

HOUSE BILL No. 4126

February 3, 2015, Introduced by Reps. Jenkins, Graves, Rendon, Outman, Yonker, Zemke, Johnson, Hughes, Schor and Sheppard and referred to the Committee on Commerce and Trade.

A bill to amend 2008 PA 551, entitled
"Uniform securities act (2002),"
by amending section 202a (MCL 451.2202a), as added by 2013 PA 264.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 202a. (1) Except as otherwise provided in this act, an
2 offer or sale of a security by an issuer is exempt from the
3 requirements of sections 301 to 306 and 504 if the offer or sale
4 meets all of the following requirements:

5 (a) The issuer of the security is an entity that is
6 incorporated or organized under the laws of this state and is
7 authorized to do business in this state.

8 (b) The transaction meets the requirements for the federal
9 exemption for intrastate offerings under section 3(a)(11) of the
10 securities act of 1933, 15 USC 77c(a)(11), and SEC rule 147, 17 CFR

1 230.147, including, but not limited to, the requirements for
2 determining whether an offeree or purchaser is a resident of this
3 state. All of the following apply concerning these requirements:

4 (i) Each of the following is prima facie evidence that an
5 individual is a resident of this state:

6 (A) A valid operator's license, chauffeur's license, or
7 official personal identification card issued by this state.

8 (B) A current Michigan voter registration.

9 (C) A signed affidavit as described in section 7cc(2) of the
10 general property tax act, 1893 PA 206, MCL 211.7cc, that indicates
11 that the purchaser owns and occupies property in this state as his
12 or her principal residence.

13 (D) Any other record or documents issued by this state that
14 establishes that the purchaser's principal residence is in this
15 state.

16 (ii) The provisions of SEC rule 147, 17 CFR 230.147, apply in
17 determining the residency of an offeree or purchaser that is a
18 corporation, partnership, trust, or other form of business
19 organization.

20 (iii) If a purchaser of a security that is exempt under this
21 section resells that security within 9 months after the closing of
22 the particular offering in which the purchaser obtained that
23 security to a person that is not a resident of this state, the
24 original investment agreement between the issuer and the purchaser
25 is void. If an agreement to purchase, or the purchase of, a
26 security is void under this subparagraph, the issuer may recover
27 damages from the misrepresenting offeree or purchaser. These

1 damages include, but are not limited to, the issuer's expenses in
2 resolving the misrepresentation. However, damages described in this
3 subparagraph shall not exceed the amount of the person's investment
4 in the security.

5 (c) The sum of all cash and other consideration to be received
6 for all sales of the security in reliance on this exemption does
7 not exceed the following amounts:

8 (i) One million dollars, less the aggregate amount received for
9 all sales of securities by the issuer within the 12 months before
10 the first offer or sale made in reliance on this exemption, if the
11 issuer has not made available to each prospective purchaser and the
12 administrator audited financial statements or reviewed financial
13 statements for the issuer's most recently completed fiscal year,
14 prepared by a certified public accountant, as defined in section
15 720 of the occupational code, 1980 PA 299, MCL 339.720, in
16 accordance with the statements on auditing standards of the
17 American institute of certified public accountants or the
18 statements on standards for accounting and review services of the
19 American institute of certified public accountants, as applicable.

20 (ii) Two million dollars, less the aggregate amount received
21 for all sales of securities by the issuer within the 12 months
22 before the first offer or sale made in reliance on this exemption,
23 if the issuer has made available to each prospective purchaser and
24 the administrator audited financial statements or reviewed
25 financial statements for the issuer's most recently completed
26 fiscal year, prepared by a certified public accountant, as defined
27 in section 720 of the occupational code, 1980 PA 299, MCL 339.720,

1 in accordance with the statements on auditing standards of the
2 American institute of certified public accountants or the
3 statements on standards for accounting and review services of the
4 American institute of certified public accountants, as applicable.

5 (d) The issuer has not accepted more than \$10,000.00 from any
6 single purchaser unless the purchaser is an accredited investor as
7 defined by rule 501 of SEC regulation D, 17 CFR 230.501. The issuer
8 may rely on confirmation that the purchaser is an accredited
9 investor from a licensed broker-dealer or another third party in
10 making a determination that the purchaser is an accredited
11 investor.

12 (e) At least 10 days before an offer of securities is made in
13 reliance on this exemption or the use of any publicly available
14 website in connection with an offering of securities in reliance on
15 this exemption, the issuer files a notice with the administrator,
16 in writing or in electronic form as specified by the administrator,
17 that contains all of the following:

18 (i) A notice of claim of exemption from registration,
19 specifying that the issuer intends to conduct an offering in
20 reliance on this exemption, accompanied by the filing fee specified
21 in this section.

22 (ii) A copy of the disclosure statement to be provided to
23 prospective investors in connection with the offering. The
24 disclosure statement must contain all of the following:

25 (A) A description of the issuer, including its type of entity,
26 the address and telephone number of its principal office, its
27 formation history, its business plan, and the intended use of the

1 offering proceeds, including any amounts to be paid, as
2 compensation or otherwise, to any owner, executive officer,
3 director, managing member, or other person occupying a similar
4 status or performing similar functions on behalf of the issuer.

5 (B) The identity of each person that owns more than 10% of the
6 ownership interests of any class of securities of the issuer.

7 (C) The identity of the executive officers, directors, and
8 managing members of the issuer, and any other individuals who
9 occupy similar status or perform similar functions in the name of
10 and on behalf of the issuer, including their titles and their prior
11 experience.

12 (D) The terms and conditions of the securities being offered
13 and of any outstanding securities of the issuer, the minimum and
14 maximum amount of securities being offered, if any, and either the
15 percentage ownership of the issuer represented by the offered
16 securities or the valuation of the issuer implied by the price of
17 the offered securities.

18 (E) The identity of any person that the issuer has or intends
19 to retain to assist the issuer in conducting the offering and sale
20 of the securities, including the owner of any websites, if known,
21 but excluding any person acting solely as an accountant or attorney
22 and any employees whose primary job responsibilities involve the
23 operating business of the issuer rather than assisting the issuer
24 in raising capital, and for each person identified in response to
25 this sub-subparagraph, a description of the consideration being
26 paid to that person for that assistance.

27 (F) A description of any litigation or legal proceedings

1 involving the issuer or its management.

2 (G) The name and address of any website that the issuer
3 intends to use in connection with the offering, including its
4 uniform resource locator or URL. If the issuer has not engaged a
5 website described in this sub-subparagraph at the time the issuer
6 files the disclosure statement described in this subparagraph with
7 the administrator under this subdivision but subsequently does
8 engage a website for use in connection with the offering, the
9 issuer shall provide the information described in this sub-
10 subparagraph to the administrator by filing a supplemental notice.

11 (iii) An escrow agreement, with a bank or other depository
12 institution ~~located in this state,~~ in which the purchaser funds
13 will be deposited, that provides that all offering proceeds will be
14 released to the issuer only when the aggregate capital raised from
15 all purchasers is equal to or greater than the minimum target
16 offering amount specified in the disclosure statement as necessary
17 to implement the business plan and that all purchasers will receive
18 a return of their subscription funds if that target offering amount
19 is not raised by the time stated in the disclosure statement. The
20 bank or other depository institution may contract with the issuer
21 to collect reasonable fees for its escrow services regardless of
22 whether the target offering amount is reached.

23 (f) The issuer is not, either before or as a result of the
24 offering, an investment company, as defined in section 3 of the
25 investment company act of 1940, 15 USC 80a-3, or an entity that
26 would be an investment company but for the exclusions provided in
27 subsection (c) of that section, or subject to the reporting

1 requirements of section 13 or 15(d) of the securities exchange act
2 of 1934, 15 USC 78m and 78o(d).

3 (g) The issuer informs each prospective purchaser that the
4 securities are not registered under federal or state securities
5 laws and that the securities are subject to limitations on transfer
6 or resale and displays the following legend conspicuously on the
7 cover page of the disclosure statement:

8 "IN MAKING AN INVESTMENT DECISION, PURCHASERS MUST RELY ON
9 THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING,
10 INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT
11 BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR
12 REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE
13 NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS
14 DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.
15 THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND
16 RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY
17 SUBSECTION (E) OF SEC RULE 147, 17 CFR 230.147(E), AS PROMULGATED
18 UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE
19 STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION
20 THEREFROM. PURCHASERS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO
21 BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE
22 PERIOD OF TIME."

23 (h) The issuer requires each purchaser to certify in writing,
24 and to include as part of that certification his or her signature,
25 and his or her initials next to each paragraph of the
26 certification, as follows: "I understand and acknowledge that:

27 I am investing in a high-risk, speculative business venture. I

1 may lose all of my investment, and I can afford the loss of my
2 investment.

3 This offering has not been reviewed or approved by any state
4 or federal securities commission or other regulatory authority and
5 that no regulatory authority has confirmed the accuracy or
6 determined the adequacy of any disclosure made to me relating to
7 this offering.

8 The securities I am acquiring in this offering are illiquid,
9 that the securities are subject to possible dilution, that there is
10 no ready market for the sale of those securities, that it may be
11 difficult or impossible for me to sell or otherwise dispose of this
12 investment, and that, accordingly, I may be required to hold this
13 investment indefinitely.

14 I may be subject to tax on my share of the taxable income and
15 losses of the issuer, whether or not I have sold or otherwise
16 disposed of my investment or received any dividends or other
17 distributions from the issuer.

18 By entering into this transaction with the issuer, I am
19 affirmatively representing myself as being a Michigan resident at
20 the time that this contract is formed, and if this representation
21 is subsequently shown to be false, the contract is void.

22 If I resell any of the securities I am acquiring in this
23 offering to a person that is not a Michigan resident, within 9
24 months after the closing of the offering, my contract with the
25 issuer for the purchase of these securities is void."

26 (i) If the offer and sale of securities under this section is
27 made through an internet website, all of the following requirements

1 are met:

2 (i) Before any offer of an investment opportunity to residents
3 of this state through the use of a website, the issuer provides to
4 the website and to the administrator evidence that the issuer is
5 organized under the laws of this state and that it is authorized to
6 do business in this state.

7 (ii) The issuer obtains from each purchaser of a security under
8 this section evidence that the purchaser is a resident of this
9 state and, if applicable, an accredited investor.

10 (iii) The website operator files a written notice with the
11 administrator that includes the website operator's name, business
12 address, and contact information and states that it is authorized
13 to do business in this state and is being utilized to offer and
14 sell securities under this exemption. Beginning 12 months after the
15 date of the written notice, a website operator that has filed a
16 written notice under this subparagraph shall annually notify the
17 administrator in writing of any changes in the information provided
18 to the administrator under this subparagraph.

19 (iv) The issuer and the website keep and maintain records of
20 the offers and sales of securities made through the website and
21 provide ready access to the records to the administrator on
22 request. The administrator may access, inspect, and review any
23 website described in this subdivision and its records.

24 (j) All payments for the purchase of securities are directed
25 to and held by the bank or depository institution subject to the
26 provisions of subdivision (e) (iii).

27 (k) Offers or sales of a security are not made through an

1 internet website unless the website has filed the written notice
2 required under subdivision (i) (iii) with the administrator.

3 (l) The issuer does not pay, directly or indirectly, any
4 commission or remuneration to an executive officer, director,
5 managing member, or other individual who has a similar status or
6 performs similar functions in the name of and on behalf of the
7 issuer for offering or selling the securities unless he or she is
8 registered as a broker-dealer, investment adviser, or investment
9 adviser representative under article 4. An executive officer,
10 director, managing member, or other individual who has a similar
11 status or performs similar functions in the name of and on behalf
12 of the issuer is exempt from the registration requirements under
13 article 4 if he or she does not receive, directly or indirectly,
14 any commission or remuneration for offering or selling securities
15 of the issuer that are exempt from registration under this section.

16 (m) The issuer provides a copy of the disclosure statement
17 provided to the administrator under subdivision (e) (ii) to each
18 prospective purchaser at the time the offer of securities is made
19 to the prospective purchaser. In addition to the information
20 described in subdivision (e) (ii), the disclosure statement provided
21 to the administrator and to prospective purchasers shall include
22 additional information material to the offering, including, where
23 appropriate, a discussion of significant factors that make the
24 offering speculative or risky. This discussion must be concise and
25 organized logically and should not present risks that could apply
26 to any issuer or any offering.

27 (n) The term of the offering does not exceed 12 months after

1 the date of the first offer.

2 (2) Every fifth year, the administrator shall cumulatively
3 adjust each of the following dollar amounts to reflect the change
4 in the consumer price index for all urban consumers published by
5 the federal bureau of labor statistics:

6 (a) The dollar limitations provided in subsection (1)(c),
7 rounding each dollar limitation to the nearest \$50,000.00.

8 (b) The dollar limitation provided in subsection (1)(d) and
9 section 201(1)(y)(iv), rounding that dollar limitation to the
10 nearest \$100.00.

11 (3) If the offer and sale of a security of an issuer is exempt
12 under this section, the issuer shall provide a quarterly report to
13 the issuer's purchasers until none of the securities issued under
14 this section are outstanding. All of the following apply to the
15 quarterly report described in this subsection:

16 (a) The issuer shall provide the report free of charge to the
17 purchasers.

18 (b) An issuer may satisfy the report requirement under this
19 subsection by making the information available on an internet
20 website if the information is made available within 45 days after
21 the end of each fiscal quarter and remains available until the next
22 quarterly report is issued.

23 (c) The issuer shall file each report with the administrator
24 and must provide a written copy of the report to any purchaser on
25 request.

26 (d) The report must include all of the following:

27 (i) The compensation received by each director and executive

1 officer of the issuer, including cash compensation earned since the
2 previous report and on an annual basis and any bonuses, stock
3 options, other rights to receive securities of the issuer or any
4 affiliate of the issuer, or other compensation received.

5 (ii) An analysis by management of the issuer of the business
6 operations and financial condition of the issuer.

7 (4) The exemption provided in this section shall not be used
8 in conjunction with any other exemption under this article, except
9 offers and sales to controlling persons shall not count toward the
10 limitation in subsection (1)(c).

11 (5) The exemption described in this section does not apply if
12 an issuer or person that is affiliated with the issuer or offering
13 is subject to any disqualification established by the administrator
14 by rule or contained in rule 262 as promulgated under the
15 securities act of 1933, 17 CFR 230.262. However, this subsection
16 does not apply if both of the following are met:

17 (a) On a showing of good cause and without prejudice to any
18 other action by the administrator, the administrator determines
19 that it is not necessary under the circumstances that an exemption
20 be denied.

21 (b) The issuer establishes that it made factual inquiry into
22 whether any disqualification existed under this subsection but did
23 not know, and in the exercise of reasonable care could not have
24 known, that a disqualification existed under this subsection. The
25 nature and scope of the requisite inquiry will vary based on the
26 circumstances of the issuer and the other offering participants.

27 (6) The administrator may adopt rules to implement the

1 provisions of this section and to protect purchasers that purchase
2 securities that are exempt from registration under this section.

3 (7) The administrator shall charge a nonrefundable filing fee
4 of \$100.00 for filing an exemption notice required under subsection
5 (1). The fees paid to the administrator under this subsection shall
6 be used to pay the costs incurred in administering and enforcing
7 this act.

8 (8) A website through which an offer or sale of securities
9 under this section is made is not subject to the broker-dealer,
10 investment adviser, or investment adviser representative
11 registration requirements under article 4 if the website meets all
12 of the following conditions:

13 (a) It does not offer investment advice or recommendations.

14 (b) It does not solicit purchases, sales, or offers to buy the
15 securities offered or displayed on the website.

16 (c) It does not compensate employees, agents, or other persons
17 for the solicitation or based on the sale of securities displayed
18 or referenced on the website.

19 (d) It does not hold, manage, possess, or otherwise handle
20 purchaser funds or securities.

21 (e) It does not engage in any other activities that the
22 administrator by rule determines are inappropriate for an exemption
23 from the registration requirements under article 4.

24 (9) Except for section 504, article 5 applies to a violation
25 of this section, including a violation concerning website
26 operation.

27 (10) As used in this section, "controlling person" means an

1 officer, director, partner, or trustee, or another individual who
2 has similar status or performs similar functions, of or for the
3 issuer or to a person that owns 10% or more of the outstanding
4 shares of any class or classes of securities of the issuer.

5 (11) The exemption described in this section may be referred
6 to as the "Michigan invests locally exemption".