

A Bill for an Act Relating to the Uniform Securities Act (Modified).

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

SECTION 1. Section 485-4, Hawaii Revised Statutes, is amended to read:

“§485-4 Exempt securities. The following securities are exempt from sections 485-8 and 485-25(a)(7):

- (1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state or territory, any political subdivision of a state or territory, or any agency or corporate or other instrumentality of one or more of the foregoing, or any certificate of deposit for any of the foregoing;
- (2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;
- (3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state or territory or any investment certificate issued by an industrial loan company duly licensed under the industrial loan law of the State of Hawaii;
- (4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association or any building and loan or similar association organized under the laws of any state or territory and authorized to do business in the State;
- (5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state or territory and authorized to do business in the State;

- (6) Any security issued or guaranteed by any federal credit union, or any credit union or similar association organized and supervised under the laws of the State;
- (7) Any security issued or guaranteed by any common carrier, public utility, or holding company which is (A) subject to the jurisdiction of the Interstate Commerce Commission; (B) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that Act; (C) regulated in respect of its rates and charges by a governmental authority of the United States or any state or territory; or (D) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States or any state or territory;
- (8) Any security listed or approved for listing upon notice of issuance on any exchange registered or exempted under the Securities Exchange Act of 1934, as amended; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe for any of the foregoing;
- (9) Any security issued by any issuer organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association;
- (10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;
- (11) Any investment contract issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan;
- (12) Any option on a commodity futures contract subject to regulation under the Commodity Exchange Act;
- (13) Any security issued by an "investment company" as defined by and registered under the "Investment Company Act of 1940" (15 U.S.C. §80a);
- (14) Any cooperative association membership stock, membership certificates or share, or membership capital, pursuant to section 421C-36, or chapters 421 or 422[.]; and

- (15) Any security for which a registration statement has been filed under the Securities Act of 1933, provided that no sale shall be made until such registration statement has become effective.”

SECTION 2. Section 485-8, Hawaii Revised Statutes, is amended to read:

“§485-8 **Registration of securities.** It shall be unlawful for any person to sell or offer to sell any security except of a class exempt under section 485-4 or unless sold or offered in any transaction exempt under section 485-6 in the State unless the security has been registered by notification[,] or by qualification[,] [or by coordination,] as hereinafter provided. Registration of stock shall be deemed to include the registration of rights to subscribe to the stock if the notice under section 485-9 or the application under section 485-10 [or the registration statement under section 485-11] includes a statement that the rights are to be issued. A record of the registration of securities shall be kept in a register of securities to be kept in the office of the commissioner of securities in which register shall also be recorded any orders entered by the commissioner with respect to the securities. The register and all information with respect to the securities registered therein shall be open to public inspection.”

SECTION 3. Section 485-11, Hawaii Revised Statutes, is repealed.

SECTION 4. Section 485-11.5, Hawaii Revised Statutes, is amended to read:

“[]§485-11.5[] **Request for private consultant.** Upon the filing of the application for registration of securities as provided in [sections] section 485-9[,] or section 485-10, [485-11] or application for exemption of securities as provided in section 485-7, the applicant may, in writing, request that the registration be prepared by a private consultant, and when requested the commissioner may contract with private consultants for such review. The cost of the review shall be borne by the applicant; provided that upon payment of the cost of review, the applicant shall be reimbursed one-half of the respective filing fee.”

SECTION 5. Section 485-12, Hawaii Revised Statutes, is amended to read:

“§485-12 **Commissioner as agent to accept service; consent to; actions in what circuit; notice to issuer.** Upon any application for registration by notification under section 485-9 made by an issuer and upon any application for registration by qualification under section 485-10 [or for registration by coordination under section 485-11] whether made by an issuer or registered dealer, where the issuer is not domiciled in the State, there shall be filed with the application the irrevocable written consent of the issuer that in suits, proceedings, and actions growing out of the violation of this chapter, the service on the

commissioner of securities of any notice, process, or pleading therein, authorized by the laws of the State, shall be as valid and binding as if due service had been made on the issuer. Any such action shall be brought either in the circuit of the plaintiff's residence or in the circuit in which the commissioner has his office. The written consent shall be authenticated by the seal of the issuer, if it has a seal and by the acknowledged signature of a member of the copartnership or company, or by the acknowledged signature of any officer of the incorporated or unincorporated association, if it is an incorporated or unincorporated association, duly authorized by resolution of the board of directors, trustees, or managers of the corporation or association, and shall in such case be accompanied by a duly certified copy of the resolution of the board of directors, trustees, or managers of the corporation or association, authorizing the officers to execute the same. In case any process or pleadings mentioned in this chapter are served upon the commissioner it shall be by duplicate copies, one of which shall be filed in the office of the commissioner and another immediately forwarded by the commissioner by registered mail to the principal office of the issuer against which the process or pleadings are directed."

SECTION 6. Section 485-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read:

"(a) The commissioner of securities may issue a stop order denying effectiveness to, or suspending, or revoking the effectiveness of, any registration if he finds that the order is in the public interest and that:

- (1) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under section 485-10(f) as of its effective date is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;
- (2) This chapter or any rule, order, or condition lawfully imposed under this chapter has been wilfully violated, in connection with the offering, by (A) the person filing the registration statement, (B) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person, directly or indirectly, controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or (C) any underwriter;
- (3) The security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but

(A) the commissioner may not institute a proceeding against an effective registration statement under this clause more than one year from the date of the order or injunction relied on, and (B) he may not enter an order under this clause on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

- (4) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;
- (5) The offering has worked or tended to work a fraud upon purchasers or would so operate;
- (6) The offering has been or would be made with unreasonable amounts of options, underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation;
- (7) When a security is sought to be registered by notification, it is not eligible for such registration; or
- [(8) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by section 485-11(1)(D); or
- (9)] ~~(8)~~ The applicant or registrant has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this clause and he shall vacate any such order when the deficiency has been corrected.

The commissioner may not enter a stop order against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective."

SECTION 7. Section 485-24, Hawaii Revised Statutes, is amended to read:

"§485-24 Delivery of prospectus to purchaser. No sale or contract of sale of any security required to be registered by qualification shall be concluded unless prior to the conclusion thereof a copy of a prospectus meeting the requirements of paragraph (3) or (4) of subsection (b) of section 485-10 [or of paragraph (1) of section 485-11] is delivered to the purchaser thereof."

SECTION 8. Statutory material to be repealed is bracketed. New material is underscored.¹

SECTION 9. This Act shall take effect upon its approval.

(Approved May 9, 1984.)

Note

- 1. Edited pursuant to HRS §23G-16.5.