

UNIFORM SECURITIES ACT (2002) (EXCERPT)
Act 551 of 2008

ARTICLE 5
FRAUD AND LIABILITIES

451.2501 Unlawful conduct; fraud.

Sec. 501. It is unlawful for a person, in connection with the offer, sale, or purchase of a security or the organization or operation of a Michigan investment market under article 4A, to directly or indirectly do any of the following:

- (a) Employ a device, scheme, or artifice to defraud.
- (b) Make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
- (c) Engage in an act, practice, or course of business that operates or would operate as a fraud or deceit on another person.

History: 2008, Act 551, Eff. Oct. 1, 2009;—Am. 2014, Act 355, Imd. Eff. Oct. 21, 2014.

Compiler's note: For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

Enacting section 1 of Act 355 of 2014 provides:

"Enacting section 1. It is the intent of the legislature by enacting this amendatory act to regulate a class of intrastate broker-dealers that is exempt under section 15(a)(1) of the securities exchange act of 1934, 15 USC 78o, and that will facilitate intrastate securities transactions among persons of this state."

451.2502 Investment advice or publications; prohibited conduct; rule or order.

Sec. 502. (1) It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities, or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities, to do any of the following:

- (a) Employ a device, scheme, or artifice to defraud another person.
- (b) Engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

(2) An investment adviser acting as a finder shall not do any of the following:

- (a) Take possession of funds or securities in connection with the transaction for which payment is made for services as a finder.

(b) Fail to disclose clearly and conspicuously in writing to all persons involved in the transaction as a result of his or her finding activities before the sale or purchase that the person is acting as a finder, any payment for services as a finder, the method and amount of payment, as well as any beneficial interest, direct or indirect, of the finder or a member of the finder's immediate family in the issue of the securities that are the subject of services as a finder.

(c) Participate in the offer, purchase, or sale of a security in violation of section 301. However, if the investment adviser makes a reasonable effort to ascertain if a registration has been effected or an exemption order granted in this state or to ascertain the basis for an exemption claim and does not have knowledge that the proposed transaction would violate section 301, his or her activities as a finder do not violate section 301.

(d) Participate in the offer, purchase, or sale of a security without obtaining information relative to the risks of the transaction, the direct or indirect compensation to be received by promoters, partners, officers, directors, or their affiliates, the financial condition of the issuer, and the use of proceeds to be received from investors, or fail to read any offering materials obtained. This subdivision does not require independent investigation or alteration of offering materials furnished to the finder.

(e) Fail to inform or otherwise ensure disclosure to all persons involved in the transaction as a result of his or her finding activities of any material information which the finder knows, or in the exercise of reasonable care should know based on the information furnished to him or her, is material in making an investment decision, until conclusion of the transaction. This subdivision does not require the finder to independently generate information.

(f) Locate, introduce, or refer persons that the finder knows, or after a reasonable inquiry should know, are not suitable investors by reason of their financial condition, age, experience, or need to diversify investments.

(3) A rule or order under this act may do any of the following:

- (a) Define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent investment advisers and

investment adviser representatives, other than supervised persons of a federal covered investment adviser, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

(b) Specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

History: 2008, Act 551, Eff. Oct. 1, 2009.

Compiler's note: For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

451.2503 Civil action or administrative proceeding; burden of proof.

Sec. 503. (1) In a civil action or administrative proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the exemption, exception, preemption, or exclusion.

(2) In a criminal proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

History: 2008, Act 551, Eff. Oct. 1, 2009.

Compiler's note: For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

451.2504 Sales and advertising literature; filing.

Sec. 504. (1) Subject to subsection (2), a rule or order under this act may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this act.

(2) This section does not apply to sales and advertising literature specified in subsection (1) relating to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by section 201, 202, or 203 except as required under section 201(g) or 202(1)(x).

History: 2008, Act 551, Eff. Oct. 1, 2009;—Am. 2013, Act 264, Imd. Eff. Dec. 30, 2013.

Compiler's note: For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

451.2505 Misleading filings.

Sec. 505. A person shall not make or cause to be made, in a record that is used in an action or proceeding or filed under this act, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

History: 2008, Act 551, Eff. Oct. 1, 2009.

Compiler's note: For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

451.2506 Misrepresentations concerning registration or exemption.

Sec. 506. The filing of an application for registration, a registration statement, a notice filing under this act, or the registration of a person, the notice filing by a person, or the registration of a security under this act does not constitute a finding by the administrator that a record filed under this act is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. A person shall not make or cause to be made to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

History: 2008, Act 551, Eff. Oct. 1, 2009.

Compiler's note: For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

451.2507 Immunity from liability.

Sec. 507. A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator, or designee of the administrator, the securities and exchange commission, or a self-regulatory organization, unless the person knew, or should have known at the

time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

History: 2008, Act 551, Eff. Oct. 1, 2009.

Compiler's note: For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

451.2508 Violations; penalties.

Sec. 508. (1) A person that willfully violates this act or a rule adopted or order issued under this act, except section 504 or the notice filing requirements of section 302 or 405, or that willfully violates section 505 knowing the statement made to be false or misleading in a material respect, is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$500,000.00 for each violation, or both. An individual convicted of violating a rule or order under this act may be fined, but shall not be imprisoned, if the individual did not have knowledge of the rule or order.

(2) The attorney general or the proper prosecuting attorney may institute appropriate criminal proceedings under this act with or without a reference from the administrator.

(3) This act does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

History: 2008, Act 551, Eff. Oct. 1, 2009.

Compiler's note: For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

451.2509 Civil liability; joint and several liability; statute of limitations; violative contract; waiver prohibited; other rights or remedies.

Sec. 509. (1) Enforcement of civil liability under this section is subject to the securities litigation uniform standards act of 1998.

(2) A person is liable to the purchaser if the person sells a security in violation of section 301, or by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission, and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. All of the following apply to an action under this subsection:

(a) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at 6% per year from the date of the purchase, costs, and reasonable attorney fees determined by the court, upon the tender of the security, or for actual damages as provided in subdivision (c).

(b) The tender referred to in subdivision (a) may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in subdivision (c).

(c) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and interest at 6% from the date of purchase, costs, and reasonable attorney fees determined by the court.

(3) A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, if the seller did not know of the untruth or omission and the purchaser does not sustain the burden of proving that the purchaser did not know, and in the exercise of reasonable care could not have known, of the untruth or omission. All of the following apply to an action under this subsection:

(a) The seller may maintain an action to recover the security, any income received on the security, costs, and reasonable attorney fees determined by the court, on the tender of the purchase price, or for actual damages as provided in subdivision (c).

(b) The tender referred to in subdivision (a) may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in subdivision (c).

(c) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, interest at 6% from the date of sale of the security, costs, and reasonable

attorney fees determined by the court.

(4) A person acting as a broker-dealer or agent that sells or buys a security in violation of section 401(1), 402(1), or 506 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsection (2) or, if a seller, a remedy as specified in subsection (3).

(5) A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of section 403(1), 404(1), or 506 is liable to the client. The client may maintain an action at law or in equity to recover the consideration paid for the advice, interest at 6% from the date of payment, costs, and reasonable attorney fees determined by the court.

(6) A person that receives, directly or indirectly, any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person is liable to the other person. The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct that gives rise to liability under this subsection, interest at 6% from the date of the fraudulent conduct, costs, and reasonable attorney fees determined by the court, less the amount of any income received as a result of the fraudulent conduct. This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

(7) The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (2) to (6):

(a) A person that directly or indirectly controls a person liable under subsections (2) to (6), unless the controlling person sustains the burden of proving that the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which the liability is alleged to exist.

(b) An individual who is a managing partner, executive officer, or director of a person liable under subsections (2) to (6), including each individual having a similar status or performing similar functions, unless the individual sustains the burden of proving that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which the liability is alleged to exist.

(c) An individual who is an employee of or associated with a person liable under subsections (2) to (6) and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proving that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which the liability is alleged to exist.

(d) A person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (2) to (6), unless the person sustains the burden of proving that the person did not know and, in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which liability is alleged to exist.

(8) A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

(9) A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(10) A person may not obtain relief if an action is not commenced within 1 of the following time limits, as applicable:

(a) Under subsection (2) for violation of section 301, or under subsection (4) or (5), unless the action is commenced within 1 year after the violation occurred.

(b) Under subsection (2), other than for violation of section 301, or under subsection (3) or (6), unless the action is commenced within the earlier of 2 years after discovery of the facts constituting the violation or 5 years after the violation occurred.

(11) A person that has made or engaged in the performance of a contract in violation of this act or a rule adopted or order issued under this act, or that has acquired a purported right under the contract with knowledge of the facts by reason of which its making or performance was in violation of this act, may not base an action on the contract.

(12) A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this act or a rule adopted or order issued under this act is void.

(13) The rights and remedies provided by this act are in addition to any other rights or remedies that may exist, but this act does not create a cause of action not specified in this section or section 411(5).

History: 2008, Act 551, Eff. Oct. 1, 2009.

Compiler's note: For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

451.2510 Purchaser, seller, or recipient of investment advice; action prohibited; false representation; security as void; damages.

Sec. 510. (1) A purchaser, seller, or recipient of investment advice may not maintain an action under section 509 if all of the following are met:

(a) The purchaser, seller, or recipient of investment advice receives in a record, before the action is commenced, an offer that does all of the following:

(i) States the respect in which liability under section 509 may have arisen and fairly advises the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, including financial or other information necessary to correct all material misstatements or omissions in the information that was required by this act to be furnished to that person at the time of the purchase, sale, or investment advice.

(ii) If the basis for relief under this section may have been a violation of section 509(2), offers to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at 6% per year from the date of purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, offers to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at 6% from the date of purchase in cash equal to the damages computed in the manner provided in this subsection.

(iii) If the basis for relief under this section may have been a violation of section 509(3), offers to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at 6% from the date of the sale, or if the purchaser no longer owns the security, offers to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at 6% from the date of the sale.

(iv) If the basis for relief under this section may have been a violation of section 509(4), and if the customer is a purchaser, offers to pay as specified in subdivision (a)(ii) or, if the customer is a seller, offers to tender or to pay as specified in subdivision (a)(iii).

(v) If the basis for relief under this section may have been a violation of section 509(5), offers to reimburse in cash the consideration paid for the advice and interest at 6% from the date of payment.

(vi) If the basis for relief under this section may have been a violation of section 509(6), offers to reimburse in cash the consideration paid for the advice and the amount of any actual damages that may have been caused by the conduct, and interest at 6% from the date of the violation causing the loss.

(vii) States that the offer must be accepted by the purchaser, seller, or recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller, or recipient of investment advice or within a shorter period of not less than 3 days that the administrator, by order, specifies.

(b) The offeror has the present ability to pay the amount offered or to tender the security under subdivision (a).

(c) The offer under subdivision (a) is delivered to the purchaser, seller, or recipient of investment advice or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice.

(d) The purchaser, seller, or recipient of investment advice that accepts the offer under subdivision (a) in a record within the period specified under subdivision (a)(vii) is paid in accordance with the terms of the offer.

(2) If the legality or exempt status of a sale of a security made in accordance with this act is contingent on the intrastate nature of that transaction, a person's agreement to purchase, or the purchase of, that security is considered a representation that the person is a resident of this state at the time that agreement is made, and if this representation is subsequently shown to be false, the agreement for the sale of the security is void.

(3) If an agreement to purchase, or the purchase of, a security is void under subsection (2), the issuer of the security may recover damages from the misrepresenting offeree or purchaser. These damages include, but are not limited to, the issuer's expenses in resolving the misrepresentation. However, damages described in this subsection shall not exceed the amount of the person's investment in the security.

History: 2008, Act 551, Eff. Oct. 1, 2009;—Am. 2013, Act 264, Imd. Eff. Dec. 30, 2013.

Compiler's note: For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.