

Legislative Analysis



UNIFORM SECURITIES ACT (2002)

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House Bill 5008 (Substitute H-2)
Sponsor: Rep. Bill Huizenga

House Bill 5016 as introduced
Sponsor: Rep. Brian Calley

House Bill 5009 as introduced
Sponsor: Rep. Andy Coulouris

House Bill 5017 as introduced
Sponsor: Rep. Dave Hildenbrand

House Bill 5010 as introduced
Sponsor: Rep. Martin Griffin

House Bill 5018 as introduced
Sponsor: Rep. Andy Meisner

House Bill 5011 as introduced
Sponsor: Rep. Mike Simpson

House Bill 5019 as introduced
Sponsor: Rep. Steve Tobocman

House Bill 5012 as introduced
Sponsor: Rep. Ed Clemente

House Bill 5020 (Substitute H-2)
Sponsor: Rep. Bert Johnson

House Bill 5013 as introduced
Sponsor: Rep. Arlan Meekhof

House Bill 5022 as introduced
Sponsor: Rep. Robert Jones

House Bill 5014 as introduced
Sponsor: Rep. David Palsrok

House Bill 5023 as introduced
Sponsor: Rep. Frank Accavitti, Jr.

House Bill 5015 (Substitute H-1)
Sponsor: Rep. Tonya Schuitmaker

House Bill 5024 as introduced
Sponsor: Rep. Joel Sheltrown

Committee: Commerce
Complete to 4-30-08

A SUMMARY OF HOUSE BILLS 5008-5020 AND 5022-5024 AS REPORTED FROM COMMITTEE

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 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 civil fines, costs of investigation, administrative assessments received by OFIR under the act would be deposited in a newly created Securities Investor Education and Training Fund. The Fund would be used in developing and implementing investor education initiatives to inform the public about investing in securities with particular emphasis on the prevention and detection of securities fraud.

If the amount in the Fund at the close of any fiscal year is \$1 million or less, the money would remain in the Fund and not lapse to the General Fund. Amounts exceeding \$1 million 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 fiscal impact on the state is indeterminate. The bill generally maintains the existing fee structure for securities, although there are several deviations, the cumulative effect of which is presently unknown. The bill increases the registration fee for a "federally covered advisor" from \$150 (MCL 451.602a) to \$200 (HB 5008, Section 410). The bill also adds new responsibilities for the Office of Financial and Insurance Regulation and a filing fee (\$65) related to the registration of investment advisor representatives. The bill also eliminates the fee (\$50-\$100) for certain "exempted securities" currently listed in MCL 451.802(a) and (b), and imposes a \$65 fee for a change of an agent registration.

In addition, the Office of Financial and Insurance and Regulation indicates that it would require an additional 7.0 FTE positions to carry out its responsibilities under the bill. The additional staffing would increase expenses by approximately \$595,000 on a full-year basis.

The bill creates a new fund, the Securities Investor Education and Training Fund, which would be used to educate and train Michigan residents on securities laws and investment issues. The bill provides that the fund would consist of all civil fines, any costs of an investigation into a possible violation charged by OFIR, as well as other "administrative assessments." The bill further provides that the balance in the fund in excess at the close of the fiscal year shall lapse to the General Fund. [The fund is created in Section 601(5). However, subsection 6 contradicts subsection 5 in that it designates the civil fines be used by OFIR to administer the act.]

Consistent with current law, the bill provides that revenue in excess of the amounts necessary to administer the act shall be credited to the General Fund. In recent years, the amount transferred to the General Fund has ranged from \$4.0 million to \$6.0 million. To the extent the bill increases the costs to administer the act (through additional FTE positions) and reduces available security fee revenue, the bill could potentially reduce GF/GP revenue. Similarly, to the extent securities fee revenue increases above the additional administrative costs, the bill could potentially increase GF/GP revenue.

POSITIONS:

The Office of Financial and Insurance Regulation (OFIR) supports the bills. (4-29-08)

The Business Law Section of the State Bar of Michigan supports the bills. (4-29-08)

The Michigan Bankers Association supports the bills. (4-29-08)

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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.