

HCR 41

HOUSE CONCURRENT RESOLUTION

REQUESTING THE AUDITOR TO CONDUCT A SUNRISE ANALYSIS OF THE
REGULATION OF VIRTUAL CURRENCY BUSINESS ACTIVITIES.

1 WHEREAS, virtual currency is an electronic form of value
2 that depends upon the market and is not backed by the federal
3 government; and
4

5 WHEREAS, consumer interest in virtual currency arises from
6 its several advantages over real currencies; specifically,
7 virtual currency is safer from computer hacking, often cheaper
8 and faster, and has finality of payment; and
9

10 WHEREAS, virtual currencies serve legitimate purposes and
11 can be purchased, sold, and exchanged with other types of
12 virtual currencies or real currencies; and
13

14 WHEREAS, in the absence of any overarching federal payments
15 regulatory framework, some states are currently examining ways
16 to regulate virtual currencies; and
17

18 WHEREAS, the Uniform Law Commission has drafted a model
19 act, as embodied in both S.B. No. 2129 and part I of H.B. No.
20 2257 H.D. 1, introduced during the Regular Session of 2018, to
21 harmonize state virtual currency laws to the extent possible;
22 and
23

24 WHEREAS, the model act regulates only virtual currency
25 business activity, which includes services for the exchange,
26 transfer, and custody of virtual currencies by a customer-facing
27 intermediary; and
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29 WHEREAS, section 26H-6, Hawaii Revised Statutes, requires
30 that:
31

32 New regulatory measures being considered for enactment
33 that, if enacted, would subject unregulated



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1 professions and vocations to licensing or other
 2 regulatory controls shall be referred to the auditor
 3 for analysis. Referral shall be by concurrent
 4 resolution that identifies a specific legislative bill
 5 to be analyzed . . .

6
 7 now, therefore,
 8

9 BE IT RESOLVED by the House of Representatives of the
 10 Twenty-ninth Legislature of the State of Hawaii, Regular Session
 11 of 2018, the Senate concurring, that the Auditor is requested to
 12 conduct a sunrise analysis of the regulation of virtual currency
 13 business activities as set forth in S.B. No. 2129 and part I of
 14 H.B. No. 2257 H.D. 1, which were introduced during the Regular
 15 Session of 2018; and

16
 17 BE IT FURTHER RESOLVED that the Auditor is further
 18 requested to submit a report of findings and recommendations,
 19 including any proposed legislation, no later than twenty days
 20 prior to the convening of the Regular Session of 2019; and

21
 22 BE IT FURTHER RESOLVED that certified copies of this
 23 Concurrent Resolution be transmitted to the Auditor and the
 24 Director of Commerce and Consumer Affairs.

25
 26
 27

OFFERED BY:

T. Stahl

Linda Chizone

FEB 22 2018





DAVID Y. IGE
GOVERNOR

DOUGLAS S. CHIN
LIEUTENANT GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
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**TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE**

**TWENTY-NINTH LEGISLATURE
Regular Session of 2018**

Thursday, March 22, 2018
2:00 p.m.

**TESTIMONY ON HOUSE CONCURRENT RESOLUTION NO. 41, REQUESTING THE
AUDITOR TO CONDUCT A SUNRISE ANALYSIS OF THE REGULATION OF
VIRTUAL CURRENCY BUSINESS ACTIVITIES.**

TO THE HONORABLE ROY M. TAKUMI, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on H.C.R. 41, Requesting the Auditor to Conduct a Sunrise Analysis of the Regulation of Virtual Currency Business Activities. My name is Iris Ikeda, and I am the Commissioner of Financial Institutions for the Department’s Division of Financial Institutions (“DFI”). The Department takes no position on H.C.R. 41, which is a companion to S.C.R. 38, and provides the following comments.

The purpose of this measure is to request that the auditor conduct a sunrise analysis of the regulation of virtual currency activities set forth in S.B. 2129 and Part I of H.B. 2257, H.D.1 (collectively, the “Legislative Proposals”). On page 1, the measure cites Hawaii Revised Statutes (“HRS”) section 26H-6, which in part requires the auditor to analyze certain “[n]ew regulatory measures . . . that, if enacted, would subject unregulated professions and vocations to licensing or other regulatory controls. . . .”

The Department respectfully submits that a sunrise analysis is not necessary or required by HRS chapter 26H, whose purpose at enactment was to address the “growing concern over the rapid proliferation of licensing boards and commissions. . . .” (Act 70, section 1, Session Laws of Hawaii 1977). The Legislative Proposals do not pertain to a new regulatory measure that would subject unregulated professions and vocations to licensing or other regulatory controls. Rather, they would regulate “virtual currency business activity,” including services for the exchange, transfer, and custody of virtual currencies.

Both Legislative Proposals identify DFI as the regulator. DFI already regulates virtual currency business activity pursuant to the Money Transmitters Act, HRS chapter 489D. In addition, DFI supervises businesses in financial services industries such as money transmitters, mortgage loan originators and mortgage loan origination companies, mortgage servicers, escrow depositories, banks, and other financial institutions. DFI periodically examines its licensees for regulatory compliance, which includes their financial safety and soundness to perform financial transactions for their customers.

Thank you for the opportunity to share the Department’s comments.

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

on H.C.R. NO. 41

**REQUESTING THE AUDITOR TO CONDUCT
A SUNRISE ANALYSIS OF THE REGULATION
OF VIRTUAL CURRENCY BUSINESS ACTIVITIES.**

**BEFORE THE HOUSE COMMITTEE on CONSUMER PROTECTION &
COMMERCE**

DATE: Thursday, March 22, 2018, at 2:00 p.m.
Conference Room 329, State Capitol

PERSON(S) TESTIFYING: KEN TAKAYAMA or PETER HAMASAKI
Commission to Promote Uniform Legislation

Chair Takumi, Vice Chair Ichiyama, and the Members of the House
Committee on Consumer Protection & Commerce:

My name is Peter Hamasaki and I am a member of the state Commission
to Promote Uniform Legislation. Thank you for this opportunity to testify on
H.C.R. No. 41 which requests the Auditor to conduct a sunrise review on the
regulation of virtual currency businesses .

The Uniform Regulation of Virtual Currency Businesses (URVCBA) was
developed by the Uniform Law Commission and became available for enactment
by the states in 2017. Currently, SB 2129, Part I of HB 2257, HD1, and
SB 3082, SD1, HD1, proposes enactment of the URVCBA. The URVCBA, which
proposes a “stand alone” regulatory scheme for virtual currency businesses,
creates a clear, comprehensive framework for regulating companies engaged in
virtual-currency business activity. “Virtual-currency business activity” means
exchanging, transferring, or storing virtual currency; holding electronic precious
metals or certificates of electronic precious metals; or exchanging digital
representations of value within online games for virtual currency or legal tender.

The uniform act creates a three-tiered regulatory structure. Persons in Tier

three, whose virtual currency business activity exceeds \$35,000 in a one year period cannot operate in the State unless they obtain a license from the Division of Financial Institutions of the Department of Commerce and Consumer Affairs. Tier two consists of providers with virtual-currency business activity levels between \$5,000 and \$35,000 annually, who are required to register with the DFI—which is a lighter regulatory burden than licensure. By comparison, Tier one exempts from regulation altogether those persons having virtual-currency business activity levels of under \$5,000 a year. Taken together, the three tiered regulatory structure that correlates higher levels of virtual currency business activity with stricter levels of regulation function as a “regulatory on-ramp,” which allows companies in their early stages of business development to focus on innovation and experimentation while they are in the earliest stages of development--where they would normally face the greatest threat from the imposition of regulatory burdens.

We recognize that the Legislature may choose this year to address the existing de facto administrative ban on virtual currency business in Hawaii by permitting reserve requirements under the State’s money transmitter law to include virtual currency. This will have the immediate advantage of allowing virtual currency businesses to once again transact business with Hawaii residents. However, as evidenced by testimony submitted in opposition to regulation of virtual currency currently under the State’s money transmitter law, there are concerns that the State’s money transmitter law is not the right model for regulating virtual currencies, and may inhibit the development of the business in Hawaii.

Given these concerns, the currently evolving regulation of virtual currency at the federal level, and the complex and rapidly changing nature of the virtual currency business, we respectfully submit that even if a stop-gap fix is enacted this session, Legislature nevertheless should direct the Auditor to review the stand alone regulatory approach proposed by SB 2129, Part I of HB 2257, HD1, and SB 3082, SD1,HD1.

Completing the “sunrise” review required by section 26H-6, Hawaii

Revised Statutes, now will give the Legislature the benefit of an in-depth review of whether regulation is needed and the means for regulation, as well as give the future Legislatures the option to immediately adopt more comprehensive regulation. Thus, if the Legislature determines in future sessions that comprehensive regulation is immediately required, the Legislature already will have eliminated the “speed bump” of sunrise review that typically prevents a legislative response for at least a year.

For the foregoing reasons, we respectfully request that H.C.R. No. 41 be approved.

Thank you very much for this opportunity to testify.

HCR-41

Submitted on: 3/21/2018 1:26:04 PM

Testimony for CPC on 3/22/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i	Support	No

Comments: