

SB3082

Measure Title:	RELATING TO VIRTUAL CURRENCY.
Report Title:	Money Transmitters Act; Virtual Currency
Description:	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.
Companion:	
Package:	None
Current Referral:	CPH
Introducer(s):	WAKAI, ESPERO, GREEN, RUDERMAN, Baker, S. Chang, Dela Cruz, Gabbard, Galuteria, Harimoto, Ihara, Inouye, K. Kahele, Keith-Agaran, Kidani, Kim, Nishihara, Shimabukuro, Taniguchi, Tokuda

Via E-Mail

February 1, 2018

Senator Rosalyn H. Baker, Chair
Senator Jill N. Tokuda, Vice Chair
Committee on Commerce, Consumer Protection, and Health
Hawaii State Capitol Room 229
415 S. Beretania Street
Honolulu, HI 96813

Re: Senate Bill 3082, Relating to Virtual Currency

Dear Chair Baker, Vice Chair Tokuda and Members of the Committee:

I write on behalf of Coinbase, Inc. (“Coinbase”), a leading retail virtual currency exchange, in regards to Hawaii Senate Bill 3082. We are headquartered in San Francisco, CA and together with our affiliates, we provide a suite of services that make it easy for customers and businesses to securely buy, sell, store, and use distributed digital currency, such as Bitcoin and Ethereum. Coinbase has been registered as a Money Services Business (“MSB”) since 2013 and is currently licensed to engage in money transmission in thirty-eight jurisdictions. 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. We understand that Hawaii Senate Bill No. 3082 (“SB3082”) proposes to extend the money transmitters act to expressly apply to persons engaged in the transmission of virtual currency, and would like to offer a few comments for your consideration.

1. Industry and Coinbase Background

The digital currency industry is an exciting space with enormous growth potential and entrepreneurial opportunity. The open, global, and decentralized nature of digital currency networks presents limitless opportunities for technological development. More specifically, the central innovation at the core of digital currency networks, the distributed ledger, allows for inexpensive, reliable, and public recordkeeping that can be utilized in a myriad of productive and innovative ways.¹

¹ The bitcoin blockchain, the first and most popular decentralized digital ledger, is used to effect and track payments among network participants, but other applications include: (i) tools which allow users to prove the existence of documents (e.g., contracts, wills and testaments, interests in property) at specific points in time; (ii) the ability for individuals to digitally "sign" and timestamp works of digital art; (iii) cryptographically activated physical property, the ownership or transfer of which may be recorded in the distributed ledger; (iv) a decentralized data storage and communications network where participants are incentivized to contribute storage capacity, computing power, or content through peer-to-peer micro-transactions; and (v) an open and transparent voting system.

Since its inception, Coinbase has strived to be the most trusted brand in the digital currency industry and to foster responsible innovation in the space by working directly with regulators, policymakers, and law enforcement agencies. Headquartered in San Francisco, California, Coinbase is the world's largest retail digital currency exchange. We operate a safe, reliable, and compliant platform that allows customers to purchase, sell, store, and use digital currencies, such as bitcoin and ethereum. Coinbase is a federally registered Money Services Business ("MSB"), a licensed financial institution in 38 U.S. states and territories, and is one of only four entities to have received the Bitlicense, New York's license for digital currency businesses. Our teams have been recognized by state, federal, and international law enforcement agencies as among the industry leaders in compliance, and we have trained multiple federal and state law enforcement agencies and task forces on digital currency networks.

2. State Policy Approaches to Digital Currency

Over years of work with regulators, law enforcement, and state legislatures, we have seen two policy approaches emerge among state policymakers, either of which can allow digital currency companies to operate in an innovative and sustainable way.

The first approach, adopted by a majority of states, is simply to exclude digital currency businesses from regulation. States which take this position acknowledge that heavy regulation of this nascent industry may stifle innovation. The size and adoption of the digital currency industry is minimal compared to other financial services, and most regulators have determined that it does not militate in favor of regulation. These states continue to monitor the growth of the space, emerging uses, and potential consumer risks that may arise as the industry grows.

The second and alternative approach, adopted by a minority of states, is to regulate digital currency operators—*i.e.*, businesses which, like Coinbase, offer digital currency exchange, transmission, and/or custody services—under existing state money transmission laws. We have found this approach to be successful where both regulators and licensees are mindful of the unique challenges presented by the regulations of digital currency activity. Licensees must acknowledge and commit to the serious compliance obligations that arise under state money transmission law, while regulators must be flexible in finding ways to help licensees meet those requirements and satisfy consumer protection priorities in a practicable manner.²

² In this second category, most state banking departments have interpreted broadly written money transmission statutes to authorize regulation of digital currency businesses with no legislative action. In one case, New York, the state banking department has created a special licensing structure pursuant to authority that arises under existing financial code. In other states, such as Washington, lawmakers have taken legislative action to amend money transmission laws to explicitly authorize regulation of digital currency businesses.

Separate from both of these approaches is the proposed adoption of the ULC’s Uniform Regulation of Virtual Currency Businesses Act³ (“URVCBA”). The URVCBA is a statutory framework for the regulation of companies engaging in virtual-currency business activity. The URVCBA’s three-tiered structure clarifies whether an individual or company engaging in virtual currency business activity is (1) exempt from the act; (2) must register; or (3) must obtain a license. The URVCBA also contains numerous consumer protections. This approach has been favored by a handful of industry representatives, however, we have not yet seen the practical application of the URVCBA, and therefore it would be at the discretion of the Hawaii Division of Financial Institutions to implement accordingly.

3. Coinbase Operations in Hawaii

As you may know, Coinbase ceased operations in Hawaii in early 2017 as a result of an untenable double reserve policy implemented by the Hawaii Division of Financial Institutions. According to the Division of Financial Institutions, a company that holds virtual currency for customers in Hawaii is required to keep a cash reserve in an amount equal to the aggregate face value of all virtual currency funds held on behalf of its customer. This policy forces virtual currency custodians like Coinbase to hoard huge sums of cash, even though we secure and fully-reserve customer virtual currency. As a result, Hawaii has shut down all lawful virtual currency operators, even while unlawful, offshore service providers persist.

We understand that SB3082 proposes to resolve this issue by extending the Hawaii Money Transmitters Act (the “Act”) to expressly apply to companies engaged in the transmission of virtual currency. SB3082 will also require that licensees dealing with virtual currency provide a warning to consumers prior to entering into an agreement with them. Since this is the approach that a handful of states have already taken, this solution will ultimately allow for Coinbase and other credible virtual currency custodians and exchanges to resume safe and lawful operations in Hawaii. Thereby allowing Hawaii residents to seek virtual currency custodial and other services from compliant, licensed businesses, not offshore unregulated companies.

We recognize that several different bills have been proposed regarding the regulation of digital currency in Hawaii. Coinbase’s goal is to open the door to allow residents of Hawaii to seek virtual currency custodial and exchange services from licensed businesses, and therefore, we will support any bill that allows for this resolution.

* * *

Coinbase stands ready to work with you and fellow policymakers in Hawaii to ensure that Coinbase and other law abiding digital currency companies can re-open business in Hawaii and

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http://www.uniformlaws.org/shared/docs/regulation%20of%20virtual%20currencies/URVCBA_Final_2017oct9.pdf

provide valued services to the residents of Hawaii. 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.

Sincerely,

Mike Lempres
Chief Legal and Risk Officer

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Submitted on: 2/1/2018 9:10:14 AM

Testimony for CPH on 2/2/2018 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
William Doom		Oppose	No

Comments:

I strongly oppose this bill. It is clear that the introducers do not have a clear understanding on blockchain technology.

Rather than a kneejerk reaction to a new technology that will change the future the introducers should take the time to understand what they are opposing.

This bill is analogous to stating in 1994 the state should block all access to the internet.

History will not look kindly upon the individuals introducing this bill, you will cripple the economy and place Hawaii and its residence at a disadvantage.

Startups will continue to leave the state and you will accelerate the brain drain.

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Submitted on: 2/1/2018 12:55:35 PM

Testimony for CPH on 2/2/2018 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Brian Zisk		Oppose	Yes

Comments:

Dear Honorable Legislators,

As a technologist/business owner who has relocated his family to Maui, did want to point out that Hawaii already has one of the toughest legal regimes for Digital Currency Regulation, being one of only 4 states with such tough laws that CryptoCurrency Exchanges are unwilling to serve your citizens, putting your constituents at a major disadvantage in the global markets, and putting your citizens at risk by forcing them to deal with unlicensed exchanges, as no licensed ones have find it viable to operate.

The existing regulations have caused local residents to lose out on major gains, and has already cost Hawaii a lot of benefit in lost taxes.

If this bill passes expanding the onerous regulations to individuals, it will prevent high net worth individuals and companies from moving here, and will actually force some of us to leave to do what is becoming more and more commonplace around the world.

Expanding what is already a tougher regulatory atmosphere than exists in 46 other states does not benefit Hawaii or its citizens.

Please reconsider expanding the already onerous regulations.

Thank you!

-Brian Zisk

Typed on my iPhone.

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Submitted on: 2/2/2018 1:20:22 AM

Testimony for CPH on 2/2/2018 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ty Robinson		Oppose	No

Comments:

Ladies and gentlemen, thank you for reading my testimony.

I am very much opposed to SB3082.

I believe it to be a law that is not only unnecessary but also extremely economically constricting to our State and the people whom you serve. It is also a law that is not aligned with the forward trajectory of progress and technological advancement taking place in our world.

Blockchain technology is perhaps the single most important invention since the Internet. It has begun to change how we see the internet, how we see money, how we see security online and has opened up a thriving, new, global economy, that may soon be worth over a trillion dollars.

It will have implications for banking, healthcare, privacy, entertainment, government and more. In countries like Australia, Korea, Japan and many other countries around the world, it is already basically legal tender. Citizens are free to use virtual currencies with little to no restriction and it has created many businesses, jobs and has attracted huge foreign investment.

Governments will soon be experimenting with creating their own currencies on the blockchain. The "Internet of Things" will soon be using crypto tokens to link our cars, vending machines, computers, phones and more onto a dynamic hardware network.

Real estate transactions are already being done on the blockchain. Wills, contracts and other documents will begin transacting on the blockchain in the near future as will voting.

And of course, there are the over 1 thousand virtual currencies that people around the world are already using daily.

Requiring a license to transmit and/or receive virtual currency is, in this global climate of high tech growth, not only out of place but out of time. The government has a poor track record of banning much of anything. This is fact. Efforts are instead shifted to regulation.

While some regulation is needed to level the playing field and prevent crime, it must be balanced with many other variables.

Cryptocurrencies are here to stay. They cannot be effectively banned, nor can they be regulated out of existence. A law requiring a license would be basically unenforceable on the individual level and shows a complete lack of understanding of the underlying technology used by crypto tokens and currencies.

On the business level, it would make Hawaii completely unattractive as a place to do any business related to the blockchain, and in the future, perhaps any business at all once all currencies are digital. And, as with Coinbase, Hawaii will just keep many reputable high tech companies away from the State.

There was no point in making exchanges carry a reserve of fiat equivalent to the crypto it's customer's own. Customers are buying crypto and holding it off of the exchange or in cold storage. Sure, you can keep it on an exchange, but its well known that this is not an advisable practice. The only time I would need fiat is when I wanted to convert my coin back into fiat, and there is a free market for that. That bill didn't add any real security for consumers using Coinbase, it just made it harder for investors to access the markets and make money.

Those individuals that would try to adhere to the law would find it unnecessarily painful to transact in virtual currency. Like so many laws before it, criminals would be enabled and law-abiding citizens would be punished.

It would also put our entire State at a disadvantage to the rest of the nation and the world. Hawaii needs high tech. A High Tech economy is something that a few in our local government and a great many hard-working individuals in our State, including myself, have been struggling to build.

Sadly, there are so many forces at work that force Hawaii to experience an endless brain drain of talent. We are consistently near the bottom out of 50 States that are friendly to business. Our best and brightest leave after college to find higher paying, more fulfilling work elsewhere. Our economy is left undiversified and our people are unprepared for the rapidly changing world around them.

The fact that virtual currencies are not backed by something is key to the philosophy and technology. Bitcoin and currencies that came after it, have proven that a currency need not have anything "backing" it, but trust in the individuals using it, and trust in the economy it is used in.

This is not unlike the US dollar, which is no longer gold backed as of 1971. In fact, you would have a hard time finding a currency that is backed by anything physical anywhere in the world. Fiat currency is simply paper. Fiat currency throughout history, has a track record of eventual failure, as it is inflationary by design.

Bitcoin, by design, is deflationary. The government can simply print an endless supply of dollars, causing inflation and destroying the buying power of the middle class. With Bitcoin, this is not possible, making the currency more like digital gold.

There are other risks in virtual currency, it is very new. This is to be expected. If the government is concerned about cryptocurrencies, perhaps a well-intentioned PSA would be more beneficial than passing a bill.

There will be market swings up and down. Bitcoin has crashed over 50% many many times in its short lifecycle. This is the nature of this particular market. Crashes are not uncommon in the stock market either, yet we accept it, only because its an old, familiar institution.

I do not believe it is the place of government to decide what the people invest their hard earned money in, nor is it something the government could effectively regulate.

This bill is one of those forces at work to keep Hawaii in the industrial age. An age that is by all measures, long gone. Our education systems have not yet caught up to the age we are in. Our laws have not yet caught up. Our paradigms have not been shifted yet but they will be.

Sure there will be hiccups along the way. Markets will crash, criminals will try to game the system as they do in many areas of our lives. But this is like the Internet 1.0. It will evolve.

There will be growing pains, but it's like a freight train that is already in motion. It cannot be stopped. What we can do is embrace it. Make Hawaii an example, like so many other places around the world, of the innovation and forward thinking that we are truly capable of.

I implore you, do not let fear and misinformation guide your decision on such an important issue. Cryptocurrency and the blockchain are here to stay. The question is: will Hawaii be part of the future? or remain stuck in the past?

thank you,

-Ty Robinson