

HOUSE BILL No. 4616

March 18, 2009, Introduced by Reps. Neumann, Liss, Constan, Scripps, Switalski, Tlaib, Roberts, Slavens, Lisa Brown, Barnett and Bauer and referred to the Committee on Senior Health, Security, and Retirement.

A bill to amend 2008 PA 551, entitled
"Uniform securities act (2002),"

by amending section 102c (MCL 451.2102c).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 102c. As used in this act, unless the context otherwise
2 requires:

3 (a) "Sale" includes every contract of sale, contract to sell,
4 or disposition of, a security or interest in a security for value,
5 and "offer to sell" includes every attempt or offer to dispose of,
6 or solicitation of an offer to purchase, a security or interest in
7 a security for value. Both terms include any of the following:

8 (i) A security given or delivered with, or as a bonus on
9 account of, any purchase of securities or any other thing
10 constituting part of the subject of the purchase and having been

1 offered and sold for value.

2 (ii) A gift of assessable stock involving an offer and sale.

3 (iii) A sale or offer of a warrant or right to purchase or
4 subscribe to another security of the same or another issuer, and a
5 sale or offer of a security that gives the holder a present or
6 future right or privilege to convert the security into another
7 security of the same or another issuer, including an offer of the
8 other security.

9 (b) "Securities and exchange commission" means the United
10 States securities and exchange commission.

11 (c) "Security" means a note; stock; treasury stock; security
12 future; bond; debenture; evidence of indebtedness; certificate of
13 interest or participation in a profit-sharing agreement; collateral
14 trust certificate; preorganization certificate or subscription;
15 transferable share; investment contract; **VARIABLE ANNUITY CONTRACT;**
16 voting trust certificate; certificate of deposit for a security;
17 fractional undivided interest in oil, gas, or other mineral rights;
18 put, call, straddle, option, or privilege on a security,
19 certificate of deposit, or group or index of securities, including
20 an interest in or based on the value of that put, call, straddle,
21 option, or privilege on that security, certificate of deposit, or
22 group or index of securities; put, call, straddle, option, or
23 privilege entered into on a national securities exchange relating
24 to foreign currency; an investment in a viatical or life settlement
25 agreement; or, in general, an interest or instrument commonly known
26 as a "security"; or a certificate of interest or participation in,
27 temporary or interim certificate for, receipt for, guarantee of, or

1 warrant or right to subscribe to or purchase, any of the foregoing.

2 All of the following apply to the term security:

3 (i) The term includes a contractual or quasi-contractual
4 arrangement that meets all of the following:

5 (A) A person furnishes capital, other than services, to an
6 issuer under the arrangement.

7 (B) A portion of the capital furnished under sub-subparagraph
8 (A) is subjected to the risks of the issuer's enterprise.

9 (C) The furnishing of capital under sub-subparagraph (A) is
10 induced by representations made by an issuer, promoter, or the
11 issuer's or promoter's affiliates which give rise to a reasonable
12 understanding that a valuable tangible benefit will accrue to the
13 person furnishing the capital as a result of the operation of the
14 enterprise.

15 (D) The person furnishing the capital under sub-subparagraph
16 (A) does not intend to be actively involved in the management of
17 the enterprise in a meaningful way.

18 (E) At the time the capital is furnished, a promoter or its
19 affiliates anticipate that financial gain may be realized as a
20 result of the furnishing.

21 (ii) The term includes both a certificated and an
22 uncertificated security.

23 (iii) The term does not include an insurance or endowment policy
24 or annuity contract under which an insurance company promises to
25 pay a fixed ~~or variable~~ sum of money either in a lump sum or
26 periodically for life or other specified period.

27 (iv) The term does not include an interest in a contributory or

1 noncontributory pension or welfare plan subject to the employee
2 retirement income security act of 1974.

3 (v) The term includes an investment in a common enterprise
4 with the expectation of profits to be derived primarily from the
5 efforts of a person other than the investor. As used in this
6 subparagraph, a "common enterprise" means an enterprise in which
7 the fortunes of the investor are interwoven with those of either
8 the person offering the investment, a third party, or other
9 investors.

10 (vi) The term may include, as an investment contract, an
11 interest in a limited partnership, a limited liability company, or
12 a limited liability partnership.

13 (d) "Self-regulatory organization" means a national securities
14 exchange registered under the securities exchange act of 1934, a
15 national securities association of broker-dealers registered under
16 the securities exchange act of 1934, a clearing agency registered
17 under the securities exchange act of 1934, or the municipal
18 securities rule-making board established under the securities
19 exchange act of 1934.

20 (e) "Sign" means, with present intent to authenticate or adopt
21 a record, either of the following:

22 (i) To execute or adopt a tangible symbol.

23 (ii) To attach or logically associate with the record an
24 electronic symbol, sound, or process.

25 (f) "State" means a state of the United States, the District
26 of Columbia, the Commonwealth of Puerto Rico, the United States
27 Virgin Islands, or any territory or insular possession subject to

1 the jurisdiction of the United States.

2 (G) "VARIABLE ANNUITY CONTRACT" MEANS AN INSURANCE OR
3 ENDOWMENT POLICY OR ANNUITY CONTRACT UNDER WHICH AN INSURANCE
4 COMPANY PROMISES TO PAY A VARIABLE SUM OF MONEY, BASED ON
5 INVESTMENT EXPERIENCE, EITHER IN A LUMP SUM OR PERIODICALLY FOR
6 LIFE OR SOME OTHER SPECIFIED PERIOD.