

HB2257 HD2

Measure Title: RELATING TO VIRTUAL CURRENCY.

Report Title: Uniform Regulation of Virtual Currency Businesses Act; Virtual Currency; Division of Financial Institutions; Money Transmitters Act; Virtual Currency

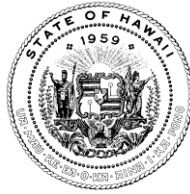
Description: Adopts certain operative provisions of the Uniform Regulation of Virtual Currency Businesses Act. Extends the money transmitters act to expressly apply to persons engaged in the transmission of virtual currency. Requires licensees dealing with virtual currency to provide a warning to consumers prior to entering into an agreement with them. Effective 7/1/3000. (HD2)

Companion: [SB3082](#)

Package: None

Current Referral: CPH

Introducer(s): OHNO, BROWER, CREAGAN, FUKUMOTO, HASHEM, ICHIYAMA, TAKAYAMA, Keohokalole, San Buenaventura



DAVID Y. IGE
GOVERNOR

DOUGLAS S. CHIN
LIEUTENANT GOVERNOR

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

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**TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION AND HEALTH**

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

Tuesday, April 3, 2018
9:35 a.m.

**TESTIMONY ON HOUSE BILL NO. 2257, H.D. 2, RELATING TO VIRTUAL
CURRENCY.**

TO THE HONORABLE ROSALYN BAKER, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on H.B. 2257, H.D. 2, Relating to Virtual Currency. My name is Iris Ikeda, and I am the Commissioner of Financial Institutions (“Commissioner”) for the Department’s Division of Financial Institutions (“DFI”). The Department submits comments on Part I of this bill. The Department supports Part II of this bill (bill sections 2 through 12); the content of Part II is companion to the original S.B. 3082.

H.B. 2257, H.D. 2 is a compilation of two pathways to manage the virtual currency industry:

- Part I of the bill (bill section 1) is the proposed model law from the Uniform Law Commission’s (“ULC”) Uniform Regulation of Virtual Currency Businesses Act (“URVCBA” or “model law”). The URVCBA proposes a framework for regulating virtual currencies as a new regulatory scheme to be supervised and regulated by DFI; and

- Part II of the bill (bill sections 2 through 12) extends the Money Transmitters Act, Hawaii Revised Statutes (“HRS”) chapter 489D, to expressly apply to persons engaged in the transmission of virtual currency.

DFI regulates money transmitters under HRS chapter 489D, including licensees that transmit virtual currency. DFI has been investigating virtual currency regulation for several years. Last summer, DFI sent a staff member to the ULC Annual Meeting in San Diego, California, to observe proceedings which led to the ULC’s approval of the model law. After the Annual Meeting, the Commissioner and staff had a conference call with the ULC drafting committee chairperson and reporter seeking clarification of the ULC’s model law and the thoughts behind some of its provisions. The Department recognizes the work that the ULC and drafting committee put into developing the model law.

The Department's main concerns about Part I of this bill are: 1) the three tiers of licensure, comprising permitted unlicensed activity, registration for a certain level of activity, and licensure for a certain level of activity; 2) its many exemptions creating uncertainty as to the activities covered; 3) reciprocity, given the different licensure standards for virtual currency among the states; and 4) creation of a new regulatory program without staffing.

The first tier of licensure is the “unlicensed sandbox.” Businesses in this tier are unsupervised. Tier 1 virtual currency businesses (“Tier 1 businesses”) are expected to self-report when their business volume approaches the Tier 2 threshold for registration. Self-reporting may not occur, as the unlicensed nature of Tier 1 businesses effectively protects them from enforcement activity. If DFI suspected a Tier 1 business met the volume requiring registration or licensure, DFI could not conduct a meaningful investigation of underreporting. DFI would be powerless to compel an unlicensed Tier 1 business to produce its books and records. Further, DFI would have no resources to investigate a Tier 1 business to determine its volume. DFI is self-funded by fees paid by licensee fees, and Tier 1 businesses pay DFI nothing under this bill, and not even the costs of an investigation. Unlicensed activity in the form of a Tier 1 business leaves consumers open to misconduct without regulatory recourse.

The Department is also concerned that the bill is not clear as to the activities it covers, as these provisions were removed from the bill.

Part I of the bill allows licensing reciprocity for a person licensed to conduct virtual currency business activity in another state, provided Hawaii has a reciprocity agreement and the person has satisfied the bill's reciprocity requirements, such as a license history, license application fee, and security and net worth requirements. While reciprocity seems like a streamlined approach, it is complicated, as each state has its own licensing laws created by legislative action for virtual currency regulation, and each has its own definition of virtual currency and standards of licensure.

Finally, Part I of the bill places the new chapter and virtual currency regulation program under DFI. As mentioned, DFI is self-funded from fees paid by licensees of its various programs. To establish this program, DFI would need funds to appoint one examiner to set up the program, as well as additional examiners the following year to conduct examinations and investigations. To maintain this new program, the program would need to generate revenues sufficient to cover the additional staff.

Part II of the bill extends the HRS chapter 489D, the Money Transmitters Act, to expressly apply to persons engaged in the transmission of virtual currency. First, this part of the bill makes clear which virtual currency businesses are subject to regulation under HRS chapter 489D. It specifically authorizes DFI to accept like-kind virtual currency as permissible investments. This addresses the concern of some virtual currency money transmitters that they cannot afford to hold cash and cash-like permissible investments to cover their virtual currency transactions, as HRS chapter 489D currently requires. As an example, the suggested language of "same volume" requirement allows a licensee to hold one Bitcoin for each Bitcoin to be transmitted.

Second, the bill warns consumers before they transact that virtual currency is volatile by nature and that they may lose all their virtual currency which is not backed or insured by the government. The bill provides a framework for DFI to regulate this still-emerging industry under the Money Transmitters Act, including requirements for licensure, license renewal, examination, record keeping, reporting, prohibited practices, sanctions, and penalties.

The Department believes that Part II of the bill will allow virtual currency companies to become licensed and operate in Hawaii and provide protections to consumers.

Thank you for the opportunity to testify in support of Part II of this bill.

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

**ON H.B. NO. 2257, H.D.2
RELATING TO VIRTUAL CURRENCY.**

**BEFORE THE SENATE COMMITTEE on COMMERCE, CONSUMER
PROTECTION and HEALTH**

DATE: Tuesday, April 3, 2018, at 9:35 a.m.
Conference Room 229, State Capitol

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

Chair Baker, Vice-Chair Tokuda, and the members of the Senate Committee on Commerce, Consumer Protection, and Health.

My name is Ken Takayama, and I am a member of the state Commission to Promote Uniform Legislation. Thank you for the opportunity to testify **in support** of part I of this measure, H. B. No. 2257, H.D.2, Relating to Virtual Currency. The members of our state commission are Hawaii's representatives on the national Uniform Law Commission, or ULC. The ULC is a nonprofit organization that is made up of volunteer attorneys appointed by their states, and its mission is to develop and draft model legislation for states in areas in which uniformity is practical and desirable. The state Commission to Promote Uniform Legislation submits the following comments:

1. The Commission strongly supports Part I of this measure, which enacts the Uniform Regulation of Virtual Currency Businesses Act (URVCBA), and provides a superior approach to the regulation of virtual currency businesses than Part II of this measure, which seeks to regulate virtual currency businesses through the State's money transmitter statute.

2. Part II of H.B. No. 2257, H.D.2 attempts to stretch a law focused upon the transmission of money and legal tender to regulate virtual currencies which are not legal tender and are not necessarily being transmitted.

3. By comparison, the URVCBA creates a clear, comprehensive framework for stand-alone regulation of companies engaged in virtual-currency business activity. “Virtual-currency business activity” means exchanging, transferring, or storing virtual currency; holding electronic precious metals or certificates of electronic precious metals; or exchanging digital representations of value within online games for virtual currency or legal tender.

4. Regulation of virtual currency businesses through the money transmitter law as proposed in Part II of this measure increases the risk of over-inclusive regulation, potentially covering individuals merely using virtual currency to make purchases on their own behalf, or academics researching, for example, virtual currency, and encryption technology and security. The URVCBA provides for exemptions for among other things, personal, family and academic uses, certain online games and certain merchant rewards programs. The URVCBA prevents these uses of virtual currency, which pose no risk of potential loss or harm to consumers, from being swept into the regulatory scheme.

5. The uniform act creates a three-tiered regulatory structure. Persons in Tier 3, whose virtual currency business activity exceeds \$35,000 in a one year period cannot operate in the State unless they obtain a license from the Division of Financial Institutions (DFI) of the Department of Commerce and Consumer Affairs. Tier 2 consists of providers with virtual-currency business activity levels between \$5,000 and \$35,000 annually, who are required to register with the DFI—which is a lighter regulatory burden than licensure. By comparison, Tier one exempts from regulation altogether those persons having virtual-currency business activity levels of under \$5,000 a year. Taken together, the three tiered regulatory structure that correlates higher levels of virtual currency business activity with stricter levels of regulation functions as a “regulatory on-ramp,” that allows companies in their early stages of business development to focus on

innovation and experimentation while they are in the earliest stages of development--where they would normally face the greatest threat from the imposition of regulatory burdens.

Unlicensed or unregistered persons who engage in virtual currency business activity with or on behalf of a resident in violation of the URVCBA can be assessed a civil penalty of up to \$50,000—a day for each violation.

6. The uniform act is also designed to protect consumers and their virtual currency. For example, section -51 of the URVCBA requires licensees and provisional registrants to issue disclosures to potential customers to inform them about fees, any insurance coverage for the product or service, etc. In addition, under section -61 of the URVCBA, all virtual-currency businesses regulated by the Act must establish specific policies and compliance programs to guard against fraud, cyber threats, money-laundering, and terrorist activity.

8. For the foregoing reasons, we respectfully request that this committee pass Part I of this measure with two changes:

(1) First, we ask that the new chapter being added by Part I be returned to the form as it existed in the H.D.1, to restore the definitions and three other sections that appear to have been unintentionally deleted; and

(2) Second, to add an uncodified section directing the Auditor to conduct a sunrise review of the regulation of virtual currency businesses—not in the manner provided by part II of this measure, but through the form of regulation provided by part I.

Thank you very much for this opportunity to testify.

Via E-Mail

April 3, 2018

Senator Rosalyn Baker, Chair
Senator Jill Tokuda, Vice-Chair
Consumer Protection and Health (CPH) Committee
Hawaii State Capitol Room 229
415 S. Beretania Street
Honolulu, HI 96813

Re: Coinbase SUPPORT of House Bill 2257, HD2, with Proposed Amendments

Dear Chair Takumi, Vice-Chair Ichiyama, and CPC Members:

I write on behalf of Coinbase, Inc. ("**Coinbase**"), the nation's leading virtual currency exchange and wallet service, to support the Hawaii HB2257, HD2, as amended. In brief, Coinbase supports deletion of Part I and adoption of Part II in the latest draft of HB2257, HD2 (the "**Bill**"). We understand this approach is also supported by Commissioner Ikeda of the DCCA Division of Financial Institutions. In brief, the proposal would amend Hawaii's existing Money Transmitter Act¹ (the "**Act**") to **(i)** explicitly extend consumer protections under existing law to cover virtual currency businesses, **(ii)** provide for certain enhanced consumer protection and security measures for virtual currency businesses, and **(iii)** allow virtual currency businesses to operate in Hawaii in compliance with law without untenable compliance burdens. Put differently, HB2257, HD2, if amended per above, will allow responsible, law-abiding virtual currency businesses to restore services in Hawaii in a manner which provides for prudent oversight and regulation.

Background

Coinbase was founded in 2012 with a mission to create an open financial system for the world. From our inception, we sought to operate transparently under regulation and view ourselves as a leader in the legitimization and maturation of the crypto economy. We provide an onramp for acquiring, trading and holding digital currencies. Through our strategy of operating the most trusted and easiest to use digital currency exchange and wallet, we have grown dramatically. We now serve over 20 million customers; we store more than \$20 billion worth of digital currencies; we have traded over \$150 billion in assets; we support business in 32 countries; and we have more than 250 employees in three offices (with full time contractors, we have nearly 1,000 dedicated personnel). We have received over \$225 million in funding from some of the nation's leading venture capital and financial service firms.

¹ Haw. Rev. Stat. §489D-1 et seq.

We have been registered as a money service business with FinCEN since 2013. In addition, we have 40 financial services licenses in 38 states. Most of these licenses are money transmission licenses. Significantly, we are one of only four companies that hold a Bitlicense from New York State's Department of Financial Services, the nation's only license specific to cryptocurrency regulation and supervision.

In addition to our formal regulatory role, Coinbase continuously shares its expertise to make sure our ecosystem is clean and compliant. We train more law enforcement agencies globally than anyone, even the Department of Justice. We have a team of individuals who offer expert training on cryptocurrencies and the blockchain to the world's leading law enforcement agencies at the state and federal level. We work frequently with lawmakers, regulators, state and federal law enforcement agencies, and other policymakers around the world to promote the adoption of effective virtual currency policy.

Hawaii is one of only two states in the union where Coinbase does not operate. As we described in our February 1, 2018 letter to the Hawaii Senate, Coinbase ceased operations in Hawaii in early 2017 as a result of a policy that imposed a double reserve requirement on Coinbase's business. This policy resulted from a reading of the Hawaii Act that requires virtual currency businesses to license under the Act but does not allow custodial virtual currency, secured on behalf of customers, to satisfy permissible investments obligations under the law. The existing policy therefore requires virtual currency operators to hoard cash stockpiles in equivalent dollar value to virtual currency reserves *already secured* on behalf of their customers; in essence a double reserve requirement. Rather than attempt to operate under an untenable business model, Coinbase—and to our knowledge, all law-abiding virtual currency businesses—ceased operations in Hawaii.

House Bill 2257

Coinbase joins with Commissioner Ikeda in supporting Part II of HB2257, HD2. This Part II remediates the above-described double-reserve problem by amending Hawaii's Money Transmitter Act to allow virtual currency businesses to operate viably and safely in Hawaii. If passed, Part II of the Bill would:

- Amend the Act to include expressly the transmission of virtual currency within the law, thereby extending existing consumer protection standards to virtual currency businesses;
- Modify certain definitions, including the definition of "permissible investments" to permit a licensee, in connection with the storage or transfer of virtual currency, to possess like-kind virtual currency of the same volume as its outstanding payment obligations.
- Require additional consumer disclosures to customers of virtual currency businesses; and

- Require submission of a third-party security audit of all electronic information and data systems.

Although Coinbase may seek to propose small tweaks to the implementing language in the future, we believe the Bill, if passed, will not harm the virtual currency ecosystem in Hawaii. To the contrary, the Bill will put Hawaii on equal footing with most of the rest of the Union by allowing virtual currency businesses to operate lawfully in Hawaii. Importantly, the Bill would not require adoption of a complex licensing regime, unlike almost any other existing in the United States, as contemplated in Part I of HB2257, HD2.

For these reasons, Coinbase proposes elimination of Part I of the Bill and would support, in a form materially similar to the current draft, Part II of HB2257, HD2. If such a Bill, as amended, were passed into law, we would be eager to restore operations in Hawaii as swiftly as possible.

* * *

Coinbase stands ready to work with you, your fellow policymakers and Commissioner Ikeda to promote the adoption of sensible regulation of virtual currency businesses. We appreciate your time and consideration with respect to this matter and look forward to working with you to find a solution that is in the best interest of Hawaii's residents. Please consider us a resource for you, and do not hesitate to reach out to me if we can be of any help on this or another issue.

Regards,
Mike Lempres
Chief Legal and Risk Officer, Coinbase



April 2, 2018

Senator Rosalyn Baker
Chairperson of the Senate Committee on Commerce
Consumer Protection and Health
Hawaii State Capitol
Honolulu, Hawaii 96813

Dear Senator Baker:

This letter is being submitted regarding H.B. 2257, H.D. 2 and our request for an amendment to the bill. Blackhawk Network is a leading provider of prepaid and financial payments products for consumers and businesses. Our company supports the physical and digital distribution of a variety of prepaid products, utilizing proprietary technology to provide consumers a wide selection of gift cards, general purpose reloadable cards, loyalty and rewards products, prepaid telecom handsets, and airtime cards across a global network totaling over 252,000 retail locations. We are headquartered in Pleasanton, California and offer products and services in the United States and 24 other countries.

If you shop in Hawaii, you've probably seen Blackhawk's Gift Card Mall rack in major supermarkets and big box stores. Our Gift Card Mall reaches tens of millions of people each week through an international network of retail outlets – leading grocery, big box, convenience, drug, and specialty stores, and Internet retailers. Blackhawk distributes prepaid products through numerous retail distribution partners in approximately 245 combined locations in Hawaii.

As a general matter, Blackhawk aims to ensure that prepaid products enter the market fairly and efficiently and provide convenient gift-giving opportunities to consumers in our increasingly card-based economy. In Blackhawk's role as an issuer of certain prepaid products, Blackhawk Network California, Inc. has obtained money transmitter licenses in 48 U.S. jurisdictions and Puerto Rico. Our company is subject to regular examination by each state in which it holds a license, as well as by federal examiners, bank partners, and network brands.

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The Prepaid Card Market

Prepaid cards are sold throughout Hawaii at a variety of convenient retail establishments and financial institutions. There are various types of prepaid cards sold to consumers throughout the state, including:

- *Gift cards:* Cards, codes, or devices that are redeemable for goods and services.
- *Loyalty, award, or promotional (LAP) cards:* Like gift cards, these products are issued on a prepaid basis and are typically redeemable upon presentation at one or more merchants for goods and services. LAP cards are often given to consumers in connection with consumer retention programs operated by merchants; sales promotions that provide coupons or discounts; rebate programs; sweepstakes/contests; customer referral programs; employee incentive programs; and charitable programs offering a reward for a donation or a prize in a charitable event, among other uses.
- *General-purpose reloadable (GPR) cards:* Cards, codes, or devices issued by financial institutions for a set amount in exchange for a payment made by a consumer that a consumer may reload. GPR cards are generally viewed as substitutes for traditional credit or debit cards.
- *Reload products:* Cards, code, or devices that can add funds to other prepaid products.

These products are generally regulated – or specifically exempted from regulation – under the federal Electronic Fund Transfer Act and its implementing regulation, Regulation E (12 C.F.R. part 1005). In addition, the Hawaii Money Transmitters Act, Haw. Rev. Stat. § 489D, generally exempts “closed-loop” gift cards – that is, gift cards that are issued by a merchant or group of affiliated merchants that are redeemable for that merchant’s or group of affiliated merchants’ goods or services – from the money transmitter licensure requirement. *See* Haw. Rev. Stat. § 489D-4.

H.B. 2257 H.D. 2

H.B. 2257 H.D. 2 would define “virtual currency” as follows:

“Virtual currency” means a digital representation of value that:

(1) Is used as a medium of exchange, unit of account, or store of value; and

Senator Rosalyn Baker, page 3

(2) Is not money, whether or not denominated in money.

"Virtual currency" does not include:

(1) Units of value that are issued in affinity or rewards programs that cannot be redeemed for either money or virtual currencies; or

(2) Units of value that are used solely within online gaming platforms that have no market or application outside of the gaming platforms."

As drafted, this definition could potentially subject the prepaid card products described above to regulation as virtual currency, even though the use and composition of such products are entirely distinct from commonly accepted conceptions of virtual currency (e.g., bitcoin, blockchain, etc.). Several concrete changes should be made to H.B. 2257 to ensure continuing strong protection of consumers while not restricting consumers' access to these popular prepaid products, certain of which are already regulated under the Money Transmitters Act.

Proposed Amendments to H.B. 2257 H.D. 2

As set forth above, H.B. 2257 H.D.2 does not appear to adequately differentiate between traditional prepaid products and commonly understood forms of virtual currency. As presently constituted, the bill could subject certain prepaid products to unnecessary regulation and subject others to duplicative regulation. In turn, these changes could reduce consumer access to these popular and consumer-friendly products. To preclude this possible reduction of access to gift cards in Hawaii, the following issues should be addressed:

- 1. The definition of "virtual currency" under Section 2(1) of Part II¹ should be amended to read as follows:**

"Virtual currency" means a digital representation of value that:

(1) Is used as a medium of exchange, unit of account, or store of value; and

(2) Is not money, regardless of whether denominated in money.

"Virtual currency" does not include:

¹ H.B. 2257 H.D. 2, p. 62, line 15.

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(1) A gift certificate, store gift card, general-use prepaid card, or loyalty, award, or promotional gift card, as each of those terms is defined in federal Regulation E, 12 C.F.R. § 1005.20(a), without giving effect to any of the exceptions set forth in 12 C.F.R. § 1005.20(b);

(2) Any card, code or device, or other device that can add funds to the products described in subsection (1); or

(3) Units of value that are used solely within online gaming platforms that have no market or application outside of the gaming platforms.

Blackhawk proposes this amendment to the definition of “virtual currency” because virtual currency and prepaid cards are entirely different products with entirely different purposes. The Hawaii Money Transmitters Act, Haw. Rev. Stat. § 489D, should clearly distinguish them. Although H.B. 2257 H.D. 2 appears to aim to exclude at least some prepaid products from the definition of “virtual currency”, the exclusion should be tightened and aligned with the carefully constructed federal definitions for such products.

- 2. A new section should be added after Part II, Section 4² to update the Hawaii Money Transmitters Act to conform to many other state money transmitter laws with respect to application of such laws to agents of banks and other financial institutions. That section should read as follows:**

SECTION 5. Section 489D-9.5, Hawaii Revised Statutes, is amended to read as follows:

*(a) 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, **and agents thereof**, shall be exempt from the licensing and examination provisions thereof.*

(b) An applicant or licensee may appoint an entity described in subsection (a) as an authorized delegate.

(c) When submitting an application for a license pursuant to section 489D-9, or when submitting an annual report pursuant to section 489D-12, an applicant or licensee that appoints an entity described in subsection (a) as an authorized delegate shall

² H.B. 2257 H.D. 2, p. 74, line 18. Other conforming changes to section numbers should be made as a result of this amendment.

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include that entity's name and the locations in this State where that entity will conduct its authorized delegate activities.

Blackhawk proposes this amendment because most other states exempt agents of banks and other depository institutions from the requirement to obtain a money transmitter license. These agents are already subject to examination via state laws specifically applicable to such institutions. To ensure that agents are not subject to duplicative regulation/supervision, the Money Transmitters Act should be amended at Sec. 489D-9.5(a) to specifically exclude agents of banks and other depository institutions.

Senator Baker, thank you and members of the Committee for your consideration of this request. We would be pleased to answer any questions you may have.

Sincerely,



Mabel Wilson
Chief Compliance Officer

HB-2257-HD-2

Submitted on: 4/2/2018 1:12:15 PM

Testimony for CPH on 4/3/2018 9:35:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard OBryan	Testifying for USD Mint Inc	Support	No

Comments:

USD Mint Inc a Hawaii corp of July 2010 Supports Adoption of the USA 50 States Uniform Regulation of Virtual Currency Businesses Act (URVCBA). <http://www.uniformlaws.org/Act.aspx?title=Regulation%20of%20Virtual-Currency%20Businesses%20Act> as Approved by the American Bar Association with Consumer Protections in the Act as in the current SB3082 SD1 HD1, and HR2257 before it was amended (Please restore adoption of the Virtual Currency Act).

Mahalo Nui, Richard OBryan at USD Mint Inc 413-628-1056 rings on Oahu

www.USDMint.com and www.SovereignMint.com with the Hawaiian community.

HB-2257-HD-2

Submitted on: 3/30/2018 8:59:05 AM

Testimony for CPH on 4/3/2018 9:35:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gary H. Namba	Individual	Oppose	No

Comments:

Good afternoon,

My name is Gary Namba. I am a private citizen that is concerned about the use of cryptocurrencies and blockchain technology in Hawaii. My main concern is the attempt to enact the Uniform Regulation of Virtual Currency Business Act (URVCBA).

In my previous written testimonies to the Senate and House, my objection to the acceptance of this bill is based on the fact that we, the financial community, the business community, the Legislature and the general public is not informed enough to have a meaningful, productive dialog concerning the legislation of cryptocurrency. I recommend that the Legislature defer the approval of SB3082 until we do.

To make this argument, I have a video that will make this point very clear. It is the recent New York City Senate Roundtable on Cryptocurrency. The video addresses "Bitlicense". Bitlicense is pretty much the URVCBA under a different name. It was passed in New York. Now they realize there are problems with it that will hurt New York rather than foster prosperity. If we pass SB0382, we will confront the same issues.

One of the testifiers is Theo Chino (in the purple suit). He is an advocate for bitcoin and cryptocurrency. He is a member of the Bitcoin Foundation, the oldest and largest Bitcoin advocacy organization in the US. (He is not testifying as a representative of the Bitcoin Foundation.) He travels the nation advocating for positive legislation for cryptocurrency, so he is very aware of legislation activities in many states. He has submitted written testimony to our Legislature on previous occasions.

(The video is cued up to start with Theo's testimony. Go back to the beginning and watch the entire video.)

<https://www.youtube.com/watch?v=TMjeuVUTLEE&feature=youtu.be&t=47m36s>

We should learn from New York's experience and take to heart the recommendations of the expert testimonies that have come forth. If what is being said in the Roundtable is not understandable to you, then my point is made that more education is needed here in order to formulate positive legislation for Hawaii.

I have found that in general, the crypto consumer community holds the position that it isn't opposed to regulation that prevents criminal/terrorist activity, investor scams and fraud. It's concern is that regulation will dampen, discourage or prevent business/government innovation and consumer usage that will hold back and/or slow down the development of blockchain technology and cryptocurrencies. These sentiments were also presented in the video.

Please watch this video. It will answer many questions that you may have and enlighten you on aspects that you may not even have considered. It is a very long video; about 1 hour and 45 minutes. But it moves fast. It's like watch a hearing on SB3082 with very informed speakers.

Respectfully,

Gary H. Namba

HB-2257-HD-2

Submitted on: 4/2/2018 8:00:27 AM

Testimony for CPH on 4/3/2018 9:35:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Theo Chino	Individual	Oppose	No

Comments:

Bitcoin is an **Intangible Commodity** that is the byproduct of a **consensus** amongst the participants, an **Immutable database technology** (commonly referred as the blockchain) and **Critical Mass**. Without those three components, a **valued token** cannot exist.

The same way water is a byproduct of Hydrogen and Oxygen, bitcoin is a byproduct of consensus and critical mass. They exist regardless of the law. **Blockchain without a bitcoin type token is impossible**. They are inseparable.

A group of Lawyers who benefit from the regulation so they can charge high fees have been trying to get this technology regulated as a financial product so they can be the only to rip its benefits.

Unfortunately, that same group of lawyers don't understand that without Critical Mass, this technology be worthless and only two groups will be developing on it; the criminals and the 1%. As usual, the emergent will be left out.

Right now, passing the ULC bill in Hawaii is simply for Coincenter to parade a success so they can show their backer that they do serve a purpose. I have been very effective rallying the local bitcoiners in other states.

You can visit the website <https://www.abolishthebitlicense.org/hearings> and watch how the technologist are reaping into shred all the ULC arguments.

For the past 2 years I have been fighting the bitlicense in New York State. The ULC Bitlicense is based from the NY Bitlicense.

I personally know that if you **give an opportunity to your local technologists** to testify, you would not be hearing from me sitting in New York City telling you how bad the ULC bill is.

Why not just change what is necessary for the exchangers to operate in Hawaii and let the ULC bitlicense be drafted with the help the Hawaiian bitcoin community?

Bitcoin and it's derivative is a great experiment that shouldn't be touched.

Respectfully submitted,

Theo Chino



J. P. Schmidt
Abaris Global
1288 Kapiolani Boulevard, Suite 1906
Honolulu, Hawaii 96814
jps@abarisglobal.com

Aloha,

I am testifying as a private citizen in support revisions of HB2257 HD2, with the removal of the Uniform Act language, and revisions to the amendments of the Money Transmitter Law proposed by the Division of Financial Institutions.

I have attached a revised bill that exempts virtual currency from the Money Transmitter Act, Chapter 489D, IF the warning proposed by the Director of Financial institutions is given to consumers. The bill also clarifies that the Penal Code chapters on Money Laundering and Computer Fraud do apply to virtual currency. This is the best way to protect consumers and allow this beneficial new technology in Hawaii.

In the interest of full disclosure, I was the Insurance Commissioner of the State of Hawaii from 2003-2010, I am currently an advisor to the Ethereum Foundation and have given presentations on insurance regulation of blockchain at the #D1Conf on decentralized insurance and the Government of Mexico's XXVII International Seminar on Securities and Finance.

Ethereum is the second largest virtual currency enterprise behind Bitcoin with a market cap of around \$80 billion. I am not testifying on behalf of Ethereum. These are my own private opinions.

Currently, citizens of 49 states can exchange and trade virtual currency of a recognized Exchange. Because of an interpretation of Hawaii's Money Transmitter Law, there are no legitimate exchanges in Hawaii. Therefore, it is critical that Hawaii's law be amended to allow legitimate Exchanges to operate as they do in all other states.

The fact that all 49 other states allow use of this new technology, and only Hawaii doesn't allow the use of this new technology sends a terrible message about Hawaii and economic development and technology.

Virtual currency and its underlying technology, Blockchain, also known as Distributed Ledger Technology or DLT, is very complex computer coding technology and few people completely understand it. That naturally causes concern for legislators and regulators.

This new technology can be analogized to the new technology "the cloud". Experts said "the cloud" was a great new way to store data. We all now use "the cloud" even though few of us really understand it. If when the cloud technology started, Hawaii said "We have to protect consumers. Their important data could be lost or identities stolen." And Hawaii enacted strict regulations that, functionally, made it impossible to use "the cloud" in Hawaii, that would have had a terrible impact on businesses.

To start to understand new technology it is important to go to trusted sources for explanations.

The World Economic Forum issued a report analyzing Blockchain Technology entitled "The Financial Infrastructure of the Future, an ambitious look at how Blockchain can Reshape Financial Services".

In Deloitte's report, their analysts and experts "foresee a confluence of trends that underscore the urgency with which insurers should be developing blockchain technology." Blockchain in Insurance, Oct, 2016

“Some pundits are likening the emergence of blockchain technology to the early days of the World Wide Web, and for good reason.” Deloitte University Press, Blockchain: Trust Economy, Feb. 7, 2017

In November 2016 Milliman, one of the top U.S. Actuarial firms, stated:

“Imagine the cost savings to your company of improving efficiency across the insurance value chain, from product management to underwriting to claims to customer service—all while potentially increasing the security of your policyholder’s data. This is what blockchain technology can do.” *Blockchain: An Insurance Focus*

“Blockchain could be one of the most disruptive innovations since the advent of the internet.” McKinsey & Co. Blockchain Technology in the Insurance Sector for the Federal Advisory Committee on Insurance (FACI), Jan 5, 2017

“This is a very big deal. It’s so much more dramatic than [when the internet was launched],” says Eric Sweden, NASCIO’s program director for enterprise architecture and governance. “It’s going to have a huge impact on how we do business, accounting, auditing -- anything that has a data lineage to it.” National Association of State Chief Information Officers

So, trusted sources think blockchain is a very big deal for economic development. Each of these sources has a more extensive explanation of DLT and why it is important.

Regulators have heard about the volatility of virtual currency, and that also raises concerns. Virtual currency and blockchain are new and developing technology, essentially a start-up. Hawaii supports and encourages technology start-ups.

The Hawaii Strategic Development Corp. and the Hawaii Growth Initiative supported 4 technology start-up accelerators and UH has XLR8UH because we recognize the importance of new technology to economic growth.

The main concerns for consumer protection are “pump and dump” schemes and scams involving promotion of illegal securities. Both of these are the responsibility of the SEC. The SEC is currently moving aggressively to protect consumers in these

areas. Other federal regulators, such as the Commodities and Futures Trading Commission (CFTC) and the Financial Crimes Enforcement Network (FinCen) are pursuing actions to protect consumers

Only two states, that I am aware of have pursued any actions in this area, Texas and North Carolina. They have issued cease and desist orders from their securities regulators, not their money transmitter regulators.

Currently, the new technology of virtual currency and blockchain essentially can't even exist in Hawaii. A bill clarifying virtual currency and the Money Transmitter Act is important and necessary to just allow Hawaii to participate in this new technology and the associated economic development.

An alternative is to simply exempt virtual currency from the money transmitter law. Wyoming just enacted such an exemption. Many states and nations have decided to step back and not enact new regulations that might stifle innovation in this area. They recognize that the tremendous benefits of blockchain technology must be given some space to develop.

The heads of the SEC and Commodity and Futures Trading Commission recently testified before Congress that their approach to regulation in this new area is "first, do no harm". Nevertheless, they are pursuing those engaged in fraud or violation of current security laws thus providing protection to consumers. Hawaii also has laws to protect citizens from fraud.

As detailed in the attached proposed revisions to HB2257HD2, exempting virtual currency from the Money Transmitter Law would send a signal that Hawaii welcomes and wants to participate in this new technology. Hawaii statutes on fraud and money laundering and the federal agencies already also provide protection.

Major corporations around the world are working together in consortia to develop applications for blockchain in their business. Enterprise Ethereum Alliance has over 200 members, including JP Morgan, British Petroleum, Mastercard, Intel, Microsoft, Earnst and Young, Royal Bank of Canada, BNY

Mellon, Credit Suisse, Deloitte, Ing, Pfizer, and UBS. Leaders in the Transportation industry, the Healthcare industry, Insurance, as well as the financial industry are working on blockchain applications to improve their industries. B3i is a consortium of the major insurers around the world who are working on insurance applications.

It is critical that Hawaii take this first step to participate in this new technology for the benefits and economic development that this technology supports.

If you have any questions, please do not hesitate to contact me.

J. P. Schmidt
(808)292-7999

See proposed revised bill below.

A BILL FOR AN ACT

RELATING TO VIRTUAL CURRENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

SECTION 1. Section 489D-4, Hawaii Revised Statutes, is amended as follows:

1. By adding one new definition to be appropriately inserted and to read as follows:

"Virtual currency" does not include digital representation of value that are:

(1) Units of value that are issued in affinity or rewards programs that cannot be redeemed for either money or virtual currencies; or

(2) Units of value that are used solely within online gaming platforms that have no market or application outside of the gaming platforms."

(3) Units of value that have value derived from information inherent therein, other than a measure of value; or

(4) Units of value that have an additional purpose or functionality other than solely being a combined medium of exchange, unit of account, and store of value, including without limitation units of value that have the purpose of storing information in addition to, or other than, a measure of value, or function as a smart contract, network access, good, service, utility, application, or means of communication of information, in addition to, or other than, a measure of value.

SECTION 2. Section 489D-5, Hawaii Revised Statutes, is amended as follows:

§489D-5 Exclusions. (a) This chapter shall not apply to:

- (1) The United States or any department, agency, or instrumentality thereof;
- (2) The United States Postal Service;
- (3) The State or any political subdivisions thereof;~~and;~~

(4) The electronic transfer of government benefits for any federal, state, or county governmental agency as defined in Consumer Financial Protection Bureau Regulation E, by a contractor for, and on behalf of the United States or any department, agency, or instrumentality thereof, or any state or any political subdivisions thereof;and;

(5) Virtual currency, provided that:

i. Before entering into any agreement to perform any virtual currency transmission services, a person shall obtain the customer's signed agreement to the following notice and retain it as a record and available to the Director upon demand:

"Most virtual currencies are based upon computer cryptography and derive their value solely from the market's perception of their value, which can experience great swings. These currencies are:

NOT backed by any physical commodity, such as gold or silver;
NOT backed by the United States or any other national government;
NOT legal tender for debts; and
NOT insured by the Federal Deposit Insurance Corporation or any government agency.

You should be aware that there is a potential for you as a consumer to lose all of your virtual currency. Though cash can also be lost, with virtual currency this loss can occur because of a computer failure; malicious software attack; an attack, closure, or disappearance of a virtual currency exchange company; lack of security; loss of your private key; or a sudden or dramatic change in value. These are just a few examples. Some virtual currency users have been unable to access their legitimate virtual currency account because of heavy traffic by other users or a prevalence of criminal activity in virtual currency use. To protect yourself, become educated as to the potential risks before deciding whether you want to transact in virtual currency."

ii. Failure to obtain the customer's written agreement as required in a. above or retain or provide to the Director on demand shall render this exemption inapplicable and the entirety of Chapter 489D shall apply to the person who provided the services, including but not limited to sections 489D-29 and 489D-30.

(b) Authorized delegates of a licensee acting within the scope of authority conferred by a written contract under section 489D-21 shall not be required to obtain a license pursuant to this chapter.

SECTION 3. Section 708A-2, Hawaii Revised Statutes, is amended as follows:

2. **§708A-2 Definitions.** As used in this chapter, unless the context otherwise requires:

"Proceeds" means property of any kind acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission.

"Property" means anything of value, including any interest, benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible or intangible, including virtual currency or a digital representation of value.

"Specified unlawful activity" means any act, or series of acts, that:

- (a) Constitutes a felony under the laws of this State;
- (b) If occurring outside this State, may be punishable by confinement for more than one year under the laws of the jurisdiction in which the act occurred;
- (c) Involves an act or acts constituting the offense of gambling, criminal property damage, extortion, theft, or prostitution or a drug offense under chapters 329, 329C, or part IV of chapter 712 or any firearm offense; or
- (d) If occurring outside this State, would constitute the offense of gambling, criminal property damage, extortion, theft, or prostitution or a drug offense under chapters 329, 329C, or part IV of chapter 712 or any firearm offense under the laws of this State.

"Transaction" includes a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase, sale, or exchange of any monetary instrument, use of a safe deposit box, or any other acquisition or disposition of property by whatever means effected.

"Unlawful activity" means any act that is chargeable or indictable as an offense of any degree or class under the laws of this State or under federal law or, if the act occurred in a jurisdiction other than this State, would be chargeable or indictable as an offense of any degree or class under the laws of this State or under federal law.

SECTION 4. Section 708-890, Hawaii Revised Statutes, is amended as follows:

§708-890 Definitions. As used in this part, unless the context otherwise requires:

"Access" means to gain entry to, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.

"Computer" means any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes all computer equipment connected or related to such a device in a computer system or computer network, but shall not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

"Computer equipment" means any equipment or devices, including all input, output, processing, storage, software, or communications facilities, intended to interface with the computer.

"Computer network" means two or more computers or computer systems, interconnected by communication lines, including microwave, electronic, or any other form of communication.

"Computer program" or "software" means a set of computer-readable instructions or statements and related data that, when executed by a computer system, causes the computer system or the computer network to which it is connected to perform computer services.

"Computer services" includes but is not limited to the use of a computer system, computer network, computer program, data prepared for computer use, and data contained within a computer system or computer network.

"Computer system" means a set of interconnected computer equipment intended to operate as a cohesive system.

"Critical infrastructure" means publicly or privately owned or operated systems or assets vital to

the defense, security, economic security, public health or safety, or any combination thereof, of the State or nation. "Critical infrastructure" includes:

- (1) Gas and oil production, storage, and delivery systems;
- (2) Water supply systems;
- (3) Telecommunications networks;
- (4) Electrical power delivery systems;
- (5) Finance and banking systems;
- (6) Emergency services, such as medical, police, fire, and rescue services;
- (7) Transportation systems and services, such as highways, mass transit, airlines, and airports; and
- (8) Government operations that provide essential services to the public.

"Damage" means any impairment to the integrity or availability of data, a program, a system, a network, or computer services.

"Data" means information, facts, concepts, software, or instructions prepared for use in a computer, computer system, or computer network.

"Obtain information" includes but is not limited to mere observation of the data.

"Property" includes financial instruments, data, computer software, computer programs, documents associated with computer systems, money, computer services, virtual currency or a digital representation of value, or anything else of value.

"Rule of court" means any rule adopted by the supreme court of this State, the Federal Rules of Civil Procedure, or the Federal Rules of Criminal Procedure.

"Statute" means any statute of this State or the federal government.

"Without authorization" means without the permission of or in excess of the permission of an owner, lessor, or

rightful user or someone licensed or privileged by an owner, lessor, or rightful user to grant the permission.

PART II

SECTION 11. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 12. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect on July 1, 3000.

HB-2257-HD-2

Submitted on: 4/3/2018 4:43:09 AM

Testimony for CPH on 4/3/2018 9:35:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
David Henry	Testifying for Blockweather Holdings, LLC	Oppose	No

Comments:

(See also the extensive testimony for SB3082.)

- There are limited finance jobs in Hawaii.
- HB2257 HD2 will further restrict the fintech industry and will restrict the growth of fintech and blockchain technology in Hawaii. Of the thousands of jobs in this industry worldwide, very few will be available in Hawaii.
- The bill will restrict growth but will not significantly improve consumer protection.
- The IRS classifies virtual currency as property, NOT as legal tender, currency, or money. Thus, it should be regulated as property, not under the Money Transmitter Act.
- The industry is still in development regarding middle and back-end software and platforms to facilitate compliance with HB2257.
- The additional risk disclosures noted in the bill are fine. All law-abiding companies in this industry already provide significant risk disclosures to customers anyways.
- Consumers are already protected by laws relating to fraud, securities, anti-money laundering, computer security, contracts, and advertising. The U.S. SEC is already VERY actively investigating and regulating virtual currency companies, hedge funds, and ICOs. Oversight at the federal level is appropriate since the majority of companies conduct primarily interstate and international transactions, not intrastate transactions.
- Delaware and several other states have blockchain technology-friendly legislation, and business activities in these states has flourished. Passing HB2257 would make Hawaii among the worst places in the world to conduct virtual currency companies, jobs, or investment.

Essentially, if you want finance jobs and the fintech technology to flourish in Hawaii, deny this bill. You can also consider adding "virtual currencies" to H.R.S. laws related to money laundering and computer security.

If you want to restrict fintech industry growth and reduce jobs, then allow this bill to pass through.

Thank you.