



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

**PRESENTATION OF THE
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

TO THE HOUSE COMMITTEE ON
FINANCE

THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

FRIDAY, MARCH 31, 2017
2:00 p.m.

**TESTIMONY ON S.B. NO. 949, S.D. 1, H.D. 1
RELATING TO MONEY TRANSMITTERS**

TO THE HONORABLE SYLVIA LUKE, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda, Commissioner of Financial Institutions ("Commissioner") of the Division of Financial Institutions ("DFI") testifying for the Department of Commerce and Consumer Affairs ("Department") regarding S.B. No. 949, S.D. 1, H.D. 1, Relating to Money Transmitters ("H.D. 1"). The Department is in strong support of this administration bill, and in particular the Senate Draft 1 version, that contains provisions intended to bring greater clarity to Hawaii's Money Transmitters Law, and the Department also offers additional comments on newly added portions of the measure concerning deregulation of decentralized virtual currency.

Comments on non-virtual currency-related provisions

This measure clarifies and strengthens Hawaii's Money Transmitters Act to provide appropriate supervision of the money transmitter industry. The measure makes the chapter more effective, improving compliance within the industry, regulatory oversight, and the Commissioner's ability to enforce the chapter.

The measure updates the chapter's permissible investments provision, Section 489D-8, HRS, which a licensee must follow in the interests of safety and soundness. Currently, a licensee must possess permissible investments "of not less than the aggregate amount of all outstanding payment instruments issued or sold by the licensee in the United States. . ." (emphasis added). Today, many money transmitters transmit money electronically. The measure makes it clear that these obligations are also subject to the permissible investments requirement, by changing the term "outstanding payment instruments" to "outstanding payment obligations", and adding language to the latter term to expressly include "[a]ll other outstanding money transmission obligations of the licensee issued in the United States". These updates will enhance consumer protection, and provide the Commissioner with more relevant information on licensee condition for better supervision.

The measure also clarifies the persons associated with a money transmitter applicant, licensee, or applicant for change of control of the licensee, for whom a

criminal history record check or other background information must be provided. This is implemented by amending the definitions of "person" and "principal" in Section 489D-4, HRS; repealing the definition of "key shareholders" and chapter references to that term; and tightening language concerning licensure applications, and change of control applications, in Sections 489D-9 and 489D-15, HRS, respectively. These clarifying changes will help applicants and licensees understand and comply with various background information requirements, and streamline DFI's processing and review of the information.

Finally, the measure makes it clear that the term, "payment instrument", in Section 489D-4, HRS, includes an "electronic instrument". This will better protect consumers who use stored value cards and other electronic instruments. The term "payment instrument" is integral to the definition of "money transmission", which is a key term in the administration of Chapter 489D, HRS.

This measure will improve licensee compliance with the chapter, and DFI's ability to effectively and efficiently administer it. It will enhance consumer protection by strengthening requirements for background information, and by making the chapter more clearly applicable to new technology and creative payment options.

Comments on H.D. 1 provisions regarding virtual currency

DFI provides the following comments on the newly added provisions in the H.D. 1 pertaining to "decentralized virtual currency". In addition to defining the term

"decentralized virtual currency" and exempting that form of virtual currency from the Money Transmitters Law, the H.D. 1 also creates a working group ("DVC Working Group") to study whether or not decentralized virtual currency should be covered under the Money Transmitters Law. The DVC Working Group would be headed by the Commissioner and would provide a report to the Legislature prior to the Regular Session of 2018 with its findings and recommendations, including proposed legislation.

In its previous testimony on the Proposed H.D. 1 version of this measure, the Department deferred to the Legislature on the ultimate question of whether decentralized virtual currency should be exempt from regulation as a form of money transmission under HRS Chapter 489D, and those comments offered a factual assessment of the current landscape of virtual currency to assist committee members in reviewing the proposed measure. In short, virtual currency is a relatively novel payment model with evolving technology, business structures, legal/regulatory frameworks, and potential commercial impacts each of which are receiving thoughtful consideration by this State and other jurisdictions. DFI notes that the National Conference of Commissioners on Uniform State Laws is working on model law for states to consider on virtual currency as evidence of the widely recognized importance and complexity in this area. Thus, DFI appreciates the previous Committees' consideration of the comments it received and the inclusion of the DVC Working Group provisions in the

H.D. 1 as a means to further discuss the advantages and disadvantages of the potential deregulation of virtual currency.

While the H.D. 1 contains both exemption provisions for decentralized virtual currency and establishment provisions for the DVC Working Group, DFI believes that the most prudent approach would be to allow the DVC Working Group the opportunity to perform its review and to provide the Legislature with findings and recommendations prior to the creation of an exemption for decentralized virtual currency.

Should the Committee retain the DVC Working Group portions currently in the H.D. 1, DFI offers the following additional comments to help clarify the bill's existing language and to bolster the DVC Working Group process. First, contrary to Section 11 of the measure, the Commissioner notes that decentralized virtual currency is generally not "unregulated by state government", unless a particular business is not deemed to be a money transmitter as that term is defined in Chapter 489D, HRS. Next, if the Legislature believes a study should be conducted by the Commissioner, we would respectfully ask that the study be broader to encompass virtual currency, not just decentralized virtual currency, to provide a more comprehensive review of this area.

With respect to implementation and facilitation of the DVC Working Group, the Commissioner does not have particular expertise and would seek information from other state commissioners who regulate money transmitters, as to whether or not they regulate virtual currency. In addition, it would be helpful for the Commissioner and/or

DFI staff to attend the national Money Transmitter Regulators Association ("MTRA") Annual Conference and Examiner's School in October 2017 or another conference specific to virtual currency regulation. This would be an efficient and effective way to gather much of this information, and ensure that it is up to date. In addition to state money transmitter regulators, many virtual currency businesses are likely to attend the conference. Given these considerations, DFI respectfully requests that this measure include an appropriation of \$10,000, which would be used for the purpose of sending two DFI staff members to the October 2017 MTRA conference.

With respect to other possible clarifications to the DVC Working Group portion of the H.D. 1, DFI is available and would appreciate the opportunity to work with the Committee on providing any requested language.

Conclusion

Again, the Department strongly supports the provisions of this administration bill, in particular those contained in the Senate Draft 1 version, that clarify existing portions of the Money Transmitter Law, which it respectfully requests be passed, changing the effective date from July 1, 2090, to September 1, 2017.

Should the Committee wish to further consider exempting different types of virtual currency from Hawaii's Money Transmitter Laws, DFI is glad to continue working with your Committee and would request that this measure be amended to first give the

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proposed DVC Working Group the chance to fully consider and provide input to the Legislature on the impacts deregulation of virtual currency would have on the State.

Thank you for this opportunity to testify and provide comments. I would be pleased to respond to any questions that you may have.

FIN-Jo

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 30, 2017 4:06 PM
To: FINTestimony
Cc: monkie.problem@gmail.com
Subject: *Submitted testimony for SB949 on Mar 31, 2017 14:00PM*



SB949

Submitted on: 3/30/2017

Testimony for FIN on Mar 31, 2017 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Scott Garris	Individual	Support	No

Comments:

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