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House Bill 5296

Sponsor: Rep. John Bennett

Committee: Corporations & Finance

Complete to 2-20-90

A SUMMARY OF HOUSE BILL 5296 AS INTRODUCED 11-15-90

The bill would amend the Uniform Securities Act, which regulates those who deal in the issuance, sale, or purchase of securities in the state, to exempt certain types of securities issuers from the act, to provide that persons licensed under the act (or who apply for registration) could be required to reimburse the Corporations and Securities Bureau -- the act's administrator, within the Department of Commerce -- for expenses related to an audit, and to permanently establish various fees scheduled to expire December 1, 1990.

Bureau Reimbursed for Audits. The act currently permits the bureau to examine periodically the records of licensees or persons applying for registration under the act. The bill specifies that expenses "reasonably attributable" to such an audit could be charged to the applicant or registrant who was involved in the examination. Funds received from such reimbursements would be deposited into the state treasury for use by the bureau in carrying out its duties under the act.

NASDAQ/NMS Exemptions. The act currently exempts a number of different securities from having to be registered under the act. The bill would also exempt 1) securities listed or approved for listing upon notice or issuance on the National Association of Securities Dealers Automated Quotation (NASDAQ)/National Market System (NMS) and any other similar security of senior or substantially equal rank, 2) securities called for by subscription rights or warrants so listed or approved, or 3) a warrant or right to purchase or subscribe to either of these.

The Corporations and Securities Bureau could -- after providing notice of hearing to all interested parties, opportunity for hearing, written findings of fact and conclusions of law, and a right to judicial appeal -- do any of the following:

- \* deny or revoke the exemption by order for a specific securities issue;
- \* deny the exemption by rule or order to a category of securities when necessary in the public interest and for the protection of investors;
- \* decertify the system by order if the bureau determined the system's requirements were so changed from those listed in federal securities law (adopted December 28, 1988), or insufficiently applied so that public interest and investor protection contemplated by the requirements were no longer afforded.

Limits on "Manual Exemption" Securities Issuers. The act currently exempts as a transaction a nonissuer distribution of an outstanding security whose issuer and any predecessors have been continuously operating for at least 5 years if 1) a recognized securities manual contains the names of the issuer's officers and directors, an up-to-date balance sheet of the issuer, and a profit and loss statement for either the fiscal year preceding the issuer's balance sheet date or the most recent year of operations, or 2) the

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security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years, or during the existence of the issuer and any predecessors if less than 3 years, in paying principal, interest, or dividends on the security.

The bill specifies that an issuer or predecessor would be considered in continuous operation only if it had gross operating revenue in each of the 5 years immediately preceding its claim of exemption and had gross operating revenue of at least \$500,000 in not less than 3 of those 5 years.

Secondary Trading of Securities. The bill would clarify that all outstanding securities of the same class as a registered security are considered to be registered for the purpose of a nonissuer transaction, providing the registration statement is effective or the issuer had a class of securities that were subject to the reporting requirements of the federal Securities Exchange Act of 1934 for at least 9 months before the transaction and all reports required under the federal act had been filed for that period.

Removal of Sunset on Fees. Public Act 408 of 1988 increased various registration fees in the act and provided a sunset date for these increases of December 1, 1990; after this date, the fees that were changed will revert to what they were before the increase. The bill would remove the sunset date for the fee increases and, thus, would permanently establish these fees in the act. The minimum filing fee under the act would remain \$100 and the maximum, \$1,250 (instead of reverting to \$50/\$500). Other registrant annual fees would remain as follows:

- \* for a broker-dealer, \$250;
- \* for a commodity issuer, \$250;
- \* for a principal, \$30 (scheduled to revert to \$25);
- \* for an agent, \$30 (instead of \$15); and
- \* for an investment advisor, \$150 (instead of \$100).

MCL 451.602 et al.