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1 or possession of his or her money, assets, or  
2 property; or

3 (B) Convert money, assets, or property of the  
4 vulnerable adult to deprive the vulnerable adult  
5 of the ownership, use, benefit, or possession of  
6 his or her money, assets, or property.

7 "Qualified person" means any agent, broker-dealer,  
8 investment adviser representative, investment adviser, or person  
9 who serves in a supervisory or compliance capacity for a broker-  
10 dealer or an investment adviser.

11 "Reasonably associated individual" means any person known  
12 to the qualified person to be reasonably associated with the  
13 account.

14 "Vulnerable adult" means:

15 (1) A person sixty-two years of age or older; or

16 (2) A person eighteen years of age or older who,  
17 because of mental, developmental, or physical  
18 impairment, is unable to:

19 (A) Communicate or make responsible decisions to  
20 manage the person's own care or resources;

21 (B) Carry out or arrange for essential activities of  
22 daily living; or

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1 (C) Protect oneself from abuse, as defined in section  
2 346-222.

3 **§485A-B Governmental disclosures.** If a qualified person  
4 reasonably believes that financial exploitation of a vulnerable  
5 adult may have occurred, may have been attempted, or is being  
6 attempted, the qualified person shall promptly notify the  
7 commissioner.

8 **§485A-C Immunity for governmental disclosures.** A  
9 qualified person who, in good faith and exercising reasonable  
10 care, makes a disclosure of information pursuant to section  
11 485A-B shall be immune from administrative or civil liability  
12 that might otherwise arise from the disclosure or for any  
13 failure to notify the customer of the disclosure.

14 **§485A-D Third-party disclosures.** If a qualified person  
15 reasonably believes that financial exploitation of a vulnerable  
16 adult may have occurred, may have been attempted, or is being  
17 attempted, a qualified person may notify a reasonably associated  
18 individual or any third party previously designated by the  
19 vulnerable adult. Disclosure may not be made to any reasonably  
20 associated individual or previously designated third party that  
21 is suspected of financial exploitation or other abuse of the  
22 vulnerable adult.

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1           **§485A-E Immunity for third-party disclosures.** A qualified  
2 person who, in good faith and exercising reasonable care,  
3 complies with section 485A-D shall be immune from any  
4 administrative or civil liability that might otherwise arise  
5 from the disclosure.

6           **§485A-F Delaying disbursements.** (a) A broker-dealer or  
7 investment adviser may delay a disbursement from an account of a  
8 vulnerable adult or an account on which a vulnerable adult is a  
9 beneficiary if:

10           (1) The qualified person reasonably believes, after  
11           initiating an internal review of the requested  
12           disbursement and the suspected financial exploitation,  
13           that the requested disbursement may result in  
14           financial exploitation of a vulnerable adult; and

15           (2) The broker-dealer or investment adviser:  
16           (A) Immediately, but in no event more than two  
17           business days after the requested disbursement,  
18           provides written notification of the delay and  
19           the reason for the delay to all parties  
20           authorized to transact business on the account,  
21           unless any such party is reasonably believed to

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1           have engaged in suspected or attempted financial  
2           exploitation of the vulnerable adult;

3           (B) Immediately, but in no event more than two  
4           business days after the requested disbursement,  
5           notifies the commissioner; and

6           (C) Continues its internal review of the suspected or  
7           attempted financial exploitation of the  
8           vulnerable adult, as necessary, and reports the  
9           investigation's results to the commissioner  
10          within seven business days after the requested  
11          disbursement.

12          (b) Any delay of a disbursement as authorized by this  
13 section shall expire upon the sooner of:

14          (1) A determination by the broker-dealer or investment  
15          adviser that the disbursement will not result in  
16          financial exploitation of the vulnerable adult; or

17          (2) Fifteen business days after the date on which the  
18          broker-dealer or investment adviser first delayed  
19          disbursement of the funds, unless the commissioner  
20          requests that the broker-dealer or investment adviser  
21          extend the delay, in which case the delay shall expire  
22          no more than twenty-five business days after the date

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1 on which the broker-dealer or investment adviser first  
2 delayed disbursement of the funds, unless sooner  
3 terminated by the commissioner or by an order of a  
4 court of competent jurisdiction.

5 (c) A court of competent jurisdiction may enter an order  
6 extending the delay of the disbursement of funds or may order  
7 other protective relief based on the petition of the  
8 commissioner, the broker-dealer or investment adviser that  
9 initiated the delay under this section, or other interested  
10 party.

11 **§485A-G Immunity for delaying disbursements.** A broker-  
12 dealer or investment adviser that, in good faith and exercising  
13 reasonable care, complies with section 485A-F shall be immune  
14 from any administrative or civil liability that might otherwise  
15 arise from a delay in disbursement in accordance with this  
16 section.

17 **§485A-H Records.** A broker-dealer or investment adviser  
18 shall provide access to or copies of records that are relevant  
19 to the suspected or attempted financial exploitation of a  
20 vulnerable adult to the commissioner, agencies charged with  
21 administering state adult protective services laws, or law  
22 enforcement, either as part of a referral to the commissioner,

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1 agency, or law enforcement, or upon request of the commissioner,  
2 agency, or law enforcement pursuant to an investigation. The  
3 records may include historical records as well as records  
4 relating to the most recent transaction or transactions that may  
5 comprise financial exploitation of a vulnerable adult. All  
6 records made available under this section shall not be  
7 considered a government record as defined in section 92F-13.

8 Nothing in this provision shall limit or otherwise impede  
9 the authority of the commissioner to access or examine the books  
10 and records of broker-dealers and investment advisers as  
11 otherwise provided by law.

12 **§485A-I Multiple duties to report.** Compliance with this  
13 section shall not discharge the duty to report suspected abuse  
14 under any other section."

15 SECTION 2. In codifying the new sections added to chapter  
16 485A, Hawaii Revised Statutes, by section 1 of this Act, the  
17 revisor of statutes shall substitute appropriate section numbers  
18 for the letters used in designating and referring to the new  
19 sections in this Act.

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1 SECTION 3. This Act shall take effect upon its approval.

2

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INTRODUCED BY: 

4

BY REQUEST

JAN 21 2020



# H . B . NO . 2317

**Report Title:**

Uniform Securities Act; Vulnerable Adult; Financial  
Exploitation; Chapter 485A

**Description:**

Protects vulnerable adults from financial exploitation in  
relation to securities.

*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.

PURPOSE: To protect vulnerable adults from financial exploitation in relation to securities.

MEANS: Add a new part to chapter 485A, Hawaii Revised Statutes (HRS).

JUSTIFICATION: This bill is based upon the North American Securities Administrators Association's (NASAA) Model Act to Protect Vulnerable Adults from Financial Exploitation, which NASAA members adopted on January 22, 2016.

As of September 30, 2019, 24 jurisdictions have enacted legislation based upon NASAA's Model Act, and one jurisdiction has adopted the Model Act by regulation.

Financial exploitation has been described as the fastest growing form of elder abuse. However, the elderly are not the only targets. Perpetrators also target adults who are vulnerable to abuse, neglect, and exploitation because of mental, developmental, or physical impairment.

Many incidents of financial exploitation involving the elderly and vulnerable adults go unreported. This is particularly true in cases where the financial abuse is perpetrated by someone entrusted by the victim, and the victim is embarrassed or ashamed, reliant on the perpetrator for care or support, fearful of retaliation, or entirely unaware of the abuse, which is often the case.

Financial exploitation can take on many forms, and its effects can be devastating

and long-lasting. For example, financial exploitation can have serious economic consequences, leading to increased reliance on taxpayer money for housing, food, and healthcare such as Medicare and Medicaid. Financial exploitation, however, goes far beyond economic loss, oftentimes affecting the vulnerable adult's physical, psychological, and emotional health, safety, independence, and overall well-being. These effects can also either directly or indirectly affect family members and loved ones, businesses, taxpayers, and society in general.

Similar to this bill, section 412:3-114.5, HRS, requires financial institutions to report suspected instances of financial abuse to the State's Department of Human Services and the appropriate county police department, but only with respect to suspected financial abuse that is directed toward, targeted, or committed against an elder who is defined as a person 62 years of age or older. Chapter 485A, HRS (Uniform Securities Act), contains only two sections pertaining to the elderly, and both sections relate only to the imposition of increased civil penalties for securities violations committed against elders.

Impact on the public: This bill will positively impact the public, because it will significantly increase the number of reports of suspected financial exploitation of vulnerable adults, which will assist with the early detection, prevention, and intervention of financial exploitation of vulnerable adults. The sooner the suspected financial exploitation can be identified, the greater the likelihood that a vulnerable adult's assets can be protected or recovered.

Eliminating or at least minimizing financial losses will also preserve the dignity, financial independence and control, and

overall quality of life of vulnerable adults.

Impact on the department and other agencies:

This bill pertains to the financial exploitation of vulnerable adults in relation to securities and thus directly impacts the Department of Commerce and Consumer Affairs' Securities Enforcement Branch, which investigates and prosecutes violations of Hawaii securities laws.

However, financial exploitation frequently occurs with other forms of abuse and neglect. As such, this bill may indirectly impact other governmental departments and agencies, including, but not limited to, health, social services, public safety, aging, disability, law enforcement, and protective services, because a report made pursuant to this bill could potentially lead to the discovery of and investigation into other forms of abuse, neglect, or wrongdoing.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-111.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.