

JAN 24 2013

A BILL FOR AN ACT

RELATING TO SECURITIES LAW.

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

1 SECTION 1. Section 485A-102, Hawaii Revised Statutes, is
2 amended by amending the definition of "security" to read as
3 follows:

4 "Security" means a note; stock; treasury stock; security
5 future; bond; debenture; evidence of indebtedness; certificate
6 of interest or participation in a profit-sharing agreement;
7 collateral trust certificate; preorganization certificate or
8 subscription; transferable share; investment contract; variable
9 annuity contract; voting trust certificate; certificate of
10 deposit for a security; fractional undivided interest in oil,
11 gas, or other mineral rights; put, call, straddle, option, or
12 privilege on a security, certificate of deposit, or group or
13 index of securities, including an interest therein or based on
14 the value thereof; put, call, straddle, option, or privilege
15 entered into on a national securities exchange relating to
16 foreign currency; in general, an interest or instrument commonly
17 known as a "security"; or a certificate of interest or
18 participation in, temporary or interim certificate for, receipt

1 for, guarantee of, or warrant or right to subscribe to or
2 purchase, any of the foregoing. The term:

3 (1) Includes both a certificated and an uncertificated
4 security;

5 (2) Does not include an insurance or endowment policy or
6 annuity contract under which an insurance company
7 promises to pay a fixed sum of money either in a lump
8 sum or periodically for life or other specified
9 period;

10 (3) Does not include an interest in a contributory or
11 noncontributory pension or welfare plan subject to the
12 Employee Retirement Income Security Act of 1974;

13 (4) Includes any contractual or quasi-contractual
14 arrangement pursuant to which:

15 (A) A person furnishes value, other than services, to
16 an offeror;

17 (B) A portion of that value is subjected to the risk
18 of the offeror's enterprise;

19 (C) The furnishing of that value is induced by the
20 representations of an offeror which [~~gives~~] give
21 rise to a reasonable understanding that a

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1 valuable benefit will accrue to the offeree as a
2 result of the operation of the enterprise; and

3 (D) The offeree does not [~~intend to be actively~~
4 ~~involved in the~~] receive the right to exercise
5 practical and actual control over the management
6 of the enterprise in a meaningful way; and

7 (5) Includes as an "investment contract", among other
8 contracts, an interest in a limited partnership and a
9 limited liability company and an investment in a
10 viatical settlement or similar agreement."

11 SECTION 2. Section 485A-402, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

13 "(b) The following individuals are exempt from the
14 registration requirement of subsection (a):

15 (1) An individual who represents a broker-dealer in
16 effecting transactions in this State limited to those
17 described in section [~~15(h)(2)] 15(i)(3) of the
18 Securities Exchange Act of 1934 [~~(15 U.S.C.~~
19 ~~78(e)(2))~~], (15 U.S.C. 78o(i)(3)), relating to de
20 minimis transactions by associated persons;~~

21 (2) An individual who represents a broker-dealer that is
22 exempt under section 485A-401(b) or 485A-401(d);


- 1 (3) An individual who represents an issuer with respect to
2 an offer or sale of the issuer's own securities or
3 those of the issuer's parent company or any of the
4 issuer's subsidiaries, and who is not compensated in
5 connection with the individual's participation by the
6 payment of commissions or other remuneration based,
7 directly or indirectly, on transactions in those
8 securities;
- 9 (4) An individual who represents an issuer and who effects
10 transactions in the issuer's securities exempted by
11 section 485A-202, other than section 485A-202(a)(10)
12 and (13);
- 13 (5) An individual who represents an issuer that effects
14 transactions solely in federal covered securities of
15 the issuer; provided that an individual who effects
16 transactions in a federal covered security under
17 section 18(b)(3) or 18(b)(4)(D) of the Securities Act
18 of 1933 (15 U.S.C. 77r(b)(3) or 77r(b)(4)(D)) is not
19 exempt if the individual is compensated in connection
20 with the agent's participation by the payment of
21 commissions or other remuneration based, directly or
22 indirectly, on transactions in those securities;

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- 1 (6) An individual who represents a broker-dealer
- 2 registered in this State under section 485A-401(a) or
- 3 exempt from registration under section 485A-401(b) in
- 4 the offer and sale of securities for an account of a
- 5 nonaffiliated federal covered investment adviser with
- 6 investments under management in excess of \$100,000,000
- 7 acting for the account of others pursuant to
- 8 discretionary authority in a signed record;
- 9 (7) An individual who represents an issuer in connection
- 10 with the purchase of the issuer's own securities;
- 11 (8) An individual who represents an issuer and who
- 12 restricts participation to performing clerical or
- 13 ministerial acts; or
- 14 (9) Any other individual exempted by rule adopted or order
- 15 issued under this chapter."

16 SECTION 3. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act shall take effect upon its approval.

19
20 INTRODUCED BY: 

21 BY REQUEST

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Report Title:

Uniform Securities Act

Description:

Clarifies, corrects errors, and amends Hawaii's securities laws.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO SECURITIES LAW.

PURPOSE: To clarify, correct errors, and amends Hawaii's securities laws to be easier to follow and consistent with best practices.

MEANS: Amend sections 485A-102 and 485A-402(b), Hawaii Revised Statutes (HRS).

JUSTIFICATION:

The bill makes corrections in the following areas:

1. This bill corrects a grammatical error, changing the verb "gives" to "give", in the definition of a "security."

2. This bill also amends the definition of a "security" to correctly incorporate the fourth element of an investment contract to track the language of Hawaii case law as determined by the Hawaii Supreme Court in State v. Hawaii Market Center, Inc., 52 Haw. 642, 485 P.2d 105 (1971).

3. This bill also corrects an erroneous reference to section 15(h)(2) of the Securities Exchange Act of 1934, the de minimis transactions exemption. This provision was designated as section 15(i)(3) and our law needs to be revised to reflect this change.

Impact on the public: This bill eases compliance obligations by correcting errors that may mislead the public, clarifies statutory requirements, and amends the statutes to track the Hawaii case law so the public can more easily comply with securities regulations.

Impact on the department and other agencies:
This bill will streamline the Department's regulatory and enforcement responsibilities with respect to securities laws.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA 111.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.