

Legislative Analysis



UNIFORM SECURITIES ACT (2002)

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House Bill 5008

Sponsor: Rep. Bill Huizenga

House Bill 5016

Sponsor: Rep. Brian Calley

House Bill 5009

Sponsor: Rep. Andy Coulouris

House Bill 5017

Sponsor: Rep. Dave Hildenbrand

House Bill 5010

Sponsor: Rep. Martin Griffin

House Bill 5018

Sponsor: Rep. Andy Meisner

House Bill 5011

Sponsor: Rep. Mike Simpson

House Bill 5019

Sponsor: Rep. Steve Tobocman

House Bill 5012

Sponsor: Rep. Ed Clemente

House Bill 5020

Sponsor: Rep. Bert Johnson

House Bill 5013

Sponsor: Rep. Arlan Meekhof

House Bill 5022

Sponsor: Rep. Robert Jones

House Bill 5014

Sponsor: Rep. David Palsrok

House Bill 5023

Sponsor: Rep. Frank Accavitti, Jr.

House Bill 5015

Sponsor: Rep. Tonya Schuitmaker

House Bill 5024

Sponsor: Rep. Joel Sheltroun

Committee: Commerce

Complete to 4-21-08

A SUMMARY OF HOUSE BILLS 5008-5020 AND 5022-5024 AS INTRODUCED 7-10-07

House Bill 5008 would create the Uniform Securities Act (2002). It would repeal the existing Uniform Securities Act, Public Act 265 of 1964. The new act would take effect 180 days after enactment. House Bills 5009-5020 and 5022-5024 would each amend a separate act to update references to make them apply to the new Uniform Securities Act. The administrator of the act would be the Office of Financial and Insurance Regulation (OFIR) within the Department of Labor and Economic Growth.

[The bill refers to the Office of Financial and Insurance Services, or OFIS, but the name of that office was officially changed by Executive Order 2008-02 as of April 6, 2008 to the Office of Financial and Insurance Regulation, or OFIR.]

The new act is based on a uniform act developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL). According to the NCCUSL, the

model act is designed to coordinate federal and state securities legislation. The purpose of such regulation is to prevent fraudulent sales of securities to investors. By "securities," the act means notes; stocks; treasury stocks; security futures; bonds; debentures; evidences of indebtedness; certificates of interest or participation in profit sharing agreements; collateral trust agreements; interests in oil, gas, or mineral rights; puts, calls, straddles, and options on securities, certificates of deposits, or groups and indexes of securities; investments in viatical or life settlement agreements; and similar instruments.

The website for the model act, with summaries and explanatory articles, is:
<http://www.uniformsecuritiesact.org/usa/DesktopDefault.aspx?tabindex=0&tabid=1>

[According to the NCCUSL, 14 states have now enacted the 2002 model act: Missouri, Idaho, Iowa, Kansas, Oklahoma, South Dakota, U.S. Virgin Islands, Maine, Vermont, South Carolina, Minnesota, Hawaii, Indiana, and Wisconsin.]

The model act is divided into seven articles as follows.

Article 1 (General Provisions) deals with definitions and references to federal statutes and federal agencies, and provides the act's short title.

Article 2 (Exemptions from Registration of Securities) provides for exempt securities and exempt transactions and the denial, suspension, revocation, condition, and limitation of exemptions.

Article 3 (Registration of Securities) addresses notice filings; securities registration by coordination; securities registration by qualification; and securities registration filings; as well as the denial, suspension, and revocation of securities registration.

Article 4 (Broker-Dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers) addresses registration requirements and exemptions for each classification of professional; succession and change in registration; filing fees; post-registration requirements; and denials, revocations, suspensions, withdrawals, restrictions, conditions, and limitations related to registration.

Article 5 (Fraud and Liabilities) deals with prohibited conduct in providing investment advice; evidentiary burden; the filing of sales and advertising literature; misleading filings; and misrepresentations concerning registration or exemption, immunities, criminal penalties, civil liability, and rescission offers.

Article 6 (Administration and Judicial Review) addresses matters related to administration; investigation and subpoenas; civil and administrative enforcement; rules, orders, interpretative opinions, and orders; public records and confidentiality; uniformity and cooperation with other agencies; judicial review; jurisdiction; and service of process.

Article 7 (Transition) deals with the repeal of existing legislation and the effective date of the new act, as well as the application of the new act to existing proceedings and existing rights and duties.

According to information from the NCCUSL, the new act "will give states regulatory and enforcement authority that avoids duplication of regulatory effort and blends with federal regulation and enforcement in a more efficient system for investor protection." The NCCUSL lists the following as key components of the model act: 1) the registration of securities by means of three methods (notice, coordination, and qualification) to clarify and simplify the process for both regulators and industry; 2) the regulation of broker-dealers, investment advisors, and their agents and representatives through registration in the states where they do business; 3) expanded enforcement powers, including civil and criminal actions against perpetrators of fraud, including court and administrative action; 4) investigatory and subpoena powers for state securities administrators; 5) criminal penalties, which are set by the state; 6) investor education; and 7) electronic filing facilitation.

The criminal provisions in House Bill 5008 would make a willful violation of the act or a rule adopted or an order issued under the act a felony punishable by imprisonment for up to 10 years and/or a fine of up to \$500,000 for each violation. An individual convicted of violating a rule or order could be fined but not imprisoned if he or she did not have knowledge of the rule or order. The attorney general or the proper prosecuting attorney could institute appropriate criminal proceedings with or without a reference from the state administrator. The act would not limit the power of the state to punish a person for conduct that constituted a crime under other state laws.

All fees and civil fines received by OFIR under the act would be deposited in the State Treasury to the credit of OFIR to be used in carrying out its duties under the law (subject to legislative appropriation). Upon appropriation, money in the fund could be used for OFIR investigations involving securities; enforcement actions; and educational programs for the public. These programs would be investor education initiatives to inform the public about investing in securities with particular emphasis on the prevention and detection of securities fraud. After the payment of amounts required by appropriation, remaining money would be credited to the General Fund.

According to information from the NCCUSL,

The states have an important role in securities regulation. There is fraudulent activity at a level that eludes federal law protection, even when federal law applies. And by no means is every security sold a "federal covered security." Many schemes to defraud investors involve locally generated pyramid schemes, misrepresentation, and scam sales. Without state regulation accompanied by civil and criminal enforcement of the law in state courts, there would be little hope of redress for many victimized investors. State enforcement is also available when there are fraudulent schemes involving federal covered securities. In effect, Congress and the SEC have acknowledged that the federal level is unable to cope with all the enforcement that needs to be done.

The 2002 Uniform Act is an effort to give states regulatory and enforcement authority that minimizes duplication of regulatory resources and that blends with federal regulation and enforcement in a more efficient system for investor protection. Uniformity of law among the states is essential for this to happen, but it needs to be a uniform law that coordinates with federal law.

House Bill 5009 would amend the Michigan Strategic Fund Act (MCL 125.2023), which exempts the fund's bonds and notes from filing requirements in the state securities law.

House Bill 5010 would amend the Michigan Consumer Protection Act (MCL 445.920).

House Bill 5011 would amend Public Act 227 of 1971 (MCL 445.111), which deals with home solicitation sales.

House Bill 5012 would amend the Public Employee Retirement System Investment Act (MCL 38.1133), under which investment fiduciaries have to be registered under state securities law.

House Bill 5013 would amend the Nonprofit Corporation Act (MCL 450.3137) to address cooperative nonvoting investment certificates and bonds.

House Bill 5014 would amend the Michigan Penal Code (MCL 750.159g and 411j) to include certain violations of the securities law in the definition of "racketeering."

House Bill 5015 would amend the Revised Judicature Act of 1961 (600.4701) to amend the definition of "crime" to update the securities act reference.

House Bill 5016 would amend the Savings and Loan Act of 1980 (MCL 491.515) to update the definition of "securities."

House Bill 5017 would amend the Michigan Education Trust Act (MCL 390.1439), which exempts advance tuition payment contracts from the Uniform Securities Act.

House Bill 5018 would amend the Code of Criminal Procedure (MCL 777.14j) to put the new felony created by the Uniform Securities Act (2002) in the sentencing guidelines as a Class E felony violating the public trust and carrying a 10-year maximum imprisonment penalty. Current felonies (also carrying 10-year maximum prison terms) under the existing securities law would be deleted.

House Bill 5019 would amend the Michigan Export Development Act (MCL 447.160).

House Bill 5020 would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act (MCL 445.1651a and 1679).

House Bill 5022 would amend the Credit Services Protection Act (MCL 445.1822).

House Bill 5023 would amend the Professional Service Corporation Act (MCL 450.228).

House Bill 5024 would amend the Natural Resources and Environmental Protection Act (MCL 324.21528 and 50510), which exempts certain bonds and notes from having to be filed under the state securities law.

FISCAL IMPACT:

The bill reduces a number of fees related to securities regulation to, generally speaking, revert back to the fee schedule in place in 2003, prior to the enactment of 2003 PA 150. The total impact on the Office of Financial and Insurance Regulation is currently not known.

	1965 PA 264		HB 5008	
	MCL Citation	Fee Amount	Bill Section	Fee Amount
Security Agents Registration				
- Agent Registration (Initial and Renewal)	451.602(c)	\$65.00	410(2)	\$30.00
- Change of Agent Registration			410(2)	\$30.00
- Licensed Agent Transfer Fee	451.602(c)	\$20.00		
Security Broker-Dealer Registration				
- Security Broker-Dealer Registration	451.602(c)	\$300.00	410(1)	\$250.00
- Investment Advisor Registration	451.602(c)	\$200.00	410(3)	\$150.00
- Investment Advisor Representative Registration			410(4)	\$65.00
- Application for Registration of a Successor	451.602(c)	\$125.00	407(1)	\$150-\$250
- Federally Covered Investment Advisor	451.602a(a) and (c)	\$150.00	410(5)	\$150.00
Securities Filing Fees				
- Registration by Notification	451.705(b)	\$100-\$1,250	305(2)	\$100-\$1,250
- Registration by Coordination	451.705(b)	\$100-\$1,250	305(2)	\$100-\$1,250
- Registration by Qualification	451.705(b)	\$100-\$1,250	305(2)	\$100-\$1,250
- Small Company Offering Registration	451.704a(10)	\$100-\$1,250		
- Small Company Offering Registration (Late)	451.704a(13)	\$250.00		
- Investment Company Notice Filing	451.708(a)(2)	\$500.00	302(1)(a)	\$500.00
- Unit Investment Trust Notice Filing	451.708(b)	\$500.00	302(2)	\$500.00
- Federal Covered Security	451.708(d)	\$100.00	302(4)	\$100.00
- Investment Company Renewal				
• Sales during 1-year of \$250,000 or less	451.708(h)(A)	\$100.00	302(8)(a)(i)	\$100.00
• Sales during 1-year of \$250,001 - \$700,000	451.708(h)(B)	\$400.00	302(8)(a)(ii)	\$400.00
• Sales during 1-year of \$700,001 - \$1,000,000	451.708(h)(C)	\$800.00	302(8)(a)(iii)	\$800.00
• Sales during 1-year of more than \$1,000,000	451.708(h)(D)	\$1,400.00	302(8)(iv)	\$1,400.00
- Exempt Securities				
• Church Bonds	451.802(a)(8)	\$50.00		
• Sales to not more than 35 persons	451.802(b)(9)(D)(3)	\$100.00		
• Offer to Existing Security Holders	451.802(b)(11)(B)	\$100.00		
• Designation Order	451.802(b)(17)	\$100.00		
• Uniform Limited Offering Exemption	451.802(b)(21)	\$100.00		

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.