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JOSH GREEN
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**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Finance
Thursday, February 24, 2022
12:30 p.m.
Via Videoconference**

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

Chair Luke 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.

Regarding the fees identified in the bill, the Department points out that in accordance with the Hawaii Insurers Council vs. Lingle, 120 Hawaii 51 (2008) the fees will be used for the examiners supervising the program. The digital currency company business model, financial profiles, and control persons reviews are increasingly more complex and complicated. The review for these companies is similar to our complex money transmitters and chartered banks. Consequently, the fees requested are

congruent to the number of hours spent by examiners and level of expertise needed by examiners to appropriately license, supervise, and regulate these companies.

Regarding the request for funds to implement the program, the DFI believes due to the complex and complicated business structure and financial plans, evolving industry, and constant change in key personnel affecting the operations of the company, DFI request three examiners to supervise these companies. Currently, the DFI does not have full regulatory authority to impose penalties on the companies participating in the digital currency innovation lab and spends a lot of time monitoring the companies. DFI found that every quarter, many participating companies change or update their business models. In a new industry, there is a lot of personnel movements and DFI found that every quarter there is a change in key personnel making it more difficult to communicate with the participating companies.

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 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:

Page 5, Lines 10-12

Delete

- (2) Holding electronic certificates representing interests in a thing of value on behalf of another person or issuing shares;

Explanation – this bill does not propose to regulate non fungible tokens (NFTs). NFTs can be purchased by U.S. Dollars and by digital currency.

Page 5, lines 16-18

Delete

- (A) Digital currency offered by or on behalf of the same publisher from which the original digital representation of value was received; or

Explanation – requested by industry that buying and selling game tokens with the same publisher should be allowed, even if the value of the game tokens are different.

Page 8, lines 14-15

Delete the phrase “Electronic Fund Transfer Act of 1978 (15 U.S.C. sections 1693 through 1693r)”

Explanation – the transactions are not subject to this regulation since this is not money transmission.

Page 10, lines 17-18

Replace (9) “A financial institution chartered or licensed by chapter 412.” With “Banks, bank holding companies, credit unions, savings banks, financial services loan

companies, and mutual banks organized under the laws of the United States or any state shall be exempt from the licensing and examination provisions of this chapter.”

Explanation – all banks and other financial institutions supervised by state or federal regulators should be exempt from licensure since these financial institutions are highly regulated by state and federal regulators.

**Statement of
Nathaniel Harmon
Founder
Blockchain Solutions Hawai'i
before the
House Committee on Finance**

**February 24, 2022
12:30 PM
State Capitol, Conference Room #308 & Videoconference**

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

Chair Luke, Vice Chair Yamashita, and Members of the Committee on Finance

Blockchain Solutions Hawai'i supports with amendment HB2108 establishes a program for the licensure, regulation, and oversight of digital currency companies.

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 three amendments to HB2108 that would achieve this.

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.

The final amendment concerns § -16 (a) "Records, net worth requirement" and more specifically the calculation of tangible net worth. An issue arises from calculating net worth based on the average value of the digital currency during the previous six months. The average price of Bitcoin over the last six months is ~\$50,000 while the current price is ~\$40,000. This would leave a business with a deficit between the value of "U.S. dollar equivalent of digital currency" as defined in § -1 "Definitions" and the reserve requirement defined by § -1 "Definitions" "Tangible net worth" and full backing clause of § -14 "Ownership and control of digital currency". To remedy this discrepancy § -16 (a) should read as follows:

- A licensee engaged in digital currency business activities may include in its calculation of tangible net worth digital currency, measured by the average value of the digital currency in U.S. dollar equivalent.

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



Written Statement of
Len Higashi
Acting Executive Director
Hawaii Technology Development Corporation
before the
HOUSE COMMITTEE ON FINANCE

Thursday, February 24, 2022
12:30 p.m.
Videoconference

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

Chair Luke, Vice Chair Yamashita and Members of the Committee.

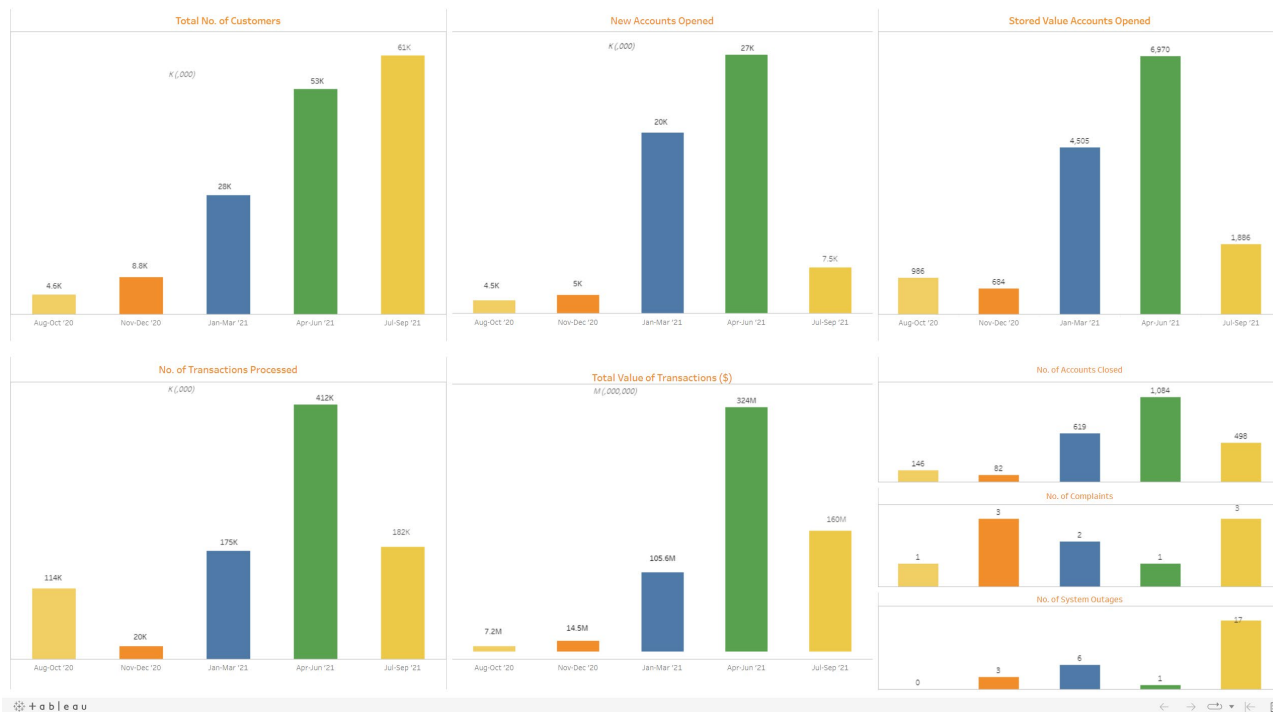
The Hawai'i Technology Development Corporation (HTDC) **supports** HB2108, HD1 that establishes a program for the licensure, regulation, and oversight of digital currency companies, extends operations of companies in the digital currency innovation lab pilot program under certain circumstances, and appropriates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

February 24, 2022

The Honorable Scott Saiki
Speaker, Hawaii House of Representatives
415 South Beretania St.
Honolulu, HI 96813

Re: H.B. 2108 - Digital Currency Licensing

Dear Speaker Saiki,

On behalf of the Electronic Transactions Association (“ETA”), thank you for the opportunity to share our perspective on House Bill 2108, legislation that would establish a licensing regime for digital currency companies.

As the trade association that represents the breadth of the payments industry, ETA has deep expertise in payments technology, including the use of digital currency, blockchain, and other cryptocurrency-related technologies. This expertise has, and continues to, provide thought leadership in the ongoing dialogue within the industry and with policymakers about the promise and challenges of digital currency. For example, last September, ETA released *5 Guiding Principles for Crypto*¹, a guide to help policymakers ensure that any new law or regulation pertaining to the space best serves the needs of consumers and businesses, furthers financial inclusion, preserves and strengthens the financial system, minimizes fraud and money laundering, and ensures that consumers and businesses continue to have access to a robust and innovative array of secure banking and payment options.

Appropriate regulation of digital currency is key to unlocking its potential while ensuring the safety and soundness of the payments ecosystem. Below, ETA has outlined concerns with certain provisions of H.B. 2108 that we believe should be addressed in order foster, not stifle, the growth of this nascent industry:

- **Uniform Law Commission’s Model State Law.** The current bill combines multiple models, including ULC, then adds additional items. This has the effect of diminishing the harmony of each individual model that has been expertly developed, and ultimately reduces regulatory certainty. Confusion in regulatory certainty creates risk that Hawaii will fall behind in innovation in this space. Hawaii should adopt the ULC’s model law.
- **30-Day Notice for Fee Changes: Section 4(b)(9).** A 30-day notice for fee changes is not in line with requirements in other states with virtual currency licenses, like New York, nor is it consistent with the lack of fee change notice requirements in other state MTL laws. ETA would suggest striking this requirement, or if not, waiving the requirement for licensees that notify consumers of fee schedules before every transaction.
- **Duplicative Requirements: Section 9(e).** As this legislation requires all licensees to register with the Nationwide Multistate Licensing System & Registry (NMLS), any requirements (e.g. fingerprinting) that are duplicative of NMLS or other license applications should not be required again.

¹ <https://www.electran.org/wp-content/uploads/2021-ETA-5-Guiding-Principles-of-CRYPTO.pdf>

- **Renewal of License; Annual Report: Section 11.** We would suggest guidance be provided on the meaning of “total value of transactions,” as used throughout this section, to clarify whether this means the gross value of the transaction, inclusive of the digital currency traded and associated fees.
- **Surety Bond: Section 11(c).** We would suggest that a surety bond be capped in order to bring the statute in line with the standards set by dozens of state money transmission license requirements already in statute. A cap of \$500,000 would align with precedent.
- **Reports of System Outages: Section 12(b)(2)(D).** The legislation fails to provide guidance on what is classified as a “system outage.” Even with a clear definition, an overbroad interpretation could be construed to include any sort of technical incident, creating vague standards for compliance and an unnecessary burden of reporting for covered companies, in addition to confusion for the regulator. ETA suggests that the requirement be struck, bringing it in line with other states’ existing law.
- **Physical Location Requirement: Section 16(a).** The profound growth of e-commerce and the digital economy during the COVID-19 pandemic has changed the way that people work and the way that businesses operate. Many companies allow employees to work full-time remotely, and some companies do not have a physical location at all. A requirement that special purpose digital companies maintain a physical location in Hawaii is burdensome and antiquated, especially given that digital currency, by its very nature, is a digital innovation. Placing this requirement on licensees will dissuade businesses from obtaining this license and operating within Hawaii.

* * *

If you have any questions or wish to discuss any aspect of our comments, please contact me or ETA Senior Vice President of Government Affairs Scott Talbott at Stalbott@electran.org.

Respectfully,



Max Behlke

Director, State Government Relations
Electronic Transactions Association
202.677.7417 | mbehlke@electran.org



February 24, 2022

12:30 p.m.

Conference Room 308 and Videoconference

To: Committee on Finance

Rep. Sylvia Luke, Chair

Rep. Kyle T. Yamashita, Vice Chair

From: Grassroot Institute of Hawaii

Joe Kent, Executive Vice President

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](#), an 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, support [HB2287](#) and its companion [SB2697 SD1](#), which would 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."

Hawaii's Chapter 412 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.

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."

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 [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."

This language gives too much leeway for the commissioner to deny an application, since it's not clear by what metric the commissioner, and future commissioners, would rely on. The ratio should be stated 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-reserve requirement. In 2017, this double-reserve requirement prompted Coinbase, the world's leading cryptocurrency exchange, to leave Hawaii.⁸

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.

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

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, 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

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 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

Now that the issue has been studied via the Digital Currency Innovation Lab, it is the perfect time to enact an exemption, as provided in SB2697 SD1 and HB2287, which would exempt cryptocurrency from the state's Money Transmitters Act, as has been done in 20 other states.¹³

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.

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,

Scrap or amend the bill.

HB2108 HD1 as written could 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.

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.

New Hampshire, New Jersey, North Dakota, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia and Wisconsin. See "[Cryptocurrency laws by state](#)," Shipkevich Attorneys at Law, 2020.

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 would be for your committee to shift its support from HB2108 to [HB2287](#) and its companion in the Senate, [SB2697 SD1](#), both of which would 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,

Joe Kent
Executive Vice President
Grassroot Institute of Hawaii

RYAN KAWAILANI OZAWA

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@hawaii A row of small, dark social media icons including Instagram, Twitter, YouTube, LinkedIn, Facebook, and others.

Email: hawaii@hey.com

February 22, 2022

Aloha, Rep. Sylvia Luke, Chair; Rep. Kyle T. Yamashita, Vice Chair;
and members of the Committee on Finance:

I am writing to express my **support** of HB2108 Relating to Digital
Currency Licensing Program.

I am currently serving as a Community Engagement Consultant with the
state's Digital Currency Innovation Lab (DCIL), but this testimony
represents solely my personal 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 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 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 Kawaiiani Ozawa

Statement of Katie Jackson, Hawaii State Block chain Advocate

Before the **House Committee on Finance**

Thursday, February 24, 2022 12:30 PM State Capitol, House Conference Room 308, Videoconference

In consideration of HB2108 – HD1

RELATING TO SPECIAL PURPOSE DIGITAL CURRENCY LICENSURE

Chair Luke, Vice Chair Yamashita, and Members of the Committee on Finance,

I oppose HB2108 HD-1 in its current form and offer amendments. 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 if left unamended.

In its current form, 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 blockchain companies out of the State.

As a longtime Oahu resident and blockchain advocate I am concerned that 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 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

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, let the space breathe a year, ask the DFI to extend the Digital Currency Innovation Sandbox another year.

Hawaii should learn from the mistakes of other states. In 2015, New York passed a very similar licencing program which has proven disastrous. 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

- a. **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.

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

³ New York Post, December 15, 2021

- b. **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 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.) **Giving broad and expanded regulatory power to the DFI is UNWISE AND LIKELY TEMPORARY** given the quickly shifting federal regulations and expansion into areas other than money transmission
 - a. The White House and Federal agencies are even now determining new regulatory approaches to digital assets. A Presidential Executive Order is expected in the next month tasking regulators to come up with a unified federal crypto strategy.
 - b. 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 learning more about the environment we need to regulate. (Bloomberg News, 21 January 2022)

SOLUTION: Keep crypto exchanges in the State by exempting crypto from money transmitter laws, create a Task Force to study the upcoming Federal and state regulations, and ask the DFI to extend the Digital Currency Innovation Sandbox another year. The ecosystem needs to be allowed to evolve and breathe. Next year we can engage all stakeholders and come back with better regulation. It is much harder to oust a law once it has been put into effect.

Thank you for the opportunity to offer these comments.