



Written Statement of
Len Higashi
Acting Executive Director
Hawaii Technology Development Corporation
before the
SENATE COMMITTEE ON WAYS AND MEANS

Tuesday, April 5, 2022
10:15 a.m.
Conference Room 211 & Videoconference

In consideration of
HB2108, HD1, SD1
RELATING TO SPECIAL PURPOSE DIGITAL CURRENCY LICENSURE

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee

The Hawai'i Technology Development Corporation (HTDC) **supports** HB2108, HD1, SD1 that establishes a program for the licensure, regulation, and oversight of digital currency companies.

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

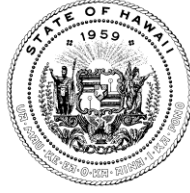
There are 15 digital currency companies in the program and data collected shows over **134,000** Hawai'i based customers currently participating with hundreds of millions of dollars transacted each quarter. HTDC has hosted 13 educational webinars on various topics, two roundtables with local financial 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.



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

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

335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

**Written Testimony Only
Testimony of the Department of Commerce and Consumer Affairs**

**Before the
Senate Committees on Ways and Means
Tuesday, April 5, 2022
10:15 a.m.
Via Videoconference**

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

Chair Dela Cruz 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 in support of 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 fund 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). Attached is Appendix A, which provides the language for the anti-money

laundering and cyber security provisions. Although H.B. 2108 S.D. 1 and S.B. 3025 H.D. 1 are similar, the Department notes the difference in Attachment 1 and recommends some language to clarify sections of the bill as the discussions continue.

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 SD1– Appendix A

Proposed language for the anti-money laundering and cyber security sections:

Section -8 Anti-money laundering program

Delete Section -8(b) – (h) 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), (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.

Attachment 1 - Preferences / Corrections

SB3025 HD1	HB2108 SD1	Comment (preferred language)
Section 1-preface	Section 1-preface	prefer HD1 language
Section 2		
Definitions		
Control	"Control" means ownership of, or the power to vote, twenty— five per cent or more of the outstanding voting securities of a licensee or controlling person. For purposes of determining the percentage of a licensee controlled by any person, there shall be aggregated with the controlling person's interest the interest of any other person controlled by the person, or by any spouse, parent, or child of the person.	new - needed
control person	"Control person" means an individual who directly or 7 indirectly exercises control over a licensee or applicant.	new - needed
	control of digital currency - "when used in reference to a transaction or relationship involving digital currency". . .	might be OK - not sure needed
digital currency-"any type of digital representation of value"	digital currency-"means any type of digital unit"	prefer HD1 language
p5 line 1, line 7 & line 15 "digital represntations of value"	"digital units that can be redeeded for goods"	prefer HD1 language; SD1 language is redundant
	Division ". . . of commerce & consumer affairs"	not needed since department is defined
exchange		formatting prefer HD1
NMLS	no caps when NMLS is spelled out	either is fine
Exclusions		
p9 lines 12-14: Securities Exchange Act of 1934 "(15 U.S.C. chapter 2B) or Commodity Exchange Act (7 U.S.C. chapter1)"	p8 lines 8-11: Securities Exchange Act of 1934, "title 15 United States Code sections 78a through 7800, or the Commodity Exchange Act, title 7 United States Code sections 1 through 27f";	different styles of citations
p11 lines 16-17 "not to"	p10, lines 11-12 "to not"	prefer HD1 language
	p10, lines 17-18 "any state [shall be exempt from the licensing and examination provisions of this chapter]."	not needed since it's in Exclusions section?
p12, lines 3-4 "(b) The commissioner may determine whether a person or class of persons shall be exempt from this chapter."	not designated separately (a)(b)	formatting prefer HD1
p15, line 8 should be §-4		formatting in HD on section numbers needs to be renumbered
p15, line 8 should be § -5		SB section numbering correction
p16, line 3 should be § -6		SB section numbering correction
p16, lines 8-14 "(1) The legal name, trade names, and business address of: (A) The applicant; and (B) Every control person, executive officer, director, general partner, and managing member, if the applicant is a partnership, association, limited liability company, limited liability partnership, or corporation;"	p15, lines 4-8 "The legal name, trade names, and business address of the applicant and, if the applicant is a partnership, association, limited liability company, limited liability partnership, or corporation, of every member, officer, principal, or director thereof;"	SB uses "control person", prefer HD1
p16, lines 15-16 (2) "The [applicant's] principal place of business located in 16 the United States;"	p15. lines 9-10 "The principal place of business located in the United States;	SB uses "applicant's" place of business... Either is fine
	p16, lines 14-15, "control persons"	first use of the term. not defined.
p18, line 2 should read "Federal Bureau of Investigation and or any governmental"	p16, line 17 same	should be the FBI or other gov't agency
p19, line 15 should be § -7		SB section numbering correction
p19 line 14 license pursuant this chapter "is granted."	p18, line10 - license pursuant to this chapter "shall be issued"	either is fine
p20, line 5 - "special purpose" digital currency	p18, line 21	SB use term "special purpose digital currency" (global use); prefer the term "digital currency" to more broadly refer to the activity as some states regulate digital currency activity in other statutes.
p22, line 1 - Foreclosures with the "preceding" three years	p20 line 17 - "last" three years	either is fine
p22 line 17, reference should be -10 (not -17)		
p24, line 7 hould be § -8		SB section numbering correction

<p>p24. line 13 - replace "assessment. The licensee shall conduct additional risk" with "assessment. The licensee shall <u>update the risk</u>"</p>	<p>note this is original AML language</p>	<p>due to the timing of the hearings, a recommendation was made to use the pillars of the law/regulation instead of the detailed items which may change when FinCEN updates the law/regulation.</p>
<p>p24, lines 13-16 "The licensee shall conduct additional [risk assessments] on an annual basis, or more frequently as risks change, and modify its anti-money laundering program as appropriate."</p>	<p>p23, lines 5-8 "The licensee shall conduct additional assessments on an annual basis, or more frequently as risks change, and shall modify its anti-money laundering program as appropriate to reflect the changes."</p>	<p>SB uses "risk assessments", and does not include "to reflect changes"</p>
<p>p24-25, line 17-20, and lines 1-15: "(b) Each licensee shall, at a minimum: (1) Establish an effective anti—money laundering compliance program in accordance with the federal 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 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 federal 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. (c) Each licensee shall have in place appropriate policies and procedures to block or reject specific or impermissible transactions that violate federal or state laws, rules, or regulations.</p>	<p>p22 line 20 to p29 line 11: replace with SB3025 HD1 language</p>	<p>due to the timing of the hearings, a recommendation was made to use the pillars of the law/regulation instead of the detailed items which may change when FinCEN updates the law/regulation.</p>
<p>p27 lines 6-13: "(1) Establish effective policies, procedures, and controls to effectuate subsection (a); (2) Designate a cybersecurity officer; (3) Develop and implement employee training in accordance with position responsibilities to keep abreast of the changing cybersecurity risk and threats; (4) Establish a method of independent testing; and (5) Maintain records.</p>		<p>due to the timing of the hearings, a recommendation was made to use the pillars of the law/regulation instead of the detailed items which may change when FinCEN updates the law/regulation.</p>
<p>p25 line 16 should be § -9</p>		
<p>p26 line 20 to p27 line 13: (b) Each licensee shall implement a written cybersecurity policy setting forth the licensee’s policies and procedures for the protection of its electronic systems and customer and counterparty data stored on those systems, which shall be reviewed and approved by the licensee’s board of directors or equivalent governing body at least annually. The cybersecurity policy shall: (1) Establish effective policies, procedures, and controls to effectuate subsection (a); (2) Designate a cybersecurity officer; (3) Develop and implement employee training in accordance with position responsibilities to keep abreast of the changing cybersecurity risk and threats; (4) Establish a method of independent testing; and (5) Maintain records.</p>	<p>p30 line 15 to p34 line 10: replace with SB3025 HD1 language</p>	<p>prefer HD1 language</p>
<p>p27 line 14 should be § -10</p>		

p28 lines 13-16: "(B) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, title 15 United States Code section 1681a(p)"	p35, lines 8-12: "(B) Applicable fee charged by the entities conducting an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, title 15 United States Code section 1681a(p)."	SD1 language "applicable fee charged by entities conducting credit report" is necessary b/c it is already under a section listing the fees to be paid (redundant language)
SB includes the renewal fee in (b) p28 line 17 to p30 line 2	HB renewal fee p36 line 14 to p37 line 20	fees are the same; prefer SD1 section designation (renewal)
p30 line 11-12 references "Hawaii Standard Time"	p38 lines 9-10 "Hawaii Aleutian Standard Time"	either is fine
p31 line 14 should be § -11		
p31, lines 14: "Renewal of license; annual report; quarterly reports."	p36 line 14: "Renewal of license; annual report."	SD1 does not have "quarterly reports" in section title. The subsections are in a different order, but have the same language.
p33 line 8: reference should be -6, -7, and -8 respectively		SB section numbers need renumbering
p33 line 15: reference should be -10		SB section numbers need renumbering
p33 line 21: reference should be -10		SB section numbers need renumbering
p34, line 6 should be § -12		
p34, line 6: "Principal place of business"	P41, line 3: Authorized places of business; principal office"	Different section titles, content is basically the same.
p34 line 13 should be § -13		SB section numbering correction
p37 line 12 should be § -14		SB section numbering correction
p39 line 4 should be § -15		SB section numbering correction
p39 line 12-13: should read: "provided by the licensee and kept by the person made in a clear and conspicuous manner in a record the person may retain. A licensee may propose for the"		Clarify language; style
p40 lines 3-13:	p46 line 19 to p47 line 7:	SB clearer style for consumers to understand
p41 line 20 should be § -16		SB section numbering correction
p 41, line 20: "Tangible net worth requirement; records"	p48. line 14: "Records, net worth requirement"	the correct term is "Tangible net worth"
p42, lines 7-10: (b) . . . "licensee shall maintain records required by subsection (c) in a form that enables the commissioner to determine whether the licensee is in compliance with this chapter, any court order, and the laws of the State."	p50, lines 20-21, and p51, lin1-2: (d) A licensee shall maintain records required by subsection (c) in a form that enables the commissioner to determine whether the licensee is in compliance with this chapter, any court order, and law of this State.	either is fine HB may be clearer since it is separately designated as a subsection.
p43 lines 1-2 and 20-21: remove reference to "United States Postal Service"	p49 lines 11-12 and p50 line 11-12: remove reference to "United States Postal Service"	address may not be in the United States
p44 line 7 should be § -17		
p44 line 17: change seven to five	p51 line 12: change seven to five	change recommended to keep record retention requirements at five years
p45 line 10 should be § -18		SB section numbering correction
p47 line 10 should be § -19		SB section numbering correction
p49 line 3: reference should be -20		SB section numbering correction
p49 lines 10-11: should read "any state or federal law concerning a special purpose digital currency license or money transmitter license"		other states may have a digital currency license with a different name
p49 line 13: reference should be -3		SB section numbering correction
p50 line 2: missing "Revoke the license"		
p50 line 4: reference should be -23		SB section numbering correction
p50 line 6: reference should be -24		SB section numbering correction
p50 line 11: reference should be -26		SB section numbering correction
p51 line 1: add "or by electronic mail" after "certified mail"	p57 line 20: add "or by electronic mail" after "certified mail"	Companies may not have a US postal service address
p52 line 7 should be § -20		
p52 after line 6: (i) Any violation of this chapter that is directed toward, targets, or injures an elder may be subject to an additional civil penalty not to exceed \$10,000 for each violation in addition to any other fines or penalties assessed for the violation.		Add elder crime provision
p53, lines 2: "may be required about transactions"	p60, lines 6: "may be required about digital currency transactions"	SD1 uses "digital currency"
p56 line 7 should be § -21		
p56, line 15: "or create a transaction on behalf"	p63, lines 18-19: "or create a digital currency transaction"	different formatting. HB uses "digital currency"
p58 line 20 should be § -22		
p60 line 13: reference should be -13		SB section numbering correction

p60 line 18-19: should read as follows: "licensee has met all the requirements of voluntary surrender and has returned the original license issued."	p68 line 6-7: should read as follows: licensee has met all the requirements of voluntary surrender and has returned the original license issued.	no paper license is issued
	p64 line 14: replace "assets" with "currency"	term not defined and too broad.
	p68 line 11: should read as follows: "make any investigation or examination authorized by this chapter; or"	licensee must permit investigations and examinations
p61 line 1 should be § -23		
p62 line 10 should be § -24		
p62 lines 19-21: format	p70 lines 4-8: (2) Cause insolvency or significant dissipation of assets of the licensee, the commissioner may issue an order requiring the licensee to cease and desist from the violation. The order becomes effective upon service of the order upon the licensee.	Prefer HD1 language to allow the commissioner to issue orders for both immediate and irreparable harm or insolvency. Highlighted language should allow for both type of orders not just for insolvency.
p63 lines 8-9: references should be -29 and -30 respectively		SB section numbering correction
p63 line 11: should read as follows: "proceeding pursuant to chapter 91 within twenty days after issuing an order to cease"		add the reference to ch 91
	p74, after line 17: (b) Any violation of this chapter that is directed toward, targets, or injures an elder may be subject to an additional civil penalty of no more than \$10,000 for each violation in addition to any other fines or penalties assessed for the violation.	Add elder crime provision
p63 line 15 should be § -25		SB section numbering correction
p64 line 3 should be § -26		SB section numbering correction
p64 line 14 should be § -27		SB section numbering correction
p65 line 7 should be § -28		SB section numbering correction
p65 lines 9, 12, 14: references should be -4		SB section numbering correction
p66 line 3: reference should be -29		SB section numbering correction
p66 lines 5, 9: references should be -4, -29 respectively		SB section numbering correction
p66 line 13 should be § -29		SB section numbering correction
p66, line 13: "(51)Administrative Proceedings"	p73, line 13: "(29) Adminstrative procedures"	Differenct section title, either is fine
p66 line 16 should be § -30		SB section numbering correction
p66 line 17: references should be -11 and -23 respectively		SB section numbering correction
p67 line 1 should be § -31		SB section numbering correction
	p74, lines 3-4: should read as follows ..."regulation, supervision, and licensing of money transmitters special purpose digital currency companies."	SD1 references money transmitters instead of special purpose digital currency companies.
p81, lines 1-8: SECTION 5. (a) "(a) The companies participating in the digital currency innovation lab operated by the department of commerce and consumer affairs and Hawaii technology development corporation shall be allowed to continue operations until their applications are acted upon by the division of financial institutions of the department of commerce and consumer affairs so long as the participating companies submit a completed application to the division by March 1, 2023."	p88, lines 20-21 & p89, lines 1-4 of section 8. (2) " The participating companies in the digital currency innovation lab shall be allowed to continue operations until their applications are acted upon by the division of financial institutions if the complete application is submitted to the division of financial institutions by March 1, 2023; and"	either is fine to allow the companies to operate in the DCIL if they apply for a license by March 1, 2023.
p82, lines 16-19 "Section 9. This Act shall take effect on July 31, 2050; provided that the special purpose digital currency licensing requirements established by section 2 of this Act shall take effect on January 1, 2023."	p88. lines 15-19 "SECTION 8. This Act shall take effect on July 1, 2022; provided that: (l) The special purpose digital currency licensing requirements established by section 2 of this Act shall take effect on January 1, 2023;"	SD1 has correct effective dates.

Statement of
Liam Grist
President
CLOUD NALU, LLC
before the
COMMITTEE ON WAYS AND MEANS

Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Tuesday, April 5th, 2022
10:15AM
State Capitol, Conference Room 211 & Videoconference

In consideration of
HB 2108, HD1, SD1 RELATING TO DIGITAL CURRENCY LICENSING PROGRAM

Cloud Nalu **supports** HB2108-SD1 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 HB2108 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. It is also appropriate for Hawaii to not wait until the Biden administration offers more regulatory measures for the industry and digital assets. By considering some of the more national standards, while also developing our own state regulatory scheme, we are positioning our residents to be both able to participate and protected. With the most recent edits to the bill HB2108 SD1 protects both users who want to use digital assets through a traditional cryptocurrency exchange and users who prefer to be the custodians of 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 green light 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 utilizing Bitcoin mining to be used for renewable, reliable 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 modified version HB2108 SD1 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 modifications to HB2108 SD1 sufficiently exclude such use from requiring licensure.

Finally, the bill attempts to address Anti-Money-Laundering concerns, and the modifications to HB2108 SD1 address these concerns from the industry appropriately.

In summary, we support HB2108 SD1 and ask members of the legislature to consider adopting this bill, as it is ready. 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>



April 5, 2022

10:15 a.m.

Conference Room 211 and Videoconference

To: Senate Committee on Ways and Means

Sen. Donovan M. Dela Cruz, Chair

Sen Gilbert S.C. Keith-Agaran, Vice Chair

From: Grassroot Institute of Hawaii

Ted Kefalas, Director of Strategic Campaigns

RE: HB2108 HD1 SD1 — RELATING TO DIGITAL CURRENCY LICENSING PROGRAM

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on [HB2108 HD1 SD1](#), a 90-page tome that would establish a program for the licensure, regulation and oversight of digital currency companies.

The main problem with HB2108 is the vast and nearly unlimited powers over the cryptocurrency market granted to the commissioner of the Division of Financial Institutions. Nearly every regulation in the bill has a caveat that allows the commissioner to rewrite the law according to his or her will, which could centralize too much power in the hands of the commissioner and burden cryptocurrency companies with a high level of regulatory uncertainty.

HB2108 also has unclear language and includes too many hurdles that could cement Hawaii as one of the worst states in the nation for cryptocurrency and cut off residents from this emerging market.

We urge lawmakers to delete the areas of the bill that give the commissioner too much regulatory discretion.

We also urge lawmakers to erase the most burdensome regulatory aspects of this bill, or, better yet, simply exempt cryptocurrency 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 SD1 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, current 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 takes a banking-centric approach to cryptocurrency legislation, but many companies that use cryptocurrency are different from banks.

On page 10, the bill says it will not apply to, “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.”

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.

>> Exemptions should be broader.

Page 10 exempts from the licensing requirement any “non—custodial digital currency business activity by a person using a digital currency acknowledged as legal tender by the United States, or government recognized by the United States, or that has been determined to not be a security by a United States regulatory agency.”

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.

This exemption is presumably meant to allow customers and businesses to use certain cryptocurrencies as a medium of exchange for goods and services, which is a good thing. However, the exemption applies to only digital currency “that has been determined to not be a security by a United States regulatory agency.”

The U.S. Securities and Exchange Commission has given unclear guidance about whether or not certain cryptocurrencies are securities. For example, the director of its Division of Corporate Finance said in 2018 that bitcoin and ether would not be treated as securities.³ But recently, Gary Gensler, chairman of the SEC, wouldn’t say whether or not ether was a security, and has been hesitant to weigh in specifically on which other cryptocurrencies might not be securities.⁴

This unclear guidance would presumably be left to the state Division of Financial Institutions, and perhaps the courts, to interpret.

Additionally, Russia’s government has recently indicated its intent to recognize cryptocurrency as a form of currency, though it’s unclear which cryptocurrencies would be recognized.⁵ The exemption as stated in HB2108 would seem to require interpretations of international law.

Additionally, the term “non-custodial digital currency business activity” would presumably include in the exemption many cryptocurrency exchanges that are non-custodial, such as SimpleSwap and ChangeNOW.⁶

It is certainly a welcome policy to allow non-custodial exchanges to operate in Hawaii without the need for a license, but it is odd that custodial exchanges such as Coinbase and Gemini would need a license, and more reason to simply exempt cryptocurrency from the state money-transmitter law altogether..

At the very least, lawmakers should broaden the exemption so any cryptocurrency could be used as a medium of exchange, such as by exempting “businesses and customers that use cryptocurrency as a medium of exchange for goods and services.”

>> Its tangible net worth requirement is not clear.

³ William Hinman, “[Digital Asset Transactions: When Howey Met Gary \(Plastic\)](#),” U.S. Securities and Exchange Commission, June 14, 2018. See also, “[SEC Declares Bitcoin and Ether as Non-Securities](#),” Cassels, June 26, 2018.

⁴ Chris Matthews, “[SEC’s Gensler won’t say whether ether is a security. amid crypto market slide](#),” MarketWatch, Jan. 11, 2022.

⁵ Sebastian Sinclair, “[Russia Moves to Recognize Crypto as a Form of Currency](#),” Blockworks, Feb. 9, 2022.

⁶ “[Best Non-Custodial Crypto Exchanges to Use in 2022](#),” Bitcoinist, December 2021.

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 is not clear by what metric the commissioner, or future commissioners, would rely on. The ratio in HB2108 should be stated more explicitly, and perhaps give guidance on what might be “necessary,” if the requirement were not \$500,000.

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

>> It requires undue surveillance and lacks surveillance security.

In Section 8 of HB2108 HD1 SD1, starting on page 22, 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.⁷

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.⁸ 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 SD1 should duplicate the money-transmitter requirement that cryptocurrency companies file to the federal government reports required by the federal government.

>> Hawaii lawmakers once favored a simple exemption.

⁷ [HRS489D](#) “Money Transmitters Act,” p. 12.

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

In 2017, Hawaii lawmakers approved at the full Senate and full House an exemption for cryptocurrency from the state's Money Transmitters Act,⁹ 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":¹⁰

"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."

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.¹¹

Conclusion

HB2108 HD1 SD1 would cement into place some of the most burdensome cryptocurrency regulations in the nation, in addition to causing confusion and overly broad powers to the commissioner.

If the members of the two committees 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 the nearly unlimited power of the commissioner to rewrite the law, dubious surveillance requirements and high fees — be deleted. This bill also needs to be written more plainly to prevent needless confusion.

For the record, we believe a much better option would be for the Legislature to support an approach that would simply exempt cryptocurrency from Hawaii's money-transmitter law and truly open the door to cryptocurrency exchange companies in Hawaii.

⁹ [SB949](#) of 2017.

¹⁰ 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.

¹¹ 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.

Thank you for the opportunity to submit our comments.

Sincerely,

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii

Statement of
Katie Jackson
Hawaii State Blockchain Advocate
before the
Senate Ways and Means Committee

Monday, April 5, 2022
10:15 AM
State Capitol, Conference Room 211 & Videoconference

In consideration of
HB2108 HD1 SD1
RELATING TO SPECIAL PURPOSE DIGITAL CURRENCY LICENSURE

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Ways and Means Committee.

I oppose HB2108 HD1 SD1 with comments. Why? Because this regulatory framework and licensing bill would do exactly the opposite of its stated purpose to protect consumers - it would actually harm consumers.

Instead of protecting consumers, this bill would expose locals to legal risks and criminal liability, mandate consumer financial surveillance, infringe on privacy rights, and create a hostile business environment with the highest licensing fees in the nation and adoption of portions of a New York program that ended up driving companies out of state.

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

1.) Known nationally as the “Frankenstein Bill,” HB2108 HD1 SD1 and an identical version in the Senate (SB3025) 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
<https://twitter.com/valkenburgh/status/1488577595729928202>

- 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 and levies the highest licensing fees in the nation on blockchain companies.
- HB2108 HD1 SD1 also 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 officials.³

2.) 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 and includes several redundant actions. Better to adopt a program more like Texas or the ULC.

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 cryptocurrencies 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

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

3.) The emerging decentralized digital asset ecosystem **DESERVES A FRESH AND CAREFUL APPROACH TO REGULATION.**

- **Applying old centralized Banking regulations and licensing schemes 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.
- **President Biden passed an Executive Order on 9 March asking federal regulators to come up with a consistent approach to crypto regulation.** Better to wait, form a Task Force and create laws in Hawaii that fit the state and still abide with the new Federal direction.
- **Crypto and Blockchain Digital Assets are decentralized and borderless - they quickly move from hostile jurisdictions to those that are open/fair and have legal clarity like Wyoming.** Hawaii cannot afford to pour poison on the soil of this new industry with harsh, overbearing licensing schemes. Companies will simply pull out and find a friendlier state to do business in.

4.) Outside Organizations have **CONCERNS ABOUT THIS BILL**

- **Coin Center** - a well regarded non-profit whose mission is to assist policy makers understand and regulate crypto - and the **Electronic Transaction Association** - have the below concerns.
- **SOLUTION: Keep crypto exchanges in the State by creating a Task Force to study the upcoming Federal and state regulations, and let the ecosystem evolve and breathe. Extend the Digital Currency Innovation Sandbox by 2 years so all stakeholders can come back with better regulation.** It is much harder to oust a law once it has been put into effect.



Comments to the Thirty-First Legislature (2022) of the State of Hawaii on S.B. No. 3076 relating to special purpose digital currency licensure and S.B. 3025 relating to digital currency licensing program

February 10, 2022

To whom it may concern:

Coin Center is an independent nonprofit research and advocacy center focused on the public policy issues facing cryptocurrency technologies such as Bitcoin. Our mission is to build a better understanding of these technologies and to promote a regulatory climate that preserves the freedom to innovate using open blockchain technologies. We do this by producing and publishing policy research from respected academics and experts, educating policymakers and the media about blockchain technology, and by engaging in advocacy for sound public policy.

We welcome the opportunity to provide feedback on S.B. 3076 and S.B. 3025, two bills attempting to reform cryptocurrency money transmission regulations.

As drafted, both of these bills would create a dangerously overbroad licensing requirement that could impose criminal liability on an untold number of Hawaiians who are not engaged in any activity raising consumer protection concerns. Crafting a licensing requirement for persons controlling customer virtual currency is a reasonable regulatory approach. Several other states and the Uniform Law Commission have taken this approach. However, requiring licenses from non-custodial entities or individuals acting on their own behalf, as these bills would do and as no other state has done, severely damages the rights of citizens

and stifles innovation unnecessarily. For these and other reasons described below, these bills must not pass as currently drafted.

The need for reform

Hawaii is in dire need of reform for virtual currency activities. To illustrate: Coinbase, one of the largest and most popular cryptocurrency exchanges in the US, is currently

unavailable to residents of Hawaii because of the state of money transmission regulation.¹

In particular, the rules established by Hawaii's Division of Financial Institutions (DFI) requires that cryptocurrency businesses maintain liquid asset reserves equal to the aggregate value of the digital currency held on behalf of customers in addition to the digital currency they hold for their customers (effectively a 200 percent reserve requirement).² It is easy to see how this could be prohibitive for businesses to operate in Hawaii; and indeed, few exchanges operate in Hawaii for this reason.

The state has taken positive steps to remedy this problem. Hawaii was among the first states to consider adopting a version of the Uniform Law Commission's well-considered cryptocurrency licensing framework, the Uniform Regulation of Virtual-Currency Businesses Act.³ In 2018, the legislature of the state of Hawaii considered SB 2129 and SB 3082, which would have adopted the URVCBA word-for-word into law. Coin Center applauded Hawaii's leadership at the time and continues to strongly recommend the URVCBA as the ideal state regulatory framework for cryptocurrency licensing.⁴

Although Hawaii did not pass the URVCBA in 2018, it did open a regulatory sandbox for digital currency companies in 2019 called the Digital Currency Innovation Lab (DCIL).⁵ Since 2020, a dozen cryptocurrency exchanges have been allowed to operate in the state without procuring an expensive money transmission license with a dual reserve requirement. The results have been promising, and the DCIL and legislature is hoping to incorporate their learnings into law. As the DCIL

program winds down in 2022, it is imperative that policymakers get this right in time, lest the state be left without many options for cryptocurrency exchange yet again.

Problems with SB 3076 and SB 3025

¹ “Coinbase accounts – Hawaii,” Coinbase.com, accessed February 8, 2021, <https://help.coinbase.com/en/coinbase/managing-my-account/other/coinbase-accounts-hawaii>.

² Neeraj Agrawal, “Hawaii’s issue with Bitcoin businesses has an obvious and easy solution,” *Coin Center*, March 1, 2017, <https://www.coincenter.org/hawaiis-issue-with-bitcoin-businesses-has-an-obvious-and-easy-solution/>.

³ “Virtual-Currency Businesses Act, Regulation of,” Uniform Law Commission, 2017, <https://www.uniformlaws.org/committees/community-home?CommunityKey=e104aaa8-c10f-45a7-a34a-0423c2106778>.

⁴ Peter Van Valkenburgh, “The ULC’s model act for digital currency businesses has passed. Here’s why it’s good for Bitcoin.” *Coin Center*, July 19, 2017, <https://www.coincenter.org/the-ulcs-model-act-for-digital-currency-businesses-has-passed-heres-why-its-good-for-bitcoin/>.

⁵ “Digital Currency Innovation Lab,” HTDC, accessed February 8, 2022, <https://www.htdc.org/programs/#dcil-section>.

After a two-year pilot, the DCIL has concluded that “digital currency transactions are not best regulated through existing money transmitter laws and that a new regulatory framework is appropriate.”⁶

Unfortunately, the alternative regulatory framework provided by SB 3076 and SB 3025 would merely create new problems. Each takes a similar approach to the state of New York’s infamous “BitLicense,” which spurred an exodus of cryptocurrency activity from the state.⁷

The main problem with SB 3076 and SB 3025 is that they attempt to micromanage what activities are and are not regulated and needing a license through lists of covered and exempted actions. But the descriptions here are vague and lend themselves to regulatory uncertainty. For example, “buying and selling digital currency as a business” is considered a licensable activity. So is “performing exchange services as a business.” But it is not clear that there is a consumer

protection element in each instance of either option. Therefore, it is not clear that there is a policy interest for such activities to be licensed.

There are similar problems in the list of exempted activities. While it is good that lawmakers want to explicitly state when activities are not licensable, and it is commendable that the legislature wisely exempts cryptocurrency mining and node maintenance from regulation, this list is similarly vague and nonsensical. For instance, “a person using digital currency including investing, buying or selling, or obtaining digital currency as payment for the purchase or sale of goods and services, *solely for academic purposes*,” (emphasis added) is exempt. Why should it only be limited to academic purposes? Should a person using digital currency for their own use outside of the academy be forced to procure a license? The problems with this piecemeal approach of exemptions and requirements are obvious.

Like the BitLicense, this approach would create more confusion about who does and does not need to obtain a license. Regulators would be tasked to issue piecemeal opinions and guidance about who qualifies. Innovation and cryptocurrency activity would stall as these vagaries are worked out.

Why the URVCBA is superior

Hawaii would do much better to simply adopt the original URVCBA that the state considered years ago. Indeed, much of SB 3076 already borrows language from the URVCBA, notably in the definition of “control of digital currency,” which is “the power

⁶ S.B. No. 3076, “A Bill for an Act relating to special purpose digital currency licensure,” Hawaii Senate, Thirty-first legislature, 2022, https://www.capitol.hawaii.gov/session2022/bills/SB3076_.htm.

⁷ Michael del Castillo, “The 'Great Bitcoin Exodus' has totally changed New York’s bitcoin ecosystem,”

New York Business Journal, August 12, 2015, <https://www.bizjournals.com/newyork/news/2015/08/12/the-great-bitcoin-exodus-has-totally-changed-new.html>.

to execute unilaterally or prevent indefinitely a digital currency transaction.” The URVCBA is so powerful and appropriate precisely because the need to obtain a license is triggered when an action meets this clear and simple definition.

Rather than trying to lay out a list of all the activities that require a license and those that don’t, the URVCBA uses a clear definition of control that can be easily applied to the myriad of cryptocurrency activities—indeed, even ones that have not been developed yet.

The URVCBA only regulates business activities, not personal use of technology or the technology itself. The activities that require a license are narrowly limited to the 1) exchange, 2) storage, or 3) control of the digital currency. These are all precisely defined [emphases added]:

(5) “Exchange” means to *assume control* of virtual currency from or on behalf of a resident, at least momentarily, to sell, trade, or convert:

(A) virtual currency for legal tender, bank credit or one or more forms of virtual currency; or

(B) legal tender or bank credit for one or more forms of virtual currency.

(20) “Store” or “storage” means *maintaining control* of virtual currency on behalf of a resident by a person other than the resident.

(21) “Transfer” means to *assume control* of virtual currency from or on behalf of a resident and to:

(A) credit the virtual currency to the account of another person;

(B) move the virtual currency from one account of a resident to another account of the same resident; or

(C) relinquish control of virtual currency to another person.

Note the use of the term “control” to trigger the regulated activity in each case. This ensures that noncustodial entities and activities such as

miners, nodes, developers, key recovery service providers, Lightning network channel nodes, and signers in a sidechain federated peg need not fear that they will run afoul of the law if they do not procure a license.

Furthermore, the URVCBA explicitly exempts “a person using virtual currency solely *a) on its own behalf b) for personal, family, or household purposes*, or *c) for academic purposes*.” [emphases added]. There is no reason why *any* personal usage, academic or no, should require a license. To fail to exempt these other forms of personal usage would merely criminalize large swaths of benign private behavior while achieving no improvement in consumer protection for, by definition, a person acting on her own behalf does not have customers whose interests she could fail to protect.

We strongly encourage the legislature of the state of Hawaii to discard the problematic language in SB 3076 and SB 3025, and instead reintroduce and pass SB 2129 and SB 3082 from the 2018 session, which adopts the URVCBA as well as special language to remove the dual reserve penalty from existing Hawaii law. At the bare minimum, should the legislature proceed in crafting a bespoke licensing bill, the definition of virtual currency business activity and the associated exemptions should precisely match the carefully developed language in the URVCBA.

We appreciate this opportunity to comment on this important piece of legislation, and would be happy to answer any questions.

Sincerely,

Andrea O’Sullivan Coin Center Fellow

Peter Van Valkenburgh
Coin Center Director of Research



1620 L Street NW, Suite 1020
Washington, DC 20036

202.828.2635
electran.org

February 18, 2022

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

The Honorable Gilbert Keith-Agaran Senator, Hawaii State Senate
415 South Beretania St.
Honolulu, HI 96813

Re: S.B. 3025 / H.B. 2384 - Digital Currency Licensing

Dear Speaker Saiki and Senator Agaran,

On behalf of the Electronic Transactions Association (“ETA”), thank you for the opportunity to share our perspective on Senate Bill 3025 and House Bill 2384, 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 Crypto¹*, 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 S.B. 3025 / H.B. 2384 that we believe should be addressed in order to 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.

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

- **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.
- **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



HB-2108-SD-1

Submitted on: 4/3/2022 3:01:14 PM

Testimony for WAM on 4/5/2022 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Sam Gridley	Individual	Support	Written Testimony Only

Comments:

Please pass this Bill to enable residents of Hawai'i to continue using cryptocurrency.

sincerely,

Samuel Gridley

HB-2108-SD-1

Submitted on: 4/3/2022 5:53:28 PM

Testimony for WAM on 4/5/2022 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Kerry Gridley	Individual	Support	Written Testimony Only

Comments:

Dear Representatives,

I would like to express my support for this bill in favor of continuing to allow cryptocurrency exchanges to operate in Hawaii. If this does not pass, Hawaii will be the only state in America that prohibits cryptocurrency exchanges. Cryptocurrencies are a common sense Investment as shown by the fact that JP Morgan, Citibank and most other large investment firms getting involved in this new opportunity.

Please vote in favor of this bill to allow Hawaii citizens to continue to participate in these new markets.

Mahalo,

Kerry Gridley

HB-2108-SD-1

Submitted on: 4/3/2022 9:30:04 PM

Testimony for WAM on 4/5/2022 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Nick Fisher	Individual	Support	Written Testimony Only

Comments:

I support the bill for a regulating body... but I also think crypto currencies should be less regulated and handled like a free market. Hawaii thus far has been very unfriendly and unrealistic in regards to crypto currencies.

Crypto currencies are compared to the internet... a free trade of information... or a free trade of value/money.... Crypto currencies have been very limited for Hawaii residents because of Hawaii's unfriendly and unrealistic legislation.

Hawaii is always the last when it comes to technology... Always unfriendly and always unwilling to take risk. Let's not be the last when it comes to crypto currencies.

HB-2108-SD-1

Submitted on: 4/3/2022 10:59:10 PM

Testimony for WAM on 4/5/2022 10:15:00 AM

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

Comments:

Support

LATE

HB-2108-SD-1

Submitted on: 4/4/2022 2:31:29 PM
Testimony for WAM on 4/5/2022 10:15:00 AM

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

Comments:

Please keep this new technology going in Hawaii, it's a great source of tax revenue, plus it's a great investment into the future. Cutting off the sandbox, would be setting Hawaii back in time, we are already the most crypto unfriendly state.