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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce and Consumer Protection
Wednesday, March 29, 2023
10:00 a.m.
Conference Room**

**On the following measure:
H.B. 1027 H.D.2, RELATING TO MONEY TRANSMITTERS MODERNIZATION ACT**

Chair Keohokalole and Members of the Committee:

My name is Iris Ikeda, and I am the Commissioner for Financial Institutions, Department of Commerce and Consumer Affairs (Department). The Department supports this administration bill with amendments.

The purpose of this bill is to enable timely, coordinated, and efficient regulation of money transmission companies to achieve financial stability and economic growth, while providing consumer protection and allow the State to share resources, data, and technology tools with other states to create a stronger multi-state system of financial regulation.

Currently, the financial components of the money transmitters modernization act, chapter 489D, HRS, provides insufficient consumer protection. The outdated financial condition requirements do not provide adequate protection for consumers considering the evolution of money transmission companies conducting activities worldwide.

The amendments incorporate the agreed upon language discussed with the industry and the Conference of State Bank Supervisors for adequate financial condition of money transmitters. With these amendments, Hawaii will have incorporated the Model Money Transmission Modernization Act to provide appropriate consumer protection requirements and will allow the industry to continue to grow and evolve.

Although the current draft amended the measure by amending the definitions of "money," "money transmission," "outstanding money transmission obligation," and "payment instrument" to align with the definitions under the Model Money Transmission Modernization Act (Model Law), DFI purposely and intentionally did not accept the proposed Model Law definitions identified in the current draft. The Model Law definitions include the Model Law component regulating digital currency as money transmissions. DFI learned through its research project in the Digital Currency Innovation Lab, digital currency transactions are very different than money transmissions. Digital currency transmission is a digital representation of value and does not have legal tender status in the United State government. Whereas money transmission is a payment intermediary between two parties or the transmission of funds to be delivered to another party with a specific set of instructions.

The DFI proposes several amendments, see Appendix A. The Department notes that the amendments reflected in Appendix A would create symmetry with in S.B. 1325 S.D.1. As such, in comparing H.B. 1027 H.D.2 to S.B. 1325 S.D. 1, the Department recommends adoption of S.B. 1325 S.D. 1 which keeps the Department's original proposed definitions.

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. The Department notes that there is a separate proposal specifically addressing digital currency regulation.

Thank you for the opportunity to testify, and we respectfully ask the Committee to pass this administration bill.

HB1027 HD2– Appendix A
Proposed language for the definition section:

Current Definition HB1027 HD2	Requested definition (HB1027)	Explanation
<p>""Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government. "Money" includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.</p>	<p>"Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government."</p>	<p>To include the highlighted definition of money may include digital currency, as two countries accept digital currency as "money."</p>
<p>""Money transmission" means to engage in the business of: (1) Selling or issuing payment instruments; or <u>to a person located in this State;</u> (2) <u>Selling or issuing stored value to a person located in this State; or</u> {(2)} (3) Receiving money or monetary value for transmission [to a location within or outside the United States by any and all means, including wire, facsimile, or electronic transfer.] <u>from a person located in this State.</u> [Money transmission does not apply to courier services.] "Money transmission" includes payroll processing services. "Money transmission" does not include the provision solely of online or telecommunications services or network access."</p>	<p>"Money transmission" means to engage in the business of: (1) Selling or issuing payment instruments;or <u>in this State;</u> (2) <u>Selling or issuing stored value to a person located in this State; or</u> {(2)} (3) Receiving money or monetary value for transmission [to a location within or outside the United States by any and all means, including wire, facsimile, or electronic transfer.] <u>from a person located in this State.</u> Money transmission does not apply to courier services.</p>	<p>Both courier services and payroll services are not considered money transmitters. Courier services are companies that deliver funds from a company to a financial institution. Payroll services are companies that deliver funds to employees by instruction of the employer.</p>
<p>"Outstanding [payment] money transmission obligation" means: (1) Any payment instrument <u>or stored value</u> issued <u>or sold by</u> the licensee [that has been] <u>to a person that is located in the United States or reported as sold in the United States:</u> A [Directly by the licensee; or B By] <u>by an authorized delegate of the licensee to a person that is located in the United States [which has been reported to the licensee as having been sold and]</u> that has not yet been paid <u>or refunded</u> by or for the licensee; <u>and</u>, or <u>escheated in</u></p>	<p>"Outstanding [payment] <u>money transmission</u> obligation" means: (1) Any payment instrument <u>or stored value</u> issued by the licensee that has been sold in the United States: (A) Directly by the licensee; or (B) By an authorized delegate of the licensee in the United States, which has been reported to the licensee as having been sold, and that has not yet been paid by or for the licensee; and (2) All other outstanding money transmission obligations of the licensee issued in the United States.</p>	<p>The amended provisions are intended to address digital currency transactions. Outstanding money transmission liability is unpaid (outstanding) until the funds are paid and the instrument is cleared.</p>

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<p>accordance with applicable abandoned property laws; or (2) All other outstanding Any money or monetary value received for transmission obligations of the licensee issued by the licensee or an authorized delegate in the United States[-] from a person located in the United States that has not been received by the payee or refunded to the sender, or escheated in accordance with applicable abandoned property laws.</p>		
<p>""Payment instrument" means any electronic or written check, draft, money order, traveler's check, or other electronic instrument or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not the instrument is negotiable. The term "payment" "Payment instrument" does not include any credit card voucher, any letter of credit, <u>stored value</u> or any instrument that is: (1) <u>is</u> redeemable by the issuer in <u>for only goods or services[-] provided by the issuer or its affiliate or franchises of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value; or</u> (2) <u>is not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program."</u></p>	<p>"Payment instrument" means any electronic or written check, draft, money order, traveler's check, or other electronic instrument or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not the instrument is negotiable. The term "payment instrument" does not include any credit card voucher, <u>stored value card</u>, any letter of credit, or any instrument that is redeemable by the issuer in goods or services.</p>	<p>A letter of credit is a letter from a bank guaranteeing payment of any overdue balance.</p> <p>Stored value is not necessarily a tangible object; it could be held virtually by a company for the consumer.</p> <p>Added "not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program." This amendment is part of the definition for digital currency transactions.</p>



LATE

March 28, 2023

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice-Chair
Members of the Senate Committee on
Commerce & Consumer Protection

Re: HB 1027, Relating to Money Transmitters

Aloha Chair Keohokalole, Vice-Chair Fukunaga, and members of the committee!

On behalf of the Independent Payroll Providers Association, we are writing to comment on HB 1027, relating to money transmitters.

Payroll service providers facilitate employers to provide paychecks to their employees and ensure that all levels of government receive their due taxes. Numerous regulatory guardrails already exist that allow the client company to closely monitor the payroll service providers' reporting and payment to state and federal government through a federal online system provided for free by the Department of the Treasury. The Electronic Federal Tax Payment System offers employers visibility into payments made by its payroll service provider to ensure accuracy.

We believe that adding payroll processors into a national model bill intended to regulate other forms of electronic transmissions will cause small, independent payroll processing businesses in Hawaii to significantly increase their compliance costs and disadvantage them as compared to large, national organizations and unintentionally draw thousands of payroll processors who facilitate the payment to an employer's small number of employees in Hawaii into the oversight of the state Department of Commerce and Consumer Affairs. Therefore, we respectfully request that this bill be amended to align with the contents previously passed by this committee as Senate Bill 1325.

The Independent Payroll Processors Association is the leading nationwide trade association of independently owned businesses whose primary function is the preparation of payroll and payroll taxes for employers of all sizes, including payroll processors who navigate Hawaii's labor and employment, tax, and compliance regulations.

Mahalo,

Independent Payroll Providers Association

Cheryl Whelan, Executive Director

LATE

March 28, 2023

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Committee on Commerce and Consumer Protection
State Capitol
Honolulu, Hawaii 96813

Subject: HB 1027, HD2, March 29, 10:00am, Room 229

Dear Senators Keohokalole and Fukunaga:

My name is Barron Guss, President of ALTRES, Inc., a three-generation, 54-year-old Hawaii company that provides employer services including payroll administration and professional employer services (PEO).

In short, I am in support of updating Section 489D-4 to modernize the way business is done in Hawaii and across the nation. The proposed legislation, HB 1027, is appropriate in concept, yet needs refinement. If signed into law, the amendments made to the Bill since its introduction create unintended consequences and confusion.

Specifically, in HD2, Section 1, Paragraph 3, the following language has been added:

“Money transmission includes payroll processing services.”

Payroll processing services do not meet the definition of a “money transmission company.” In fact, many payroll service providers (PSP) do not actually receive any monies in trust from the employers they serve; hence, the consumer protection need does not exist. This is not to say that some PSPs don’t operate with trust accounts, but the IRS has existing regulations in place for this relationship and, therefore, no further consumer protection is needed.

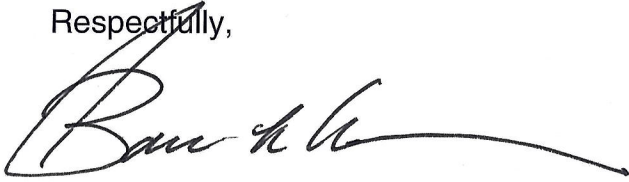
What I think what has happened is that the Conference of State Bank Supervisors, in their model legislation, is trying to address a gap in coverage without firsthand knowledge of how the payroll industry works. For example, pay and earned wage access cards are services that could be confusing and categorically mislabeled as payroll processing services. Both of these payroll related products are provided by third parties, including credit card companies, specialized providers and even banks. These financial institutions definitely meet the definition of “money transmitters,” which individually, may or may not be regulated.

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To avoid further confusion and misapplication of the law, I urge this committee to remove the amended language contained in HD2, Section 1, Paragraph 3 that specifically makes payroll service providers subject to 489D-4.

Thank you in advance for your continued efforts to bring thoughtful legislation to the people of Hawaii.

Respectfully,

A handwritten signature in black ink, appearing to read "Barron L. Guss", with a long horizontal flourish extending to the right.

Barron L. Guss
President and CEO



LATE

Date: March 28, 2023
To: Chair Keohokalole, Vice-Chair Fukunaga
Members of the Senate Committee on
Commerce & Consumer Protection
Re: Hearing on HB 1027, Relating to Money Transmitters

House Bill 1027, Relating to Money Transmitters is intended to expand regulation of money transmission companies, while providing consumer protection. It allows the State to share resources, data, and technology tools with other states to create a stronger multi-state system of financial regulation.

We support the intent of regulating money transmitters, but respectfully request that this bill be amended to reinsert the contents of its companion, Senate Bill 1325, which this committee previously heard.

The issue of whether to regulate payroll processor companies was recently considered and rejected by New York policymakers, on the grounds that the increased costs of regulation weren't needed, and the industry functions as designed. In the interest of transparency and accountability, we would welcome an opportunity to work with state regulators and legislators to share more about the extensive oversight already in place for payroll processors.

As the chair of the public policy committee of the Payroll Group, the largest trade association of small and medium sized payroll processors to inform you of the impact policy that is before your office would have on the State's tax collection, small business community, and wages of working Hawaiians. **TPG representing the small and medium sized payroll processors throughout Hawaii is opposed to HB1027.**

Thank you for the opportunity to comment on HB 1027,

Robin Imbrogno, The Payroll Group, Past President, Government Affairs Chair
The Human Resource Consulting Group

HB-1027-HD-2

Submitted on: 3/27/2023 7:18:48 PM

Testimony for CPN on 3/29/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Andrew Crossland	Individual	Oppose	Written Testimony Only

Comments:

I **strongly oppose** this Bill that would facilitate a Central Bank Digital Currency in Hawaii.

HB-1027-HD-2

Submitted on: 3/26/2023 4:53:50 PM

Testimony for CPN on 3/29/2023 10:00:00 AM

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

Comments:

We do not need other States we should be Independent!!!!