter 16-24 shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ D. B. Griffin III

D. B. GRIFFIN III

Commissioner of Financial Institutions

APPROVED AS TO FORM: Date 6/28/07

/s/ James C. Paige

Deputy Attorney General

APPROVED: Date 7/6/07

/s/ Lawrence M. Reifurth

LAWRENCE M. REIFURTH, Director
Commerce and Consumer Affairs

APPROVED: Date 7/12/07

/s/ Linda Lingle

LINDA LINGLE

Governor
State of Hawaii

July 13, 2007

Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Adoption of Chapter 16-24
Hawaii Administrative Rules

June 18, 2007

SUMMARY

Chapter 16-24, Hawaii Administrative Rules, entitled "Money Transmitters", is adopted.

THIS MATERIAL CAN BE MADE AVAILABLE FOR INDIVIDUALS WITH SPECIAL NEEDS IN BRAILLE, LARGE PRINT OR AUDIO TAPE. PLEASE SUBMIT YOUR REQUEST TO THE COMMISSIONER OF FINANCIAL INSTITUTIONS AT (808) 586-2820.