



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

Friday, February 18, 2022
10:10 a.m.
Videoconference

In consideration of
SB3025, SD1
RELATING TO DIGITAL CURRENCY LICENSING PROGRAM.

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

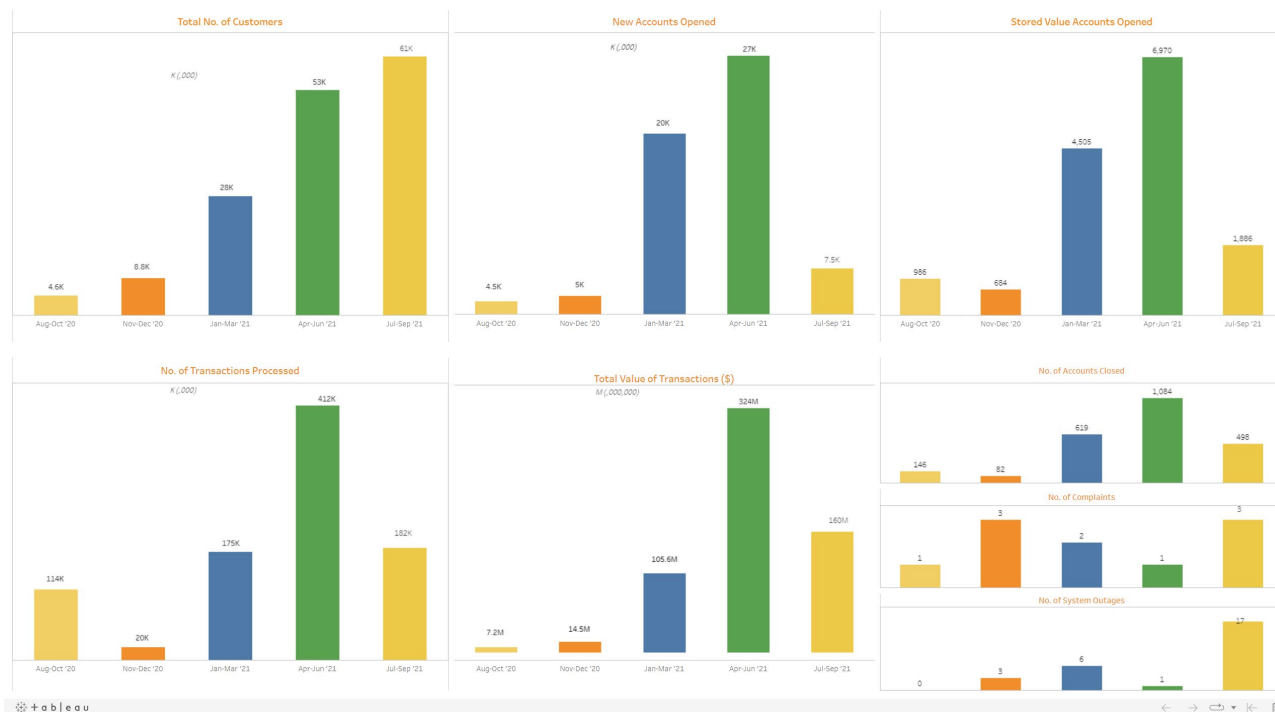
The Hawai'i Technology Development Corporation (HTDC) **supports** SB3025, SD1 that establishes a program for the licensure, regulation, and oversight of digital currency companies.

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 Hawai'i 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

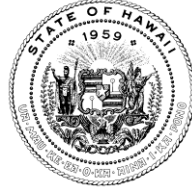
There are 15 digital currency companies in the program and data collected shows over 61,000 Hawai'i based customers currently participating with hundreds of millions of dollars transacted each quarter. HTDC has hosted 13 educational webinars on various topics, two roundtables with local financial institutions 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 Hawai'i 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 Hawai'i'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.

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**

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

**Before the
Senate Committee on Ways and Means
Friday, February 18, 2022
10:10 a.m.
Via Videoconference**

**On the following measure:
S.B. 3025, 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 on this bill.

The purpose of this bill is to establish a program for the licensure, regulation, and oversight of digital currency companies. The Senate Draft 1 adopts most of the language of Senate Bill 3076, with certain amendments.

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 transact in digital currency). As such, the Department respectfully urges this committee to pass this measure to allow DFI additional time to address stakeholder issues.

Regarding the fee structure set forth on pages 37 to 38 of the bill, the Department notes that unlike general funded programs in this state and in other states,

the Department's fee structure is premised on ensuring that the costs of the program are borne by its licensee or registrant population. The Department receives no general funds. The complexity of the regulation and the projected number of licensees help determine the amount of the fee. 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.

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 bill.

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 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 S.B. 3025 / H.B. 2384 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.

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



February 18, 2022

10:10 a.m.

Conference Room 211 and Videoconference

To: Committee on Ways and Means

Senator Donovan Dela Cruz, Chair

Senator Gilbert Keith-Agaran, Vice Chair

From: Grassroot Institute of Hawaii

Joe Kent, Executive Vice President

RE: SB3025 — 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 [SB3025](#), a 90-page tome that would establish a program for the licensure, regulation and oversight of digital currency companies.

The main problem with SB3025 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, and that could centralize too much power and burden cryptocurrency companies with a high level of regulatory uncertainty.

SB3025 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, support [SB2697](#) and its companion [HB2287](#), which would 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 SB3025 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, SB3025 takes a banking-centric approach to cryptocurrency legislation, but many companies that use cryptocurrency are different from banks.

On page 11, SB3025 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.

>> Exemptions should be broader.

Page 10 exempts from the licensing requirement "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

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."

security by a United States regulatory agency; or a financial institution chartered or licensed by chapter 412.”

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.⁴ 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.⁵

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.⁶ The exemption as stated in SB3025 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.⁷

It’s certainly a welcome policy to allow non-custodial exchanges to operate in Hawaii without the need for a license, but it’s odd that custodial exchanges like Coinbase and Gemini would need a license, and more reason to simply exempt cryptocurrency from the state money transmitter law altogether, such as in SB2697 and HB2287.

⁴ 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.

⁵ Chris Matthews, “[SEC’s Gensler won’t say whether ether is a security. amid crypto market slide](#),” MarketWatch, Jan. 11, 2022.

⁶ Sebastian Sinclair, “[Russia Moves to Recognize Crypto as a Form of Currency](#),” Blockworks, Feb. 9, 2022.

⁷ “[Best Non-Custodial Crypto Exchanges to Use in 2022](#),” Bitcoinist, December 2021.

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.

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

This language gives too much leeway for the commissioner to deny an application, since it’s not clear by what metric the commissioner, and future commissioners, would rely on. The ratio in SB3025 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 SB3025, 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.⁸

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.⁹ 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.

⁸ [HRS489D](#) “Money Transmitters Act,” p. 12.

⁹ 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.

If anything, SB3025 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.

In 2017, Hawaii lawmakers approved at the full Senate and full House an exemption for cryptocurrency from the state's Money Transmitters Act,¹⁰ 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":¹¹

"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's the perfect time to enact an exemption, as provided in SB2697 and HB2287 which would exempt cryptocurrency from the state's Money Transmitters Act, as has been done in 20 other states.¹²

Conclusion

SB3025 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.

¹⁰ [SB949](#) of 2017.

¹¹ 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.

¹² 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.

For the record, we believe a much better option would be for your committees to shift their support from SB3025 to [SB2697](#) and its companion in the House, [HB2287](#), 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



LATE

TESTIMONY

LIBERTARIAN PARTY OF HAWAII
% 92-149 Kohi Place
Kapolei, HI 96707

RE: **SB3025** to be heard on Friday February 18

Please oppose this bill.

Take into consideration why people get involved in digital currency. For some folks it's a game to play on the stock market, for others it is taking that next step to a more technological paradigm, and for most it is because they have lost faith in the value of the dollar. That last reason is why you should oppose this bill. This bill is 89 pages long. Crypto is not that interesting to be 89 pages long, but it is with all the red tape this bill is covered in. Why are you even considering bills that are 89 pages long? Do you think the average person can understand a law that is 89 pages long? This bill attempts to usurp everything that is enticing about crypto by adding all the things that have made businesses and the dollar weak. Think of crypto like this, it's our ball, you have already had your turn to play with it, and now we want to play without you. Hawaii is taxed at every exchange, taxed on taxed, hidden taxes in the form of inspections, licenses and permits, these taxes raise the cost of living and become a burden to the people. Crypto currencies offer a new opportunity for new people to thrive apart from this oppressive system. Hawaii is choked out of any dream of making it out of whatever socioeconomic position they were born into by the language and interminable rules like the ones that exist in this bill. I ask again that you oppose this bill, and I thank you for your consideration.

Sincerely,

Feena Bonoan
Vice Chair
February 17, 2022

LATE



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

LATE



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

February 18, 2022

10:10 a.m.

Conference Room 211 and Videoconference

To: Committee on Ways and Means

Senator Donovan Dela Cruz, Chair

Senator Gilbert Keith-Agaran, Vice Chair

From: Grassroot Institute of Hawaii

Ted Kefalas, Director of Strategic Campaigns

RE: SB3025 — RELATING TO DIGITAL CURRENCY LICENSING PROGRAM

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer additional comments on [SB3025](#), a 90-page tome that would establish a program for the licensure, regulation and oversight of digital currency companies.

Here are some proposed amendments that would make the bill better.

1) On page 10, starting on line 19, strike "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 State regulatory agency"

2) 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 recordkeeping 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.

3) Reduce by half the fees starting on page 36, section 11.

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

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

Also add the following statement.

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

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

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

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

8) On page 46, delete the phrase starting on line 2: "and any additional disclosure the commissioner determines reasonably necessary for the protection of persons."

9) On page 51, line 12, change "seven" to "three."

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

Thank you for the opportunity to submit our proposed amendments to this bill.

Sincerely,

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii

LATE

**State of Hawaii
Senate Committee Hearing on SB3025, a bill to regulate digital currency**

Testimony Concerning SB3025, 2022 from the representative of the Libertarian Party of Hawai'i County and Member at Large of the State Executive Committee Representing Members Across the Islands

Before Hawaii Senate Committee(s)CPN/EET, WAM
Submitted Thursday, Feb. 17, 2022 for public hearing

Austin "Shiloh" Martin, Sui Juris
Jurist, Author, Consultant, Musician
Libertarian Party Hawai'i County Chair
Libertarian Party State Executive Committee Member at Large
16-566 Keaau Pahoa Rd., #188-736, Keaau, HI, 96749

Testimony Concerning SB3025 from Austin "Shiloh" Martin to the Senate Committee(s)

I am humbled and honored to address this body; I thank the committee members sincerely for their time and consideration. On behalf of the people who have trusted me to speak and represent their voices to this body, I want to sincerely thank you for the service you do for all of us from the bottom of our hearts. The times are hard, and hard times make hard problems for leaders. We are grateful for your standing in the gap and defending our way of life and our rights during these trying and perilous times. Big Island's people feel very strongly about this issue, and in general are very frustrated with politics. It is on their behalf that I am giving this testimony today, and it is for them that I will attempt to unpack some of the issues with SB3025.

While I want to be specific in my treatment of SB3025, as a Jurist, I find that the problems with this bill are so large, manifold, and layered, that citation is almost meaningless. The bill makes incredible and incorrect fundamental presumptions about

the "Cryptocurrency" and "digital currency" ecosystems that, from the outset, get things all wrong. SB3025 fails fundamentally to understand the thing it attempts to regulate, which means many of the specific passages of the bill are non-sequiturs: they have nothing to do whatsoever with the thing they are regulating, but define and mandate the regulation be applied nonetheless. This makes deconstruction difficult because in any given passage, fundamental incorrect assumptions about the technology, its use, and its qualities must be constantly rebutted, explained, and bifurcated from the perception of the bills authors. Even if we could somehow get beyond this massive problem of scope and definitions, there are even more internal and legal problems with SB3025's language, technical form, scope, intent, and implementability - which show that the bill was poorly constructed and will either suffer swift failure or swift repeal. It seems very likely that the authors either have no understanding of the industry they so ambitiously hope to tax and regulate, or else this bill is the incarnation of the will of certain legacy industries, like the large banks, who would find it most profitable if the technology were restricted for their own use. As a jurist, I can confidently say that SB3025 would never stand judicial review; I know without hesitation that I could personally obtain standing and successfully challenge the constitutionality of SB3025, in the event of its passage.

Very little care was taken with respect to existing law, save to leave loopholes for certain established businesses, which is evident in the inappropriate way portions of different existing codes were crammed together and then scandalously justified as being "similar to what other states have passed". This bill is an absolute monster and, if passed, will be remembered as one of the greatest legislative blunders of the modern age in Hawaii. The passage of this bill would be an absolute scandal - and the victims of the subsequent racket would be the Hawaiian voters.

SB3025 aims to bring the entire crypto ecosystem under the direct control of the big banks and state regulators, and yet clearly fails to even grasp the breadth of its own scope and just what it is that SB3025 proposes to regulate. Most critically, enforcement of this bill would require total, draconian control of the internet (vis-a-vis, China's Great Firewall), and proposes (ignorantly) to control all implementations of cryptography in a

digital environment, and the transferrable of all security tokens which could be exchanged for "value". Compliance would be unfair and burdensome. The lack of clarity in definitions could only be clarified by much litigation at a potentially great cost to the State of Hawaii and her people. For instance, there are many use cases for existing cryptocurrency that have nothing at all to do with money services (such as the tracking and registry of real world goods or IOT networking devices); these use cases would nonetheless fall under entirely the wrong regulatory authorities with no clear way to remedy the problem without repeal of the entire act, scope definition, details and all. If ever this technology was widely adopted by any of our trading partners as a solution to existing supply chain problems, Hawaii would have created an incredible regulatory nightmare for itself to untangle or live with. The authors of this bill clearly have no long-term vision, but are reacting with ignorance to new ideas which they rushed to cram into their existing heuristic expedient.

This technology is changing the world, whether we like it or not. Our neighbors, the Marshall Islands, have become the first of the sovereign nations to go with a full digital currency system, and their "Sovereign" (SOV) is being minted using Algorand's Blockchain technology, which is also used to track real-time supply chain transactions, resolve international trade disputes, create digital contracts, promote "trustless" transactions, provide transparency in the public sector, register rights and ownership to objects, and to even help to track and clean up pollution around the planet. This tech cannot simply be put into the "money" box as a legislative expedient! Contrary to popular political doctrine, doing the *wrong thing* is far, far worse than doing *nothing*. The only people who think otherwise spend too much time listening to their own interviews and campaign ads.

The examples of definitional and regulatory issues with SB3025 are abundant; the authors seem to have forgotten that most of what is commonly called "cryptocurrency" is simply the necessary by-product of running cryptographic security algorithms which have nothing at all to do with finances or money. The "value" inherent in its constituent parts have nothing whatsoever to do with "currency" or "money transmission"; indeed

with security tokens and digital representations of rights and real world goods, the SB3025 would effectively implement a more restrictive and more invasive regulatory measure against the broader freedoms of the people to contract than was seen in the USSR. The bill's language would literally make all kinds of security software operations and non-financial services suddenly and outrageously subject to financial regulatory authorities and even more outrageously would necessarily insert private banks into transactions and businesses which they have absolutely nothing to do as counterparties. It would be a security and enforcement nightmare. None of this could be avoided thanks to the core misunderstandings of SB3025, as obviously reflected in the very definitions and scope of the bill. Many of the very items that would be considered regulatable would have nothing to do with "money" and would instead perform many other functions, from back end computer transactions, web security, advertising, private contract authentic to real world good delivery systems and inventory control. These and many other functions are completely cut off and hampered if they are always treated like "money", subject to control and regulation of state regulatory authority, and worse, funneled through the already failing and incompetent banking clans. It would add middlemen, and ultimately, it would be cheaper and more expedient to just leave Hawaii out, and take their green business revolution elsewhere. This is a tiny, abbreviated example of the variety of the application of the technology that this atrocious bill seeks to sum up as "money-transmitter services". Indeed, "cryptocurrency" can be that - but only because there is inherent value in authentication and security technology, especially in relation to the many varied use cases.

The bill seems to take a shot on behalf of the existing financial companies to defraud the people of the right to make their own choices about cryptocurrency. It frankly contradicts the federal definitions and policies, offering yet more burdensome "restriction party" politics to the Hawaiian People.

There are deeper problems with this bill than just its technical aspects. At its heart, this bill aims not only to legislatively throttle a fledgling new technology, but along with it, entire industries old, new, and even some yet to come, all which offer near limitless

applications and benefits to our islands and to the world. There are significant constitutional questions that immediately arise with this bill on its face, especially in light of the decisions across the country regarding money, property, currency, and the first amendment. Our society is one ruled by and based upon law, formed through the common bonds of our people around the principles of individual liberty, freedom, and honor. To attempt to assert the kind of draconian control over this technology in its infancy, as presented in SB3025, is not only the acme of foolishness, but cuts clean contrary to everything that Hawaii stands for; such does not protect consumers but entirely the opposite.

If this bill is passed, the cryptocurrency industry is essentially banned from operating in Hawaii without special systems in place to comply with our unique and unenlightened codes. Full enforcement could "break the internet" or perhaps our regulators' effectiveness. The bill will need immediate repair or repeal, and your political rivals will run on the promise to repeal it, and legitimately attack any representative or senator who supported SB3025; it will be a public embarrassment.

Let's just talk about some very frank facts, here. Cryptocurrency itself can't be controlled or stopped without "stopping" the whole internet. Everyone I know knows about cryptocurrency and knows someone personally who has made money somewhere in the vast ecosystem growing around that technology. These even include a shocking number of very poor, under-educated households and individuals that I would not have guessed would know about crypto. An even more shocking percentage of these people also own some cryptocurrency - and not a single one of these voters (no matter their party affiliation) want the government directly interfering with their right to take risks, and regulating an industry that needs breathing room. Only the most ancient and the most television-news dependent/addicted are out of the loop on crypto. This is not a small number of people who will be directly affected.

What do I mean? Well, by the language of this bill, most crypto owners I know would be required to either get licensed as a business to continue holding their own assets in

their hard wallets, off of the exchanges, or else would potentially be punished as criminal offenders for exercising their private property rights, based on SB3025's language. In such a case, any lawyer worth their salt would gladly inform them of just how unconstitutional this bill is and how many ways there are to completely defeat any such charges if they are willing to pay for litigation. And they would win. No question.

SB3025's implementation would very likely run afoul not only of the 1st amendment and the due process amendments, but also of the interstate commerce clause, and perhaps even deeper maxims of law. There are substantial questions at law of jurisdiction, standing, interest, and identity & clarity of definitions. SB3025 fails in every sense to accomplish anything useful for Hawaii - but it certainly will make tens of millions of dollars for the big banks at the direct expense of your voters.

We stand on the precipice of history, looking over a crossroads. The world is making decisions out of fear and greed driving errors upon errors, driving up dust and storm clouds. When last the world looked so, small nations like Switzerland understood the importance of financial freedom and so left room for neutrality. Rather than taxing deposits and adopting one of the new "modern" banking regulatory systems as the rest of the world had done, Switzerland kept its options open, and allowed privacy, freedom, and anonymity in its financial services, which effectively spared it from invasion and disaster during WW2. As a result, during the time when the rest of the world was falling to pieces - Switzerland became rich, and flourished, preserving its borders and status without the need for armed conflict.

We could be Switzerland. We could trust our own people to make their own choices, rather than again taking away from the people yet another of their few remaining freedoms. We could do what's best for Hawaii, and uphold the constitution. We could allow this new industry room to grow here - and encourage a legitimate source of revenue and industry that will not destroy our land, pollute our seas, or impoverish our people. We throw these options away if we pass this bill.

If we pass this bill, we act with a heavy, ignorant hand to control this new and promising technology. We not only risk destroying a potentially carbon-negative industry, swift repeal, and being left behind technologically, but we also give every last voter who is even thinking about buying cryptocurrency yet one more very painful reason to never vote for us again, and to never take us seriously again. We will actually cost them money in the middle of an inflationary crisis during an election year. This should be a no-brainer.

Vote "No" on SB3025, Hawaii, our people, our economy, (and likely your jobs) will depend on it.

There is already a system of code that largely governs the cryptocurrency community already. We passed it years ago; it is called the Uniform Commercial Code. Any attempt to specially regulate this industry at this stage will not only run afoul of constitutional conflicts, but also into direct conflicts with the UCC and provisions that already exist and govern most commercial financial activity. If we begin to rewrite the rules by cramming the entire industry into a box by having bank lawyers grotesquely sew together different portions of other codes, as we have with SB3025, then we will end up with this Act under federal judicial review within the year, and will likely lose the ensuing litigation at great cost to voters who are already sick of their government ruining their lives with knee-jerk authoritarianism in response to every bump in the night. This kind of bill is not what America or Hawaii is all about. SB3025 should have never been brought. It is a career torpedo and an absolute nightmare in terms of both compliance, enforcement, and "unintended" consequences. Passing this bill **will** cost *your* voters - in *your* district money, possibly large amounts of money, - in the middle of an inflationary crisis, during an election year. Need I say more?

It is in everyone's best interest to kill this terrible bill here and now. There are many other bills being considered, and one or two of them could even be called "good", but not this one. This one is bad for Hawaii and the worst possible move during an election year. Of course, then again, most of you are on the other team; maybe if I thought less of the great state of Hawaii and her people, I would be encouraging you to go ahead

and pass this atrocity of a bill and so guarantee many, many more seats for the other parties at the table next year - but this issue is far too important to play politics over, and our people all deserve better than what they have been getting lately.

In conclusion, on behalf of the People of Big Island and across the Hawaiian Islands who didn't vote for you last time (and a surprising number who did), I respectfully and urgently ask that this committee votes "no" on SB3025, or else this committee will make my job (to unseat you all) much easier.

Aloha Loa!

/s/ Austin "Shiloh" Martin

Kea'au, Hawaii

Hawai'i County Chair, Libertarian Party

Libertarian Party State Executive Committee Member at Large

SB-3025-SD-1

Submitted on: 2/16/2022 4:26:51 PM

Testimony for WAM on 2/18/2022 10:10:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Gerard Silva	Individual	Oppose	No

Comments:

No Digital Money this will be to Easy to still money!!

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 16, 2022

Aloha, Senator Donovan M. Dela Cruz, Chair; Senator Gilbert S.C. Keith-Agaran, Vice Chair; and members of the Committee on Ways and Means:

I am writing to express my **support** of SB3025 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.

Are there nefarious actors, scammers, and criminals using crypto? Yes. But such entities 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 often find themselves engaging in a new activity 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 law must be amended this year, or all this progress will have been for naught.

Another proposal put before the legislature this session would remove all restrictions on cryptocurrencies. I believe this bill before you 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. SB3025 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

SB-3025-SD-1

Submitted on: 2/16/2022 10:07:42 PM

Testimony for WAM on 2/18/2022 10:10:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
jordan dinong	Individual	Support	No

Comments:

I support the use of cryptocurrency in Hawaii. I believe it will be a very important part of our future.

SB-3025-SD-1

Submitted on: 2/17/2022 12:06:10 AM

Testimony for WAM on 2/18/2022 10:10:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Aaron Castro	Individual	Support	No

Comments:

Cryptocurrency trading/investing provides us with the opportunity to hedge against inflation, which is currently at an unprecedented level, in a place where the cost of living is already high and wages are low. Banning this activity would not only be unethical, but it would also be anti-aloha spirit because you are essentially forcing crypto holders/users into making unfavorable decisions which could result in complete liquidation of their entire portfolio. Hawaii is the 50th state, but that does not mean we need to constantly be last in line and the worst at almost everything compared to other states. Please pass this bill and keep the traders, trading. Thank you and aloha!

SB-3025-SD-1

Submitted on: 2/17/2022 12:37:45 AM

Testimony for WAM on 2/18/2022 10:10:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Bryce johnson	Individual	Support	No

Comments:

I believe crypto currency will change the way we interact with money and will bring equality to our financial systems.

SB-3025-SD-1

Submitted on: 2/17/2022 9:02:36 AM

Testimony for WAM on 2/18/2022 10:10:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Aaron Kim	Individual	Support	No

Comments:

Aloha,

I am writing to express my huge concerns that we may loose access to Crypto exchanges here in Hawaii. First and foremost we need to allow Hawaii residence the option and access to take part in the free economy of the US and the world. Keeping pace with the rest of the states in the US is critical for locals to have the ability to have access to opportunities that can change generations here in Hawaii. I understand that many people do not understand the blockchain technology and the changes that are to come. This can lead to fear and the need to deny access under the premise of protecting consumers. However, I believe the industry is matured to the point that consumers have the information and industry security standards in place to allow an individual to make an educated decision and decide for themselves if they want to enter the crypto market. (We live a free country, I believe) The last ruling was made back in 2016, which in blockchain time is ancient history. Our understanding and growth of the industry has changed immensley. It is not going anywhere and will change the nature in which we do business and the internet as a whole. I understand why the banking system might be scared/concerned, but they need to learn and accept the challenge of becoming part of this transformation and take advantage of what is to come. Change is innevitable.

We do not have time to watch from the sidelines for even a year. This technology and market is moving at a rapid pace. I have done well so far in the crypto market and firmly believe it will be a large part of my asset development and investment portfolio that will allow me to one day purchase a home here in Hawaii and retire as productive member of society. I work hard everyday, contribute to Hawaii's tax base and live within my means only to see that inflation and rising costs are making it hard (almost impossible) for me to get ahead. Taking away acces to crypto markets for me is the same as Hawaii taking away the abilityto invest in the stock market. Unacceptable, shameful and shortsighted.

I believe in this so strongly that I have become a one issue voter. I will be watching who votes for or against allowing access to crypto for Hawaii residence. Please don't deny us access to what will prove to be one of the greatest opportunities to build wealth. If this is the best bill right now that will allow us continued access to Crypto then please pass it. Let's start with keeping access to crypto for Hawaii and move on from there. Thank you for your time and for listening to my concerns.

Sincerely, Aaron Kim (A concerned voter.)

SB-3025-SD-1

Submitted on: 2/17/2022 9:22:10 AM

Testimony for WAM on 2/18/2022 10:10:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Carrie Blocher	Individual	Support	No

Comments:

I can't understand why the state would want to lose this tax revenue. Does Hawaii want to keep it's position as the most crypto unfriendly state?

SB-3025-SD-1

Submitted on: 2/17/2022 9:53:58 AM

Testimony for WAM on 2/18/2022 10:10:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Rama Camarillo	Individual	Support	No

Comments:

Please pass any cryptocurrency bill that will permit Hawaii residents to continue trading cryptocurrencies, indefinitely. It would be unethical and anti-aloha spirit to force current crypto exchange users to liquidate their existing positions. Furthermore, crypto investing provides residents with a means to keep up with inflation which is at unprecedented levels in a state where the cost of living is already high and wages are low. Please put an end to making Hawaii last in line for everything. Let crypto thrive and endure.

February 17, 2022
Kepano Kekuewa
4348 Waialae Ave., #369
Honolulu, HI 96816
808-725-2628

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

I am writing to express my support of SB3025 Relating to Digital Currency Licensing Program.

Having left Hawai'i after college in the mid-90s to pursue a job in technology, my career grew exponentially along with the Internet boom, and I was given the opportunity to return to Hawai'i to represent leading technology firms until opting to launch my own technology and investment businesses locally. As a "boomerang" resident, I hoped to make an impact upon my return. I recently started serving as a faculty member with the University of Hawai'i, supporting Native Hawaiian students interested in STEM career fields, but this testimony represents solely my personal opinion as a Hawaii resident, technologist, and entrepreneur.

Playing a direct role in the growth of the Internet, I view digital assets as the next exponential opportunity for early adopters and practitioners. The need to diversify our economy in Hawai'i is a well worn record, yet, we find ourselves stubbing our collective toes with restrictive policies that stifle innovation. To make matters worse, the current money transmitter rules forces residents to seek riskier platforms to explore and invest in digital assets.

This evolving space deserves regulatory clarity and the spirit of innovation to foster growth and opportunities for our residents. Please pass SB3025 to ensure Hawai'i residents are not left out.

Mahalo for your consideration,



Kepano Kekuewa

SB-3025-SD-1

Submitted on: 2/17/2022 12:33:38 PM

Testimony for WAM on 2/18/2022 10:10:00 AM



Submitted By	Organization	Testifier Position	Remote Testimony Requested
Nikos Leverenz	Individual	Support	No

Comments:

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

This legislation is salutary insofar as it provides a framework to facilitate banking and commercial transactions in Hawaii utilizing cryptocurrencies.

However, private consumers who maintain accounts with Hawaii-based banks should also be able to readily access the range of cryptocurrency services offered by online entities like Coinbase. [Venmo offers the ability to buy and sell cryptocurrencies like Bitcoin and Ethereum in amounts as low as \\$1.](#)

Please ensure that ongoing legislative deliberations include Hawaii residents with in-state bank accounts who would like to add cryptocurrencies to their investment portfolio without setting up accounts with out-of-state banks or brokerage services.

Mahalo for the opportunity to provide testimony.

LATE

Statement of

Katie Jackson

Hawaii State Blockchain Advocate

Senate Ways and Means Committee

Friday, February 18, 2022

10:10am

State Capitol, Conference Room 211 & Videoconference

In consideration of

SB3025

RELATING TO DIGITAL CURRENCY LICENSING PROGRAM

Thank you for the opportunity to provide comments.

I offer comments on this bill (SB3025) and hope to support this bill going forward but amendments are needed.

As drafted, SB3025 creates a dangerously over broad licensing requirement and 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.....However, requiring licenses from non-custodial entities or individuals acting on their own behalf, as this bill would do and as no other state has done, severely damages the rights of citizens and stifles innovation unnecessarily.”¹

The main problem with SB 3025 is that it “attempts to micromanage what activities are and are not regulated and needs a license through

¹ Coin Center Statement - 10 February 2022, Comments to the Thirty-First Legislature (2022) of the State of Hawaii on bills relating to special purpose digital currency licensure programs

lists of covered and exempted actions. But the descriptions are vague and lend themselves to regulatory uncertainty.”²

There is a better way - simply adopt the original Uniform Law Commission’s Uniform Regulation of Virtual-Currency Businesses Act of 2017 (URVCBA) that Hawaii considered years ago. Much of SB3025 already borrows language from this bill and it is so powerful because it appropriately and precisely defines WHO needs to obtain a license.

For these and other reasons described, **this bill needs to be amended and I therefore propose the following seven amendments (and attach a red line copy):**

**AMENDMENT #1: PART I, GENERAL PROVISIONS,
§-1 Definitions.**

Change: Strike all of section 1 and replace all **definitions** with the Uniform Law Commission Virtual Currency Businesses Act Model Regulation definitions found here (“Virtual-Currency Businesses Act, Regulation of,” Uniform Law Commission, 2017, (<https://www.uniformlaws.org/committees/community-home?CommunityKey=e104aaa8-c10f-45a7-a34a-0423c2106778>).³)

Justification: The bill’s definitions should align with the Uniform Law Commission model licensing legislation rather than create new definitions

² Ibid.

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

AMENDMENT #2: Part II, §-6 License; application; issuance, Section E.

Change: Strike all of section E

Justification: 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.

AMENDMENT #3: Part II: §-10 Fees; bond. Section B.

Change: Strike the word 'minimum' and replace it with 'maximum' in section (b) to read "The Penal sum of the bond shall be a maximum of \$500,000..."

Justification: A surety bond should 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.

AMENDMENT #4: Part II: §-11 Renewal of license; annual report.

Change: Define exactly what "value of transactions" means - needs greater clarity

Justification: This section mentions "value of transactions" multiple times. This bill, however, fails to clarify whether or not the phrase "value of transactions" means the gross value of the transaction, inclusive of the digital currency traded and associated fees.

AMENDMENT #5: Part II: §-11 Renewal of license; annual report. Subsection E-1-D.

Change: Strike Subsection E-1-D entirely which reads 'the number of system outages.'

Justification:The legislation fails to provide guidance on what is classified as a "system outage." Even with a clear definition, an over broad 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. Striking this requirement would bring it in line with other states' existing law.

AMENDMENT #6: Part II: §-12 Authorized places of business; principal office.

Change: Strike Section 12 in entirety

Justification: The physical location requirement is antiquated given the digital world we live in.

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.

AMENDMENT #7: PART III. DISCLOSURES, ADVERTISING, AND RECORDKEEPING, §-15 Required disclosures. Subsection B-(7)

Change: Strike entirety of Subsection B-(7) starting with line "the person's right to at least 30 days..."

Justification: 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. Suggest striking this requirement.

LATE

SB-3025-SD-1

Submitted on: 2/17/2022 7:30:11 PM

Testimony for WAM on 2/18/2022 10:10:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Danny de Gracia II	Individual	Oppose	No

Comments:

Testimony of Dr. Danny de Gracia, Th.D., D.Min.

in strong opposition to the measure Senate Bill 3025, SD1
(Written Only)

before the Senate Committee on Ways and Means
Friday, February 18, 2022, 10:10 a.m., Room 211

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

While the Legislature's intentions to create a permanent legal framework for the use of cryptocurrencies in the State of Hawaii is appreciated, this measure seeks to square a circle with regards to its attempts to mitigate risk for Hawaii residents.

To begin, *all* cryptocurrencies are inherently unstable and thus do not fit the five classical requirements of "money" (fungability, durability, portability, recognizability, and stability). Digital currency vendors cannot reasonably be expected to meet the same regulatory or reserve requirements that apply to banks or credit unions or commodities exchanges and so on because these are apples to oranges. Cryptocurrency exists entirely as a social psychological construct, and thus, it is impossible for a digital currency vendor to operate in a way that completely mitigates risk for those who choose to purchase cryptocurrency. What you are seeing with cryptocurrency is a 21st century form of tulipmania writ large thanks to the speculative mega-bubble that is only possible by the loose monetary policy of the world's central banking institutions. It is not a question of "if" there will be a disastrous implosion of the cryptocurrency market, but when.

Now yes, there are still billions of dollars to be made in cryptocurrency before the market is through identifying malinvestment, and yes, there is still an opportunity to get rich quick and get out - if one is lucky. Personally, I can't see myself being chained to an asset that no matter whether it gains \$20,000 in one day or crashes by \$10,000 another day, I must somehow hold it and never sell it, because I must somehow wait for more persons to throw bad money after it to get my profits. That is chasing a fantasy, and that is precisely the reason why attempting to regulate this tulipmania is the folly of proceeding in a perfectly rational way toward an irrational policy conclusion. Nonetheless, the majority of Hawaii residents have already "missed the boat" with regards to its people getting into crypto fast enough to benefit from the tulipmania of the last decade and a half, thanks in no small part to the existing financial regulations of the State of

Hawaii which have blocked it during the ramp up of Bitcoin and other cryptos.

A better solution would simply be to deregulate this process entirely and have no regulations with respect to the use of crypto in Hawaii. While this may seem terrifying to the Committee, it is, to be truthful, the most equitable way to approach this process, because it will allow whatever money is to be made to be made, and personal decision-making, combined with social behavior, will weed out the good from the bad all on its own.

Sir Alec Issigonis said in 1959 that "a camel is a horse designed by committee." In attempting to create a permanent regulatory framework for digital currencies, the Legislature is making the most lame camel in the history of financial regulation. The tulipmania we are seeing will come to a screeching, terrible halt one day and there will be massive winners and massive losers no matter what attempts the State of Hawaii makes to regulate it. But the only thing you will achieve is blocking ordinary Hawaii residents from making a little money here and there in the meantime. Is it better to make it impossible to profit than to provide an opportunity to risk one's disposable income to make short-term profits? For some Hawaii residents, they would much rather take the risk than be denied the market freedom to do so.

So here is my recommendation: If this committee wishes to allow crypto to be used in Hawaii, deregulate it and let it not be subject to any regulation at all. Those who win will win, and those who lose will lose. Please hold this measure.

Thank you for this opportunity to testify in opposition.

LATE

SB-3025-SD-1

Submitted on: 2/17/2022 9:25:48 PM

Testimony for WAM on 2/18/2022 10:10:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Darwin M Fajardo	Individual	Support	No

Comments:

Virtual Currency has been classified as Digital Property according to the IRS. Notice 2014-21, 2014-16 IRB 938. Cryptocurrency is a type of Virtual Currency and is being regulated by the IRS and SEC and even the Dept. of Treasury. Countries such as El Salvador and Tonga and many others are adopting BitCoin as Legal Tender. Hawaii is situated geographically as the gateway for travelers from many different countries already utilizing virtual currency. A tax on this could be a potential income Generator for the State of Hawaii. Hawaii needs to adopt Virtual Currency and allow Free Market Capitalism to allow for an organic growth of this exciting technology. Blockchain technology is secure and provides many benefits to its users. I appeal to you to allow mass adoption of this technology and allow individuals to participate in these free market economy.

I wholeheartedly and enthusiastically SUPPORT Virtual Cryptocurrency.

SB-3025-SD-1

Submitted on: 2/18/2022 8:35:18 AM

Testimony for WAM on 2/18/2022 10:10:00 AM



Submitted By	Organization	Testifier Position	Remote Testimony Requested
Todd Robertson	Individual	Support	No

Comments:

I support SB3025 SD1, RELATING TO DIGITAL CURRENCY LICENSING PROGRAM, as the data gathered through the digital currency innovation lab program confirmed that digital currency transactions are not best regulated through existing money transmitter laws and that a new regulatory framework is appropriate.

I am personally active in trading digital cryptocurrencies and have been creating, buying, and selling non-fungible tokens (NFTs) through digital cryptocurrency platforms. I believe that digital cryptocurrency platforms provide many opportunities to diversify and grow the economy in Hawaii, and even provide opportunities to underserved communities in Hawaii. Therefore, it is essential to support appropriate regulatory frameworks and government programs that enable the growth of these industries in Hawaii.

Thank you for the opportunity to offer these comments.