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**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

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(o)(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;

- 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.

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INTRODUCED BY



BY REQUEST

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JAN 22 2013

H.B. NO. 835

**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.