

**ACT 240**

**H.B. NO. 2193-86**

**A Bill for an Act Relating to Securities.**

***Be It Enacted by the Legislature of the State of Hawaii:***

**SECTION 1.** Section 485-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

**“(b) Procedure for registration by notification. Securities entitled to registration by notification shall be registered by the filing by the issuer or by any registered dealer interested in the sale thereof, in the office of the**

commissioner, of a statement with respect to the securities containing the following:

- (1) Name of issuer, location and, if incorporated, place of incorporation;
- (2) A brief description of the securities, including the amount of the issue;
- (3) Amount of securities to be offered in the State;
- (4) A statement of the amount of the issuer's income, expenses, and fixed charges during the last three years, certified to by a public accountant;
- (5) A balance sheet showing the amount and general character of its assets and liabilities as of the last fiscal year immediately preceding, certified to by a public accountant;
- (6) A brief statement of the facts which show that the securities fall within one of the classes in this section defined;
- (7) The price at which the securities are to be offered for sale to the public;
- (8) A statement that the issuer has complied with all the laws of the United States relating to the sale of securities;
- (9) Such further information as the commissioner may require.

All of the statements, exhibits, and documents of every kind required by the commissioner under this section, except properly certified public documents, shall be verified by the oath of the applicant or of the issuer in such manner and form as may be required by the commissioner.

In the case of securities falling within the class defined by [paragraphs (1) or (2), of subsection (a),] subsection (a)(1) or (2), a copy of the circular to be used for the public offering shall be filed in the office of the commissioner with the statement or within two days thereafter or within such further time as the commissioner allows.

In the case of securities falling within the classes defined by [paragraphs (3),] subsection (a)(3), (4), (5), (6), and (7), the circular to be used for the public offering shall be filed with the statement.

The filing of such statement in the office of the commissioner and the payment of the fee hereinafter provided shall constitute the registration of the security. Upon such registration, the securities may be sold in the State by any registered dealer giving notice in the manner provided in section [485-14(i)] 485-14(o) subject to the further order of the commissioner as hereinafter provided.

At the time of filing the statement, as prescribed in this section, the applicant shall pay to the commissioner a fee of one-twentieth of one per cent of the aggregate offering price of the securities to be offered in the State for which the applicant is seeking registration, but in no case shall the fee be more than [\$100.] \$250."

SECTION 2. Section 485-10, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) At the time of filing the application for registration as prescribed in this section, the applicant shall pay to the commissioner, a fee of one-tenth of one per cent of the aggregate offering price of the securities to be sold in the State for which the applicant is seeking registration, but in no case shall the fee be less than [\$20] \$50 nor more than [\$200.] \$500."

SECTION 3. Section 485-10, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Registration under this section is effective for a period of one year and may be renewed for additional periods of one year by filing, by a date not later than fifteen days prior to expiration of registration, a prospectus meeting the requirements of [paragraph (3) or (4) of subsection (b) of this section,] subsection (b)(3) or (4), and containing information as of a date not more than ninety days prior to the date of filing, together with the payment of a renewal fee of [\$20.] \$50.”

SECTION 4. Section 485-14, Hawaii Revised Statutes, is amended to read as follows:

**“§485-14 Registration of dealers, investment advisers, salesmen and investment adviser representatives.** (a) It is unlawful for any person to transact business in this State as a dealer, investment adviser, salesman, or investment adviser representative unless registered under this chapter.

(b) Eligibility for registration as a dealer. To be eligible for registration as a dealer an applicant [must be of good repute and] shall have had (or if the applicant is a partnership or corporation have at least one partner, officer, or employee who has) at least one year of experience as a full-time security salesman or experience as a security salesman on a part-time basis found by the commissioner of securities to be substantially equivalent thereto, provided that the foregoing experience requirement shall not apply to issuers of securities applying for registration as dealers for the sole purpose of issuing and selling securities issued by them.

(c) Application for registration as a dealer. An application for registration as a dealer in writing shall be filed in the office of the commissioner in such form as the commissioner may prescribe, duly verified by oath, and shall state the principal office of the applicant wherever situated, and the location of the principal office and branch offices in the State, if any, the name and style of doing business, the names, residence, and business of principals, copartners, officers, and directors, specifying as to each his capacity and title, the general plan and character of business, the length of time the dealer has been engaged in business and information as to the time, place, and character of experience as a securities salesman. The commissioner may also require such additional information as to the applicant's previous history, record, and association [as he deems necessary to establish the good repute in business of the applicant.] including the following:

- (1) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;
- (2) The applicant's financial condition and history;
- (3) Whether the dealer, or any person employed by or associated in business with the dealer, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the dealer under section 485-15; and
- (4) Any other information as the commissioner deems necessary to establish the qualifications of the applicant.

There shall be filed with such application an irrevocable written consent to the service of process upon the commissioner in actions against the dealer in manner and form provided in section 485-12.

(d) Eligibility for registration as an investment adviser. To be eligible for registration under this chapter, an investment adviser [shall be of good repute,] shall have complied with provisions mandatory of this section, and shall take and pass an oral or written examination, or both, prescribed by the

commissioner, to test the applicant's knowledge of the securities business; provided that the commissioner may by rule [or regulation] set forth exemptions to the examination requirement. Every person required to take such an examination at or before the time of the examination, shall pay to the commissioner a fee of [\$100.] \$250.

(e) Registration of investment advisers. An application for registration, duly verified by oath by the applicant, shall be filed in the office of the commissioner accompanied by (1) an irrevocable written consent to the service of process upon the commissioner in actions against the investment adviser in manner and form provided in section 485-12, (2) the applicant's photograph, and (3) a form of the disclosure statement described in section 485-25(c)(4). Information on the registration statement shall include:

- (1) The name and form of organization under which the investment adviser engages or intends to engage in business; the name of the state or other sovereign power under which the investment adviser is organized; the location of the investment adviser's principal business office and branch offices, if any; the names and addresses of the investment adviser's partners, officers, directors, and persons performing similar functions or, if the investment adviser is an individual, of such individual; and the number of the investment adviser's employees;
- (2) The education, the business affiliations for the past five years, and the present business affiliations of the investment adviser and of the investment adviser's partners, officers, directors, and persons performing similar functions and of any controlling person thereof;
- (3) The nature of the business of the investment adviser, including the manner of giving advice and rendering analyses or reports;
- (4) A balance sheet certified by an independent public accountant and other certified financial statements if the investment [advisor] adviser has custody of or discretionary authority over client money, securities or other assets, or an unaudited, verified balance sheet and financial statements if the investment [advisor] adviser has no custody of or discretionary authority over client money, securities or other assets;
- (5) The nature and scope of the authority of the investment adviser with respect to clients' funds and accounts;
- (6) The basis or bases upon which the investment adviser is compensated;
- (7) Whether the investment adviser, or any person employed by or associated in business with the investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the investment adviser under section 485-15;
- (8) A statement as to whether the principal business of the investment adviser consists or is to consist of acting as investment adviser; and
- (9) [Such other] Other information as to the applicant's previous history, record, and association as the commissioner deems necessary [to establish the good repute of the applicant.] including:  
(A) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any

aspect of the securities business and any conviction of a felony;

(B) The applicant's financial history; and

(C) Any additional information as the commissioner deems necessary to establish the applicant's qualifications.

The commissioner may use a uniform registration form adopted by the North American Securities Administrators Association, the Securities and Exchange Commission, or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934; provided such form encompasses the information required under this section.

If an applicant is currently registered by the United States Securities and Exchange Commission or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, the commissioner may accept a certified copy of the registration application the applicant submitted to obtain such registration in lieu of the application required by this section.

(f) Approval, bond. If the commissioner finds that the applicant for registration as a dealer is eligible for such registration, then he shall register the applicant as a dealer upon payment of the fee hereinafter provided and upon such dealer's filing a bond in the sum of \$5,000 running to the State conditioned upon the faithful compliance with this chapter by the dealer and by all salesmen registered by him while acting for him. The bond shall be executed as surety by a surety company authorized to do business in the State; provided that no bond is required of or from any such applicant if the applicant at the time of making his application is a member of any recognized stock or bond exchange which has been in existence for a period of five years prior to April 29, 1931; provided further that no bond is required of a dealer if the aggregate par value of the securities to be sold is less than \$5,000 or in the case of no par value stock, if the price at which the stock is to be offered to the public is less than \$5,000 if the person selling or offering the securities for sale to the public notifies the commissioner in writing of his intention to make the sale and after the sale files with the commissioner a statement of the kind and amount of stock sold and the price received therefor, but where the aggregate par value of the securities or the price at which the stock is to be offered to the public is less than \$5,000 no more than one such sale or offering shall be allowed within a period of one year; provided further that in lieu of the above bond any dealer may deposit and keep deposited with the commissioner cash in the amount of \$5,000 or securities to be approved by the commissioner having a market value at all times of not less than \$5,000 which cash or securities shall be held in trust for the fulfilling of the same terms and conditions as in the case of a bond required by this section, which cash or securities may be withdrawn at any time subject to the deposit in lieu thereof of cash or other securities of equal value, or upon the filing of a bond as provided in this section, and which cash or securities will be so held in trust for a period of two years beyond the revocation or termination of the registration of the dealer depositing the same.

(g) Investment adviser's approval; bond, insurance required. If the commissioner finds that the applicant for registration as an investment adviser is eligible for such registration, the commissioner shall register the investment adviser upon a payment of a fee hereinafter provided and upon such investment adviser filing a bond in the sum of \$50,000 with the State as the obligee. The bond requirement shall be \$5,000 if the adviser does not have custody of or discretionary authority over client money, securities or other

assets. The bond shall be conditioned upon the faithful compliance with this chapter by the investment adviser. The bond shall be executed as a surety by a surety company authorized to do business in the State, provided that in lieu of the above bond any investment adviser may deposit and keep deposited with the commissioner cash in the applicable amount of \$50,000 or \$5,000 or securities to be approved by the commissioner having a market value at all times of not less than \$50,000 or \$5,000 which cash or securities shall be held in trust for the fulfilling of the same terms and conditions as in the case of a bond required by this section, which cash or securities may be withdrawn at any time subject to the deposit in lieu thereof of cash or other securities of equal value, or upon the filing of a bond as provided in this section, and which cash or securities will be so held in trust for a period of two years beyond the revocation or termination of the registration of the investment adviser depositing the same. In addition, the investment adviser shall file with the commissioner a certificate of insurance which indicates that such investment adviser's business is insured for errors and omissions for at least \$100,000 per occurrence with a \$200,000 aggregate for those with less than two years experience and a \$500,000 aggregate for those with two or more years of experience for the protection of the investment adviser's client.

(h) Eligibility for registration as a salesman. To be eligible for registration under this chapter a salesman [shall be of good repute,] shall have complied with the provisions mandatory of this section, shall be designated as a salesman by a registered dealer, and shall take and pass an oral or written examination, or both, prescribed by the commissioner, to test his knowledge of the securities business. Every person required to take such an examination shall, at or before the time he takes the same, pay a fee as prescribed by the commissioner. No person shall be designated as a salesman by, or shall act as a salesman for, more than one registered dealer.

(i) Registration of salesmen. An information statement, containing such information as the commissioner shall prescribe, duly verified by oath by the applicant, shall be filed in the office of the commissioner, together with an appointment of the applicant as a salesman by a registered dealer. The commissioner may require the following:

- (1) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;
- (2) The applicant's financial history and condition;
- (3) Disclosure as to whether the salesman or any person associated in business with the salesman is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the salesman under section 485-15; and
- (4) Any additional information as the commissioner deems necessary to establish the applicant's qualifications.

If the commissioner finds a salesman designated by any registered dealer to be eligible for registration as a salesman, he shall register the person as a salesman upon the payment of the fee hereinafter provided.

(j) Eligibility for registration as an investment adviser representative. To be eligible for registration under this chapter an investment adviser representative [shall be of good repute,] shall have complied with the provisions mandatory of this section, shall be designated as a representative by a registered investment adviser and shall take and pass an oral or written examination, or both, prescribed by the commissioner, to test his knowledge of the investment advisory and securities business; provided that the commis-

sioner may by rule [or regulation] set forth exemptions to the examination requirement. Every person required to take such an examination shall, at or before the time he takes the same, pay a fee as prescribed by the commissioner. No person shall be designated as an investment adviser representative by, or shall act as an investment adviser representative for, more than one registered investment adviser.

(k) Registration of investment adviser representative. An information statement, containing such information as the commissioner shall prescribe, duly verified by oath by the applicant, shall be filed in the office of the commissioner, together with an appointment of the applicant as an investment adviser representative by a registered investment adviser. The commissioner may require the following:

- (1) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;
- (2) The applicant's financial history and condition;
- (3) Disclosure as to whether the investment adviser representative, or any person associated in business with the investment adviser representative, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the investment adviser representative under section 485-15; and
- (4) Any additional information as the commissioner deems necessary to establish the applicant's qualifications.

If the commissioner finds an investment adviser representative designated by any investment adviser to be eligible for registration as an investment adviser representative, he shall register the person as an investment adviser representative upon the payment of a fee hereinafter provided.

(l) Recording; duration; renewal; fee. The name and addresses of all persons found eligible for registration as dealers, investment advisers, salesmen, or investment adviser representatives and all orders with respect thereto shall be recorded in a register of dealers, investment advisers, salesmen, and investment adviser representatives kept in the office of the commissioner which shall be open to public inspection. Except as hereinafter provided, every registration under this section shall expire on December 31 in each odd-numbered year. Applications for renewals shall be made not less than thirty nor more than sixty days before the end of the odd-numbered year. Any applicant for renewal of a dealer, investment adviser, salesman, or investment adviser representative registration who does not submit his application within the time prescribed by this section shall pay a penalty of one hundred per cent of the applicable renewal fee. Any applicant for renewal of a dealer, investment adviser registration who submits his application after December 31 of the odd-numbered year shall be required to reapply as a new dealer or investment adviser. The registration of any dealer, investment adviser salesman, or investment adviser representative may be revoked or terminated prior to its expiration by written notice filed with the commissioner by the registered dealer, registered salesman, registered investment adviser, or registered investment adviser representative concerned, and the revocation shall take effect as of the date and time of filing of the notice. Upon revocation or termination of the registration of any dealer, investment adviser, salesman, or investment adviser representative, the dealer's, investment adviser's, salesman's, or investment adviser representative's certificate of registration shall be surrendered to the commissioner for cancellation. The fee for registration and for each biennial renewal shall be [\$50] \$100 in the case of dealers and

investment advisers and [§10] §25 in the case of salesmen, and investment adviser representatives.

(m) Changes. Changes in registration occasioned by changes in the personnel of a partnership or in the principals, copartners, officers, or directors of any dealer or investment adviser's business may be made from time to time by written application setting forth the facts with respect to such change.

(n) Announcement of registration application. The commissioner, by rule, may require an applicant for initial registration as a dealer, investment adviser, salesperson, or investment adviser representative to publish an announcement of the application in one or more newspapers of general circulation in this State.

(o) Notice of intent to offer. Every registered dealer who intends to offer any security of any issue registered or to be registered shall notify the commissioner in writing of his intention so to do. The notice shall contain the name of the dealer, shall state the name of the security to be offered for sale, and whenever a dealer has prepared such notice and has forwarded the same by registered mail, postage prepaid, and properly addressed to the commissioner, such dealer, as to the contents of the notice and the filing thereof, is deemed to have complied with the requirements of this subsection.

(p) Issuers as dealers. Any issuer of a security required to be registered under this chapter selling such securities (other than in exempt transactions as defined in section 485-6), and any issuer of an exempt security as defined in section 485-4(9) and (10) offering such securities (other than (1) in exempt transactions as defined in section 485-6, or (2) through a dealer registered pursuant to this chapter) shall file with the commissioner a bond or deposit securities or cash in an amount, based on the total capitalization, to be determined by the commissioner in his discretion, which amount, however, shall not be less than \$5,000, nor more than \$25,000, subject also to the same conditions as herein prescribed in the case of dealers, and may appoint salesmen in the manner herein prescribed in the case of dealers.

(q) Capital requirement for dealers and investment advisers who have custody of or discretionary authority over client money, securities, or other assets. The commissioner may by rule require a minimum capital requirement for registered dealers which shall not be less than \$5,000 in the case of dealers and prescribe a ratio between net capital and aggregate indebtedness. The commissioner may by rule require a net worth requirement which shall not be less than \$5,000 for investment advisers."

SECTION 5. Section 485-15, Hawaii Revised Statutes, is amended to read as follows:

**"§485-15 Denial, revocation of dealers', investment advisers', salesmen's, and investment adviser representative's registration; suspension during investigation, etc.** Upon the finding of errors in a registration statement or the filing of complaints by consumers or by any government agency, the commissioner may conduct an investigation of the applicant or registrant and registration under section 485-14 may be refused or any registration granted may be revoked by the commissioner of securities if after a reasonable notice and a hearing the commissioner determines that the applicant or registrant so registered:

- (1) Has violated this chapter or any rule made hereunder;
- (2) Has made a material false statement in the application for registration;



- (3) Has been guilty of a fraudulent act in connection with any sale of securities, or has been or is engaged or is about to engage in making fictitious or pretended sales or purchases of any such securities or has been or is engaged or is about to engage in any practice or sale of securities which is fraudulent or in violation of law; or
- (4) Has demonstrated his unworthiness to transact the business of dealer, investment adviser, salesman, or investment adviser representative.]
- (1) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;
- (2) Has violated or failed to comply with any provision of this chapter or any rule or order under this chapter;
- (3) Has been convicted, within the past ten years, of any misdemeanor or involving a security or any aspect of the securities business, or any felony;
- (4) Is permanently or temporarily enjoined by any court of competent jurisdiction for engaging in or continuing any conduct or practice involving any aspect of the securities business;
- (5) Is the subject of an order of the commissioner denying, suspending, or revoking registration as a dealer, investment adviser, salesman, or investment adviser representative;
- (6) Is the subject of an order entered within the past five years by the securities administrator of any other state or by the Securities and Exchange Commission denying or revoking registration as a dealer, investment adviser, salesman, or investment adviser representative, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order of the Securities and Exchange Commission suspending or expelling the applicant or registrant from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States Post Office fraud order; but:
  - (A) The commissioner may not institute a revocation or suspension proceeding under this paragraph more than one year from the date of the order relied on, and
  - (B) The commissioner may not enter an order under this paragraph on the basis of an order under another law of this State unless that order was based on facts which would currently constitute a ground for an order under this section;
- (7) Has engaged or is about to engage in fraudulent, dishonest, or unethical practices in the securities business;
- (8) Is insolvent, either in the sense that liabilities exceed assets or in the sense that the dealer, investment adviser, salesman, or investment adviser representative cannot meet obligations as they mature; but the commissioner may not enter an order against a dealer or investment adviser under this paragraph without a finding of insolvency as to the dealer or investment adviser;

- (9) Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business;
- (10) Has failed reasonably to supervise agents, if a dealer, or employees, if an investment adviser; for the purposes of this paragraph no person shall be deemed to have failed reasonably to supervise any person if there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violations by such other person, and such person has reasonably discharged the duties and obligations incumbent upon the person by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with; or
- (11) Has demonstrated unworthiness to transact the business of dealer, investment adviser, salesman, or investment adviser representative.

In cases of charges against a salesman or investment adviser representative notice thereof shall also be given the dealer or investment adviser employing such salesman or investment adviser representative. Pending the hearing the commissioner may order the suspension of the dealer's, investment adviser's, salesman's, or investment adviser representative's registration; provided the order states the cause for the suspension.

Until the entry of a final order the suspension of the dealer's or investment adviser's registration, though binding upon the persons notified thereof, shall be deemed confidential, and shall not be published, unless it appears that the order of suspension has been violated after notice.

In the event the commissioner determines to refuse or revoke a registration as hereinabove provided, he shall enter a final order herein with his findings on the register of dealers, investment advisers, salesmen, and investment adviser representatives; and suspension or revocation of the registration of a dealer or investment adviser shall also suspend or revoke the registration of all his salesmen or investment adviser representatives.

It shall be sufficient cause for refusal or cancellation of registration in case of a partnership or corporation or any unincorporated association, if any member of a partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be cause for refusing or revoking the registration of an individual dealer, investment adviser, salesman, or investment adviser representative."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 8. This Act shall take effect upon its approval.

(Approved May 28, 1986.)