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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committees on Commerce and Consumer Protection and Energy,
Economic Development, and Tourism
Tuesday, March 22, 2022
10:15 a.m.
Via Videoconference**

**On the following measure:
H.B. 2108, H.D. 1, RELATING TO DIGITAL CURRENCY LICENSING PROGRAM**

Chairs Baker and Wakai and Members of the Committee:

My name is Iris Ikeda, and I am the Commissioner of the Department of Commerce and Consumer Affairs' (Department) Division of Financial Institutions (DFI). The Department offers comments on this administration bill.

The purpose of this bill is to establish a program for the licensure, regulation, and oversight of digital currency companies beginning 1/1/2023; to extend operations of companies in the digital currency innovation lab pilot program under certain circumstances; and appropriate funds out of the compliance resolution fu to implement the program.

This bill is a work in progress as the DFI continues to meet with various stakeholders (Digital Currency Innovation Lab participants, industry association, consumers, state and federal regulators, and companies who transaction in digital currency). As these discussions continue, DFI has been trying to incorporate these thoughts into the bill. The DFI proposes several amendments from these

conversations, see Appendix A. The Department notes that the amendments reflected in Appendix have been adopted in S.B. 3025 S.D.2. As such, in comparing H.B. 2108 H.D.1 to S.B. 3025 S.D. 2, the Department prefers S.B. 3025 S.D. 2 with an effective date of July 1, 2022 instead of July 31, 2050 in section 8 of the Senate Draft 2.

The Department requests that this bill continue to move through the process as the Department is committed to providing a licensure scheme that will provide appropriate consumer protection while allowing companies to flourish.

Thank you for the opportunity to testify on this administration bill.

HB2108 HD1 – Appendix A

Proposed amendments:

Delete Section -8(b) – (h), page 23, line 14 to page 29, line 2 and replace with

- (1) Establish an effective anti-money laundering compliance program in accordance with the Anti-Money Laundering Act of 2020;
- (2) Establish an effective customer due diligence system and monitoring program;
- (3) Screen against the Office of Foreign Assets Control (OFAC) and other government lists;
- (4) Maintain records of cash purchases or cash transactions and report to the appropriate federal regulatory agency as required by the Anti-Money Laundering Act of 2020
- (5) Establish an effective suspicious activity monitoring and reporting process; and
- (6) Develop a risk-based anti-money laundering program.

Explanation – The Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) is engaged in rulemaking discussions with various stakeholders to update the anti-money laundering rules and regulations pursuant to the Anti-Money Laundering Act of 2020. As a result of the rulemaking, some of the thresholds for reporting may change in accordance with the risk associated with various transactions. These six components of the anti-money laundering law will not change.

Section -9 Cyber security program

Delete -9(b) – (g), page 31, line 1 to page 34, line (4) and replace with:

- (b) Establish effective policies, procedures, and controls to effectuate subsection (a);
- (c) Designate a cybersecurity officer;
- (d) Develop and implement employee training in accordance with position responsibilities to keep abreast of the changing cyber security risk and threats;
- (e) Establish a method of independent testing; and
- (f) Maintain records.

Explanation – The requirements of maintaining a cyber security program has been undergoing changes to meet the sophistication of cyber threats. These components of a cyber security program incorporate cyber security related principles from the Federal Financial Institutions Examination Council (FFIEC), the National Institute of Standards and Technology (NIST) Cybersecurity Framework and applicable components from the FFIEC Information Technology Examination Handbook for non-depository companies.



Written Statement of
Len Higashi
Acting Executive Director
Hawaii Technology Development Corporation
before the
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
And the
SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM

Tuesday, March 22, 2022
10:15 a.m.
Videoconference

In consideration of
HB2108, HD1
RELATING TO SPECIAL PURPOSE DIGITAL CURRENCY LICENSURE

Chairs Baker and Wakai, Vice Chairs Chang and Misulacha and Members of the Committees

The Hawai'i Technology Development Corporation (HTDC) **supports** HB2108, HD1 that establishes a program for the licensure, regulation, and oversight of digital currency companies, extends operations of companies in the digital currency innovation lab pilot program under certain circumstances, and appropriates funds out of the compliance resolution fund to implement the program.

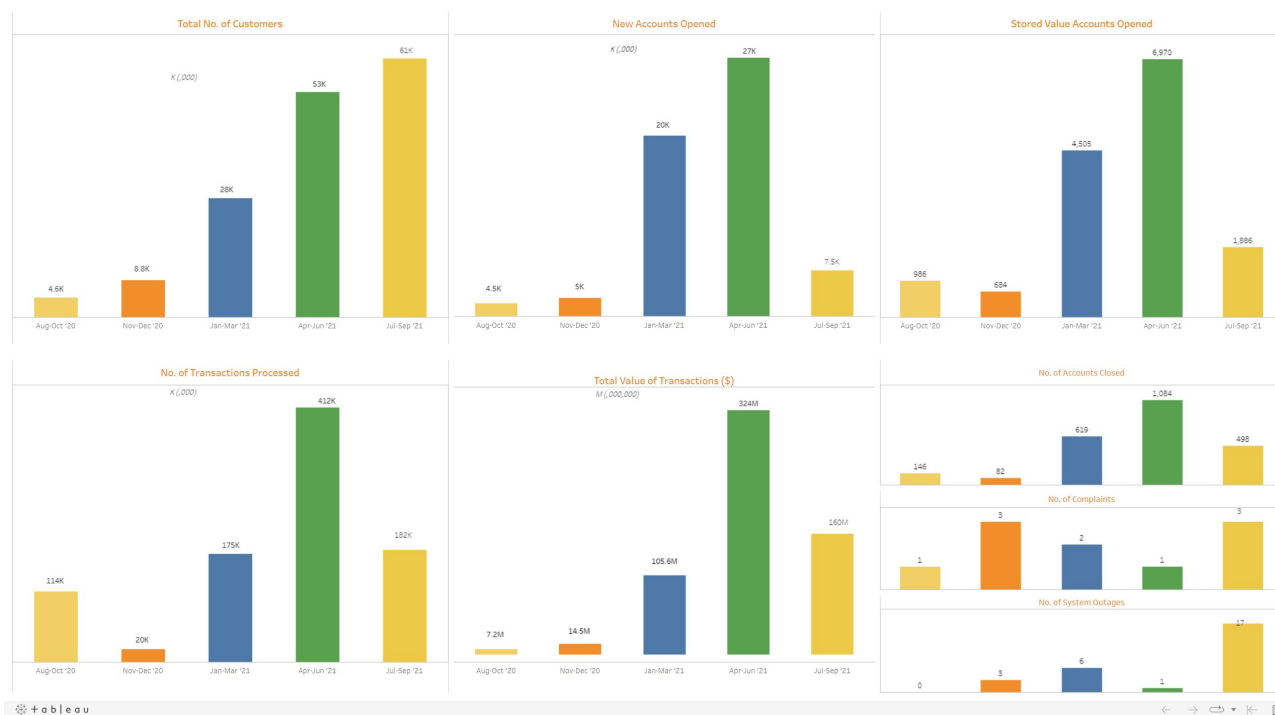
HTDC supports initiatives aimed at accelerating the adoption of new technologies. HTDC has partnered with the DCCA Division of Financial Institutions on a 2-year pilot project for digital currency which ends June 30, 2022. The goals of the program are to:

- * Create economic opportunities for Hawaii through early adoption of digital currency
- * Offer consumer protection by providing guidance to issuers of digital currency
- * Provide data to shape legislation supporting digital currency activities

There are 15 digital currency companies in the program and data collected shows over 61,000 Hawai'i based customers currently participating with hundreds of millions of dollars transacted each quarter. HTDC has hosted 13 educational webinars on various topics, two roundtables with local financial institutions and crypto investors, formed an advisory group of local domain experts in crypto, and facilitated two pilot projects exploring the economic benefits of crypto for fundraising and Non-Fungible Tokens (NFT) for selling art. HTDC received 10 complaints from

general Hawai'i based consumers during the span of the program. A summary chart of the data collected is provided below and can also be found on our website at

<https://www.htdc.org/digital-currency-innovation-lab/>



While the pilot program has not concluded, the results of the program clearly indicate strong interest from Hawai'i residents. The ability for Hawai'i's residents to continue engaging in digital currency transactions will not be possible without enabling legislation. The 15 companies participating in the program have also expressed unanimous support for regulation and alignment with industry standards applied to existing traditional financial institutions. For example, program participants believe that fulfilling the requirements of a robust IT cybersecurity policy is necessary before crypto-based companies are allowed to do business. They have also expressed the need for clear and consistent regulatory guidelines for companies to conduct business in Hawaii following the end of the pilot program. Since the state of digital currency continues to evolve, it is imperative that the state designate an entity in charge to guide and inform Hawaii's position and response towards digital currency activities. Therefore, we support this bill and defer to the Department on the technical aspects of the bill.

HTDC respectfully requests correction of the defective effective date. Thank you for the opportunity to offer these comments.

**Statement of
Nathaniel Harmon
Founder
Blockchain Solutions Hawai'i
before the
Senate Committee on Energy, Economic Development, and Tourism
And the
Senate Committee on Commerce and Consumer Protection**

**March 22, 2022
10:15 AM
State Capitol, Conference Room # & Videoconference**

**In consideration of
HB2108
RELATING TO VIRTUAL CURRENCY**

**Chair Baker, Vice Chair Chang, and Members of the Committee
And
Chair Wakai, Vice Chair Misalucha, and Members of the Committee**

Blockchain Solutions Hawai'i supports HB2108 with amendment which establishes a program for the licensure, regulation, and oversight of digital currency companies. The amendments proposed in this testimony have been incorporated into the Senate companion SB3025.

Blockchain Solutions Hawai'i (BSH) was founded in 2018 with the intent of providing a helpdesk for individuals, legislators, and businesses in Hawai'i looking to integrate with blockchain technology. To this goal we have and will continue to succeed. Through our Zero-Knowledge Security Service we have assisted numerous individuals in self-custodying their own assets. We have worked with multiple businesses integrate Bitcoin and other blockchains into their existing offerings. We provide expert information to the Hawai'i Technology Development Corporations (HTDC) Digital Currency Innovation Lab (DCIL) as part of their Advisory Group. Through the DCIL webinar series we presented a compelling case for why there is no path to decarbonization for Hawai'i that does not involve Bitcoin, and we are partnering with Makai Ocean Engineering to demonstrate as much. Finally, we develop and build non-custodial software solutions using blockchain technology to solve major pain points for Hawai'i and non-Hawai'i businesses.

It is important to understand that while there exists fundamentally ground-breaking technology that will alter society as a whole in this space, not all blockchains are equal. Having been involved in this space for the better part of a decade we can attest that it is riddled with fraud. Criminals mask their illegal security offerings with buzzwords, lofty promises, and shiny websites. They raise capital in exchange for their

“Coin” from desperate individuals hoping that “Coin X” will make them rich. All too often the founders pull the rug out from under the investors and run away with the capital. All of this is to say there needs to be more regulation and requiring a license is a good first step.

As written this bill would require a license from projects that have no way of applying for one nor the ability to enforce the rules required of license holders. This will most assuredly have the effect of limiting all growth for this industry in the state.

With the goal of regulating businesses in the space that poses the risk of material harm to residents while not limiting growth in the state. BSH proposes two amendments to HB2108 that would achieve this goal, amendments which have already been included in the Senate companion SB3035.

The first amendment would be to add an exclusion to § -2 “Exclusions” as follows

- "Non-custodial digital currency business activity by a person using a digital currency acknowledged as legal tender by the US or government recognized by the US or that has been determined to not be a security by an US regulatory agency"

This exclusion would cover all non-custodial business activity by individuals and businesses that pose no risk to the end consumer. The common ethos in the community is “not your keys, not your coins”. In other words, a customer can not have their funds stolen if you do not hold them. As for the second clause in the proposed amendment, exempting only projects that meet the criteria of being adopted as legal tender or determined to not be a security by the relevant regulatory body. This clause covers the case mentioned in the second paragraph above where bad actors cloak their fraud in techno-babble buzzwords. Many of the so called “Web3” projects claim decentralization while behind the curtain have a single actor in control. Smart contract platforms like Solana can be arbitrarily shut or reverse user’s transactions at the will of their “foundation”. So, while a non-custodial “Smart Contract” may be built on the Solana Network, if the network itself is custodial then all projects built on top of it will also be custodial. SEC Chair Gary Gensler is the most well-educated high-ranking regulator currently serving in the US Government, having taught a semester long course on Bitcoin and Blockchains at MIT. So far, the SEC has determined that two projects in the space are not securities, Bitcoin and Ethereum, Bitcoin having been determined to be a commodity. As the vast majority of activity in the space resides in these two projects, +60% at the time of writing, exempting non-custodial project from these networks would allow for the greatest proportion of innovation to occur in Hawai’i. Further, Bitcoin possesses the unique designation of being the only network to be adopted as legal tender by a US recognized government, El Salvador, with more countries to follow suit in 2022. Without an exemption for networks serving as Legal Tender would create a slew of unintended consequences.

The second amendment would be an additional clause added to § -14 (e) “Ownership and control of digital currency” stating as follows:

- “Unless clearly presented and stated to the client that doing so is the intent of the product”

A number of the businesses in the space such as Blockfi, Celsius, and Gemini offer an interest-bearing account. The interest on this account is gained through lending out the client’s assets. Without an exemption both the lending and interest accounts would be forced to shut down. Further, this is the entire model of DeFi, thus this stipulation unamended would have the effect of removing DeFi from Hawai’i.

With the above amendments, this act to establish a licensing program for digital currency businesses in the state of Hawai’i will accomplish the intentions set forth in the language of the bill.

Thank you for the opportunity to offer these comments.



Blockchain Solutions Hawai'i

Mahalo

Nathaniel Harmon

Blockchain Solutions Hawaii

N.harmon@blockchainsolutionshi.com



March 22, 2022

10:15 a.m.

Conference Room 229 and Videoconference

To: Senate Committee on Commerce and Consumer Protection

Sen. Rosalyn H. Baker, Chair

Sen. Stanley Chang, Vice Chair

Senate Committee on Energy, Economic Development, and Tourism

Sen. Glenn Wakai, Chair

Sen. Bennette E. Misalucha, Vice Chair

From: Grassroot Institute of Hawaii

Ted Kefalas, Director of Strategic Campaigns

RE: HB2108 HD1 — RELATING TO SPECIAL PURPOSE DIGITAL CURRENCY LICENSURE

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on [HB2108 HD1](#), a 90-page tome of a bill that would establish a program for the licensure, regulation and oversight of digital currency companies.

We appreciate the goal of creating a pathway for cryptocurrency companies to operate in Hawaii. However, HB2108 HD1 has unclear language and too many hurdles that could cement Hawaii as one of the worst states in the nation for cryptocurrency and cut residents off from this emerging market.

We urge lawmakers to delete the most burdensome regulatory aspects of this bill, or, better yet, simply exempt cryptocurrency companies from Hawaii's money-transmitter law — considered by cryptocurrency companies to be the main stumbling block to operating here.

Among the issues with HB2108 HD1 that need to be addressed:

>> Its approach is banking-centric.

Much of the bill's language was derived from model legislation provided in August 2021 by the Conference of State Banking Supervisors, of which Iris Ikeda, commissioner of the Hawaii Division of Financial Institutions, is a board director at large.¹ So far, not one state has enacted any of its recommendations.²

Not surprisingly, HB2108 HD1 takes a banking-centric approach to cryptocurrency legislation, but many companies that use cryptocurrency are different from banks. For example, the bill could be interpreted as requiring food establishments to obtain a "special purpose digital currency license" in order to accept cryptocurrency as payment.

On page 5 of the bill, "digital currency business activity" is defined as "exchanging, transferring, or storing digital currency," but Section 2 of the bill, which starts on page 8 and outlines exclusions to its proposed regulations, does not include food establishments.

On page 10, HB2108 HD1 says it will not apply to financial institutions that are "chartered or licensed by chapter 412."

Chapter 412 of the Hawaii Revised Statutes defines a Hawaii financial institution as a bank, savings bank, savings and loan association, depository financial services loan company, nondepository financial services loan company, trust company, credit union or intra-Pacific bank.³

This presumably means that Hawaii financial institutions could buy, sell and exchange bitcoin and other cryptocurrencies without needing a special purpose digital currency license.

It is a welcome idea to afford banks the freedom to interact with the emerging cryptocurrency market without the need for a special license. However, it is odd that other companies would be required to get a special license to use cryptocurrency.

>> Its tangible net worth requirement gives too much power to the commissioner.

¹ ["CSBS Leadership,"](#) Conference of State Banking Supervisors, accessed Feb. 5, 2022.

² ["CSBS Model Money Transmission Modernization Act,"](#) Conference of State Banking Supervisors, Jan. 6, 2022. See also, ["CSBS Uniform Money Transmission Modernization Act,"](#) Conference of State Banking Supervisors, August 2021, pp. 45-52.

³ [HRS 412:1-109](#), which states, "A Hawaii financial institution may be a bank, resulting bank as defined in article 12, savings bank, savings and loan association, depository financial services loan company, nondepository financial services loan company, trust company, credit union, or intra-Pacific bank."

Section 16 of the bill, starting on page 48, would require licensees to meet a “tangible net worth” requirement of \$500,000 “or in an amount determined by the commissioner necessary to ensure safe and sound operation.”

This language gives too much leeway for the commissioner to deny an application, since it’s not clear by what metric the commissioner would rely on. The language should state the ratio more explicitly, and perhaps give guidance on what might be “necessary,” if the requirement were not \$500,000.

The CSBS model legislation, while overly burdensome, at least bases its tangible net worth requirement on statute rather than the opinion of the commissioner, stating: “A licensee under this [Act] shall maintain at all times a tangible net worth of the greater of \$100,000 or 3 percent of total assets for the first \$100 million.”⁴

Alternatively, lawmakers could simply cut the commissioner’s power to bypass the \$500,000 requirement, which would provide cryptocurrency companies with more regulatory certainty.

>> Its reserve requirement is not clear.

In a House Committee on Finance hearing on [Jan. 18, 2022](#), Commissioner Ikeda said that the bill would require licensed cryptocurrency companies to have a “one-to-one” reserve ratio, also known as a double reserve.⁵ However, this “one-to-one” ratio is not clearly specified in the bill.

If the reserve ratio requirement is indeed one-to-one, that should be specified in the bill.

HB2108 HD1 also does not make it clear whether cryptocurrency can be used as a “permissible investment,” and this effectively could create a “double reserve” requirement, such as exists in Hawaii’s current money-transmitter law,⁶ whereby a company holding \$1 billion of cryptocurrency would also need to hold \$1 billion of cash.

This problem exists because Hawaii’s money-transmitter law does not allow cryptocurrency to be used as a permissible investment.⁷ Thus, cash must be used, effectively creating a double-

⁴ [“CSBS Model Money Transmission Modernization Act,”](#) Conference of State Banking Supervisors, Jan. 6, 2022. See also, [“CSBS Uniform Money Transmission Modernization Act,”](#) Conference of State Banking Supervisors, August 2021, p. 34.

⁵ [“FIN Info Briefing — Tue Jan 18, 2022 @ 1:30pm,”](#) YouTube video, Hawaii House of Representatives, Jan. 18, 2022 at 51’:51”.

⁶ [HRS489D.](#)

⁷ [HRS489D-4](#), pp. 3-4.

reserve requirement. In 2017, this double-reserve requirement prompted Coinbase, the world's leading cryptocurrency exchange, to leave Hawaii.⁸

If the intent is to encourage cryptocurrency exchange companies in Hawaii, HB2108 HD1 should state clearly whether cryptocurrency can be used as a permissible investment in the calculation of its reserve requirement.

>> It is unclear whether customers need to be licensed.

On page 5 of HB2108 HD1, the definition of "digital currency business activity" includes "transferring" digital currency. On page 7, the definition of "transfer" could include moving digital currency to a hard wallet. On page 14, it is stated that a license would be required for "digital currency business activity." Taken together, these three statements make it appear that someone would need a license to transfer cryptocurrency to their own wallet.

However, a statement on page 8 seems to exclude "the exchange, transfer, or storage of digital currency ... regulated by the Electronic Fund Transfer Act of 1978, 15 U.S.C. Section 1693 through 1693r, the Securities Exchange Act of 1934, 15 U.S.C. Sections 78a through 78oo, or the Commodity Exchange Act, 7 U.S.C. Sections 1 through 27f."

And in Section 2, subsection 8, page 10, the bill says "a person that (A) Does not receive compensation from a person for: (i) Providing digital currency products or services; or (ii) Conducting digital currency business activity" also is excluded.

So essentially, the bill is not clear about whether cryptocurrency customers would need to be licensed. And, of course, the default should be against requiring customers to obtain a cryptocurrency license, because that would be excessively burdensome.

>> It requires undue surveillance and lacks surveillance security.

In Section 8 of HB2108 HD1, starting on page 23, the bill says licensed cryptocurrency companies would be required to provide to the state massive amounts of surveillance data on customer financial transactions.

By contrast, Hawaii's [money-transmitter law](#), on page 12, requires licensees to submit only to the federal government, and not necessarily to the state, any reports that are required by the federal government.⁹

⁸ Juan Suarez, "[How Bad Policy Harms Coinbase Customers in Hawaii](#)," Coinbase, Feb. 27, 2017.

⁹ [HRS489D](#) "Money Transmitters Act," p. 12.

Hawaii's government does not have a good track record for keeping its data systems secure, as evidenced by the multiple hacks that have occurred in recent years.¹⁰ Requiring that cryptocurrency companies hand over vast amounts of financial information to the state is unnecessary and could create a "honeypot" for hackers to attack that would put Hawaii residents' financial information in jeopardy.

If anything, HB2108 HD1 should duplicate the money-transmitter requirement that cryptocurrency companies file to the federal government reports required by the federal government.

>> Its license fees seem discriminatory and unreasonably high.

HB2108 HD1 requires licensees to pay an annual fee of \$50,000. By contrast, the annual fee for [money transmitters](#) is only \$2,000.

Ideally the fees for both should be equal, and preferably both at the lower amount, if Hawaii wishes to encourage more entrants in the emerging cryptocurrency market.

Hawaii lawmakers once favored a simple exemption.

In 2017, Hawaii lawmakers approved at the full Senate and full House an exemption for cryptocurrency from the state's Money Transmitters Act,¹¹ but the exemption was deleted in conference committee before the bill was enacted. Commissioner Ikeda stated at the time that lawmakers should first study the issue via a "Decentralized Virtual Currency 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," she said.¹²

¹⁰ Peter Boylan, "[Cyberattacks hit at least 3 Hawaii government systems in past week](#)," Honolulu Star-Advertiser, Dec. 14, 2021, and Sam Spangler, "[Hawaiian Electric attacked daily by hackers as White House warns of ransomware](#)," KHON2, Hawaii News Now, June 8, 2021.

¹¹ [SB949](#) of 2017.

¹² Iris Ikeda, Commissioner of the Division of Financial Institutions, "[Testimony on SB949, HD1, SD1](#)," Hawaii State Legislature, March 31, 2017. See also, "[Conference Committee Rep. No. 78](#)," Hawaii State Legislature, April 27, 2017.

Now that the issue has been studied via the Digital Currency Innovation Lab, it is the perfect time to exempt cryptocurrency from the state's Money Transmitters Act, as has been done in 20 other states.¹³

Amend or scrap the bill.

HB2108 HD1 as written would cement into place the most burdensome cryptocurrency regulations in the nation, in addition to causing confusion.

If the members of the committee considering this bill are committed to using it as the vehicle to help Hawaii participate more fully in the worldwide cryptocurrency market, the Grassroot Institute of Hawaii recommends that all the burdensome aspects of the bill — such as its unreasonable net worth requirements, dubious surveillance requirements and high fees — be deleted.

This bill also needs to be written more plainly, to prevent needless confusion. This could be done in the following way:

1) On page 23, delete Section 8 and replace it with the "Money laundering reports" language as listed on page 12 of [Hawaii's money-transmitter law](#):

(a) Every licensee and its authorized delegates shall file with the commissioner all reports relating to transactions in the State, as required by federal record-keeping and reporting requirements in Title 31 United States Code Section 5311 et seq., 31 Code of Federal Regulations Part 103, Section 125, and other federal and state laws pertaining to money laundering.

(b) The timely filing of a complete and accurate report with the appropriate federal agency shall satisfy the requirements of subsection (a), unless the commissioner notifies the licensee that reports of this type are not being regularly and comprehensively transmitted by the federal agency.

2) Reduce by at least half the fees starting on page 37, Section 11.

¹³ States that do not require a money-transmitter license for virtual currency transactions include Arizona, Arkansas, California, Colorado, Idaho, Illinois, Kansas, Maryland, Massachusetts, Michigan, Montana, New Hampshire, New Jersey, North Dakota, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia and Wisconsin. See "[Cryptocurrency laws by state](#)," Shipkevich Attorneys at Law, 2020.

3) On page 48, in Section 16, replace Section (a) with the following language derived from the CSBS Uniform Money Transmission Modernization Act:

A licensee under this [Act] shall maintain at all times a tangible net worth of the greater of \$100,000 or 3 percent of total assets for the first \$100 million, 2 percent of additional assets for \$100 million to \$1 billion, and 0.5 percent of additional assets for over \$1 billion.

Also add the following statement:

Digital currency is deemed a permissible investment for the purposes of calculating tangible net worth under this chapter.

4) On page 15, delete subsection (4).

5) On page 18, delete subsections (f) and (g).

6) On page 40, delete subsection (4).

7) On page 45, delete the phrase starting on line 19: "and any additional disclosure the commissioner determines reasonably necessary for the protection of persons."

8) On page 51, line 10, change "seven" to "three."

9) On page 59, delete Section 20 and replace it with [Section 17](#) of Hawaii's Money Transmitters Act.

For the record, however, we believe a much better option than amending HB2108 HD1 would be for the Legislature to simply exempt cryptocurrency from Hawaii's money-transmitter law and truly open the door to cryptocurrency exchange companies in Hawaii.

Thank you for the opportunity to submit our comments.

Sincerely,

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii

LATE

Statement of
Liam Grist
President
CLOUD NALU, LLC
before the
COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Tuesday, March 22, 2022
10:15 AM
State Capitol, Conference Room 229 & Videoconference

In consideration of
HB2108 HD1
RELATING TO CRYPTOCURRENCY

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
Senator Glenn Wakai, Chair
Senator Bennette E. Misalucha, Vice Chair

Cloud Nalu **supports** SB2695 SD2 RELATING TO DIGITAL CURRENCY LICENSING PROGRAM

Cloud Nalu is a Bitcoin-as-a-service platform for Hawaii residents, businesses, and institutions who need help buying and selling bitcoin, and integrating with the Bitcoin network through our Software-as-a-Service products. We started as a tech outsourcing company in 2016 on Maui and since 2020 have been a part of the Digital Currency Innovation Lab (DCIL).

The Department of Financial Institutions (DFI), in partnership with HTDC through the DCIL, has been instrumental in prioritizing education and safety for our local residents interested in the cryptocurrency space through webinars with industry experts. This program has also allowed our company in particular, to pivot during COVID and hire 4 new employees. We have also seen the economic benefits our clients have enjoyed by engaging with digital currencies, through the DCIL. The DFI has also made it a priority to include the company participants of the DCIL and local experts in the drafting and editing of SB2695 through roundtable discussions and requesting feedback from participating companies, including Cloud Nalu, to allow for the continued development, innovation, and regulation of the industry through its proposed licensure program.

The establishment of the licensure program is appropriate for the continued safety and confidence of Hawaii residents and businesses interested in using Bitcoin, blockchain, and digital currency technology to create a better future for Hawaii. We believe the DFI is the appropriate arm of the state to regulate the industry. With the most recent edits to the bill in the Senate version, SB2695 SD2 protects both users who want to use digital assets through a traditional cryptocurrency exchange and users who prefer to custody digital assets themselves, with their own "keys" as sovereign citizens using cryptography to protect their wealth and private property - rather than traditional, centralized sources.

With clear regulation and licensing provided by the state, Hawaii's companies, institutions (banks), and participating cryptocurrency companies - all finally have the official greenlight to create better experiences for transactional payments, financing, communication, and more products and services for Hawaii residents and consumers. The cryptography and cyber security industry here have benefited from state-sponsored research and education. The same will be said about the state's role in supporting the

Bitcoin industry, which - through this bill, is ripe for growth. According to Google search queries, Hawaii is in-fact, one of the states most highly interested in “Bitcoin” and “Cryptocurrency”.

As we transition our local economy, we need to look for ways of keeping more monetary value and talent in Hawaii. We also need to meet our goals of being energy independent with 100% renewable energy by 2045. Bitcoin technology provides a promising new path forward for solving both of these priorities. By making the movement of value (in fiat currencies and BTC) more efficient, supporting Hawaii engineers, programmers, and cryptographers, and by utilizing Bitcoin mining to be used for renewable energy resource projects such as OTEC, we can make our state a better place to live and visit for all. We believe supporting the adoption of Bitcoin is the most efficient way to a more free, cooperative, equitable, sustainable, and peaceful Hawaii.

In the continued development of this bill, it is important to exclude non-custodial use of digital currency, as written in the edited SB2695 SD2 bill (Pg 10, section 9) since US citizen’s right to use code and cryptography as free speech and freedom of expression, is already protected by federal law¹ and universal human rights². The current bill HB2108 as written, seems to contradict the ability of individuals and businesses to use cryptocurrency and software independently of a 3rd party, requiring licensure for such non-custodial use. The modifications to SB2695 SD2 sufficiently exclude such use from requiring licensure. Alternatively however, it may be simpler to use the URVCBA model of the Uniform Laws Committee³, as recommended by Coin Center and others, which clearly defines what business activity should be regulated as “Virtual Currency Business Activity”. This more simple scope would require licensure of and *“impose prudential regulations and customer protection requirements on businesses whose products and services include (1) the exchange of virtual currencies for cash, bank deposits, or other virtual currencies; (2) the transfer from one customer to another person of virtual currencies; or (3) certain custodial or fiduciary services in which the property or assets under the custodian’s control or under management include property or assets recognized as “virtual currency.”*⁴

Finally, the bill attempts to address Anti-Money-Laundering concerns by adding requirements to already existing federal requirements (FinCEN). Specifically, under Section 8, page 26, line E, requiring licensees to record the “description of the transaction”. We recommend this to be removed, as this would be too costly for companies looking to operate in Hawaii and needing to modify their data collection and AML program to be able to comply with Hawaii’s specific requirements under this Act. The nature or description of transactions is too challenging to collect from users and report for many transactions. Collecting this data is arguably an intrusion of privacy, and will not have a material impact on AML risk. Therefore, we recommend removing section 8’s line E, requiring licensees to record the “description of the transaction”.

Thank you for the opportunity to provide comments and for your consideration of this bill.

¹ Phillip E. Reiman, Cryptography and the First Amendment: The Right to be Unheard, 14 J. Marshall J. Computer & Info. L. 325 (1996) <https://repository.law.uic.edu/jitpl/vol14/iss2/6/>

² UNESCO, Human Rights and Encryption <https://unesdoc.unesco.org/ark:/48223/pf0000246527?1=null&queryId=e05fdd78-68b9-4ff3-b7ce-b998b0c0cf01>

³ Virtual-Currency Businesses Act, Regulation of <https://www.uniformlaws.org/committees/community-home?CommunityKey=e104aaa8-c10f-45a7-a34a-04232106778>

⁴ Uniform Regulation of Virtual-Currency Businesses Act <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=ca527d52-9bcf-15b0-b1c1-279b55b53fa4&forceDialog=0>

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March 17, 2022

Senator Rosalyn H. Baker, Chair; Senator Stanley Chang, Vice Chair; members of the Committee on Commerce and Consumer Protection; and Senator Glenn Wakai, Chair; Senator Bennette E. Misalucha, Vice Chair; and members of the Committee on Energy, Economic Development, and Tourism:

I am writing to express my **support** of HB2108, HD1, relating to Special Purpose Digital Currency Licensure.

I currently serve as a Community Engagement Consultant with the state's Digital Currency Innovation Lab (DCIL), but this testimony represents solely my opinion as a Hawaii resident and lifelong technologist.

I believe the crypto, digital currency, and blockchain space will be as transformative to communities and technologies as the advent of the Internet nearly 30 years ago. Hawaii's current regulatory regime is needlessly restrictive and is a major barrier that prevents Hawaii residents and businesses from taking advantage of opportunities that are widely available in every other state.

Yes, there are nefarious actors, scammers, and criminals using crypto, but these bad actors are also rife on the Internet — a now universal utility critical to modern life. Any tool can build something or break something, but banning the tool is not the answer.

Indeed, our current regulations are currently driving Hawaii residents to riskier practices and providers as they seek to circumvent the law. For the technically savvy, it's not difficult at all, but everyday citizens are often pushed further off the beaten path with no guardrails or consumer protections in place.

Fortunately, the DCIL (a collaboration between the state Division of Financial Industries and the Hawaii Technology Development Corporation) allowed the state and DFI Commissioner Iris Ikeda to interface directly with digital currency exchanges, allow a pilot that allowed Hawaii residents to participate in this new space, and facilitated careful study of consumer and provider interactions.

The DCIL proved there is significant interest among Hawaii residents to participate in cryptocurrencies, with over 60,000 new Hawaii customers

conducting nearly \$1 billion in transactions. But the law must be amended this year, or all this progress will have been for naught.

Some proposals before the legislature this session would remove all restrictions on cryptocurrencies. I believe HB2018, HD1 takes a more measured approach, still requiring a licensure program and oversight to ensure that exchanges are sound operations that will serve Hawaii customers responsibly.

Hawaii is globally notorious as being unfriendly to crypto, if not to business in general. HB2108, SD1 would be an important step in both providing residents greater freedom to explore this dynamic space, and improving our reputation in the broader technology space.

Mahalo for your consideration.



Ryan Kawailani Ozawa

HB-2108-HD-1

Submitted on: 3/17/2022 3:40:44 PM

Testimony for CPN on 3/22/2022 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

There should be only one System the Q F S !!

HB-2108-HD-1

Submitted on: 3/17/2022 7:39:02 PM

Testimony for CPN on 3/22/2022 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Carrie Blocher	Individual	Support	Written Testimony Only

Comments:

Please allow us to buy crypto in Hawaii, every other state can. The tax revenue is huge.

Statement of
Kevin Teruya

before the
Senate Committee for Commerce and Consumer Protection
Senate Committee on Energy, Economic Development, and Tourism

Tuesday, March 22, 2022
10:15 AM
State Capitol, Conference Room 229 & Videoconference

In consideration of
HB2108 HD1
RELATING TO SPECIAL PURPOSE DIGITAL CURRENCY LICENSURE

Honorable Chairs, Vice Chairs, and Members of the Committee for Commerce and Consumer Protection and Committee on Energy, Economic Development, and Tourism.

I support HB2108 HD1 that establishes a program for the licensure, regulation, and oversight of digital currency companies.

In 2017, the Division of Financial Institutions required that digital asset exchanges comply with the current Money Transmitter act to operate in Hawaii. As a result, reputable and low-fee exchanges exited the State's digital asset market, leaving consumers with zero reputable options. Consumers, such as myself, turned to foreign exchanges of questionable character that charged usurious fees (e.g., upwards of 10%).

Five years later, Hawaii has fallen far behind other states in adopting reasonable legislation and regulations regarding digital assets. The people of Hawaii have suffered as a result. Despite our high cost of living, savers earn a paltry 0.05% APY interest on their savings, versus 8% from a digital asset exchange in the sandbox. A business fills out several forms and pays \$40.00 to have monies transferred to Japan. The transaction takes about 5 days and goes through at least five intermediaries. The same transaction may be achieved in minutes for a few dollars using digital assets. Finally, reasonable legislation and regulation may slow the brain drain via the support for high-paying, remote-friendly occupations in the digital asset arena such as coding. Consequently, the adoption and fostering of digital assets serves as a benefit to the State and its people. Passage of HB2108 HD1 is the first step towards that goal.

I do have a reservation regarding HB2108 HD1 as I am skeptical as to whether it will make a long-term difference. The bill's invasive procedures, reporting/data collection requirements, fees, and bonding requirements may prove to be an insurmountable operational barrier for many digital asset companies. Case in point, a similarly restrictive regulatory regime exists in the form of New York state's Bit License. A study indicated that regulatory compliance costs (upwards of \$100,000.00) deterred small, local digital asset firms from operating in the state. As a result, Further, re for the onerous regulatory requirements deter otherwise consumer friendly companies from servicing the New York market. As a result, larger firms dominate the market. Given the costs incurred, my concern is that the current bill may price even larger firms out of the Hawaii marketplace. Unlike New York, it is questionable whether Hawaii has the financial scale to incentivize continued operation by the firms in the sandbox.

Despite my concern however, **I support** HB2108 HD1.

Thank you for the opportunity to offer these comments.

Kevin Teruya

HB-2108-HD-1

Submitted on: 3/19/2022 7:27:26 AM

Testimony for CPN on 3/22/2022 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Paul Klink	Individual	Support	Written Testimony Only

Comments:

I support.I've Aloha,

Paul L Klink

HB-2108-HD-1

Submitted on: 3/19/2022 10:24:30 AM

Testimony for CPN on 3/22/2022 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Trung Lam	Individual	Support	Written Testimony Only

Comments:

Aloha e Chair Baker, Vice-Chair Chang, and Members of the Committee for Commerce and Consumer Protection.

I support bill HB2018 HD1 as written to help provide a safer onramp for Hawaii residents to onboard into cryptocurrency. The cryptocurrency industry is vast and rapidly changing, and it would be unrealistic to expect any bill to cover all the bases. However, HB2018 HD1 will at least provide a safer and easier access point for new investors to participate and help the State of Hawaii gather more data on the growth and adoption of cryptocurrency.

Mahalo for the opportunity to comment.

HB-2108-HD-1

Submitted on: 3/19/2022 5:44:24 PM

Testimony for CPN on 3/22/2022 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Brad Uchida	Individual	Support	Written Testimony Only

Comments:

Support

HB-2108-HD-1

Submitted on: 3/21/2022 10:09:11 AM

Testimony for CPN on 3/22/2022 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Mark Soeda	Individual	Support	Written Testimony Only

Comments:

Dear Chair and Committee Members,

I am writing in support of HB2108. We are at a pivotal point in history, as we stand at the beginning of a new era. Not since the dawn of the internet itself, have we seen something as transformative as this on the horizon.

To let the little progress we have made in this space stall or end here, would not only be a missed opportunity for individuals, but it would also be a setback for the State of Hawaii. Blockchain technology and digital assets are new innovations that will change the world. It will shift the paradigm of how we store and transfer value. The ongoing institutional adoption by private companies and governments alike, support this belief.

On March 9 of this year, the President of the United States had issued an executive order regarding digital assets. It was titled, “Ensuring Responsible Development of Digital Assets.” This executive order laid out several objectives towards regulating this asset class, and becoming a global leader in this emerging technology. But the main point to take away from the order, is that digital assets are here to stay.

For Hawaii, this is another opportunity to possibly drive ourselves forward, beyond a “tourist industry.” It is also an opportunity to continue to give our residents the freedom to choose how they wish to use, or not use, digital currency. Compared to most states in the country, we are far behind, and the gap is getting wider.

Make no mistake that we are at an inflection point. Do we want to remain one of the worst states in the country, regarding the most innovative technological development in the last 30 years? Or do we want to open our doors to new possibilities, and invite innovative companies emerging in blockchain technology, to possibly operate here?

For as long as many of us can remember, there have been a lot of talk about diversifying our economy and modernizing how we do business. The time is now, and the opportunity is here to back these words with actions. HB2108 will be a small step forward, but a critical one, if we are to keep pace with the rest of the world. So please vote to move Hawaii forward, not backwards.

Thank you for your time and your consideration.

Statement of **Katie Jackson**

Hawaii State Blockchain Advocate before the

**Senate Committees on Commerce and Consumer Protection and Energy,
Economic Development and Tourism**

Tuesday, March 22, 2022 10:15 AM State Capitol, Conference Room 229 &
Videoconference

In consideration of **HB2108 HD1 RELATING TO SPECIAL PURPOSE DIGITAL
CURRENCY LICENSURE**

Chairs Wakai and Baker, Vice Chairs Misalucha and Chang, and Members of the
Committees.

I oppose HB2108 HD1 with comments. Why? Because this regulatory
framework would do exactly the opposite of its stated purpose to protect
consumers against loss and mismanagement by financial intermediaries. This bill
would actually harm consumers and would put Hawaii out in front of President
Biden's 9 March Executive Order asking the federal regulators to come up with a
uniform policy towards crypto regulation.

**Instead of protecting consumers, this bill would expose locals to legal
risks and criminal liability, mandate financial surveillance/data
collection, infringe on privacy rights, and force crypto and block
chain companies out of the State. It would also need to be amended
multiple times in the years ahead since it gets out in front of the
Federal regulators.**

As a longtime Oahu resident and block chain advocate **who collaborates
with State Blockchain Associations**, if allowed to pass unamended, this
licensure program would put Hawaii dead last in the nation on crypto regulation.¹

Known nationally as the "Frankenstein Bill," HB2108 HD 1 is a mash up
of three different "model laws" from the Uniform Law Commission (ULC), the
Conference of State Banking Supervisors (CSBS), and a faltering New York
BitLicense law.²

¹ California Blockchain Association, State License Comparison Matrix Chart on page 4

² Coin Center Statement, 1 February 2022, Peter Van Valkenburgh, Director of Research

- **This regulatory “word salad” creates more harm than good, mixes up its own definitions, and sows massive confusion** on who actually needs to get a new license. Better to form a task force that extends the Sandbox for 2 years, let the space breathe a year and come back next year with a consistent and uniform set of regulations.

HB2108 mistakenly copies the New York BitLicense program which drove most crypto companies out of the state, saw compliance costs upwards of \$1million and is even now being considered for repeal by New York state officials.³

1.) We welcome and desire a pathway to regulation that works, but this is a PRIVACY DISASTER and data hack waiting to happen

- **The reporting requirements in this proposed regulation is a PRIVACY NIGHTMARE** and ACLU lawsuit waiting to happen. Asking companies to create centralized data bases of user’s financial transactions is a law enforcement and hacker’s dream. Crypto companies already comply with multiple federal regulations in order to operate. This new state regulation simply adds another layer of regulation.
- **The excessive FINANCIAL SURVEILLANCE of individuals** required by this regulation would prohibit access to financial services. Blockchain technologies open up access to communities of color and the unbanked. Financial surveillance would have a chilling effect on those who for the first time have access to these emerging financial services (remittances etc).

2.) The emerging decentralized digital ecosystem DESERVES A FRESH AND CAREFUL APPROACH TO REGULATION.

- **Applying old centralized Banking regulations to the emerging Blockchain digital economy is like applying horse and buggy regulations to the new automobile.** We need to take the same approach bipartisan lawmakers took in 1996 when the economy was

³ <https://nypost.com/2021/12/15/eric-adams-hopes-for-nyc-bitcoin-boom-blocked-by-backwards-thinking-albany/>

shifting from landline telephones to the internet. The Telecommunications Act of 1996 wisely allowed the internet to grow, breathe and emerge without forcing old regulatory frameworks on it.

3.) Anti-money laundering/consumer protections are important. Local and federal law enforcement have AUTHORITY TO PROSECUTE CYBER CRIMES and are doing so. The Department of Justice created the National Cryptocurrency Enforcement Team (NCET) on 6 October 2021 to spearhead complex investigations and prosecutions of criminal misuses of cryptocurrency and to recover the illicit proceeds of crimes facilitated by cryptocurrency.

4.) Passing this bill will LIKELY BE TEMPORARY given President Biden's 9 March Executive Order asking Federal Agencies to come up with a consistent policy towards crypto regulation. This bill would put Hawaii out in front of this approach and would likely need multiple amendments.

- **The White House and Federal agencies are even now determining new regulatory approaches to digital assets.** Hawaii should let the Feds lead, and then include the proper agencies next legislative session after forming a local Task Force since the digital asset ecosystem encompasses more than just virtual currency (ie. Commodities, personal property, data ownership).
- **Let's start fresh together next year** after watching what happens at a national level and learn more about the environment we need to regulate.

5.) Outside Experts have concerns about this bill. I am attaching two letters from Trade Associations and Federal Non-Profits that lay out the case for why this bill needs to be amended or voted against.

SOLUTION: Keep crypto exchanges in the State by creating a Task Force (SB2695) to study the upcoming Federal and state regulations and add an amendment to extend the Sandbox by two years. Let the ecosystem evolve and breathe. Next year we can engage all stakeholders and come back with better regulation that is reflective of

President Biden’s new direction on regulation and is a better fit for Hawaii. It is much better to wait and create a law that reflects the federal position than to pass an ill-fitting law that must be amended every year.

Thank you for the opportunity to offer these comments.

STATE LICENSING LAWS

Law or Regulation:	(ULC Model Act)	NY Bitlicense	CA Money Transmission Law	TX Money Transmission Law
Basic Info:	California Assembly members have introduced a model law from the ULC. It has yet to pass.	The Bitlicense was promulgated in NY in 2015. Unlike the ULC model act, it is a regulation rather than a law and the text is completely different.	The text of the law may require cryptocurrency companies to get licensed. Unlike other states, the regulator has refused to either grant licenses to cryptocurrency companies or publicly say that licensing requirements don't apply.	Texas also has a money transmission licensing law. The Texas regulator has said that businesses dealing only in cryptocurrencies do not need licenses but exchanges handling fiat money as well as cryptocurrency do need licenses.
How is the category of businesses that need licenses defined?	Businesses with "the power to execute unilaterally or prevent indefinitely a virtual currency transaction" on behalf of a customer.	Businesses that do any of the following: "receiving virtual currency for transmission," "transmitting virtual currency," "storing, holding, or maintaining custody or control of virtual currency on behalf of others," "buying and selling virtual currency as a customer business," "performing exchange services as a customer business," "controlling, administering, or issuing a virtual currency."	Businesses that "receive money or monetary value in the United States for transmission within or outside the United States by electronic or other means." Regulator has never said publicly whether "monetary value" includes bitcoin or other cryptocurrencies.	Businesses that engage in "the receipt of money or monetary value by any means in exchange for a promise to make the money or monetary value available at a later time or different location." But, the regulator has said that "cryptocurrencies as currently implemented cannot be considered money or monetary value under the Money Services Act."
Who must obtain a license?				
Hosted Wallet Providers	Yes	Yes	Maybe	No
Custodial Exchanges	Yes	Yes	Maybe	No
Miners	No	Maybe	No	No
Software wallet developers	No	Maybe	No	No
Multi-sig wallet providers	No	Maybe	Maybe	No
Full node operators	No	Maybe	No	No
Lighting node operators	No	Maybe	Maybe	No
Decentralized exchange providers (persons who facilitate exchange without taking custody).	No	Yes	No	No
Persons holding their own cryptocurrency or holding it for personal/family/ or business purposes.	No	Maybe	Maybe	No
Small businesses holding less than \$5,000 annually for customers	No	Yes	Maybe	No
Issuers of new decentralized cryptocurrencies.	No	Yes	Maybe	No
Investors buying and selling on their own account.	No	Maybe	No	No

Figure 1.1 - State by State Licensing Comparison Matrix
Source: California State Blockchain Association

