

ACT 54

H.B. NO. 940

A Bill for an Act Relating to Securities.

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

SECTION 1. Chapter 485A, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . PROTECTION OF ELDERS AND VULNERABLE ADULTS
FROM FINANCIAL EXPLOITATION**

§485A-A Definitions. As used in this part, unless the context otherwise requires:

“Elder” means an individual sixty-two years of age or older.

“Financial exploitation” means:

- (1) The wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of an elder or a vulnerable adult; or
- (2) Any act or omission by a person, including through the use of a power of attorney, guardianship, or conservatorship of an elder or a vulnerable adult, to:
 - (A) Obtain control through deception, intimidation, or undue influence over the elder’s or vulnerable adult’s money, assets, or property to deprive the elder or vulnerable adult of the ownership, use, benefit, or possession of the elder’s or vulnerable adult’s money, assets, or property; or
 - (B) Convert money, assets, or property of the elder or vulnerable adult to deprive the elder or vulnerable adult of the ownership, use, benefit, or possession of the elder’s or vulnerable adult’s money, assets, or property.

“Qualified person” means any agent, broker-dealer, investment adviser representative, investment adviser, or person who serves in a supervisory or compliance capacity for a broker-dealer or an investment adviser.

“Reasonably associated individual” means any person known to the qualified person to be reasonably associated with the elder, vulnerable adult, or account.

“Vulnerable adult” means a person eighteen years of age or older who, because of mental, developmental, or physical impairment, is unable to:

- (1) Communicate or make responsible decisions to manage the person’s own care or resources;
- (2) Carry out or arrange for essential activities of daily living; or
- (3) Protect oneself from abuse.

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

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

§485A-D Third-party disclosures. If a qualified person reasonably believes that financial exploitation of an elder or a vulnerable adult may have occurred, may have been attempted, or is being attempted, a qualified person may notify a reasonably associated individual or any third party previously designated by the elder or vulnerable adult. Disclosure shall not be made to any reasonably associated individual or previously designated third party who is suspected of financial exploitation or other abuse of the elder or vulnerable adult.

§485A-E Immunity for third-party disclosures. A qualified person who, in good faith and exercising reasonable care, makes a disclosure of information pursuant to section 485A-D shall be immune from any administrative or civil liability that might otherwise arise from the disclosure.

§485A-F Delaying disbursements or transactions. (a) A qualified person may delay a disbursement from, or a transaction in connection with, an account of an elder or a vulnerable adult, or an account on which an elder or a vulnerable adult is a beneficiary, if:

- (1) The qualified person reasonably believes that the requested disbursement or transaction may result in financial exploitation of the elder or vulnerable adult after initiating an internal review of the requested disbursement or transaction and the suspected financial exploitation; and
- (2) The qualified person:
 - (A) Immediately, but in no event more than two business days after the requested disbursement or transaction is delayed, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless any party is reasonably believed to have engaged in suspected or attempted financial exploitation of the elder or vulnerable adult;

- (B) Immediately, but in no event more than two business days after the requested disbursement or transaction is delayed, notifies the commissioner; and
 - (C) Continues its internal review of the suspected or attempted financial exploitation of the elder or vulnerable adult, as necessary, and provides status updates to the commissioner upon request.
- (b) Any delay of a requested disbursement or transaction as authorized by this section shall expire upon the sooner of:
- (1) A determination by the qualified person that the requested disbursement or transaction will not result in financial exploitation of the elder or vulnerable adult; or
 - (2) Fifteen business days after the date on which the qualified person first delayed the requested disbursement or transaction, unless the commissioner requests that the qualified person extend the delay, in which case the delay shall expire no later than twenty-five business days after the date on which the qualified person first delayed the requested disbursement or transaction, unless sooner terminated or further extended by the commissioner or by an order of a court of competent jurisdiction.
- (c) A court of competent jurisdiction may enter an order extending the delay of the requested disbursement or transaction, or may order other protective relief based on the petition of the commissioner, the qualified person who initiated the delay under this section, or other interested party.

§485A-G Immunity for delaying disbursements or transactions. A qualified person who, in good faith and exercising reasonable care, complies with section 485A-F shall be immune from any administrative or civil liability that might otherwise arise from a delay of a requested disbursement or transaction in accordance with that section.

§485A-H Records. A qualified person shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an elder or a vulnerable adult to the commissioner or law enforcement, either as part of a referral to the commissioner or law enforcement, or upon request of the commissioner or law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation of an elder or a vulnerable adult. All records made available under this section shall be exempt from disclosure under chapter 92F.

Nothing in this section shall limit or otherwise impede the authority of the commissioner to access or examine the books and records of a qualified person as otherwise provided by law.

§485A-I Multiple duties to report. Compliance with this part shall not discharge the duty to report suspected abuse under any other law.”

SECTION 2. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

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

(Approved June 16, 2021.)