
A BILL FOR AN ACT

RELATING TO SECURITIES.

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

1 SECTION 1. Section 485A-202, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The following transactions are exempt from the
4 requirements of sections 485A-301 to 485A-305 and 485A-504:

5 (1) An isolated nonissuer transaction, whether or not
6 effected by or through a broker-dealer;

7 (2) A nonissuer transaction by or through a broker-dealer
8 registered or exempt from registration under this
9 chapter, and a resale transaction by a sponsor of a
10 unit investment trust registered under the Investment
11 Company Act of 1940, in a security of a class that has
12 been outstanding in the hands of the public for at
13 least ninety days, if, at the date of the transaction:

14 (A) The issuer of the security is engaged in
15 business, the issuer is not in the organizational
16 stage or in bankruptcy or receivership, and the
17 issuer is not a blank check, blind pool, or shell
18 company that has no specific business plan or

- 1 purpose or has indicated that its primary
2 business plan is to engage in a merger or
3 combination of the business with, or an
4 acquisition of, an unidentified person;
- 5 (B) The security is sold at a price reasonably
6 related to its current market price;
- 7 (C) The security does not constitute the whole or
8 part of an unsold allotment to, or a subscription
9 or participation by, the broker-dealer as an
10 underwriter of the security or a redistribution;
- 11 (D) A nationally recognized securities manual or its
12 electronic equivalent designated by rule adopted
13 or order issued under this chapter or a record
14 filed with the Securities and Exchange Commission
15 that is publicly available and contains:
- 16 (i) A description of the business and operations
17 of the issuer;
- 18 (ii) The names of the issuer's executive officers
19 and the names of the issuer's directors, if
20 any;
- 21 (iii) An audited balance sheet of the issuer as of

1 a date within eighteen months before the
2 date of the transaction or, in the case of a
3 reorganization or merger when the parties to
4 the reorganization or merger each had an
5 audited balance sheet, a pro forma balance
6 sheet for the combined organization; and

7 (iv) An audited income statement for each of the
8 issuer's two immediate previous fiscal years
9 or for the period of existence of the
10 issuer, whichever is shorter, or, in the
11 case of a reorganization or merger when each
12 party to the reorganization or merger had
13 audited income statements, a pro forma
14 income statement; and

15 (E) Any one of the following requirements is met:

16 (i) The issuer of the security has a class of
17 equity securities listed on a national
18 securities exchange registered under section
19 6 of the Securities Exchange Act of 1934 or
20 designated for trading on the National
21 Association of Securities Dealers' Automated
22 Quotation System;

- 1 (4) A nonissuer transaction by or through a broker-dealer
2 registered or exempt from registration under this
3 chapter in an outstanding security if the guarantor of
4 the security files reports with the Securities and
5 Exchange Commission under the reporting requirements
6 of section 13 or 15(d) of the Securities Exchange Act
7 of 1934 (15 U.S.C. 78m or 78o(d));
- 8 (5) A nonissuer transaction by or through a broker-dealer
9 registered or exempt from registration under this
10 chapter in a security that:
- 11 (A) Is rated at the time of the transaction by a
12 nationally recognized statistical rating
13 organization in one of its four highest rating
14 categories; or
- 15 (B) Has a fixed maturity or a fixed interest or
16 dividend, if:
- 17 (i) A default has not occurred during the
18 current fiscal year or within the three
19 previous fiscal years or during the
20 existence of the issuer and any predecessor
21 if less than three fiscal years, in the

- 1 payment of principal, interest, or dividends
2 on the security; and
- 3 (ii) The issuer is engaged in business, is not in
4 the organizational stage or in bankruptcy or
5 receivership, and is not and has not been
6 within the previous twelve months a blank
7 check, blind pool, or shell company that has
8 no specific business plan or purpose or has
9 indicated that its primary business plan is
10 to engage in a merger or combination of the
11 business with, or an acquisition of, an
12 unidentified person;
- 13 (6) A nonissuer transaction by or through a broker-dealer
14 registered or exempt from registration under this
15 chapter effecting an unsolicited order or offer to
16 purchase;
- 17 (7) A nonissuer transaction executed by a bona fide
18 pledgee without the purpose of evading this chapter;
- 19 (8) A nonissuer transaction by a federal covered
20 investment adviser with investments under management
21 in excess of \$100,000,000, acting in the exercise of

- 1 discretionary authority in a signed record for the
2 account of others;
- 3 (9) A transaction between the issuer or other person on
4 whose behalf the offering is made and an underwriter,
5 or among underwriters;
- 6 (10) A transaction in a note, bond, debenture, or other
7 evidence of indebtedness secured by a mortgage or
8 other security agreement if:
- 9 (A) The note, bond, debenture, or other evidence of
10 indebtedness is offered and sold with the
11 mortgage or other security agreement as a unit;
- 12 (B) A general solicitation or general advertisement
13 of the transaction is not made; and
- 14 (C) A commission or other remuneration is not paid or
15 given, directly or indirectly, to a person not
16 registered under this chapter as a broker-dealer
17 or as an agent;
- 18 (11) A transaction by an executor, administrator of an
19 estate, personal representative, sheriff, marshal,
20 receiver, trustee in bankruptcy, guardian, or
21 conservator;
- 22 (12) A sale or offer to sell to:

H . B . NO . 2497

- 1 (A) An institutional investor;
- 2 (B) A federal covered investment adviser; or
- 3 (C) Any other person exempted by rule adopted or
- 4 order issued under this chapter;
- 5 (13) Any transaction pursuant to a sale or an offer to sell
- 6 securities of an issuer, if the transaction is part of
- 7 an issue in which:
 - 8 (A) There are no more than twenty-five purchasers
 - 9 (other than those designated in paragraph (12)),
 - 10 wherever located, during any twelve consecutive
 - 11 months;
 - 12 (B) The issuer reasonably believes that all
 - 13 purchasers (other than those designated in
 - 14 paragraph (12)), wherever located, are purchasing
 - 15 for investment purposes and not with the view to,
 - 16 or for sales in connection with, a distribution
 - 17 of the security. The purchase shall be presumed
 - 18 to be made with a view to distribute and not to
 - 19 invest if any resale of a security sold in
 - 20 reliance on this exemption is within twelve
 - 21 months of sale, except a resale pursuant to a
 - 22 registration statement effective under section

1 485A-301, or to an accredited investor pursuant
2 to an exemption available under this chapter;

3 (C) No commission, discount, or other remuneration is
4 paid or given, directly or indirectly, to a
5 person, other than a broker-dealer or agent
6 registered under this chapter, for soliciting a
7 prospective purchaser in this State; and

8 (D) The securities of the issuer are not offered or
9 sold by general solicitation or any general
10 advertisement or other advertising medium;

11 (14) A transaction under an offer to existing security
12 holders of the issuer, including persons who at the
13 date of the transaction are holders of convertible
14 securities, options, or warrants, if a commission or
15 other remuneration, other than a standby commission,
16 is not paid or given, directly or indirectly, for
17 soliciting a security holder in this State;

18 (15) (A) A transaction involving the offer or sale of a
19 security by an issuer to an accredited investor
20 that meets the following requirements:

21 (i) The issuer reasonably believes that the sale
22 is to persons who are accredited investors;

1 issuer; any beneficial owner of ten per cent or
2 more of any class of the issuer's equity
3 securities; any issuer's predecessor, director,
4 officer, general partner, or promoter presently
5 connected in any capacity with the issuer; and
6 any underwriter or partner, director, or officer
7 of the underwriter of the securities to be
8 offered:

9 (i) Within the last five years has filed a
10 registration statement that is the subject
11 of a currently effective registration stop
12 order entered by any state securities
13 administrator or the Securities and Exchange
14 Commission;

15 (ii) Within the last five years has been
16 convicted of any criminal offense in
17 connection with the offer, purchase, or sale
18 of any security, or involving fraud or
19 deceit;

20 (iii) Is currently subject to any state or federal
21 administrative enforcement order or judgment
22 entered within the last five years, finding

1 fraud or deceit in connection with the
2 purchase or sale of any security; or
3 (iv) Is currently subject to any order, judgment,
4 or decree of any court of competent
5 jurisdiction, entered within the last five
6 years, temporarily, preliminarily, or
7 permanently restraining or enjoining such
8 party from engaging in or continuing to
9 engage in any conduct or practice involving
10 fraud or deceit in connection with the
11 purchase or sale of any security;

12 (C) Subparagraph (B) shall not apply if:

13 (i) The party subject to the disqualification is
14 licensed or registered to conduct
15 securities-related business in the state in
16 which the order, judgment, or decree
17 creating the disqualification was entered
18 against such party;

19 (ii) Before the first offer under this exemption,
20 the commissioner, or the court or regulatory
21 authority that entered the order, judgment,
22 or decree waives the disqualifications; or

1 offer is made in compliance with Rule 165 adopted
2 under the Securities Act of 1933 (17 C.F.R.
3 230.165); and

4 (B) A stop order of which the offeror is aware has
5 not been issued against the offeror by the
6 commissioner or the Securities and Exchange
7 Commission, and an audit, inspection, or
8 proceeding that is public and that may culminate
9 in a stop order is not known by the offeror to be
10 pending;

11 (17) An offer to sell, but not a sale, of a security exempt
12 from registration under the Securities Act of 1933 if:

13 (A) A registration statement has been filed under
14 this chapter, but is not effective;

15 (B) A solicitation of interest is provided in a
16 record to offerees in compliance with a rule
17 adopted by the commissioner under this chapter;
18 and

19 (C) A stop order of which the offeror is aware has
20 not been issued by the commissioner under this
21 chapter and an audit, inspection, or proceeding

1 that may culminate in a stop order is not known
2 by the offeror to be pending;

3 (18) A transaction involving the distribution of the
4 securities of an issuer to the security holders of
5 another person in connection with a merger,
6 consolidation, exchange of securities, sale of assets,
7 or other reorganization to which the issuer, or its
8 parent or subsidiary and the other person, or its
9 parent or subsidiary, are parties;

10 (19) A rescission offer, sale, or purchase under section
11 485A-510;

12 (20) An offer or sale of a security to a person not a
13 resident of this State and not present in this State
14 if the offer or sale does not constitute a violation
15 of the laws of the state or foreign jurisdiction in
16 which the offeree or purchaser is present and is not
17 part of an unlawful plan or scheme to evade this
18 chapter;

19 (21) Employees' stock purchase, savings, option,
20 profit-sharing, pension, or similar employees' benefit
21 plan, including any securities, plan interests, and
22 guarantees issued under a compensatory benefit plan or

H .B. NO. 2497

1 compensation contract, contained in a record, established
2 by the issuer, its parents, its majority-owned
3 subsidiaries, or the majority-owned subsidiaries of the
4 issuer's parent for the participation of their employees,
5 including offers or sales of such securities to:
6 (A) Directors; general partners; trustees, if the
7 issuer is a business trust; officers;
8 consultants; and advisors;
9 (B) Family members who acquire the securities from
10 those persons through gifts or domestic relations
11 orders;
12 (C) Former employees, directors, general partners,
13 trustees, officers, consultants, and advisors if
14 those individuals were employed by or providing
15 services to the issuer when the securities were
16 offered; and
17 (D) Insurance agents who are exclusive insurance
18 agents of the issuer, or the issuer's
19 subsidiaries or parents, or who derive more than
20 fifty per cent of their annual income from those
21 organizations;

22

- 1 (22) A transaction involving:
- 2 (A) A stock dividend or equivalent equity
- 3 distribution, whether or not the corporation or
- 4 other business organization distributing the
- 5 dividend or equivalent equity distribution is the
- 6 issuer, if nothing of value is given by
- 7 stockholders or other equity holders for the
- 8 dividend or equivalent equity distribution other
- 9 than the surrender of a right to a cash or
- 10 property dividend if each stockholder or other
- 11 equity holder may elect to take the dividend or
- 12 equivalent equity distribution in cash, property,
- 13 or stock;
- 14 (B) An act incident to a judicially approved
- 15 reorganization in which a security is issued in
- 16 exchange for one or more outstanding securities,
- 17 claims, or property interests, or partly in such
- 18 exchange and partly for cash; or
- 19 (C) The solicitation of tenders of securities by an
- 20 offeror in a tender offer in compliance with Rule
- 21 162 adopted under the Securities Act of 1933
- 22 (17 C.F.R. 230.162);

1 (23) A nonissuer transaction in an outstanding security by
2 or through a broker-dealer registered or exempt from
3 registration under this chapter, if the issuer is a
4 reporting issuer in a foreign jurisdiction designated
5 by this paragraph or by rule adopted or order issued
6 under this chapter; has been subject to continuous
7 reporting requirements in the foreign jurisdiction for
8 not less than one hundred eighty days before the
9 transaction; and the security is listed on the foreign
10 jurisdiction's securities exchange that has been
11 designated by this paragraph or by rule adopted or
12 order issued under this chapter, or is a security of
13 the same issuer that is of senior or substantially
14 equal rank to the listed security or is a warrant or
15 right to purchase or subscribe to any of the
16 foregoing. For purposes of this paragraph, Canada,
17 together with its provinces and territories, is a
18 designated foreign jurisdiction and the Toronto Stock
19 Exchange, Inc., is a designated securities exchange.
20 After an administrative hearing in accordance with
21 chapter 91, the commissioner, by rule adopted or order
22 issued under this chapter, may revoke the designation

H. B. NO. 7497

1 of a securities exchange under this paragraph, if the
2 commissioner finds that revocation is necessary or
3 appropriate in the public interest and for the
4 protection of investors;

5 (24) Any offer or sale by or through a real estate broker
6 or real estate salesperson licensed under the laws
7 of this State, of a security issued on or after
8 July 1, 1961, by a corporation organized under the
9 laws of this State, the holder of which is entitled
10 solely by reason of the holder's ownership thereof, to
11 occupy for dwelling purposes a house, or an apartment
12 in a building, owned or leased by such corporation;
13 provided that the issuer of the security shall apply
14 for the exemption to the commissioner on such form and
15 containing such information as the commissioner may
16 prescribe. If the commissioner finds that the
17 business applicant's proposed plan and the proposed
18 issuance of securities are fair, just, and equitable,
19 that the applicant intends to transact its business
20 fairly and honestly, and that the securities that the
21 applicant proposes to issue and the method to be used
22 by the applicant in issuing or disposing of the

1 securities will not, in the opinion of the
2 commissioner, work a fraud upon the purchaser thereof,
3 the commissioner shall issue to the applicant a permit
4 authorizing the applicant to issue and dispose of the
5 securities in this State in the manner provided herein
6 and in such amounts and for such consideration as the
7 commissioner may provide in the permit. Otherwise,
8 the commissioner shall deny the application and refuse
9 the permit and notify the applicant of the decision in
10 writing, subject to appeal as provided in section
11 485A-609. In any permit issued under this paragraph,
12 the commissioner may require the deposit in escrow or
13 impoundment of any or all securities, the proceeds
14 from the sale thereof, approval of advertising
15 material, and any of the conditions as set forth in
16 section 485A-304(f). The commissioner may act as
17 escrow holder for securities required to be deposited
18 in escrow by the commissioner's order or as a
19 necessary signatory on any account in which impounded
20 proceeds from the sale of escrowed securities are
21 deposited;

1 (25) Any offer or sale by or through a real estate broker
2 or real estate salesperson licensed under the laws of
3 this State of an apartment or unit in a condominium
4 project, and a rental management contract relating to
5 the apartment or unit, including an interest in a
6 partnership formed for the purpose of managing the
7 rental of apartments or units if the rental management
8 contract or the interest in the partnership is offered
9 at the same time as the apartment or unit is offered.

10 For the purposes of this paragraph, the terms
11 "apartment", "unit", "condominium", and "project"
12 shall have the meanings prescribed in section 514A-3
13 or 514B-3; and

14 (26) Any transaction not involving a public offering within
15 the meaning of section 4(2) of the Securities Act of
16 1933 (15 U.S.C. 77d), but not including any
17 transaction specified in the rules and regulations
18 thereunder."

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

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

H.B. NO. 2497

- 1 (1) An individual who represents a broker-dealer in
2 effecting transactions in this State limited to those
3 described in section 15(h)(2) of the Securities
4 Exchange Act of 1934 (15 U.S.C. 78(o)(2));
- 5 (2) An individual who represents a broker-dealer that is
6 exempt under section 485A-401(b) or 485A-401(d);
- 7 (3) An individual who represents an issuer with respect to
8 an offer or sale of the issuer's own securities or
9 those of the issuer's parent company or any of the
10 issuer's subsidiaries, and who is not compensated in
11 connection with the individual's participation by the
12 payment of commissions or other remuneration based,
13 directly or indirectly, on transactions in those
14 securities;
- 15 (4) An individual who represents an issuer and who
16 effects transactions in the issuer's securities
17 exempted by section 485A-202, other than section
18 [~~485A-202(a)(11) and (14)~~] 485A-202(a)(10) and (13);
- 19 (5) An individual who represents an issuer that effects
20 transactions solely in federal covered securities of
21 the issuer; provided that an individual who effects
22 transactions in a federal covered security under

- 1 section 18(b)(3) or 18(b)(4)(D) of the Securities Act
2 of 1933 (15 U.S.C. 77r(b)(3) or 77r(b)(4)(D)) is not
3 exempt if the individual is compensated in connection
4 with the agent's participation by the payment of
5 commissions or other remuneration based, directly or
6 indirectly, on transactions in those securities;
- 7 (6) An individual who represents a broker-dealer
8 registered in this State under section 485A-401(a) or
9 exempt from registration under section 485A-401(b) in
10 the offer and sale of securities for an account of a
11 nonaffiliated federal covered investment adviser with
12 investments under management in excess of \$100,000,000
13 acting for the account of others pursuant to
14 discretionary authority in a signed record;
- 15 (7) An individual who represents an issuer in connection
16 with the purchase of the issuer's own securities;
- 17 (8) An individual who represents an issuer and who
18 restricts participation to performing clerical or
19 ministerial acts; or
- 20 (9) Any other individual exempted by rule adopted or order
21 issued under this chapter."

1 SECTION 3. Section 485A-501, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) It shall be unlawful for a person, in connection with
4 the offer, sale, or purchase of a security, directly or
5 indirectly:

6 (1) To employ a device, scheme, or artifice to defraud;

7 (2) To make an untrue statement of a material fact or to
8 fail to state a material fact necessary to make the
9 statements made, in light of the circumstances under
10 which they were made, not misleading;

11 (3) To engage in an act, practice, or course of business
12 that operates or would operate as a fraud or deceit
13 upon another person;

14 (4) To issue, circulate, or publish any prospectus,
15 circular, advertisement, printed matter, document,
16 pamphlet, leaflet, other literature (in this chapter
17 collectively referred to as "advertising matter"),
18 which contains an untrue statement [~~or~~] of a material
19 fact or fails to state a material fact necessary to
20 make the statements therein made, in light of the
21 circumstances under which they are made, not
22 misleading;

- 1 (5) To issue, circulate, or publish any advertising matter
2 or make any written representation, unless the name of
3 the person issuing, circulating, publishing, or making
4 the same and the fact that the person is issuing,
5 circulating, or making the same shall be clearly
6 indicated thereon;
- 7 (6) To make any statement or representation or issue,
8 circulate, or publish any advertising matter
9 containing any statement, to the effect that the
10 security has been in any way approved or endorsed by
11 the commissioner; or
- 12 (7) To issue, circulate, or publish any advertising matter
13 unless a copy thereof has been previously filed with
14 the office of the commissioner, or unless the
15 commissioner has by rule adopted or order issued under
16 this chapter exempted the filing of any advertising
17 material."

18 SECTION 4. Section 485A-502, Hawaii Revised Statutes, is
19 amended by amending subsection (c) to read as follows:

20 "(c) Notwithstanding subsection (b)(1), an investment
21 adviser may enter into, extend, or renew an investment advisory
22 contract that:

H.B. NO. 2497

- 1 (1) Provides for compensation based upon the total value
2 of a fund averaged over a definite period, or as of
3 definite dates, or taken as of a definite date; or
4 (2) Provides for compensation to the investment adviser on
5 the basis of a share of capital gains or capital
6 appreciation of the funds of the client; provided that
7 the conditions and requirements as defined and set
8 forth in Rule 205-3 under the Investment [Company]
9 Advisers Act of 1940 (17 C.F.R. 275.205-3) shall be
10 met; and provided further that before entering into
11 the advisory contract, and in addition to the
12 requirements of Form ADV, the investment adviser shall
13 disclose in writing to the client or the client's
14 independent agent all material information concerning
15 the proposed advisory arrangement, including the
16 following:
17 (A) That the fee arrangement may create an incentive
18 for the investment adviser to make investments
19 that are riskier or more speculative than would
20 be the case in the absence of a performance-based
21 fee;

- 1 (B) Where relevant, that the investment adviser may
2 receive increased compensation with regard to
3 unrealized appreciation as well as realized gains
4 in the client's account;
- 5 (C) The periods that will be used to measure
6 investment performance throughout the contract
7 and their significance in the computation of the
8 fee;
- 9 (D) The nature of any index that will be used as a
10 comparative measure of investment performance,
11 the significance of the index, and the reason the
12 investment adviser believes that the index is
13 appropriate; and
- 14 (E) Where the investment adviser's compensation is
15 based in part on the unrealized appreciation
16 of securities for which market quotations are
17 not readily available within the meaning of
18 Rule 2a-4(a)(1) under the Investment Company Act
19 of 1940 (17 C.F.R. 270.2a-4(a)(1)), how the
20 securities will be valued and the extent to which
21 the valuation will be independently determined."

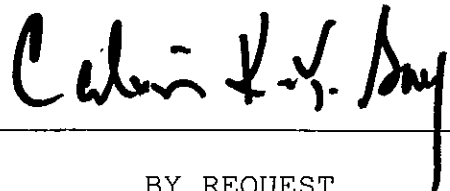
H. B. NO. 2497

1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect upon its approval.

4
5
6
7
8

INTRODUCED BY:



BY REQUEST

JAN 23 2012

H .B. NO. 2497

Report Title:

Uniform Securities Act

Description:

Clarifies and corrects ambiguities and errors in 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.

PURPOSE: To clarify and correct ambiguities and errors in Hawaii's securities laws.

MEANS: Amend sections 485A-202(a), 485A-402(b), 485A-501(a), and 485A-502(c) Hawaii Revised Statutes.

JUSTIFICATION: The securities chapter of the Hawaii Revised Statutes contains errors, ambiguities, and inconsistencies due to recent changes in the law and drafting errors. This bill corrects these errors, ambiguities, and inconsistencies.

The bill makes corrections in the following areas:

1. This bill amends the time to file a notice with the Commissioner to claim an exemption to be "no later than fifteen days" after the first sale instead of "within fifteen days after" the first sale. This change makes the language consistent with other notice filing language throughout the chapter.
2. This bill also corrects several drafting errors where internal references were wrongly cited.

Impact on the public: This bill eases compliance obligations of the securities industry by correcting errors, ambiguities and inconsistencies in the securities laws.

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

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-111.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.