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House Bill 5008 (Substitute S-1 as reported)
House Bill 5018 (as reported without amendment)
Sponsor: Representative Bill Huizenga (H.B. 5008)
Representative Andy Meisner (H.B. 5018)
House Committee: Commerce
Senate Committee: Banking and Financial Institutions

CONTENT

House Bill 5008 (S-1) would repeal the Uniform Securities Act and enact the "Uniform Securities Act (2002)", which also would require the registration of securities (e.g., notes, stocks, and bonds); require the registration of investment advisers, broker-dealers, and agents; prohibit fraudulent practices in relation to securities; and establish civil remedies and criminal penalties for violations. In regard to differences from current law, the bill would do the following:

- Revise the definition of "securities" by including uncertificated securities, excluding interest in a pension or welfare plan under the Employee Retirement Income Security Act, and providing that the term could include, as an investment contract, an interest in a limited partnership, limited liability company, or limited liability partnership.
- Revise the entities excluded from the definition of "broker dealer".
- Define "depository institution", "institutional investor", "self-regulatory organization", and additional terms.
- Expand exemptions from securities registration requirements.
- Authorize the Office of Financial and Insurance Regulation (OFIR), by rule or order, to exempt a security, transaction, or offer, or a class of securities, transactions, or offers from the registration and notice filing requirements, to waive conditions for an exemption, and to deny, limit, or revoke an exemption.
- Add a notice requirement for Federal covered securities.
- Authorize OFIR to issue stop orders denying effectiveness to, or suspending or revoking the effectiveness of, registration statements.
- Require the registration of people representing investment advisers, and require Federal covered investment advisers to meet notice filing requirements.
- Authorize OFIR to deny an application or limit the registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and to revoke, suspend, or limit the registration of a registrant, in the public interest.
- Require certain actions for relief to be brought within two years after discovery or five years after a violation, whichever was earlier.
- Allow OFIR to develop and implement investor education initiatives.
- Create the "Securities Investor Education and Training Fund", which would receive civil fines, costs of investigations, and other administrative assessments, and require the balance of the Fund in excess of \$1.0 million at the close of a fiscal year to be credited to the General Fund.

- Allow OFIR to impose an additional civil fine for violations that victimized individuals who were 60 or older or were unable to protect their financial interests due to disability, illiteracy, or inability to understand the language of an agreement.
- Describe records that would not be public records or available for public inspection.
- Refer to electronic communication in provisions establishing whether an offer to sell or purchase was made in this State.

The proposed Act would take effect on October 1, 2009. The existing Act would govern all actions, prosecutions, or proceedings pending or instituted on the basis of facts or circumstances occurring before that date. The existing Act also would govern any offer or sale made within one year after October 1, 2009, pursuant to an offering made in good faith before that date on the basis of an exemption available under the existing Act.

House Bill 5018 would amend the sentencing guidelines in the Code of Criminal Procedure to include a violation of the Uniform Securities Act (2002) as a Class E felony against public trust with a statutory maximum of 10 years' imprisonment. The bill also would delete the sentencing guidelines' classifications for violations of the existing Uniform Securities Act, which also are Class E felonies against the public trust with a statutory maximum of 10 years. The bill is tie-barred to House Bill 5008.

MCL 777.14j (H.B. 5018)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

House Bill 5008 (S-1) would increase the responsibilities of the Office of Financial and Insurance Regulation within the Department of Labor and Economic Growth. Currently, securities regulation is supported by fees levied under the Uniform Securities Act. In FY 2007-08, approximately \$20.7 million was collected in securities fee revenue; of this amount, \$7.7 million lapsed to the General Fund. This approach would continue under the bill, which specifies that revenue received from the fees and the civil or administrative fines levied under the proposed Act would be available upon appropriation for the costs of administration. Revenue not used for administration would lapse to the General Fund, or for some types of revenue specified in the bill, be deposited in the proposed Securities Investor Education and Training Fund.

The fees in the proposed act would generally be the same as the fees levied under the current Uniform Securities Act. Several of the registration and filing fees currently are being levied at increased amounts that are scheduled to sunset on September 30, 2012. These fee amounts and sunsets would be the same under the bill. The bill also would create a fee structure for registration of investment adviser representatives, who would pay a registration fee of \$65 before October 1, 2012, and a reduced fee of \$30 after September 30, 2012. The amount of additional revenue from the proposed registration of investment adviser representatives is unknown and would depend on the number of registrants.

The bill would create the Securities Investor Education and Training Fund which, upon appropriation, could be used to educate the Michigan public regarding securities laws and investment issues. The bill states that the Fund would receive all civil fines (which appear to be allocated twice in the bill, for administrative costs as described above and to the proposed Fund), payments for costs of investigations, and other administrative assessments levied pursuant to the proposed Act. The Fund would be permitted to carry forward a balance of up to \$1.0 million. Funds in excess of that amount would lapse to the General Fund. The amount of revenue to the Fund would depend on the level of violations and enforcement activities.

According to OFIR, it would require an additional 7.0 FTEs to implement the increased responsibilities under the bill. The estimated annual cost of these positions is \$595,000;

however, the bill does not provide appropriations for these positions. If the positions were appropriated in a future budget, a portion of the cost would be offset by the additional revenue provided from registration of investment adviser representatives. Costs in excess of this revenue would reduce the lapse to the General Fund.

The bill's criminal penalties would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of violating the proposed Uniform Securities Act. In 2006, there were four offenders convicted of violating the existing Uniform Securities Act, which the bill would repeal. All four offenders were convicted of making fraudulent statements or schemes and were sentenced to jail. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$32,000. Additional penal fine revenue would benefit public libraries.

House Bill 5018 would have an indeterminate fiscal impact on State and local government. An offender convicted of the Class E offense under the bill would receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38 months. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$32,000. Additional penal fine revenue would benefit public libraries.

Date Completed: 12-16-08

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.