
A BILL FOR AN ACT

RELATING TO SECURITIES.

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

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

4 **"PART . PROTECTION OF ELDERS AND VULNERABLE ADULTS FROM**
5 **FINANCIAL EXPLOITATION**

6 **§485A-A Definitions.** As used in this part, unless the
7 context otherwise requires:

8 "Elder" means a person sixty-two years of age or older.

9 "Financial exploitation" means:

- 10 (1) The wrongful or unauthorized taking, withholding,
11 appropriation, or use of money, assets, or property of
12 an elder or a vulnerable adult; or
- 13 (2) Any act or omission by a person, including through the
14 use of a power of attorney, guardianship, or
15 conservatorship of an elder or a vulnerable adult, to:
 - 16 (A) Obtain control through deception, intimidation,
17 or undue influence over the elder's or vulnerable
18 adult's money, assets, or property to deprive the

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1 elder or vulnerable adult of the ownership, use,
2 benefit, or possession of the elder's or
3 vulnerable adult's money, assets, or property; or
4 (B) Convert money, assets, or property of the elder
5 or vulnerable adult to deprive the elder or
6 vulnerable adult of the ownership, use, benefit,
7 or possession of the elder's or vulnerable
8 adult's money, assets, or property.

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

13 "Reasonably associated individual" means any person known
14 to the qualified person to be reasonably associated with the
15 elder, the vulnerable adult, or the account.

16 "Vulnerable adult" means a person eighteen years of age or
17 older who, because of mental, developmental, or physical
18 impairment, is unable to:

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

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

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

3 **§485A-B Governmental disclosures.** If a qualified person
4 reasonably believes that financial exploitation of an elder or a
5 vulnerable adult may have occurred, may have been attempted, or
6 is being attempted, the qualified person shall promptly notify
7 the 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 an elder or a
16 vulnerable adult may have occurred, may have been attempted, or
17 is being attempted, a qualified person may notify a reasonably
18 associated individual or any third party previously designated
19 by the elder or vulnerable adult. Disclosure shall not be made
20 to any reasonably associated individual or previously designated
21 third party that is suspected of financial exploitation or other
22 abuse of the elder or 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 or transactions.** (a) A
7 broker-dealer or an investment adviser may delay a disbursement
8 from, or a transaction in connection with, an account of an
9 elder or a vulnerable adult or an account on which an elder or a
10 vulnerable adult is a beneficiary if:

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

17 (2) The broker-dealer or investment adviser:

18 (A) Immediately, but in no event more than two
19 business days after the requested disbursement or
20 transaction is delayed, provides written
21 notification of the delay and the reason for the
22 delay to all parties authorized to transact

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1 business on the account, unless any such party is
2 reasonably believed to have engaged in suspected
3 or attempted financial exploitation of the elder
4 or vulnerable adult;

5 (B) Immediately, but in no event more than two
6 business days after the requested disbursement or
7 transaction is delayed, notifies the
8 commissioner; and

9 (C) Continues its internal review of the suspected or
10 attempted financial exploitation of the elder or
11 vulnerable adult, as necessary, and provides
12 status updates to the commissioner upon request.

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

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

19 (2) Fifteen business days after the date on which the
20 broker-dealer or investment adviser first delayed the
21 requested disbursement or transaction, unless the
22 commissioner requests that the broker-dealer or

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1 investment adviser extend the delay, in which case the
2 delay shall expire no more than twenty-five business
3 days after the date on which the broker-dealer or
4 investment adviser first delayed the requested
5 disbursement or transaction, unless sooner terminated
6 or further extended by the commissioner or by an order
7 of a court of competent jurisdiction.

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

14 **§485A-G Immunity for delaying disbursements or**
15 **transactions.** A qualified person who, in good faith and
16 exercising reasonable care, complies with section 485A-F shall
17 be immune from any administrative or civil liability that might
18 otherwise arise from a delay of a requested disbursement or
19 transaction in accordance with this section.

20 **§485A-H Records.** A broker-dealer or an investment adviser
21 shall provide access to or copies of records that are relevant
22 to the suspected or attempted financial exploitation of an elder

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1 or a vulnerable adult to the commissioner, department of human
2 services, or law enforcement, either as part of a referral to
3 the commissioner, department of human services, or law
4 enforcement, or upon request of the commissioner, department of
5 human services, or law enforcement pursuant to an investigation.
6 The records may include historical records as well as records
7 relating to the most recent transaction or transactions that may
8 comprise financial exploitation of an elder or a vulnerable
9 adult. All records made available under this section shall be
10 exempt from disclosure under chapter 92F.

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

15 **§485A-I Multiple duties to report.** Compliance with this
16 section shall not discharge the duty to report suspected abuse
17 under any other section."

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

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

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INTRODUCED BY: 

4

BY REQUEST

JAN 25 2021

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Report Title:

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

Description:

Mandates reporting of suspected financial exploitation of elders and vulnerable adults in relation to securities. Provides immunity for good faith reporting and authorizes the delay of disbursements and transactions.

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 mandate reporting of suspected financial exploitation of elders and vulnerable adults in relation to securities. To provide immunity for good faith reporting and authorize the delay of disbursements and transactions.

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 July 30, 2020, 28 jurisdictions have enacted legislation based upon NASAA's Model Act, and one jurisdiction has adopted NASAA's 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, with devastating and long-lasting effects. Financial exploitation can have serious economic consequences, resulting in increased reliance on taxpayer money for housing, food, and healthcare such as Medicare and Medicaid. Financial exploitation often affects an individual's physical, psychological, and emotional health, as well as his or her safety, independence, and well-being. These effects, in turn, can 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 significantly increase the amount of reports of suspected financial exploitation of elders and vulnerable adults, which will assist with the early detection, prevention, and intervention of financial exploitation of elders and vulnerable adults. The sooner the suspected financial exploitation can be identified, the greater the likelihood that the elder's or the 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 elders and vulnerable adults who fall victim to financial exploitation.

Impact on the department and other agencies:

This bill pertains to the financial exploitation of elders and 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's securities laws. In addition, because a report made pursuant to this bill could potentially lead to the discovery and investigation of other forms of abuse, neglect, or other wrongdoing, 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.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-111.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.